

THE EMERGENCE OF AN EQUITABLE SOCIAL ORDER UNDER THE COLONIAL RULERS

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Abstract

This paper focuses the evolution of the judicial system in colonial India after the Charter Act of 1833. The Charter Act of 1833 legalized the British colonization of India and the territorial possessions of the company were allowed to remain under its government, but were held in trust for his majesty, his heirs and successors for the service of Government of India. This act is important in that it defined for the first time the constitutional position of British Indian territories. The evolution of a sound legal system can be regarded as the best and the most notable legacy left behind by the company rule in India. The British rulers constituted law Commissions, Indian legislative council and their sustained labor succeeded in the framing of the Indian Penal Code and Codes of Criminal and Civil Procedure. They provide the guiding light as envisaged by the early British experts who framed these codes around a hundred and fifty years ago.

Keywords

Judiciary, Colonialism, Legal system, Modernity, Customs, Regulations, Justice

The Saint Helena Act of 1833 or the Government of India Act of 1833 is an Act of the Parliament of the United Kingdom. As this act was intended to provide for an extension of the Royal Charter granted to the East India Company. It is also called the

Charter Act of 1833. This Charter Act extended the Charter by 20 years. Important provisions of the act was legalization of British colonization in India, split in the Bengal Presidency, enhanced power of Governor General of India, codifying the laws, Indians in the government services, mitigation of slavery, more Bishops, and the drain of wealth.

The Charter Act of 1833 marked the end of the haphazard and incoherent process by providing for a definite body of law and the act was a decisive step in overhauling the Indian judicial set-up. It sought to bring to an end the exploits of “body judges and idle collectors shaking the pagoda tree”. The future codification of law was expounded by Macaulay, when he address the House of Commons, “We propose no rash innovation; we wish to give no shock to the prejudices of any part of our subjects. Our principle is simply this- uniformity where you can have it, diversity where you must have it-but in all cases certainty”.

As part of the judicial proceedings courts of small causes were originally instituted under the provisions of act IX of 1850 in the presidency towns of Calcutta, Madras and Bombay. They succeeded the former courts of request and set up with a view to adjudicate upon cases involving petty debts. In Madras the small causes court was established on December 1, 1850. The Government of Madras were well aware of the need to economies judicial expense but the court faced the problem of increased labor. These courts were founded upon the model of the English County Courts and were peculiarly designed by the government for the benefit of the poorer classes. It diffused a happy sense of justice and security among the poorest classes of people, by far the most numerous, who found their interests referred to the same tribunal as their richer neighbors and determined by the same wisdom, justice and integrity.

After the growth of British Empire in India the rulers faced new administrative problems mainly because of the loosely knit fabric of the system which was inadequate besides being rickety and ill-designed to stand the rigors of time. In the field of judiciary shortcomings and anomalies of the system became more apparent than ever. The important factors which created an atmosphere wholly uncongenial to impartial and equitable administration of justice was diversity of customs and usages of the Indians and confused and contradictory regulations which governed proceedings of the law courts in different British Indian territories.

The Charter Act of 1833 symbolized the new sprit and vigor of British rule in India. It forbade the Company to engage itself in trade and profitable commercial activities and recognized the political unity of India established as a sequel to British rule by designating the Governor-General of Fort William in Bengal as the Governor-General of India.

The proposed law commission was actually appointed on February 17, 1835 , comprising G.W. Anderson from Bombay, J.M. Macleod from Madras and C.H. Cameron, a barrister of Calcutta. It was considered as a progressive measure by enlightened Indian public opinion. The law Commission chiefly employed in drafting a code of Penal Law of India. But it is a reality that first law commission ostensibly failed to bring about any appreciable change in the judicial administration of the country. The second law commission appointed in London in 1854, were limited to digesting and putting into shape the reports and drafts of the first commission. On the eve of the passage of the charter act of 1853 the second commission came into existence as a result of the enquiries conducted by the British parliament into the affairs of the Company. The commendable achievement of the commission was it

evolved a scheme for amalgamating the Supreme Court and the *Sader* Court and establishing high court in their place and formulated the draft criminal procedure code and made a superficial examination of the Indian penal code and the finalization of the draft code of civil procedure.

The Indian Penal Code, which was originally drafted under the direct supervision of T.B. Macaulay, President of the first Indian Law Commission. He unequivocally expressed that; “This code should not be a mere digest of existing usages and regulations, but should comprise all the reforms which the commission may think desirable. It should be framed on two great principles, the principle of suppressing crime with the smallest possible infliction of suffering, and the principle of ascertaining truth at the smallest possible cost of time and money”. The hard work of the Law Commission was rewarded when Macaulay submitted the draft penal code to the government of India on 14th October 1837.

The draft penal code submitted by the Indian law commissioners was a commendable achievement and was prepared with great ability and by the best talents available in India. But the greatest short coming of the penal code was that it was “exceedingly difficult to make an intelligible and correct version of it in the native language”. Indian penal law was founded solely on principles of morality and jurisprudence. In a few years the penal law of India will be familiarly known to a great number of young men of the middle classes who, besides furnishing recruits to the judicial service, will constitute a public prepared to criticize the proceedings of the criminal courts in a fair and enlightened spirit. The penal code as passed in 1860 came into operation on the first day of January 1862, though it was originally scheduled to be enforced from the first of May, 1861.

The criminal procedure code was mainly enacted to supplement the Indian Penal Code. In the matters of criminal justice it is a common fact that without a clear code of procedure, the utility and meaning of the penal code would have well-nigh been lost. The Government of India was anxious to produce a code of procedure which was to be easily intelligible, quick, inexpensive and just. Attempts towards this end were made as early as 1837 by the Indian law commissioners. But several factors which hampered the formulation of a code of criminal procedure were the unsettled political condition, numerous extraneous functions of the law commission and the uncertainty about the fate of the penal code itself. The code of criminal procedure ultimately was passed by the legislative council as Act XXV of 1861. It came into force on January 1, 1862.

