The Case of Moro Raghunath

A case illustrating the conflict between Judiciary and Executive in India in early nineteenth Century

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Growth of Judiciary during the early period of British rule in India has an interesting history. The existing Judicial apparatus on the eve of the British conquest of Bengal had become ineffective. In 1765, when the Diwani had been conferred on the East India Company by the Moghul Emperor, powers of collecting land revenue and administering Civil Justice were entrusted to the Company. Between 1765 and 1773 the Company exercised quasi-political powers; although it was in the eyes of the Government of England a purely commercial corporation. The passing of the Regulating Act, in 1773, by the British Parliament brought about a substantial change in the character of the East India Company and its political character was recognised. Apart from this measure change in the character of the Company, a new kind of Government apparatus was also introduced. The personal rule of the Nazim in Bengal was replaced by a different kind of system. It is true to say that the foundations of the modern system of Government were laid by the Regulating Act which came into operation in 1774. As a consequence, a central Government exercising over-all supervision over the Presidencies of Bengal, Bombay and Madras was created at Calcutta. It consisted of a Governor-General and an Executive Council; and, at the same time, a Judicial tribunal in the shape of a Supreme Court was also established at Calcutta. Prior to these reforms introduced by the Parliament, the East India Company, under Warren Hastings who became the Governor-General, had also re-organised the existing Judicial system. There were district courts and on top of them existed the Sadar Diwani Adalat and the Sadar Nizamat Adalat. With the establishment of the Supreme Court, two types of courts began to function, one established by the Company administered Indian (Hindu and Muslim) laws and the other established by the British Parliament administered English Law. Since the Jurisdictions of the courts were not properly defined, an inevitable conflict arose in Bengal which could only be resolved in 1781. It has a long history and it will be out of place to discuss it here. The Regulating Act was responsible for the establishment of the Supreme Court in Fort William. In the other two Presidencies, the Supreme Courts came into existence much later-in Madras in 1801 and in Bombay in 1824. In Bombay, the establishment of the Supreme Court resulted into a very serious conflict between the Executive and the Judiciary; and we are concerned in discussing it here.

The conflict was an unprecedented one. The creation of a Supreme Court in Bombay was a novelty. A simple Recorder's Court had been transformed into a Supreme Court in 1824. Sir Edward West, who was Recorder became the Chief Justice and was aided in his duties by two more Judges-Sir Charles Chambers and Mr. John Peter Grant. Conflict between the Supreme Court and various bodies started almost from the year of its foundation. The Editor of the Bombay Gazette, one Mr. Fair, incurred the wrath of the Judges. He was asked to apologise and, on refusing to do so, was compelled to leave the country.[1] Another tussle arose when the Supreme Court refused to register the Press regulations of the Government. They could not become laws without being registered. The real and rather bitter conflict between the Executive and the Judiciary, however, arose over the case of Moro Raghunath.[2]

Briefly speaking, the case arose as a result of dispute over the guardianship of one Moro Raghunath, a resident of Poona. His parents had died when he was barely fourteen years old. He was placed under the guardianship of his relation Pandurang Ram Chander, who was also related to the Peshwas, and after whose fall he resided in Poona. The Bombay Government treated him as a privileged Sardar and was pledged to protect him. Another relation of Moro Raghunath disputed the guardianship. He complained that the boy was being ill-treated and wanted him to be removed from the custody of Pandurang and through his lawyers applied to the Supreme Court to issue habeas corpus. Chambers and Grant, JJ. issued the writ. It at once raised the question of jurisdiction. The Supreme Court claimed that its jurisdiction was not legally limited to the island, and town of Bombay and factories subordinate thereto.

1 Asiatic Journal, April, 1829, pp. 385-86

2 I had the opportunity of examining a large mass of materials preserved in the National Archives at New Delhi and one is able to get the real picture of this conflict after perusing it.

Sir John Kaye, in his biography of Sir John Malcolm, who was the Governor of Bombay at that time, writes, 'Bombay Judges boldly contended that their writs were operative from one end of the Presidency to another and that it mattered not who or what its object might be, the law of the Supreme Court of Judicature could reach it all the same.'[3] Kaye was also of the opinion that this assertion threatened the very existence of the Company's Government and it was Governor's duty to maintain the authority of the Government.

