

Lecture-24



Lord Cornwallis: Judicial Plans of 1793

1. Separation of Executive and the Judiciary

The powers vested in the collector were administrative and judicial as he was also in charge of collection of revenue and for deciding cases arising out of revenue matter. Now, the collector was only responsible for the collection of revenue.

2. Mal Adalats were abolished

Revenue courts which exclusively tried cases arising out of revenue matters and presided by the Collector as Judge, was now abolished.

All powers and pending suits of the Revenue courts were now transferred to Mofussil Diwani Adalats and thus not tried by the collector.

3. Executive subjected judicial control

The Governor General and his council were now subject to judicial control. Any wrong acts committed by them while carrying out their functions and outside of it could be heard or tried and punished by the Diwani Adalats. Suits against the Government by private individuals could be brought forward and were tried by the Diwani Courts.

4. Indian natives had to sign a bond with the British Subjects agreeing to go to court

British could recover claims from Indian natives and vice versa by signing a bond with each other agreeing to go to court.

5. Establishment of Provincial Courts of Appeal at the four divisions

Earlier the appeal from the Mofussil Diwani Adalats lay to the Sadr Diwani Adalat situated at Calcutta. But this process for time consuming and expensive so provincial courts of appeal were

established at each division i.e. Patna, Calcutta Murshidabad and Dacca. Appeals from the Mofussil Adalat now lay to the provincial court of appeal which were to be heard within three months of filing them. These courts were presided by three covenant English servants of the company. Quorum was of two servants. It was an open court and could try revenue, civil and criminal cases. They could also try cases referred to them by the Sadr Diwani Adalats.

Cases valued more than Rs. 5000 were referred to the King-in-council.

6. Native Officers given important posts

Native officers were appointed by the Governor General-in-council. Native officers were made Munsiffs of the Munsiff courts at district level. This court could try cases upto Rs.50. Zamindars, Tehsildars, etc appointed as Munsiffs.

Personal Laws of Hindus and Muslims were applicable in cases relating to marriage, inheritance, caste, religious usages and institutions. These personal laws were interpreted by the native officers who were appointed to assist the court to expound the personal law

7.Sadr Diwani Adalat

It was highest court of appeal in India. It was presided over by the Governor General and the Council who were the Judges of the Sadr Diwani Adalat. Their function was to supervise the lower courts and to hear appeals from the provincial courts of appeal when the sum of the matter of the case was more than Rs.1000.

Further an appeal from the Sadr Diwani Adalat lay to the King-in-council, when the sum of the matter of the case was more than Rs.5000.

8. Reforms in criminal judiciary

The court of circuit was merged with the provincial court of appeal. The power of the collector as a magistrate was taken away and was vested in the judges of the diwani adalats instead.

9. Uniform pattern of Regulations

Until now, any new regulation that was issued did not follow an uniform pattern. This was changed by making it a rule that any new regulation that would be made would have a title to explain the nature of the subject matter and contain a preamble which would state the purpose for enacting the regulation.

10. Reforms in Muslim Personal Law

The Sadr Nizamat Adalat was directed to follow the muslim personal law to try and punish criminal cases, but with some modifications. The relatives of murder victims did not have a provision to pardon the murderer. The cruel and inhuman punishments such as cutting off limbs of the offender were replaced with punishment of imprisonment and hard labour for 14 years.

11. Court Fees abolished

Court fees which was imposed in the judicial plan of 1787 was abolished. The court fee was abolished so that the people could easily reach to the court for securing justice.

12. Legal Profession recognised for the first time in India

The legal profession was recognised in India for the first time. The pleaders of the case had to have prior legal knowledge to be eligible to be a pleader of the court.

Defects of the judicial plan of 1790

The provisions of multiple levels of appeals made the judicial machinery complicated and slow moving. Thus, large number of cases remained pending in the courts for long period.

The Indians were totally excluded from the judiciary except at very low level of munsif. Cornwallis was of a belief that the Indians were unworthy of holding any position of responsibility because of their character. This distrust shown towards the Indians generated the dissatisfaction among the native people as well as made the system less efficient as the English

servants did not know and understand the customs, usages, etc. of the people; therefore Europeans could not understand nor provide solutions the problems of the natives.

Cornwallis did everything on procedural side but he could not reform the substantive part of law mainly the criminal law which was based on Muslim law and had many defects.