

CC-12:HISTORY OF INDIA(1750s-1857)

III. COLONIAL STATE AND IDEOLOGY:

(A) ARMS OF THE COLONIAL STATE:ARMY,POLICE,LAW

As the British Empire grew in size and its resources needed to be controlled, so did the need for an efficient and authoritative administration increase. Initially there was respect for Indian tradition and no attempts were made to impose European ideals. But from the mid-eighteenth century onwards the conquerors felt the need to assert sovereignty and exert control to insure steady flow of revenue. The idea of cultural particularism began to lose ground on the face of Evangelical attacks and the utilitarian zeal for reform. Evangelicalism and utilitarianism are the two schools of thoughts or intellectual current in Britain which preached the idea of improvement and thus pushed forward the issue of reform both at home and in India. The idea of improvement led to introduction of British principles of justice and uniformity under a civil authority exercised by British personnel. It was hoped that good laws and sound administration would lead to the freeing of individual initiative from despotism, irrational customs and traditions. Industrial Revolution in Britain which was also taking place around the same time necessitated an integration of markets throughout India and her development as source of agricultural raw materials. All these required an unequivocal assertion of sovereignty, much greater penetration into Indian economy and society and control over Indian trade not only with Britain but with other countries as well.

JUDICIAL SYSTEM

The grant of diwani in 1765 gave the East India Company the right to collect revenue in Bengal, Bihar and Orissa. The Company exercised the Diwani and the Nizamat through its agents who were Indians, but the actual powers was in the hands of the Company. The English was thus given the complete control over the province but were not responsible for its administration. This system of administration, the rule of the Company and the Nawab, was known as Dual Government of Bengal. This system continued from 1765 to 1772CE and was abolished when Warren Hastings came to India as the Governor of Bengal in 1772 .Warren Hastings decided to take full control of the Justice system of the country.

Under the new system of 1772 each district was to have two courts, a civil court or diwani adalat and a criminal court or fauzdari adalat. Thus the Mughal nomenclature was retained, and the laws to be applicable were Muslim laws in criminal justice and the Muslim or Hindu laws in adjudicating personal matters, such as inheritance, marriage etc. This division of the topics of law was accordance to English system which left such matters as Marriage, Divorce, property, religious worship or excommunication, in the jurisdiction of the Bishop's courts where the law applicable was the ecclesiastical law. The civil courts in India were to be Presided over by the European District Collectors, and they were to be assisted by the maulvis and Brahman pundits interpreting indigenous laws for their understanding. The Criminal courts were to be under a kazi and a mufti but they were to be supervised by European Collectors. The appeal court, the Sadar Nizamat Adalat was removed from Murshidabad to Calcutta and put under the control of the president and council members.

In civil justice system further changes took place between 1773 and 1781, partly in response to the demands of revenue collection and partly in deference to the Whig principle of separating executive functions from the administration of justice. According to the plans worked out by Hastings and Sir Elijah Impey, the chief justice of the Calcutta High Court, district collectors were divested of their judicial duties. In the area of civil justice, instead of district courts, initially six provincial courts, later replaced by eighteen mofussil courts were created and they were to be presided over by only the European covenanted officers of the Company, who would be designated Judges' for this purpose. For some time the new Supreme Court, created by the Regulating Act of 1773, acted as an appeal court; but its conflict with the Supreme Council over definition of jurisdiction led to the confinement of its authority to the city of Calcutta and to matters related to factories dependent on Fort William. In its place the Sadar Diwani Adalat was now reconstituted to serve as an appeal court, with Sir Elijah himself taking over its superintendence in 1780. Along with this Europeanization, which was the most dominant and visible feature of the judicial reforms of this period, there was also another coherent trend, and that was towards systematisation or institutionalisation of the civil justice system. The Code of 1781 prescribed specific rules and regulations to be followed in all the civil courts down to the lowest level and all judicial orders were henceforth to be in writing. The major problem that hindered certainty and uniformity in the system was that of conflicting and varying interpretations of indigenous laws, as Brahman pundits, for ale, often gave divergent

