

Provincial Pride, Public Outcry: The Creation of the Lahore High Court and Judicial Development in South Asia

Yaqoob Khan Bangash

Assistant Professor at Information Technology University, Lahore, Pakistan.

Email: yaqoob.bangash@gmail.com

ABSTRACT

The creation of a modern judicial system is one of the most enduring legacy of British rule in South Asia, especially the Punjab. In the Punjab, the judicial system not only ingrained itself quickly but the province soon became the most litigious in India. Despite being often labelled as the 'loyal' province, progress in its higher judiciary was slow. Even though the Punjab got a Chief Court in 1866, it was only after decades of representations by the judges of the Punjab Chief Court, the Government of the Punjab and finally the Government of India, that Whitehall granted a High Court to the province in 1919, much later than other comparable provinces. The reasons behind such a delay, the long-drawn process, and the final upgradation of the Punjab Chief Court as the Lahore High Court, merit study as they shed critical light on the pattern of governance, development of public interest, and the ultimate role and impact of the judiciary in the Punjab.

Key words: Punjab, Judiciary, Lahore High Court, British Raj & Legal history

Introduction

The establishment of a modern system of justice is one of the most far reaching, long lasting, and impactful legacies of British rule in India. At the departure of the British in 1947, the judiciary was the only part of government which seamlessly transitioned from the Raj to independent rule in both India and Pakistan. The judiciary had an effect on almost every sphere of life, from the major issues of land revenue and ownership disputes, to the smaller questions of overcharging or trespassing, from disputes between different local governments, to issues between different government agencies, private enterprises and individual subjects, the work of the judiciary permeated every facet of life.

The Punjab always held a special place in British India: it was the last major territory to be added to British rule in India, and its famous 'Punjab School' laid the groundwork for a very close and paternal form of government, which bade well for the British in the Revolt of 1857 where the province not only remained largely pacified, but also supported the British in quelling the Revolt (See, Smith,

1883, and Gandhi, 2013, chapter 5). The Punjab was also one of the most litigious provinces in British India and often the reason given was that the cheap and ready nature of judicial relief in the province enticed the population to refer matters to the judiciary (See, Civil Justice Report, 1872, paragraph 4). Thus, the nature of the judiciary and its relationship with the people are important elements in the study of the Punjab, and without their examination a complete picture of governance and development in British Punjab cannot be sketched.

This paper traces the history of one of the most significant events in the judicial history of the Punjab: the creation of the Lahore High Court. While high courts had been created in several other provinces starting from 1861, the Punjab was one of the last provinces to get a high court, and that too was the result of a long campaign for its creation. Only little has been written on the judiciary in the Punjab, and even in what has been written there is scarcely anything on the long struggle for the creation of the high court (Sidhwa, 1989, and Khan, 2017). However, the reasons behind the delays in the creation of a high court in the Punjab, the discussions which led to it, and the final creation of the high court, certainly merit study as they not only reveal important elements in the development of the judiciary in the province but also shed critical light on the policies of the British regarding the province and the interest of the public in the issue.

Development of the judiciary in British Punjab

After the annexation of the Punjab in March 1849 by the East India Company a Board of Administration was setup with the now former resident of Punjab, Sir Henry Lawrence, responsible for foreign affairs and relations with the sardars, his brother John Lawrence, in charge of land settlement and fiscal issues and Charles Mansel, in charge of justice and police. The Board only administered the Punjab for four years, and in 1853 it was replaced by John Lawrence as Chief Commissioner, with Robert Montgomery becoming the Judicial Commissioner.

The work of the Judicial Commissioner of the Punjab was vast. With territory stretching from the Khyber Pass in the west to, after 1858, Delhi in the east, the Hindukush mountains in the north and the border of Sind in the south, and with an estimated population of 17 million in 1855, it was not an easy task for one man (Krishan, 2004, p. 79). Very quickly the Punjab Crimes Act was introduced for criminal justice while in 1853 a brief Punjab Civil Code was also promulgated. Care was taken that the religious sensibilities of the population were not offended and that code was simple 'to avoid technicality, circumlocution and obscurity, to simplify and abridge every rule, procedure and process' (Administration Report, 1849-50, 1850-51, p. 76).

