CHAPTER ONE

THE CORNWALLIS SYSTEM AND THE COLONIAL EXECUTIVE

Of the 51 Bengal regulations passed in 1793, the first 48, all enacted on May 1, formed the Cornwallis Code. They ran to 387 pages of print. The proclamation, in the first regulation, of the permanency of both the ownership of land and of the rate at which it was taxed was complemented, in the preambles to the second and third regulations, by the grant to the people of Bengal of as large a measure of legal autonomy as the legislators could think of. Together with the fourth, which established some of the procedures to be adhered to by the civil courts, these initial regulations contained the soul of the reform. Until then, the administration of the land revenue and that of justice had been entrusted to the same persons. The collectors had heard and determined revenue cases in which they themselves were the defendants. The Marquess of Cornwallis was convinced that, in this way, the property rights of the people could not be protected. His code, therefore, abolished the revenue courts of the district collectors and transferred all suits cognisable in them to new civil courts whose jurisdiction and procedures were carefully defined so as to render them absolutely impartial. The major principle of the government henceforward was to distance itself from the management of agrarian affairs, which were left to the proprietors of permanently settled lands, and particularly to avoid infringing, by the tax collecting branch of the government, the legal autonomy conferred on these proprietors: “Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.” The manner in which this was to be achieved was not the establishment of a completely independent judiciary. Full autonomy of the courts would have fractured the colonial civil service into two rival services, a judicial and a fiscal one.

1 Regulations passed by the Governor General in Council of Bengal with an Index and Glossary, Vol. I, 1793, 1794, and 1795, London 1828; Section 1, Reg. 2, 1793. The verb 'infringing' is used several times here.
Nevertheless, the government went a long way in this direction by declaring the independence of executive control of all 26 civil courts of first instance, that is to say of the district judiciary.

The craving for colonial hygiene, evident in the quote given above, is traceable throughout the Cornwallis Code. The “infringement” of Indian rights would be anathema to European civil servants. In a corrupt environment, it was felt, the only clean-hands policy was a hands-off policy. “Government has determined”, the code asserted, “to divest itself of the power of interfering in the administration of the laws and regulations in the first instance, reserving only, as a court of appeal or review, the decision of certain cases in the last resort.” This would not be restricted to civil suits between Indians; it would also extend to government officers, especially those employed in the collection of the revenues, whether they were British or Indian, all of whom were made amenable to the courts for acts in opposition to the regulations. It was not the Company’s executive, but its ‘rule of property’ that would reign. In 1793, in other words, Cornwallis transferred the Company’s sovereignty to a constitution that assigned an unassailable position to the civil courts it had established.

A charter for India

The great virtue of the dispensation now deployed in India consisted in its aloofness. On the one hand, so as not to ‘infringe’ on Indian rights and take responsibility from Indian hands, the Company’s prescriptions of substantive law were reduced to a minimum. On the other hand, its regulations would reign absolutely in the field of adjective law, particularly of civil procedure. The procedures were designed to be as open and intelligible as the legislator could make them so as to be used as tools in Indian hands. This was the gift conferred on India by Britain: the gift that would enable each and everyone in the country to be the agent of his own future. It was a purely formal constitution that, on the basis of British reason and without formulating an opinion on anything specifically Indian, promised to guide the citizens of India to find their own destiny, their own road to modernity. Regulations 5 and 6 may serve as a first illustration. They established provincial

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2 Section 1, Reg. 3, 1793; the preamble of a regulation is always numbered as its first section.