interpretations of the various schools example dharmashastra and sometimes their opinions on the same law varied widely from case to case. To reduce this element of uncertainty, a Committee of eleven pundits compiled, at the behest of Hastings, a digest of Hindu laws in 1775, and it was translated into English by N.B. Halhed in 1776 for the purpose of lessening the dependence of European judges on their indigenous interpreters. A code of Muslim laws was also compiled by 1778. With this standardisation of law, the practice of law now needed professional expertise that could only be expected from a specially trained group of people, the 'lawyers'.

There was a certain reversal of this system in 1787, when once again the collector was given the duty of administering civil justice. It was Lord Cornwallis and his Code of 1793 that finally set the rule of separating revenue collection from administration of civil justice as a safeguard for property rights against abuse of power by revenue officials and their agents. The new system provided for a hierarchy of courts from zillah (district) and city courts to four provincial courts and the Sadar Diwani Adalat with appellate jurisdiction. All the courts were to be headed by European judges, with provision for appointment of 'native commissioners'. The criminal justice system was also completely overhauled, as the district magistrates complained to Cornwallis about the anomalies of Islamic laws and the corrupt practices at the criminal courts. But more importantly, it was felt that such an important branch of administration could no longer be left in charge of an Indian. The faujdari adalats, which until then functioned under Naib Nazim Reza Khan, were therefore abolished and replaced by courts of circuit, headed by European judges. The office of the Naib Nazim itself was abolished and the Sadar Nizamat Adalat was brought back to Calcutta and placed directly under the supervision of the Governor-General-in-Council. The jurisdiction of these criminal courts did not extend to the British born subjects, who remained under the jurisdiction of the Supreme Court at Calcutta. The entire judicial reform of Cornwallis therefore spoke of one thing-a total exclusion of Indians from the whole system, which became less ambiguous in its authoritarian and racially Superior tone.

The system of Permanent Settlement in effect in Bengal but in case of Madras it was Ryotwari system and hence the scenario of Judicial alterations were a bit different there, which included provisions for greater Indianisation of the system at the lower levels (village panchayats, district and city courts) and the

union of magisterial, revenue collection and some judicial powers in the office of the collector. Fully introduced in Madras by 1816, it was later extended to Bombay by Elphinstone in 1819.

Apart from the question of Indianisation, there was the issue of codification of laws, which would establish a uniform judicial administration and civil authority throughout British India. These issues were not raised until the governor-generalship of Lord Bentinck and the Charter Act of 1833. The act, first of all, threw open judicial positions to Indians and provided for the appointment of a law commission for codification of laws. By this time the collectors had once again resumed magisterial authority and some judicial power. The law commission appointed under Lord Macaulay completed the task of codification by 1837, but it had to wait until after the revolt of 1857 for full implementation. The Code of Civil Procedure was introduced in 1859, the Indian Penal Code in 1860 and the Criminal Procedure Code in 1862.

In British India, however, the judicial administration now, looked significantly different from what it was under the Mughal rule, and these changes the ordinary Indians found hard to comprehend. Justice now became distant, not just physically, because of the geographical distance from the district courts, but also psychologically, as the indigenous people did not understand the complex judicial procedures, dominated by a new class of lawyers. But here too there were problems, as the colonial system retained a considerable terrain for judicial discretion, based on the argument of cultural particularism or civilisational inferiority of the indigenous people. The concept of equality before law often did not apply to the Europeans. If there was greater movement towards equality in civil justice system, racial privilege for the rulers remained in place in various forms in the criminal courts.

POLICE

The colonial state in its early phase used the indigenous institutions for controlling crimes. Warren Hastings, for example, retained the post of the fauzdars and utilised the policing functions of the Zamindars during the early phase of Company rule. Finding this arrangement inadequate, he also appointed Magistrates in the districts and each district was divided into smaller sub-units, each under the charge of a darogah who headed a group of 20-30 armed policemen and supervised the village watchmen who was in charge of 20-30 villages. The darogahs functioned under the over-all control of the Magistrates.