Sir John Malcolm wrote a letter to the Governor-General, Lord William Bentinck, in which he stated, "If this process had been served, appeals would have been made in hundred other cases and Company Sahib, as they call him, must have shut up shop, which he shall not do in this quarter, as long as I am the Shop Keeper".[4] Sir John Malcolm wrote a letter also to the Judges of the Supreme Court to the following effect, "You will, for a short period, be induced by our representations to abstain from any acts (however legal you may deem them) which, under the measures, we have felt compelled to take, and which we deem essential to the interest committed to our charge must have the effect of producing open collision between our authority and yours, and by doing so not only diminish that respect in the native population of this country which it is so essential to both to maintain, but to seriously weaken by a supposed division in our internal rule, those impressions on the minds of our native subjects, the existence of which is indispensable to the peace, prosperity and permanence of the Indian empire.[5]

The Judges felt that it was an attempt to influence them and impede the course of Justice.

On the 5th of October, 1828, Sir John Grant wrote a personal letter to Sir John Malcolm, the Governor, taking exception to the letter written by the latter. When the Court met on the 6th of October and the Judges had taken their seats, the letter of the Government was read aloud by the Clerk of the Crown. Sir Charles Chambers addressing the Court said, "Within these walls we own no equal and no superior but God and the King".[6] Soon after Sir Charles Chambers, the Chief Justice, who had gone to England, died there. Sir John Peter Grant, the Second Judge, who later became Chief Justice, was determined to fight alone.

A regular conflict ensued between the Government of Bombay and the Supreme Court. Sir John Malcolm sent a close friend to England with all the papers and also referred the matter to the Supreme Government at Calcutta, headed by Lord William Bentinck, the Governor-General. Sir John Peter Grant also sent a petition to the King of England and sought the opinion of the Supreme Government.

In the national archives are preserved the whole bunch of papers concerning this interesting case, which throw considerable light.

A notice of the Court appeared in the Bombay Courier[7] extraordinary, dated Thursday, the 2nd of April, 1829, in which the Acting Chief Justice expressed his dissatisfaction at the manner in which the Government failed to comply with the orders of the Court. The Judge announced, "I have therefore to announce that their Court has ceased on all its sides, and that I shall perform none of the functions of a Judge of the Supreme Court until the Court received an assurance that its authority will be respected and its process obeyed and respected and rendered effectual by the Government of this Presidency."

As a counter blast, came the proclamation of the Governor dated the 3rd of April, 1829. 'The adoption of this extreme measure', read the proclamation, 'renders it necessary that the Governor in Council should announce to the European and the Native inhabitants of Bombay his resolution to make every effort in his power to protect their persons and property during this extraordinary conjuncture.'[8]

In the unpublished papers one finds an interesting comment on this situation by Mr. Dewar, the Acting Advocate-General of the East India Company at Bombay. He said, 'In India there are two Judicial establishments perfectly independent of each other, with different judges administering different laws but with duties to perform equally important, one which the legislature has enabled His Majesty to establish at

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3 Kaye: The Life and Correspondence, of Maj. General Sir John Makam, Vol. II, p. 508.
4 Ibid., p. 511
5 J. W. Knapp: Reports of Cases Argued and Determined before the Judicial Committee of His Majesty's Mast Honourable Privy Council (1831).
6 Kaye: The Life and Correspondence of Maj. General Sir John Malcolm, Vol. II, p. 518.
7 An English newspaper published from Calcutta.
8 Political Proceedings, 15th April, 1829

the Presidencies and which is bound to administer Justice throughout the extensive dominions of the British India of which the whole administration and Government is given by Charter to the Hon'ble Company; a broad line has been placed between these two jurisdictions, that a conflict of laws which every wise Government abhors may be avoided for nearly half a century, these jurisdictions have not clashed and for the first time it is Suddenly declared that all classes of persons without exception throughout the whole territories are subject at least of the power and authority of the Company's court is shaken to the very centre by the reverse of a decree of its principal criminal court as in the case off Bapoo Gaunesa .....".[9]

The Court in its defence pointed out that it had only adjourned and the functions had not been suspended as declared in the Proclamation. It was further pointed out that lot of obstacles were placed in the way of one Carapiet Saffer an Armenian clerk of the attorney through whom the pleuries writ was served.[10] The Company's Officers refused help and Sir Lionel Smith commanding the Company's forces in Bombay was even accused of threatening the Attorney's clerk.

While these complaints against each other went on, an answer from the supreme Government in Calcutta and the Home Government was awaited. The subordinate Governments in British India before the Act of 1833 had the right to directly correspond with the Home Government.

Lord William Bentinck, the Governor-General, in his reply to Sir John Malcolm, suggested that the latter should await the reply of the Home Government, but, in conclusion, mentioned, 'We can have no difficulty at the same time of expressing our entire concurrence in the view you have taken of the great evils arising out of the unlimited jurisdiction as assumed or exercised by the Supreme Court at Bombay'[11]. In his reply to the Acting Chief Justice dated May 5,1829, he (the Governor-General) said that the orders of the Home Government be awaited.