Under the Chief Commissioner and then later from 1859, under the Lieutenant [Lt.] Governor, the administration of justice in the Punjab consisted of several tiers. For example, by the end of 1856 there were in addition to the Small Causes Court, 111 courts of the Deputy, Assistant and Extra Assistant Commissioners,

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totalling to 215 courts, corresponding roughly one court for about 59,152 of the population (Administration Report, 1854-55 and 1855-56, paragraph 7). Later, in 1860 the Honorary Magistracy was also introduced to further relieve the civil servants from lower-level judicial work. However, the work of the judicial officers kept increasing and even the government noted that 'the people were bringing more and more cases before the courts, until the proportion of suits in the Punjab to its population exceeded that in any other part of the Bengal Presidency, perhaps even all of India.' (Administration Report, 1856-57 and 1857-58, paragraph 3).

The year 1861 was a very significant year in the judicial history of British India. In that year the Indian Penal Code was introduced, and in the same year was also enacted the Indian High Courts Act which empowered the Crown to create high courts by Letters Patent in the three presidencies of Bombay, Calcutta and Madras. Hitherto, each presidency had its Supreme Court with Saddar Diwani Adalat and Saddar Faujdari Adalat, and this act consolidated them in the new high courts. Subsequently, in 1862 three high courts were established in Calcutta, Bombay, and Madras.

With the establishment of three high courts there was some expectation that changes would be introduced in the judiciary in the Punjab. By the 1860s it was patent that the Judicial Commissioner was unable to deal with all the appeals coming to him and that a separate system of the judiciary was urgently needed in the province. As a result, the Punjab Courts Act of 1865 reorganised the judiciary in the Punjab. Under the act the work of the civil courts increased as suits regarding land, rent, produce or revenue of land were transferred to the civil from revenue courts. It also stipulated that suits could only be initiated at the lowest level of courts, enhanced the powers of the assistant commissioners, and gave commissioners of divisions original and appellate powers. Most importantly, it also created a Punjab Chief Court, replacing the office of the Judicial Commissioner. The establishment of the Chief Court not only put the judiciary in the Punjab on sounder footing, it also separated it a little from the executive. Furthermore, it also now got jurisdiction over European British subjects, which had hitherto been exercised by the Calcutta High Court. The Punjab Chief Court began functioning when on February 16, 1866, the Judicial Commissioner, Mr. A.A. Roberts assumed the office of the senior judge of the Chief Court, with Mr. C. Boulnois, lately judge of the Calcutta Court of Small Causes, taking oath as the puisne judge. Thereafter the Chief Court formally began its proceedings from March 3, 1866.

From its inception the Punjab Chief Court proved its mettle. In the year 1867-68, for example, a total of 601 criminal cases were disposed by the two judges of the Chief Court, and only 40 were pending by the end of the year (Administration Report, 1867-68, p. 27). Similarly, out of the 1,478 civil appeals, 1,311 were disposed during the year leaving only 167 civil appeals pending at the end of the year (Administration Report, 1867-68, p. 30). As the years passed the litigation in

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the Punjab increased by 10% on average. The mixing of judicial and executive functions however meant that from the Niab Tehsildar to the Commissioner, a lot of the time of the civil servants was spent in hearing cases and appeals. Thus the Lt. Governor noted that ‘...the improvement of the judicial administration is being obtained at the expense of the Executive...’ with which the judges of the Chief Court concurred and stated: ‘Every year it becomes more apparent that the Judicial agency of the province requires considerable strengthening, and that the combination of executive and judicial functions, however suitable it may have been in times gone by, is becoming more and more unsuitable now...It is believed that it is quite possible to increase the number of our judges and effect separation, more or less complete, between the Administrative and Judicial agencies without much additional outlay’ (Civil Justice Report, 1869, paragraph 146).

