



Cornwallis's Trio Judicial Reforms: A Supremacist Evil Plan or Legal Renaissance

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Abstract

This work makes an attempt to bring forth the different opinions on the very mysterious and critical presence and performance of Lord Cornwallis who at one end is presume to have brought in reforms that pioneered the judicial systems however on the other end considering the loop holes, the biased intentions and defects his presence was absolutely hazardous for the legal system and especially the representatives and rights of Indians. Reforms will be individually analyzed and opinions shall be discussed to identify the defects and intentions in the judicial reforms. This qualitative study aims to find out the critical aspects of lord's ideal plans veiled behind the glittering golden words. This works finds that Lord Cornwallis though being corrupt has always kept the Company above everything and for the purpose has utilized all assets and every person one way or the other and has brought certain developments to many regional systems.

KEYWORDS: Judicial Plans, Legal History, Cornwallis, Sub Continent, East India Company

Introduction

History is a subject that is undoubtedly without criticising and exaggerating always written in two opposite directions especially in the case of wars and most probably when it comes to leaders or commanders of armies. For one side he is a hero having committed heroic deeds but for the others he is always a barbaric invader having committed cruelties and war crimes. To this point each understands the scenario but what about making and implementation of rules and laws? Does the facts applies there too or its more than that? Is there any plans of intentions that would actually interpret the psychology or its about the master mind plans that manipulates in a way to counter the plans and the actual ideas along with the existences within the society in a way that would resist rebuttals and rebellions?

Personality and leadership of Lord Cornwallis is one of the few great examples that are being noted with the bipolar approaches as One looks at his major achievements and the others holds him liable for the conspiracies behind his deemed plans under his lordships. For some he is known as the founder of Indian Currency¹ whether the others recognize him as a General who lost American colonies.² This work will attempt to evaluate both theories about Lord Cornwallis while analyzing his Judicial reforms along with pre and post India activities and the output he delivered in those cases along with his intentions.

Lord Cornwallis's family had a long history of lordships and powerful Posts since one of his ancestor Thomas Cornwallis who became the sheriff in London in 1378.³ Since Thomas Cornwallis elders of Lord Cornwallis had been representatives in Parliament. Lord Cornwallis was born on December 31st 1738. He got his early education in from Eton and then as per the customs went to Military academy in Turin, Italy. He also served in the German courts with lord Granby and was present in the battle of Minden. He entered the parliament as member of eye in 1760 and within two years succeeded to Earldom after the death of his father in 1762. Having faced several accusations in the parliament because of opposing political opinions he withdrew from public life and opted for social exile. This was the time he began his major role in the international politics and wars for the British Empire.⁴

Lord Cornwallis being of an active and serving nature intended to serve his nation and in the due course joined General Henry Clinton in America in 1776 as promoted Lieutenant General. Cornwallis and Clinton had several failures and victories during their stay in America however the conflict with General Washington and Admiral de Grasse is the most prominent among all. Worst of all happened in the Battle of Yorktown which compelled Cornwallis to surrender after a siege of 3 weeks to joint French and American armies under the command of De Grasse. This was the incident which made Cornwallis to be known as general who lost America.⁵

Cornwallis as Governor General and Commander in Chief in India

Cornwallis served as Governor general and commander in chief in India in two phases, One from September 1786 to October 1793 and the second time in 1805 from July to October. Conditions previously in his American play was almost the same as in India where he had to face Tipu Sultan more than once just like he face several battles in America but contribution in both states differed a lot as history mentions the struggles in America ended with loss of American colonies however contributions in India brought great reformations and are placed at a different virtue

¹ Sinha, J, C, Economic annals of Bengal, Macmillan & Co. 6 ed, P 301, 1927.

² Appointing Stability in an Age of Crisis: Lord Charles Cornwallis and the British Imperial Revival, 1780-1801, Bradley S. Benefield, University of Tennessee – Knoxville, 2005

³ Seton Karr, W, S, Rulers of India, The Marquess Cornwallis, The Clarendon Press, 1890

⁴ Ibid

⁵ The Yorktown chronicles, revealing herein the tale of American Revolution, October 19, 1781 available at <https://www.historyisfun.org/sites/yorktown-chronicles/history/cornwallis.htm> last assessed on 09 July, 2021.

in history.⁶ He did his best in the best served manner in America but the conditions were hopeless before his travel to America and that got worse soon after the command was entrusted to General Clinton.⁷ Many critics takes it their own way but according to General Clinton, Cornwallis worsen the situation due to absence of proper planning and strategy in the due course of action but when we come across Cornwallis point of view, he explains it in a different way having planned to lessen the army post for a strong and safe position and that his stances were always defensive with exception to Virginia.⁸ This brief mentioned here was to justify the attempts of Cornwallis which did not work properly however the intentions behind that were to have a safe and respectful position for the army and British Empire respectively despite being blamed by General Clinton and others.