A rather interesting letter of a private nature was received by Sir John Malcolm from Lord Ellenborough who was at that time President of the Board of Control which directed and controlled the affairs of the East India Company on behalf of the Government of England. Lord Ellenborough, in his letter, pointed out that the first step contemplated was to appoint the Company's Advocate General, Mr. Dewar, as Chief Justice of the Supreme Court in Bombay.

He wrote, "I thought putting him over Sir John Grant's head would do more to rectify public opinion than any other measure I could at once adopt."[12] Ellenborough also mentioned in the same letter the name of one Mr. William Seymour of the Chancery in England whose name was being considered for appointment as a puisne Judge. He commented, "He will rather support the Government than use the authority of the Supreme Court as a means of raising an opposition."[13]

A copy of the letter somehow strayed into the columns of the Paper 'Bengal Haskaru'[14] in Calcutta and quite a furore was created.

Soon after the opinion of the Privy Council was received, it silenced the controversy. No Judgment was delivered in the case; but the report of the Privy Council, which was affirmed by His Majesty, was to the following effect:

"That the writ of Habeas Corpus were improperly issued in the two cases referred to in the said petition."

'That the Supreme Court has no power or authority to issue a writ of Habeas Corpus except when directed either to a person resident within those local limits wherein such court has a general jurisdiction or to a person out of such local limits, who is personally subject to the civil and criminal jurisdiction of the Supreme Court.'

'That the Supreme Court has no power or authority to issue a writ of Habeas Corpus to the gaoler or Officer of a native court as such officer, the Supreme Court having no power to discharge persons

9 Political Proceedings, 1829 Reference to an earlier case.
10 Political Proceedings 1829
11 Political Proceedings, 15th May, 1829.
12 Kaye: The Life and Correspondence of Major General Sir John Malcolm, p. 529
13 Kayic: The Life and Correspondence of Maj. General Sir John Malcolm, p. 529.
14 An English newspaper published from Bombay.

imprisoned under the authority of a native Court.'

"That the Supreme Court is bound to notice the jurisdiction of the Native Court, without having the same specially set forth in the return to a writ of Habeas Corpus."[15]

Thus ended a long drawn out controversy between the Executive and the Judiciary in the Presidency of Bombay. Wounds were healed but scars remained. The struggle had begun after the foundation of the Supreme Court in Calcutta in 1774. Till the year 1861 duality in the spheres of Executive and Judicial administration persisted. The Company itself came to an end in 1858 and, by the Indian High Courts Act of 1861, the two sets of Courts, viz. one established by the East India Company and the other, by Act of Parliament in England, were amalgamated; and a unified system of Judiciary emerged. In the words of Cowell, 'Supreme Courts were the Chief tribunals which owed their authority exclusively to the English Parliament and Crown. There were, however, other Judicial authorities, derived from the same source which long existed in India, some of them not yet abolished and which were originally established in days before the Company had obtained sovereign power and when they had merely to govern their own servants and those resident under their immediate protection.' [16]

It is thus obvious that conflict was inevitable since both bodies of courts had been duly constituted but their jurisdictions had not been clearly defined. The Governments of the Presidencies favoured the Company's Courts since they could exercise control over them. The Supreme Courts were established by the British Crown and their Judges felt that they were not subject to any kind of control by the Governments of the Presidencies. The Supreme Courts had been created at a time when the Company's Government was at its lowest ebb; and the Parliament, by creating such independent Courts, thought that some kind of check could be exercised on the powers of the Company's Governments. Consequently, conflict arose between the two sets of courts. It is, however, obvious from the documents quoted above that the Company's Government was anxious to control the Judiciary. Lord Ellenborough's letter to Malcolm gives a clear indication. Judges of the Supreme Courts were men of great integrity. After the whole episode was over, even Sir John Malcolm did not doubt the bona-fides of Sir john Peter Grant who had fought boldly. The Asiatic Journal, while commenting on the whole episode, mentioned, "An apparent warmth of temper and expression is all we impute to them (Judges) not perfectly reconcilable with their sense of duty, and then imperfection may be charitably assigned to a belief groundless indeed, as it seems to us, that they had been affronted in their public character".[17] The belief was not altogether pointless. The Supreme Court, during the period of the Company's administration, did work in isolation; and conflict at times became inevitable. It was largely due to ill-defined jurisdictions of the two sets of courts, viz. the Courts of the Company and the Supreme Court.

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15 J. W. Knapp: Reports of Case Argued and Determined before the Judicial Committee of His Majesty's Most Honourable Privy Council, 1831, pp. 58-59.

16 Cowell: The History and Constitution of the Courts and Legislative authorities in India, p. 135

17 Asiatic Journal, April, 1829 (Calcutta), p. 390