By 1876 the work of the Chief Court had increased considerably, and despite the addition of a third judge, case pendency began to increase. Thus, the Chief Court began to limit appeals and admitted ‘...to a Bench cases in which there seem prima facie grounds for interference...’ (Civil Justice Report, 1877, paragraph 17). However, this measure did not change things much and by 1880, the number of appeals rose to 2,787, with 1,105 appeals pending by the end of the year. The backlog had begun to accumulate so significantly that it forced the Lt. Governor to request the government in Delhi for a fourth judge. Sir Robert Egerton noted: ‘the work of the Chief Court has become much heavier than it was, and there is apparently no prospect of its diminishing’ (Civil Justice Report, 1880, paragraph 7). In October 1882, then the Supreme Government approved two additional judges for a period of one year (Secretary, Government of India, Home Department, 1882). However, the workload kept increasing so much so that in the year 1886 the number of civil cases in the Chief Court increased from 2,681 in 1885 to 3,954. The Civil Justice report for the year therefore noted: ‘The number of judges was unable to keep pace with this work, for while 3,856 appeals from decrees and orders were for disposal, only 2,052 were decided, leaving a pending file of 1,804 appeals on January 1, 1887’ (Civil Justice Report, 1886, paragraph 8). As a result, the Government of India sanctioned the retention of a fifth and sixth judge for one year from November 1887, to improve the disposal of cases. However, even in 1887 the Lieutenant Governor knew that ‘it will be necessary to retain five judges permanently in the court’ (Civil Justice Report, 1887, paragraph 7). By the 1890’s the temporary sixth judge had also almost become permanently needed as the work of the Chief Court kept increasing. From 1896 to 1897, for example, the number of civil appeals to the Chief Court rose from 1502 to 1757, notwithstanding the re-appointment of a sixth judge towards the end of 1897 (Civil Justice Report, 1887, paragraph 9). On the criminal side in the same year, conditions were not much better with over 948 appeals pending for more than a year.

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Discussion over the status of the chief court

By the 1880's the issue of the status of the Punjab Chief Court had become a matter of discussion between the judges, the Punjab Government, the Government of India and the Secretary of State for India. Throughout the 1880's the judges of the Chief Court made representations to the government about the position of the judges of the Chief Court, their salaries and pensions, and the status of the court. Despite the repeated postponement of their requests, the judges of the Chief Court were adamant and wrote to the government again in 1893 emphasising that 'the matters dealt with...are not merely matters of personal interest to the Judges, but they are matters which are intimately connected with the efficiency of the Court, and are consequently matters of public concern' (Registrar, Chief Court, 1893). In his comments on the proposals, the then Lt. Governor, Sir Dennis Fitzpatrick, who had already served as a judge in the Chief Court, agreed with the request of the judges that one among them should be chosen as the 'Chief Judge' rather than the most senior among them being called the 'Senior Judge' stating that 'it is true that so long everything is going as smoothly as has been the case hitherto in the Chief Court of the Punjab, the special functions of the head of the Court are not of very great importance, but circumstances might at any time arise which would make it desirable to have at the head of the Court the strongest of its members...' (Junior Secretary, Government of Punjab, 1894). Sir Dennis also recommended that the Chief Judge should receive an additional allowance in recognition of this added responsibility. Subsequently, Mr. Justice Henry M. Plowden was appointed as the first Chief Judge of the Chief Court of the Punjab in 1895, and in 1896 when Mr. Justice Sir Charles Arthur Roe became the second Chief Judge of the Chief Court an additional allowance of Rs. 250/- per month was also allowed for the Chief Judge.

Despite Sir Dennis Fitzpatrick's staunch support for the Chief Court, he did not agree that the time had come for the Chief Court to be converted into a high court. He noted that the argument of the judges that as high court judges they would be appointed by the Crown [and not the Government of India as was then the case] and therefore would have greater honour and dignity, be relieved of any executive interference, and also could not be easily removed at the whim of the government, were simply a matter of procedure and not of practice since:

...there are no Judges in this country or anywhere else more thoroughly independent of the executive Government than the Judges of that Court, and that there is no Government in India which more punctiliously respects the independence of the Judges than the Government of the Punjab...that there is no authority in India that more completely commands the respect and confidence of the masses of people with which it has to do than the Chief Court of the Punjab, and His Honor does not think that the respect and confidence could be one bit

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augmented by converting the Court into a High Court ' (Junior Secretary, Government of Punjab, 1894).

Hence, the discussion of a change in status were put on hold and the judges had to contend with the 1892 despatch of the Secretary of State for India in which he had stated that the Chief Court 'does not differ materially in dignity and importance from the High Courts' (Registrar, Chief Court, 1900).