When Cornwallis reached India in September having sailed in ay from Britain, the situation here was a chaos and everything was messed up having no control over the economical and armed sectors. He initiated with applying his reinforcement mechanisms in the armed sectors and reformations in the revenue sectors. If we could remind his stay in America he always tried to avoid force and bring in possible solutions with negotiations etc and same he did initially but later he changed his mind as per the circumstances in India while dealing with Tipu Sultan, son of Haider Ali who was very well planned and equipped of war tactics and army. The change in strategy was clear from his letter that he wrote to his brother, the bishop of Lichfield that any man of common sense could have ever imagined avoiding war, using Henry Dundas when he expresses war as an absolute and cruel necessity.⁹

Government under Cornwallis can said to be of Peace with the exception of battles with Tipu Sultan and following those battles there had been minor conflicts and later cession of French settlements and other peaceful events happened. After this Cornwallis was relieved and he turned his attentions towards the reforms which would declare him in history as one of great statesman who led foundation of civilized Indian colonies. Lord Cornwallis made three major judicial reforms in 1787, 1790 and 1793. Each of the judicial reforms identified different areas and not amended until the end of British rule.

Judicial Plan of 1787

Lord Cornwallis was a strategist and respected statesman beside poor performance in America for many reasons. However after coming to India he noticed many unwanted and ill practices and intended to bring in immediate reforms. For the purpose he adopted a plan in 1787 and the main points are as follows:

Revenue and Judicial administrations were separate before Cornwallis which created many problems both economically and legally in terms of jurisdiction; Cornwallis combined both administrations and created one authority named as Collector. Collector was to collect revenue and decide cases of the same nature. Courts where

⁶ Ibid

⁷ Sir John Kay, An opinion, Seton Karr, W, S, Rulers of India, The Marquess Cornwallis, The Clarendon Press, 1890

⁸ Ibid

⁹ Ibid

collector would deal with revenue cases was called as Mal Adalat.¹⁰ Bihar, Bengal and Orissa had 36 districts and in order to reorganize them, number was decreased to 23 and a Magistrate of district who was also the collector would try cases of revenue and also of criminal nature and was vested with powers to arrest a criminal for a maximum of 15 days and then commit his case to criminal court.¹¹

The collector also had the powers to deal with cases of civil nature and the court where civil cases were heard was also established known as Muffassil diwani adalat. Appeal against the muffasil diwani adalat was to be made to sadar diwani adalat in matters of value upto 1Rs 1000 and to the kings council which comprised of chief Qazi, Chief Maulvi, Two maulvis from Muslim and a hindu pandit, when the matters was of value more than Rs 5000. Office of registrar was established which was subordinate to collector and could hear matters of value upto Rs. 200.¹²

Lord Cornwallis intent to improve the revenue along with uprooting of corruption by implementing this plan but there were certain defects that includes the vesting of over power to a single person, the collector on one hand but also by over burdening him of work. This plan ignored criminal justice system but ended discriminating privileges along with removing court fees that need to be well appreciated.

Judicial Plan of 1790

The previous plan of 1787 was a result of an immediate response to surface issues therefore it lacked lot of questions to be answered and many issues to be resolved like the criminal justice system, the role of unaccountable and weak administration of Nawabs, delay in cases and justice in mofussil and fojdari courts and especially the corrupt officers who administered the whole system. Cornwallis was well aware of the situation and that was the reason he vested powers of Magistrate to Collector and to bring other reforms he had keen eye on his plans but the revenue and other situations in Bengal delayed his plans. To answer all these issues a new plan was made in 1790. The main features of judicial plan of 1790 are as follows:

Before grounding in practical plans for the resolution of above mentioned problems, Cornwallis reached for the precedents of previous governor General Hastings whether he had left behind any actions that would have affected the authorities of Nawab whose authority and administration was the biggest problem for sustainable government policies. He found many such precedents along with few others that were amendments to existing laws.¹³

¹⁰ Aspinall, A, Cornwallis in Bengal, 1931, Manchester University Press

¹¹ Ibid

¹² Ibid

¹³ Note: Hasting amended the Islamic punishment for dacoity and added to execution of the dacoits, the slavery and fine of the village and families of the dacoit which was extremely illogical, illegal and unethical.