Even before the establishment of the Indian Law Commission in 1835 attempt were made to chalk out a plan respecting the administration of justice in civil cases. After a close scrutiny the draft of civil procedure code submitted to the government of India on September 26, 1854. The code was finally enacted and received the assent of the Governor-General on March 22, 1859.

In the history of Indian judicial system the codification of law was an epoch-making event. About three decades of sustained labor and planned work done by the best British legal minds, which constituted the law commissions and the Indian legislative council, crystallized in the formation and drafting of the Indian Penal Code and the codes of criminal and civil procedure. Both the codes played a unique and pivotal role in the dispensation of justice, both criminal and civil, through the established law courts of the country. Even today the modes and methods of administering justice, in all its essential features, continue to be the same as

envisaged by the progenitors and framers of these codes a hundred and fifty years ago.

Last but not the least, the Indian law commissioners made a significant contribution by digesting various laws and regulations in force with a view to their codification and the eventual introduction of uniformity in the judicial organization. In the sphere of law and justice, the next two decades up to the passage of the charter act of 1853 were years of great activity. After the First war of Independence in 1857, the Crown took over the Government of India in 1858. By this time, the codification of Indian laws had sufficiently progressed. Finally well defined system of law and well organized system of courts were established under the High Court Act, 1861 and the enactment of the codes like Civil Procedure Code, Criminal Procedure Code and Indian Penal Code.

British rule in India lasted for about 200 years and such a long rule was bound to leave behind a rich and prosperous legacy. The most important legacy of British rule in India is the unification of India and the codification of laws and the establishment of the rule of law. No man was to be punished and sentenced except according to law. All citizens were equal before the law. If anyone violated the law and order of the country, he was to be punished irrespective of caste, creed, religion and official status. The code of criminal procedure code, civil procedure code, Indian evidence act, the Indian penal code, the Indian contract act, the sale of goods act, the partnership act etc applied equally to all irrespective of caste or religion.

The present legal system is the best example of the legacy of British rule in India. If we critically study the present legal setup of the country, the more it becomes clear that the present legal system in the country is a remarkable legacy of

the British rule. The English text books on law, Jurisprudence by *Salmond*, the analytical system and the methods of case law still continues in India in some sort. It is instructive and profitable if we compare the statutes of India up to 1947 with the statutes in England. It very clearly shows how much our past legislation was based on the legislation in England. The Supreme Court is merely a continuation of the Federal Court of India and the Privy Council as in the same pattern in England. The remarkable work done by the Indian Law Commission during the 19th century has become a part and parcel of our national life. The main drawback of the British legal system is very expensive, time-consuming, very complicated and not suitable to the illiterate. It takes years to dispose of a case and there is truth in the contention that justice delayed is justice denied.

The disorganized and incoherent process related to judiciary came to an end with the Charter Act of 1833. The system of Indian administration and the constitution of the East India Company were radically changed due to the enactment of the Charter of 1833. For the first time in the history of British India a single legislature for all the presidencies was established under this Charter. Lord Macaulay, the first Indian law commission submitted many reports in various laws. It was based on a detailed study primarily of the English law. The English law, to the extent it suited Indian conditions, usages and customs, was thus systematically imported to India. By the codification of Indian law a systematic import of English law was implemented. Through the enactment of four law commission the English notions of law and justice were introduced in India.

The rules and regulations, devised, implemented and gradually revised in due course of time over a period of few decades by the British colonial administrators of

India, for the efficient protection of their commercial interests and, in effect, the callous exploitation of Indian economy for their national well being, eventually evolved to a paraphernalia of power and system of Governance that ensured, to a certain extent, collective social welfare, social justice and equality before law for all Indians as a social and legal practice, that gradually nullified the hold of unequal perception of individuals propagated by ' *Varna*' and caste system existing in Indian tradition. The most impressive and notable achievement of the British rule in India was that, with their implementation of rules and regulations and successive reforms, probably without intending it to be so but in effect evolving a more equitable system of administration, in actual practice, like British system of administration contributed a strong and modern system of legal practice. The consolidation of that modern legal practice ensures a strong foundation for democracy in India even today. In turn, it ensures the proper legal, administrative and executive procedures for the protection of political freedom and safeguarding of civil rights. In a sense, it can be argued and seen that India exists as a modern, secular and democratic state on the basis of legal and administrative practices and procedures gradually built up by the British rule in India. Even the Indian constitution and culmination of these administrative and legal practices implemented by the British India, with many languages and different currents of regional culture, gradually evolved into one nation states with firm central government and implicit faith in the principle – unity in diversity- largely as a result of the overall impact of the British policies and practices which aimed at forging India into one nation by preventing the tendency to fragmentation on the basis of languages and regional cultures. In the onward journey to future promising greater prosperity and eminence, the British legal practices and procedures act as beacon for India today.

The liberal administrative and judicial reforms of the colonial rulers succeeded in forging the foundations of the modern legal system of India. In other words, independent India's indebtedness to the judiciary that came into existence as a result of British colonial administration in India is truly a notable and significant factor. In effect, the new system of judiciary founded and functioning on the bases of a set of norms, values and principles provided the people with the dignity of the rule of law and a set of clearly defined and codified personal laws to guide the people in personal life as well as in the context of interpersonal relations, conflicts and differences. Thus, it became clear that the origin and collective heritage of Indian legal system owe much in terms of the contribution of solid and sterling value from the British during the history of the colonial period.

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