With Sir Mackworth Young becoming Lt. Governor in 1897, the judges of the Chief Court again wrote to the government regarding their status. They argued that converting the Chief Court into a high court would have the following benefits:

- 1) The mode of appointment and the conditions of tenure of office of Judges of the High Court is the standard established by the authority of the Secretary of State for India, and it is desirable that the Chief Court should be brought up to this standard.
- 2) It would be consistent with the importance and dignity of the Province that its highest Court should be on the same footing as that of the North-Western Provinces.
- 3) It would be for the improvement of the Judicial Service in the Punjab.
- 4) It would be for the improvement of the local bar (Registrar, Chief Court, 1900).

The judges also elaborated that further delay in the upgradation of the Chief Court was adversely affecting the judicial service in the province. They noted that such is the importance attached to working in the Chief Court that a current judge had applied to become a Commissioner. They also lamented that 'the officers who voluntarily join the Judicial Service are not ordinarily the most promising'(Registrar, Chief Court, 1900). The judges furthermore complained that while the members of the Council of the Lt. Governor were called 'Honourable,' they still had not been officially granted the same privilege even though they outranked the members of the council.

Sir Mackworth Young was very sympathetic to the submissions of the judges of the Chief Court and wrote to the Government of India, supporting their cause. He recognised that he was 'unaware of any reason why the Punjab should not have a High Court,' and also strongly argued that the pay of the Chief Judge of the court should be improved and that they should be given the title of 'Honourable' (Chief Secretary, Government of Punjab, 1900). In his reply, the Viceroy and Governor General of India, Lord Curzon, while acceding to the request that the salary of the Chief Judge of the Chief Court should be commensurate with the salary of the puisne judges of the high courts, viz. Rs. 4,000/- per month, and for the grant of the title of 'Honourable' to the learned judges, opposed the elevation of the Chief Court to a high court. His main contention was that 'in the frontier Province there is great advantage in utilizing the highest Court of Justice as a Minister of Justice, and to frame rules and issue instructions for the guidance of subordinate Courts in

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a way that would be out of the question in the case of a High Court' (Lord Curzon, 1900). Therefore, the main reason why the Chief Court was not being upgraded to the status of a high court was because of the peculiar circumstances of the frontier districts. Since tribal laws and the Jirga were in practice in the frontier districts and part of the areas were still unsettled, the government preferred to utilise the more flexible Chief Court which was still clearly beholden to the executive rather than the high court model.

Public reaction to the status of the chief court

In time, the question of the upgradation of the Chief Court became a matter of public concern in the Punjab and soon it was not just the judges but the entire public who were clamouring for an improvement. The North West Frontier Province had been created in 1901 out of the frontier districts of the Punjab, and so the main reason cited for the delay a decade earlier, namely the existence of the frontier districts, did not hold true anymore. Furthermore, over four decades had elapsed since the foundation of the Chief Court and it was considered untenable that despite the large amount of litigation adjudicated by the Chief Court, its status had remained unaltered for so long a time.

The issue of the Chief Court was discussed in the Punjab Legislative Council both in April 1910 and March 1911, where a member, Barrister Shadi Lal, who himself was soon to be raised to the Chief Court, twice requested the government to look into the matter. Shadi Lal lamented that 'while we are doing everything to put this Province on a footing of equality with other sister Provinces and thereby removing the impression which prevails in some quarters that the Punjab is a backward province, no effort seems to have been made so far as to raise the Chief Court to the status of a Chartered High Court'(Legislative Council, 1910, p. 13). Shadi Lal also contended that the extra expenditure of the high court would not be more than Rs. 60,000/- to a 100,000/- per year, which, since the province was in a healthy financial state, it could easily bear. He therefore proposed that the upgradation be announced at the upcoming Delhi Durbar of December 1911, where for the first time a reigning monarch and consort, King—Emperor George V and Queen Mary, would visit India. Mr. Mohammad Shafi, also an eminent barrister, agreed with Shadi Lal and exclaimed that while the Punjab lagged behind the United Provinces of Agra and Oudh at the time of the establishment of the Chief Court, it had by now even surpassed the United Provinces in terms of development. Shafi saw the continuation of the Chief Court as an 'absolute anomaly' and argued that 'having shown that we are absolutely in advance of that Province, I ask why should we be left in the background in regard to our highest tribunal of justice?'(Legislative Council, 1910, p. 13).

The increase in public awareness and the pressure brought to bear upon the government by members of the Legislative Assembly, newspapers, and informed

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public opinion, once again forced the Government of the Punjab to write to the Government of India regarding the upgradation of the Chief Court. The Punjab Chief Secretary noted that it was clear to the Lieutenant Governor ‘that the feeling in favour of the conversion [of the Chief Court] to a High Court is strong and growing among the educated class and the legal profession and the Press, and is acquiesced in by all other classes...It is opposed by no class of the community’(Chief Secretary, Government of Punjab, 1914). The Punjab Government recognised that the work of the Chief Court judges was ‘certainly no less arduous than those of the Judges of the High Courts; if anything the pressure of work is heavier and the strain more severe in the Punjab.’ Comparing it with the Allahabad High Court the Chief Secretary noted that the amount of litigation in the Punjab was about 45% higher than in the United Provinces and the income from court fees was also considerably higher. Therefore, it was not farfetched that the province should also have a high court on a similar pattern. In fact, the Chief Secretary noted that the upgradation will have a positive impact on the bar since it would attract men of a higher calibre than those at present due to an enhancement of powers and prestige. The upgradation will also have a salutary effect on members the Punjab Commission as at the moment ‘the Punjab is singularly poor in highly paid appointments on both sides, executive and judicial...’ and therefore a high court, it was hoped, would ‘induce more efficient officers from the Punjab Commission to enter the judicial line’ (Chief Secretary, Government of Punjab, 1914).

As a result of this strong representation by the Government of the Punjab, the Government of India again took the issue into consideration, and after conferring with the new Lt. Governor (Sir Louis Dane had been replaced by Sir Michael O’Dwyer in late 1914), finally concurred with the judges of the Chief Court of the Punjab and the Punjab Government. The Governor General therefore wrote to the Secretary of State, Lord Crewe, in early 1915, recommending that he and his Council, ‘...are satisfied that the time is ripe for the enhancement of the dignity of the Chief Court of the Punjab, and we accordingly recommend that His Majesty may be moved...to issue a Letters Patent establishing a High Court in the Punjab’ (Governor General in Council, 1915). Since this was the first time both the Government of the Punjab and the Government of India had agreed on the proposal to convert the Punjab Chief Court into a chartered high court, the Secretary of State and his Council gave it serious consideration. However, in his letter to the Governor General in Council on May 7, 1915, Lord Crew declined the request. The decision was based on the fact that the Secretary of State saw the request primarily based on ‘sentiment.’ He argued that ‘I do not find in the papers before me any evidence that the administration of justice in the Punjab is hampered by the constitution of the Chief Court, or that the personnel of the Judges is inferior to that of the Judges of the High Courts’(Secretary of State for India, 1915). He also pointed out that improvements in the judges’ salary and pensions, the quality of the bar, and the Punjab Commission—all could be done without necessarily this change. He further argued, based on a detailed note by the

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Legal Advisor to the Secretary of State for India, that all the previous chartered high courts proceeded from the Supreme Courts of the three presidency towns, and since the Punjab had not at any time been under the jurisdiction of any of the presidency courts, the existence of these courts did not create a precedence. The Legal Advisor noted that the creation of the ‘chartered courts at Allahabad and for Behar and Orissa was a continuation of the same judicial administration which had previously existed in those territories’ (Note by Legal Advisor, 1915). Hence the creation of a Lahore High Court would ‘create a new departure’ (Note by Legal Advisor, 1915). However, Lord Crewe did not completely close the door, and while noting that this matter was not ‘urgent,’ concluded that ‘if, when the war is over, Your Excellency’s Government should desire, after taking into consideration the foregoing remarks, once more to bring the question before me, it will be open to you again to address me in the matter’ (Secretary of State for India, 1915).

The Supreme Government’s reaction to the joint requests of both Lahore and Delhi was received very negatively in the Punjab, especially at a time when the Punjab was wholeheartedly supporting the war effort. The *Punjabee* newspaper received news of the refusal before its official communication, but did not want to believe it. In its May 4, 1915 edition, the paper noted: ‘We still hope, for the good name of the Secretary of State and for the cause of good government in India and of the contentment and satisfaction of an importance section of His Majesty’s Indian subjects, that our correspondent has been misinformed in this matter’ (Punjabee, 1915, May 4). Referring to the outrage in the United Provinces after the refusal of the House of Lords to sanction an Executive Council for the province despite the support of the local government, the Government of India and the Secretary of State, the *Punjabee* stated that the refusal to elevate the Punjab Chief Court to the status of a high court will elicit feelings ‘far intenser and far more widespread than even the feeling which the actions of the Lords has aroused in the United Provinces’ (Punjabee, 1915, May 4). It further argued that it was more important and relevant for the people to have the Chief Court upgraded to high court than to have the United Provinces executive council issue resolved. It continued: ‘The masses may or may not have heard of an Executive Council. They know everything about the highest tribunal in the Province and its relation with the subordinate judiciary’ (Punjabee, 1915, May 4). The newspaper further lamented that the Secretary of State had taken this decision in opposition to the united voices of the Punjab government, the Government of India, and all shades of public opinion in India. The newspaper opined:

The constitutional right of the Secretary of State to veto a proposal put forward by the Government of India we do not question. But we do maintain that this right should only be exercised in those cases where the Secretary of State has good grounds for believing that public opinion is against the proposal of the Executive Government. Where, as in the present case, not only is public opinion profoundly in

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sympathy with the proposal, but the proposal itself is a belated attempt to satisfy the demands of public opinion...(Punjabee, 1915, May 4).

Other newspapers also refused to believe that the rumours were true: the *Loyal Gazette* (1915, May 9) published from Lahore simply asked: 'how can the Secretary of State reject the proposal, in spite of the long felt want and strong wishes of the public and the recommendations of the Local and Imperial Governments?' Similarly, the *Punjabee* (1915, May 19), carried a report from a 'Madras contemporary,' exclaiming it 'inconceivable that the Secretary of State could do anything so utterly indefensible.'

The official confirmation from the Government of India of the refusal to establish a high court in Lahore on June 15, 1915, led to a strong reaction from the press. The *Punjabee* (1915, June 17), again led the way and lamented that 'had India been a self-governing member of the Empire, action like that of the Secretary of State in this matter would have been inconceivable.' For the press and the people, this was again an indication that while they were on the front fighting for King and Country, they were still not equal to the dominions, and despite promises to the contrary, were still being treated as children who had yet to come up to mark. Newspapers like the *Desh* (1915, June 19), from Lahore then could see no option but to call for the launch of agitation, even during the war, for the demand of a high court at Lahore.

The Secretary of State's refusal to establish a high court in Lahore was clearly seen by a section of the press as the denigration of the Punjab—a province which had hitherto been one of the most loyal to the British. The *Punjabee* (1915, June 19), lamented that 'till the province gets its High Court it will not be able to shake itself clear from its non-regular antecedents or take its proper place among the provinces of India.' The *Paisa Akhbar* (1915, June 20), also argued that the Punjab was 'in no way behind the inhabitants of the other provinces in education, civilisation, trade and general progress,' and wondered why such a decision had been made. The *Hindustan* (1915, June 23), from Lahore went even further and demanded that 'We not only want a High Court but an Executive Council as well.' The denial of upgradation to the Chief Court was not now just a simply cause of the judiciary, it had become a larger issue of the treatment of the Punjab on par with other provinces of India and added to the growing demands of the Indians for more self-government.

The Chief Court Bar Association also reacted strongly to the Secretary of State's declaration and both its European and Indian members unanimously denounced the decision. Meeting under the chairmanship of Mian Mohammad Shafi, a leading barrister and a future member of the Viceroy's Executive Council, the Bar Association passed a resolution which stated:

The Chief Court Bar Association, representing the legal profession in the Punjab, places on record its respectful but emphatic protest...In view of the fact that this much needed reform is long overdue and of the absolute unanimity existing

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among all classes in respect of the question of its urgency in the interests of the administration of justice...this Association requests His Excellency the Viceroy to once again urge upon the Secretary of State the necessity of elevating the Chief Court to the Status of a High Court (Tribune, 1915, July 15).

Creation of the high court of judicature at Lahore

The strong reaction by the public to the refusal of London to grant a high court to the Punjab, alarmed the Government of the Punjab, and the Chief Secretary again wrote to the Government of India expressing the disappointment of the local administration. He noted that the Lt. Governor 'feels bound to state with all deference that he himself received the decision with much regret, and he considers that at a time when the Punjab had done and is doing so much for the Empire, and when there are so many possible sources of serious trouble in the Province, it would be both a politic and a graceful act to remove without further delay all avoidable grounds for dissatisfaction among the people by granting, at once and without agitation, a concession which is desirable in itself and in any case cannot be long postponed' (Chief Secretary, Government of Punjab, 1915). The letter further pointed out that not only does the High Court Act 1861 expressly provide for the creation of high courts beyond the original presidency towns, the fact that the Punjab is more prosperous and advanced than the other provinces of India and yet remains without a high court, merits to be first in the grant of such an honour. The Governor General, Lord Hardinge and his Council, therefore impressed upon the Secretary of State a reassessment of his earlier denial of the request. They wrote: '...we are in entire agreement with the Punjab Government that the time has come with the strong public sentiment now existing in favour of the institution of a local High Court cannot be lightly disregarded...' (Governor General in Council, 1915). This representation, finally, had the desired effect and in his letter of July 14, 1916, Mr. Chamberlain, the first Conservative Secretary of State for India in a decade, stated that he was now convinced that 'it would not be right to maintain the more cautious attitude,' adopted in the year previous and that 'it is evident that the province regards the proposal as one that touches its interests in a very high degree.' He therefore authorised the Viceroy to 'make an announcement that after the lapse of the war and as soon as financial conditions permit, the necessary steps will be taken for the conversion of the Court' (Austen Chamberlain, 1916). At this point, the only real obstacles to the upgradation of the court were the 'Great War' and the financial situation of the country after the war.

With the end of the war in sight, and after a new high court already established at Patna in 1916, the judges of the Chief Court wrote to the Punjab Government in March 1918, with a proposal for a scheme to make the upgradation possible. In terms of the financial burden of a high court the judges noted that the additional expenditure would be about Rs. 65,000/- per annum. Out of this they

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noted that the improvements in the establishment of the court had already been made by early 1918, and on the issue of the increase of pay of the judges, they declared that they have ‘no intention of asking immediately for increased salaries’ (Registrar, Chief Court, 1918). They argued that if the Chief Court would be immediately converted into a high court they would allow for withholding the additional salaries they would draw as judges of a high court till the end of the war, or ‘they would suggest that the additions to their pay should be deducted from their salary bills as contribution on their part to the British Exchequer’ (Registrar, Chief Court, 1918). The judges noted that notwithstanding the great contributions of the province to the Great War they were unwilling to accept an inferior position compared to the other high courts, where ‘an officiating temporary additional puisne Judge of a High Court takes precedence over their Chief Judge even in his own Province’ (Registrar, Chief Court, 1918). The judges therefore prayed that ‘in the matter of work done this Court has nothing to fear from comparison with any of the High Courts and they consider that the superior status of a High Court has been fully and long since earned. They are therefore most unwilling that the elevation of their court should be postponed...’ (Registrar, Chief Court, 1918).

The forceful representation of the judges to the government had its desired effect. Writing to the Government of India the Lt. Governor of the Punjab noted that ‘the financial position of the province is eminently satisfactory, and it can well afford the extra expense’ (Chief Secretary, Government of Punjab, 1918). Sir Michael O’Dwyer further noted that ‘hope has been deferred for so long, and it is impossible to say when the war will end,’ and so it was no longer useful to wait till the end of the war to enact this promise as ‘the scheme for the conversion of the Chief Court is a small matter compared with the great changes which are in contemplation in other directions’ (Chief Secretary, Government of Punjab, 1918). In agreeing with the Lt. Governor, the Viceroy and Governor General of India, Lord Chelmsford, stated that both he and his Council were ‘very anxious to show our appreciation of the excellent services rendered by the province during the war, and we regard it as a matter of great importance that these services should receive due recognition’ (Lord Chelmsford, 1918). Indeed the Punjab had not only contributed nearly half of the men to the British Indian Army but also added over 45 million rupees to the war loan and over five million rupees to other funds connected with the war. The Governor General realised that the fact that ‘the chief judicial authority in the Punjab is only a Chief Court is taken as a reflection on its status and prestige, and there undoubtedly exists a strong feeling in the province that the enhancement of the status of the court should not be further delayed’ (Lord Chelmsford, 1918). Lord Chelmsford therefore not only strongly recommended to the Secretary of State for India that Letters Patent establishing the High Court of Judicature at Lahore be granted, but that the increase in the establishment should be authorised and that even the increase in the pay of the judges, which they had so generously offered to forgo, be sanctioned. The Secretary of State concurred with the representation and accordingly wrote to the King-Emperor on February 12, 1919 requesting that the Letters Patent establishing the High Court of Judicature at

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Lahore be issued. Consequently, His Majesty the King-Emperor George V issued the Letters Patent on March 12, 1919 which established the High Court of Judicature at Lahore for the Provinces of Punjab and Delhi with effect from March 21, 1919. According to the Letters Patent, the first Chief Justice of the Lahore High Court was to be Sir Henry Adolphus Byden Rattigan, the outgoing Chief Judge of the Chief Court, with Mr. William Chevis, ICS, Mr. Henry Scott Smith, ICS, Rai Bahadur Shadi Lal, Barrister-at-law, and Mr. Walter Aubin Le Rossingnel, ICS, as puisne judges. Mr. Leycester Hudson Lesie-Jones, ICS, and Mr. Alan Brice Broadway, Barrister-at-Law were to be the additional judges of the newly constituted Lahore High Court.

Conclusion

The final establishment of the Lahore High Court in 1919 was a result of almost thirty years of struggle by not just the judges of the Punjab Chief Court, but also the people, legislators, and after 1900, the Government of the Punjab. The discussions between the Government of the Punjab, the Supreme Government in India, and the Secretary of State in London, over the creation of the high court exhibit the intricate inner workings of governance in India. Where on the outside it was the 'British Government in India,' the exchanges noted above show a great deal of disagreement, dissension and even indignation between the almost wholly white British rulers of India. Questions over the 'pride of the Punjab' were raised in this regard not just by Indians, but also British officials, who by their long affiliation with the province had achieved a certain 'Punjabi' mindset, and were keen to defend the rights and privileges of the province in front of Calcutta, Delhi or London.

The public interest over the creation of the high court was also exceptional and showed the deep interest of the educated class at least, in not just the prestige of the province through the creation of a high court, but also the judicial benefit it would bring in terms of being further separated from the executive, higher quality of judges, and more power. Public sentiment was such that the *Punjabee* (1915, June 17), newspaper even called for agitation in light of the refusal of the Secretary of State to grant the Punjab a high court and warned that there will be 'an agitation of unprecedented magnitude, an agitation quiet, orderly and absolutely constitutional, but one which will be participated in by all sections the educated community and carried on with a vigour and determination which will acknowledge no defeat and which must eventually triumph.' Such articles, as well as discussions in the Punjab Legislative Council, thus exhibit the first wave of nationalism in India, where achieving more power through constitutional means was the mainstay of nationalist discourse in India.

The High Court of Judicature at Lahore was established in 1919 almost exactly seventy years after the annexation of the Punjab by the British, and more

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than fifty years since the creation of the Punjab Chief Court in 1866. In the ensuing years, the British system of justice had permeated every part of life in the Punjab. From a haphazard system of law in the Sikh period, it did not take long for the people of the Punjab to understand and make ready use of the matrix of courts the British had established in the Punjab. As the number of cases in the Punjab increased the government noted with glee that the introduction of their judicial reforms was having the desired effect. For example, in the 1850s a government report noted: 'The more free a Punjabee feels himself, the less he will tolerate nuisances from his neighbour, the more ready he will be to hail his adversary before the Magistrate' (Administration Report, 1854-55 and 1855-56, paragraph 16). While it was clear that recourse to the law was frequently being made under British rule, it was not clear if it translated into any less violent or other crime. For example, the Administration of Criminal Justice report of 1917 noted that 'the number of convicts under sentence of death admitted to Punjab jails is on an average greater than the number admitted to all the jails of Bengal, Madras, Bombay, Bihar and Orissa and Assam put together,' and hence higher litigation levels did not always prove a deterrence to the incidence of crime (Civil Justice Report, 1917, paragraph 10). Nevertheless, the creation of the Lahore High Court played a seminal part in the development of the judiciary and the rule of law in the Punjab and South Asia, and the judges and lawyers of the Lahore High Court continued to play an important role in the rest of the British Raj and even beyond in independent Pakistan.

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