Regulation XXII of 1793 abolished the policing right of Zamindars. In the system of administration, evolved by Cornwallis, District Collectors combined the duties of revenue-collection and the police duties as Magistrates. These functions were separated briefly at the recommendation of the Bird Committee (1808-12) when separate District Superintendents of Police were appointed. However, in 1844 the functions of the Collector, the Magistrate and the Police were again combined to tackle, the problem of the increasing incidences of property crimes.

The Police organisation emerged as an autonomous organ of the colonial state in the North-West-Frontier Province in the 1840s as a quasi-military instrument for maintaining order and assisting a fragile political authority. The Sind model was found to be adequately suited to tackle any political agitation, was introduced in Punjab when it was conquered in 1849 and later with various modifications to Bombay in 1853 and Madras in 1859. The Madras system provided for a military police and a civilian unarmed force, both subservient to the civilian authority of the Collector-Magistrate in the districts. But in the meanwhile, the revolt of 1857 had shaken the foundations of the British rule and had made it more conscious of the need of an effective machinery for collecting information and policing the empire. The Police Commission appointed in 1860 provided for a basic structure of a police establishment that was enacted in the Police Act of 1861. And that structure with only minor adjustment, remained unchanged for the next century of British rule.

ARMY

The evolution of the Company's army was integrally connected to the development of its Indian empire. In the eighteenth century Royal forces, particularly the navy, were often dispatched to India on lease to the Company to help it out at times of trouble, but this created problems, particularly in the relationship between the King's army officers and the civilian authorities of the Company. So from very early on there was an attempt to raise a permanent Company's army in India. It was in the eighteenth century that the rulers of some of the north Indian successor states, like the Nawab of Awadh and the Raja of Banaras, refined this recruitment system and raised sophisticated trained peasant armies distanced from the civilian communities. It was this tradition that the East India Company appropriated as it started recruiting its own army, which came to be known as the sepoy (from sipahi or soldier) army. The French had first initiated this tradition of recruiting an Indian army in 1721-29. It was

renewed by Lord Clive after the defeat of the Bengal nawab in 1757. This sepoy army was to be trained and disciplined according to European military standards and commanded by European officers in the battlefield. Some of these officers including the commander-in-chief were King's officers, while the majority were nominated by the Company directors by way of distributing patronage. In the early nineteenth century by legislation twenty thousand Royal troops were to be stationed in India and paid for by the Company, ostensibly as a strategy to subsidise Britain's defence expenditure in the post-Napoleonic era.¹⁰⁹ In addition to that the size of the Company's Indian army also increased continually and as its territory expanded beyond Bengal, the military labour market from where it recruited extended as well.

The army not only conquered territories, it also protected the empire against real or imagined internal threats; it handled peasant rebellions against high revenue demands, made alliances with Indian elites, collected information about Indian society and economy. It was thus considered to be the most important apparatus of rule for the Company's administration in India. To a large extent, however, this sense of importance was generated by the army itself. Thus as the empire expanded, the Company's army came to incorporate a variety of social groups and a number of military traditions, which had to be accommodated in a careful balancing game and power had to be shared with the local elites. In the following decade there were attempts to streamline the army administration, the main purpose of which was to have more rigorous control over the sepoys and their families. The reforms of the 1830s, which aimed at levelling the differences and promoting a universal military culture, as shown by Seema Alavi created discontent among the sepoys. This unhappy feeling particularly showed in the Bengal army, as the reforms infringed upon the sepoys high caste status and disturbed the power relations within which they were located. In the 1840s, therefore, the disaffection of the Indian troops found articulate expressions from time to time and these incidents prepared the backdrop for the mutiny in the Bengal army in 1857.

REFERENCE

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