Cornwallis relied on the Hastings precedents and Section seven of the Regulation act 1773.¹⁴ Courts system was revived therefore the civil court known as the mofussil adalat finished and new three courts were established. Salaries of the judges and officers were increased to avoid corruption. Cruel and extreme punishments ended and criminal courts were handed over to English from Muslim officers however they remained as advisors to courts¹⁵

Control of the criminal system was taken by the governor general. Court fee was introduced to cover the expenses of calling a witness etc. Law of evidence was modified and several changes were made to Islamic law and punishments.¹⁶ These reforms had a very good outcome as crime rate lowered and life and property of people remained much secured. Cornwallis did his best while introducing this plan but it still had two major defects. One was that lack of provision that would explain the supervision of collector as during the passage of time the work load had increased much and he had got such powers that were abused rather used for betterment and prosperity. Another defect was the absence of Indians in judiciary as Cornwallis never considered Indians trustworthy and competent for the posts. This was a remarkable intent that drops down all praises for Cornwallis and turns his images to a Supremacist Commander.¹⁷

Judicial Reform of 1793

Cornwallis was well aware of the defects and he went for another judicial reform that took place in 1793. This is well known as Cornwallis code and it is combination of forty eight rules written by Sir George Barlow. It covered regulation from both both civil and criminal law.¹⁸ Powers of collector got limited to only collection of revenue. Matters of civil and criminal natures were now heard by judges and Mal Adalat was abolished taking the suits to mofussil diwani adalat and fajdari adalats.¹⁹ Executives were now accountable before law and any wrong committed by them in the exercise of powers were brought before the diwani adalat and diwani adalata had powers to try and punish the executives.²⁰

Previously the court of appeal was only situated in Calcutta but now four provincial courts of appeal were established in Calcutta, Patna, Dacca and Murshidabad to save time and money and to speed up the justice system.

¹⁴ Section seven of regulation act 1773, 'Vests the ordering, management and government of all the territorial acquisitions and revenues in the kingdom of Bengal, Bihar and Orissa in the Governor general and councils, for such time as the territorial acquisitions and revenues in the possession of the said company and as it was then before the legislature that the president and council had interposed and altered the criminal law of this country, such alteration and all future necessary amendment thereof appear by the above clause to be legally sanctioned and authorised'.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Teacher, Law. (November 2013). Governor General Lord Cornwallis's Impact on Administrative. Retrieved from

<https://www.lawteacher.net/free-law-essays/constitutional-law/governor-general-lord-cornwalliss-impact-law-essays.php?vref=1>

¹⁹ Ross, Charles, Cornwallis, April, 1859, London

²⁰ Ibid

These courts could hear civil criminal and revenue cases. These courts could try matters of Rs 5000 and matters above this values were tried by the king in council.²¹ Cornwallis had a problem of distrust towards Indians and he is criticised for that however in the third reform he provided Indians with different posts such as Zamindar, tehsildar etc and had the powers to try cases upto Rs 50.²²

A major event that happened in this reform was the recognition of Legal profession and it was mandatory for a person to have sound knowledge of law in order to plead in court.²³ Beside making efforts and bringing in third judicial reform there was still major lacunae in handling the increasing number of pending cases. He worked mainly on the procedural side and ignored the substantive law especially the Muslim law and the modifications made had many defects. Natives were again ignored to be given posts in judiciary with the exception of very small posts of munsif etc. The mentality of Cornwallis is again well interpreted from his mistrust upon Indians or we can say the British ideology of supremacy and distrust towards the rest of the world.²⁴

Conclusion

Cornwallis being a competent and very dedicated person towards the British empire tried his best to serve in the best possible manner by simultaneously acting upon the mainstream rules of empire and his personal expertise while handling cases of immediate and important nature. He adopted policies of the empire along with what he thought may deem fit in the course of action. He has delivered much more than many to empire and to the judicial system of India. However despite of being an experienced and learned person he had that one defect in his mentality that depicts a true supremacist psychology that is quite obvious from his dealings with the natives, ground realities behind the distrust upon the Indians etc. The mind-set, aim, mission of English personals are to be more competent and trustworthy (in spite of his experience with their corruptions and corrupt intentions) towards company and the empire. I would however conclude that though he is known to be the general who lost the American colonies he served very well in India, brought great reforms to revenue and judicial system, adopted strategies that intended to avoid wars and looked for peace and prosperity but the one thing that he always kept stratification among the natives and English and that would include many hidden ground realities too depicts his supremacist mentality and the reforms he made may apparently be progressive for India but had mostly benefitted the company and the judicial powers were all vested to Englishmen to be served by Indians.

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid