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The British Policies of Transforming Justice Administration of Murshidabad Nawabs

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ABSTRACT

This paper attempts to map the intricacies of justice disbursement processes operative in Murshidabad during the time of Nawabs and its unfortunate overhaul resulting from the interference of the British. Based on sheer ignorance of the intricacies of Islamic Justice system, the British sought to alter the judicial edifice of the country and replace it with their own system which proved to be counter-productive for the many judicial administrators and officials. Whether in the form of administrative orders or rules for resolving disputes and punishing crimes, the new justice system had a transformative role, albeit negative to play in indigenous society. It played its part by changing the social values and purpose of things, the rhythm and rules of work, the use and division of space and even the order of personal relationships. Since the norm was denial of existing values and customs what emerged as law and justice were colonial creations and situations of British prejudices and extreme vulnerability of the natives made all their causes appear hopeless.

Introduction

Historical accounts have proved that Bengal 'subah' (province) had been under the Mughal governors ever since the 12th century; that governors from Delhi had been appointed in Bengal from as early as 1194 A.D., the first being Muhammad-i-Bakhtyar under the emperor Kutubuddin Aibak². The history of Murshidabad is little distinct during the Mughal rule which to a greater extent is the history of Bengal as a whole; this history "is of special interest not only to the Hindus and Mussalmans in Bengal, but also to the Englishmen, in that Bengal formed the foundation-stone of the glorions-fabrio of Empire in Asia that England was destined in subsequent years to rear on the wreck of the mighty Empire of the Great Mogul."³

It was during the sixteenth century that the Mughals annexed Bengal to their Imperial dynasty thereby ending its long isolation from Delhi and the rest of North India and introduced the Muhammadan religion and the law of Islam. The history of Murshidabad proper dates to prominence since the time of Murshid Quli Khan who removed the seat of government from Dacca to Maksudabad in 1702, for it was believed to be "an excellent site, where news of all four quarters of the subah could be easily procured, and which, like the pupil of the eye, was situated in the centre of the important places of the subah."⁴ This decision, historians feel was solely taken for political considerations.

Once Bengal became a part of the mighty Mughal Empire in 1575, the regular subah or provincial administration was introduced. But the advent of Murshid Quli Khan was about to script a new history. Though he was the last subahdar appointed by the Mughal Emperor Aurangzeb, all his successors were hereditary who had consolidated their position by sheer display of sword and extended their subordination to the Mughal authority merely as token of respect. Taking Bengal into a phase of provincial isolationism, Murshid Quli Khan transformed Murshidabad into the capital of subah Bengal and thus it stands in history today as the lineal predecessor of the independent nawabs of Bengal. The Bengal nawabs with their

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² Hunter W.W. (1885), *Imperial Gazetteer of India*, vol.2, pp. 188.

³ Zaydpuri G.H. (1788), *Riyaz-Us-Salatin; A History of Bengal*, pp. 1

⁴ O'Malley L.S.S. (1914), *Bengal District Gazetteers-Murshidabad*. (West Bengal District Gazetteers.Government of West Bengal), pp. 31.

seat of power at Murshidabad maintained the tradition of the imperial Mughals and executed their administration from two co-ordinated channels, the nazim-nawab administering criminal justice and the diwan who though head of the financial department was also the highest judicial authority in matters civil. While the nazim as officer was charged with the administration of criminal law and police, the diwan was responsible for both collecting revenues and with matters secular.

Islamic Justice System under the Nawabs

A study of the 'Letters of the Committee of Circuit dated 15th August 1772' provides an insight into the system of judicature, established by the ancient constitution of Bengal. Justice under the nawabs in the district was disbursed by two distinct classes of tribunals (1) those of qazis, men of piety and erudition who decided cases on the elaborate system of Mahommedan Law and (2) other officers of the government whose power and authority was regulated by no fixed rules but by general principles in the interest of litigants, particularly when they were aliens in race and creed. The judicial edifice of the kingdom also included several types of courts; (i) the court of nazim who as supreme magistrate personally presided over trials of capital offences; such a court was conducted every Sunday and popularly christened as roz-adalat. The nazim's court served both as court of original and appellate jurisdiction; however, initially in most cases the proofs of offences were brought to the notice of the faujdar who then transferred it to the nazim for his verdict and judgement. (ii) The task of the deputy of the nazim in the criminal court was to take cognizance of quarrels, frays and abusing names, besides deciding matters of property excepting claims of land and inheritance. This was the court of the daroga-i-adalat-al-alia. (iii) All cases relating to property in land or real estate were referred to the diwan who as chief judge seldom exercised his authority in person but through his deputy the daroga-i-adalatdiwan exercised de-facto power in civil cases (iv) the court of the qazi (also popular as sharia court) was the judge in all claims of inheritance and succession and performing socio-religious functions as marriages, circumcisions and funerals and (v) the faujdar or the office holder of the police was the judicial authority of non-capital crimes.

The justice system that prevailed was actually the Perso-Arabic system in native settings; a mixture of both indigenous and foreign attributes. While the indigenous usage was allowed to prevail in general administration, the foreign model influenced almost exclusively the court and the higher official circles. Since the administration of justice was of prime importance, wide and elaborate arrangements were made and every subah (province) had a number of courts - civil and criminal of original and appellate jurisdiction and every sub-division and large district town had the courts of the qazis, sadrs⁵ and mir-i-adls.⁶ The Muslim authorities had established the chief qazi not only in the capital, but also in the mofussils (interior districts) and Mohammedan Criminal Law served as the fountain of justice for all subjects, applicable to both the Muslims and Non-Muslims alike. In line with Mughal tradition the nawab instituted two important institutions for justice dispensation, one under the qazi administering Islamic law - both civil and criminal and the other under the mir-i-adl who exercised jurisdiction in matters not specifically provided by the religious laws of the respective communities.

Although the supreme authority to redress the grievances of his subjects was the prime responsibility of the nawab himself, the limited capacity of the human nature stood in the way of shouldering the task of administration alone so, he appointed unbiased and discreet servants in the capacity of the judicial authority for discharging justice.

The subordinate qazis were posted in the small cities and large villages while the office of the mir-i-adl was located in towns. However, in situations of rare circumstances when the office of both existed in the same town or city, it was the mir-i-adl who enjoyed the control over the former qazi. Though not a regular officer in the court, the mufti provided important insights and expounded the rules and principles of Islamic law based on sharia (provide footnotes) on the basis of which the qazi based his judgement. He was a sort of unofficial 'Legal Remembrancer of Canon Laws', who though not holding a regular portfolio in the justice department was frequently referred to.

The Committee of Circuit refers to two other officers in Murshidabad namely the kotwal and qanungo, who had no judicial authority but had come to acquire it. The kotwal was recognized as the peace-officer of the night as he was responsible for discharging police functions only at night - preventing forcible intrusions of strangers, finding thieves and stolen goods and

⁵The chief 'sadr' was responsible for the administration of religious endowments and charity. He was the civil judge of causes arising from the disputes relating to such endowments of land and other forms of charitable grants and property. Mishra B.B. (1961), *The judicial administration of East India Company (1765-1782)*, Motilal Banarasisdass, pp. 54.

⁶The judicial portfolio of mir-i-adl was created during the reign of Sikandar Lodi. Since then this post has been maintained. Though his responsibilities and duties as judicial officer varied from time to time; his court was the chief court of appeal. Husain V. (1934), *Administration of Justice during the Muslim Rule in India*, pp. 62.

any failure on his part made him answerable to his higher authority, the faujdar. Though in the early period the faujdar had no judicial authority but by the end of the 18th century he had come to enjoy judicial power over all cases less than capital crimes. Likewise, the qanungo, who was officially the registrar of land, often acted as arbitrator in matters of land. Equally important was the muhtesib, as censor morum. He was the officer in charge for up-keep of public morals and overseeing of weights and measures. He fulfilled a range of functions; as a supervisor of public morals, he took cognizance of social menaces as drinking and alcoholism, dealing high-handedly with businesses of intoxicants and spirituous liquors and keeping an eye on those suspected of maintaining false weights and measures. Though he was actually the market-inspector responsible for checking weights and measure, supervising the quality of goods sold at the market-place and shops so as to discourage unfair trade practices, other responsibilities as supervision of public roads, traffics, public spaces and buildings fell within the bounds of his responsibilities. Though he was not a judicial functionary, he exercised a general supervision over the judicial officers as the notaries, scribes, legal counsels and magistrates; he protected public morals by enforcing dress codes and imposing restrictions on interaction of men and women in public and supervising prostitutes and brothels. Finally, he also enforced strict observance of religious duties as fasting during Ramadan and attending prayers every Friday. However, his powers were circumscribed in that he could neither initiate enquiry nor supervise formal complaints, his actions were limited to cases where the offender was caught red-handed. The offender was instantly punished and his property confiscated. Through waqia-navis (news-reporters), khufia-navis (spies) and harkarah (secret news agent) supplying oral information, the nawab kept himself well-informed of all events.

The Laws of Quran and the Sunnah (Traditions of the Prophet) had been the standard of judicial determination. The punishments – both civil and criminal, were determined based upon these authoritative texts with no deviations and permitted reliance on the ancient customs and usages only in those cases where it afforded no rule of decision. Since these authoritative texts threw no light on cases where the parties involved were non-Muslims, their issues were usually decided according to the customary practices and usages. The result was that cases of Non-Muslims came to be judged by individual discretion of the judges and the possibility of the case being decided by individual whims and caprices remained open. As B.B. Mishra (1961) states, “In matters of property and in all other temporal concerns, the Mussulman law gave the rule of decision, excepting where both the parties were Hindoos, in which case the point was referred to the judgement of the Pandits, or Hindoo lawyers. Under the Muslim Government, justice was therefore, distributed by two distinct types of tribunals - qazi administering the law of the ‘Quran’ and the other under the officers of Government exercising discretionary authority in matters not concerned by the canon law.”

While the Quranic Laws were followed in case of the members of the faith, for the Non-Muslims it was not the business of the authorities to interfere if they settled their differences among themselves in accordance with their own particular laws and customs without resorting to the authorities for their legal help. Though the nawab was the supreme judicial authority, sometimes the highest court of appeal and the court of first instance, much judicial powers were exercised by the chief qazi in charge of canon law and the diwan who administered cases of secular nature. The Committee of Secrecy mentions that the causes of religious nature were not entrusted to any temporal judge but were reserved for the sole discretion of the qazi who was the final decision-giver and submission to it was both mandatory and obligatory and the people often submitted ungrudgingly.

Since the functioning of the courts was basically limited to Murshidabad and its adjoining areas, no proper arrangement existed in the mofussil (interior district). This was because the judicial system of the nawab’s kingdom was largely a replica of the Mughal Empire and the Mughal Government being more military in nature and urban oriented, less attention was paid to the justice mechanism in the mofussil. The smaller towns and villages had no qazis’ posted by the authority and the distant interiors lacked proper judicial arrangements. Though there were substitutes of the qazi who exercised power, such power was under no lawful authority for it depended upon their ability to contest its exercise. The sadr exercising jurisdiction over disputes of religious and charitable nature remained non-functional since no evidence of its functioning have been found in either the records of the proceedings of the Committee of Circuit or the Proceedings of the Murshidabad Council. Though different courts existed in the nawab’s kingdom, laxity and overlapping jurisdiction prompted them to encroach and usurp each other’s functions with the same court taking cognizance over both the civil and criminal cases. For instance, in matters of property, both the daroga-i-adalat diwan and daroga-i-adalat-al-alia exercised their jurisdiction. However, it was the adalat of the diwan which was fully effectual while the adalat of the nazim or that of its deputy daroga-i-adalatal-alia existed only in name.

The records of the Parliamentary Committee of 1773 point out that takhem or arbitration by local judges were a well-established practice. But nonetheless it was limited to suits only of commercial disputes and matters of debt. Such practices were mostly due to the nature of village life itself prevalent since time immemorial where men referred their disputes for arbitration to men chosen by them. Their continuation was largely due to the respect for ancient traditions. The village communities resolved disputes within themselves; the system was firmly entrenched in the collective life of the village by virtue of the close contacts with each other and facilitated by the peculiar nature and needs of the village communal life. Except for in special cases, the zamindar acted as the judge-magistrate within the bounds of his zamindari or estate; his judicial powers were ordinarily confined to the collection of revenues detaining the defaulters for their non-payment. The records of James Long (1869, p xxxi) reveal a comment of Lord Clive in a despatch in 1767 'Calcutta is the place where the profession of the law is exercised by men who seem to derive all their knowledge by inheritance, or to possess it by intuition without previous study or application. Arbitration was greatly resorted to, to the disgust of men who grudge the time given to it from their professional pursuits.'⁷ "Mr. Stewart, the Resident at Burdwan remarked that arbitration so common a practice in Bengal is an unsatisfactory, dilatory and indecisive process"⁸.

In 1773, the Committee of Secrecy pointed out that zamindars exercised judicial authority by virtue of the very nature of land tenure held by them. By the end of the 18th century, they had consolidated themselves into de-facto judges in districts within their jurisdiction. As a class of self-assumed adjudicators, they were ever ready to assert their influence on the smallest weakness or laxity on the part of the authorities. By virtue of being the collectors of revenue, they were the head of the villages and enjoyed unstinted authority which increased with the decline of the power of the faujdar. The Committee of Circuit mentioned that the zamindars, shikdars (officer with executive and revenue functions) and other revenue officers have come to assume power for which no provision has been provided for in the laws of the land and the manner in which these officials exercise their power will lead to total anarchy.

In a survey in August 1772, the Committee of Circuit discovered that a host of functionaries were attached with the judicature in the country ranging from the nazim himself as chief judge in capital crimes and diwan in secular matters with their respective deputies (daroga-i-adalat-al-alia' and daroga-i-adalat diwan respectively) to qazi in matters of religion, mufti or the legal remembrance, muhtesib or officer of weights and balances, police officer or justice of the peace and the informal arbitrators as kotwals, faujdars, qanungos, and the zamindars. These local and informal authorities enjoyed coercive power by virtue of their wealth and official position in the administrative hierarchy. This was also reflected in the Report of the Committee of Secrecy in 1773 which stated that justice administration in Murshidabad was one marked by intense diversity because multiple and overlapping functionaries existed for justice disbursement in all cases of civil, criminal, religious and revenue matters.

The Interference of the British in Indigenous Justice Administration

The history of Bengal has been one of shock absorbance; the advent of the British had fundamentally altered the judicial landscape of the country. 'The Paradise of India'⁹ as it was known, 'under the rule of the Murshidabad nawabs had the potentialities of a strong Muslim power'.¹⁰ Since the waning Mughal hegemony and the distance from Delhi allowed little interference in the administration of the provincial governors, the subahdars of Bengal achieved greater autonomy and gradually started their independent dynastic rule. On the other hand, being one of the wealthiest provinces of Mughal India, Bengal was an extraordinary prize for the English. The defeat of the nawab in the battle of Plassey (1757) together with the grant of diwani (the right of revenue collection granted by a Royal Farman on 12th August 1765) had reduced the Muslim nawab to a tinsel sovereign with the administration of the criminal justice as the only concession. "This divorce of the responsibility of control vested in the company, from the actual conduct of the administration ..., proved disastrous alike to the rulers and to the people"¹¹. From the 5th Report of Select Committee of the House of Commons (1812), it was clear that the Court of Directors had the intention of grabbing all possible benefits without the actual trouble of administration and they extracted the full advantage of the diwani and in their letter dated 28th August, 1771, they declared their intention to take upon themselves the entire care and management of the revenues.

⁷ Rahim Md. A. (1908). *The Muslim Society and Politics in Bengal A.D. 1757-1947*, University of Dacca, pp. 3.

⁸ Banerjee D. N. (1943) *Early Administrative System of the East India Company in Bengal 1765-1774*, Vol.1, Longmans, Green & Company, Ltd., pp. 464.

⁹ Samuel Charles Hill (ed.) *Bengal in 1756-1757 - A Selection of Public and Private papers dealing with the affairs of the British in Bengal during the reign of Siraj-ud-Daulah*. (Publications for the Government of India. London: John Murray, 1905), pp. 160.

¹⁰ Rahim Md. A. *The Muslim Society and Politics in Bengal A.D. 1757-1947*, University of Dacca, pp.3.

¹¹ Hunter W.W. (1894), *Bengal ms records; A Selected List of 14,136 Letters in the Board of Revenue 1782-1807*, W.H. Allen & Co, pp.17

The Court of directors at home in consultation with the authorities at Fort William in 1769 adopted measures to reform the justice administration in Bengal. The Sixth Report of the Committee of Secrecy (1773) appointed to look into the affairs of the East India Company in 1772, while taking note of the system of judicature established by the Constitution of ancient Bengal pointed out that both in the capital Murshidabad and in the several districts, the indigenous judicial system had branched out for the exercise of the criminal, civil, religious and revenue jurisdiction. It further pointed out that the temporal judges were not entrusted with the task of judging issues involving Islamic religion since they required the attention of those learned in Islamic fiqh or jurisprudence and as such could only be entrusted to the wisdom and discretion of the qazi.

In a letter dated 10th July 1772, Warren Hastings declared his intention to the Council that as sovereign authority in Bengal the British reserved the right to abrogate the Muhammadan Law. Taking advantage of the prevailing situation, on the pretext of the nawab's youth and inexperience, he recommended the dissolution of the judicial power of the Muslim royalty. He found the acknowledgment of the nawab's superiority as a great and dangerous concession and considered their own interference in the administration as both right and expedient. Harboursing haughty contempt towards the prevailing Islamic law, Hastings labelled the said law as wanting and advised that proceedings of criminal courts be revised because he felt the letter to the law was clearly repugnant to the principles of good government and common sense; its flexibility and leniency appeared as obstacles to the maintenance of law and order as it had restricted the powers of the courts to hand down capital punishments. Such interference was uncalled, for strictly speaking, as diwan they were not entitled to interfere with the judicial administration. "The Company had no right to interfere. Its duty, as fixed by the treaty, was to collect the revenue ..."¹² But the British officers played petty tyrants and controlled the local court; they acted as judges wherever they went making the natives groan under their oppression. Verelst observed, "in Bengal, the people are so far from supposing justice due from the magistrate that one-quarter of the property in dispute belongs to the judge as a reward for his trouble".¹³

Questioning the unwanted interference of the British nawab Siraj-ud-Daulah in one of his personal letters to the British wrote in his own hand, "if you imagine that by carrying a war against me you can establish your trade in these dominions you may do so as you think fit."¹⁴ Though the nawab had retained the administration of criminal justice till 1790, civil justice had been completely shattered during the anarchy that preceded 1765. The reign of the nawab ended in 1756 A.D. and the English rule, "To all intents and purposes, the rule of the nawab in Bengal came to an end in 1765 A.D. and the rule of the English, in fact though not in name, commenced in that year".¹⁵ By bartering his authority in being a pensioner¹⁶ the nawab was reduced from de-facto to de-jure position.

Hastings realized that in "it was impossible to place the revenue administration on a sound footing without a thorough reform of the administration of justice"¹⁷ and "the next seventeen years after the grant of diwani ... were spent by the Company's servants in tentative efforts at administration"¹⁸. But the administration of the country was only a secondary business. Profit making continued to be its chief aim and the two important means to achieve this end were conquest and government; as prosperity begot political ambition, the company turned into a political force in Bengal.¹⁹

The crusade of reducing the indigenous judicial system (sharia court) into ruins was jointly borne by Hastings and Cornwallis. Hastings Judicial Plan of 1772 as the first British Indian law code for Bengal signalled the arrival of major changes in justice administration. Approved by the President along with his Council, his New Plan was a result of the secret consultation held at Fort William on 21st August 1772. Consisting of 37 Regulations dealing with civil and criminal laws, it was the first Anglo-Indian code, which hoped to dole out reforms keeping in mind the exigencies of the people. But this was much easier said

¹² Hunter W. W. (1872), *The Annals of Rural Bengal*, Trubner & Co., pp. 170

¹³ Majumdar.N. (1960), *Justice and Police (1765-1793): A Study of the Nizamat in Decline*, 1st ed., Firma K. L. Mukhopadhyay, pp. 58.

¹⁴ This is an extract of a letter from Nabob Siraj-ud-Daulah to Vice Admiral Watson, dated 23rd January 1757. Walter Kelly Firminger (ed.) (1758), *Proceedings of the Select Committee at Fort William in Bengal*, Calcutta: The Bengal Secretariat Record Room, pp. 9-10.

¹⁵ Majumdar R.C (1978). *The history of Modern Bengal 1765-1905*, G. K. Mukherjee, pp. 2.

¹⁶ The supremacy of the British in Bengal presaged by the battle of Plassey was established eight years later on solid foundation of legal rights with the acquiring of diwani rights of Bengal, Bihar and Orissa. The allowance of 53 lakhs of rupees to the Nawab was reduced to 41 lakhs of rupees in 1766 and further to 32 lakhs of rupees in 1769 A.D. Majumdar R.C (1978). *The history of Modern Bengal 1765-1905*, G. K. Mukherjee, pp. 2.

¹⁷ Forrest George William (ed.) (1857-58), *Letters, Despatches and other State papers preserved in the Department of Government of India 1772-1785*, Superintendent of Government Printing, pp. 12.

¹⁸ Hunter W.W. (1894), *Bengal ms records; A Selected List of 14,136 Letters in the Board of Revenue 1782-1807*, W.H. Allen & Co, pp. 13.

¹⁹ For a quarter of a century, the East India Company had not been merely a great trading company but also a great territorial power, ruling over a population more than double that of England and Wales. A. Aspinall (1931), *Cornwallis in Bengal: The Administrative and Judicial Reforms of Cornwallis in Bengal*, University Press, pp. 1.

than done. Though the 'New Plan' favoured retention of the native traditions and codes, Hastings divided Bengal into several districts and placed them under the Collector who acted as the chief judge of the newly established mofussil diwani-adalat (in every district) taking cognizance of all civil cases including property, inheritance, marriage, contracts etc. To clip the powers of native judges further, the governor-general transferred all appeals from the mofussil diwani-adalat to sadr-diwani-adalat at Calcutta²⁰ which comprised the Governor as president and at least two members of the council aided by the diwan of the treasury and the chief qanungo. By this time the treasury had already been shifted from Murshidabad to Calcutta. On the same line was established the 'mofussil faujdari (or nizamat) adalat' in each district for trial of criminal acts and other misdemeanours aided by a qazi or mufti and two other mauilvies; but these courts were kept dependent upon the Supreme Court in Calcutta. The qazi was now reduced to a mere assistant and aide of the collector who helped the English judge in expounding the religious rules in deciding various cases. It must be noted here that in line with the plan for justice reforms, the Committee of Circuit had recommended the establishment of two superior as well as two inferior courts of justice at Calcutta.

Hastings had vested the supreme power within his office, the right to intervene in critical cases and with the English advisers he reviewed the decisions of the sudder-faujdari or nizamat-adalat. Whenever he felt that certain sentences imposed by the native judges transversed the sense of English justice, he ordered its correction by the authority of the President and Council taking only that much of Islamic law that was cognizable to their sense of justice.

Though the district courts had full powers to decide and punish all sorts of criminal cases, their jurisdiction was restricted short of awarding death sentences. Such cases found their place in the sadr-nizamat-adalat²¹ at Calcutta which confirmed the appropriate punishment and finally sent it to the Nawab. "By these arrangements", Hastings wrote to the Court of Directors "the whole power and Government of the Province would centre in Calcutta, which may now be considered as the capital of Bengal."²² By making Calcutta the crucible of change far from the grandeur of Murshidabad, Hastings judicial Plan of 1772 successfully reduced the native judicial officers to a mere cipher and brought the traditional justice system to the brink of dissolution.

However, the phase of melancholy revolution of experiments did not wane with his exit but was taken up with much more zest and hatred by his successor Cornwallis. By his famous Cornwallis Code, he instituted four courts of circuit supervised by the company's officials; now each district had a separate judge with a native judge in subordinate position to the English officers. Blamed with charges of partiality and tergiversation Cornwallis labelled the native judicial officers as steeped in corruption, ignorant and wanting in culture. So by 1790 he declared his resolve to don the responsibility of supervising the criminal justice system in the whole of Bengal.

What had made matters worse was the effect of their looking upon Arabic and religious scriptures as a crime; they failed to understand that it was qazi justice combining the religious norms and realities of the local system that had made a happy accommodation. Indigenous justice administration was gradually anglicized through successive regulations and though it continued till the later part of the 19th century until the Indian Penal Code was enacted in 1860 but the replacement of Persian²³ in native courts with that of the English language proved to be the last nail in its coffin.

The Regulation of 3rd December 1790 which had abolished the punishment of mutilation whistled the arrival of further changes and the country witnessed the introduction of a new court system; a three tiered structure with English officers at the helm of affairs. Consisting of the Governor-General and his Council the sadr-nizamat-adalat assisted by the chief qazi and two muftis was the highest criminal court of the country. Below it within each division stood the circuit court where a qazi and a mufti as assessors assisted the two English judges, (all functionaries being appointed by the Governor-General himself).

²⁰The first sitting of the sadardiwaniadalat was held on the 18th March, 1773. In cases of civil suits, appeals from the mofussil diwani-adalat could be made to sadr-diwani-adalat if the subject matter of the case exceeded Rs.500. Banerjee D. N. (1934), *Early Administrative System of the East India Company in Bengal 1765-1774*, Vol. 1, Longsman, Green & Company, Ltd., pp. 480-481.

²¹The Sadr Nizamat-Adalat like the Sadr Diwani-Adalat had originated in the Regulation of 1772 and was abolished on 1st July 1862 under the charter responsible for the establishment of the High Court of Judicature at Fort William in Bengal. Patra A.C. (1962), *The Administration of Justice under the East India Company in Bihar, Bengal and Orissa*, Asia Publishing House, pp. 71.

²²Forrest George William (ed.) (1857-58), *Letters Despatches and other State papers preserved in the Department of Government of India 1772-1785*, Calcutta: Superintendent of Government Printing, pp. 11.

²³Persian in Bengal was the great language of business in every department, and continued as the language of the courts even down to 1835. James Long. *Selections from Unpublished Records of Government mainly relating to the Social Conditions of Bengal in the Last Century (1869)*, Calcutta: Office of the Superintendent of Government, pp. xxiii.

At the bottom stood the magistrates court staffed by a single judge adjudicating upon petty disputes in the district. The Circular Order dated 15th April 1785 had equipped the magistrates to try petty offences as quarrels, abuses, affrays, minor assaults and small thefts but its powers was circumscribed in cases concerning the life or limb or capital punishment of more than 15 ratans or whips and imprisonment of more than four days; such cases were referred to the *sadr-nizamat-adalat*.

These magistrate courts in their habitual mischievousness acted unintelligently without caring for actual rules and processes and produced bad results and rulings; such neglect always proved more prejudicial leading to difficulties. Without going through the cases, the magistrates dismissed them without any regular process of enquiry or assigned them to their juniors and to clerks for preparation of reports for submission to their superiors. For reasons of individual irregularity and failure to appreciate the duties of judicial offices the fate of these cases became dependent upon personal caprices. Private engagements and personal disinclination prevented the magistrates and judges from devoting the time and energy necessary for the proper disposal of suits.

The Government Report of the Administration of Criminal justice in the Lower Provinces of Bengal during the year 1887 clearly showed that the unsatisfactory results of the Murshidabad courts have been the result of imperfect enquiry and lack of commitment to deal with the cases with proper evidences. By want of impartiality they waived all reasons and gave decisions most unfavourable in inconsonant mode; the trials of serious cases missed success for reasons of difficulty of procuring the true evidences and the tendency to supplement the defective truths by falsehood. Individual idiosyncrasies allowed large elements of discretion in punishment and most guilty persons were released without any concrete proofs. The quality of justice delivered was a painful scene disclosed with the judges proceeding with cases at their leisure frequently forgetting to take them up; the files neither bore the official signature or seal leaving space for insertion at pleasure nor was a date affixed on it for calling the case again. Under such precarious situation, it was unwarranted that records of the cases were maintained.

The content of Islamic justice was further watered down when it was proposed that the Muslim jurists would apply their fatwas only in qualified conditions of absence of the British regulations and in cases of disagreement over the same the matter would be transferred to the *sadr-nizamat-adalat*. The introduction of the court of circuit in 1793 had made the collapse of the Muhammadan government eminent. With the transfer of criminal jurisdiction to Calcutta, the nawab lost the last shadow of his authority and those few qazis who remained attached to the Anglo-Indian courts continued as legal counsellors until their office was abolished by Act XI of 1864.

Though the British continued with Persian as the official language for many years, the Act of 1837 (Section I of Act XXIX) had empowered the governor-general to abolish Persian as the court language in any part of or in the whole of the provinces. As a result, the deputy Governor of Bengal through a circular dated 9th February 1838 instructed all the departmental heads of various offices to replace Persian with Bengali or other local dialects in their respective district offices.

The codification of all criminal and procedural laws was virtually complete by 1882. The damage was indeed severe because what the English had established was a highly mechanistic framework where the language, ideas and idioms were all foreign; the native cultural, moral and religious ideas were not only disrespected but labelled as unscientific and uncivilized. All elasticity, accommodativeness and morality were thus lost. What the British implemented in the name of law in Bengal was a queer mixture of Islamic tenets and English statute laws; they distorted both the procedures and substantive law of Classical Islam. The British failed to interpret the tenets of Islamic Criminal justice in their right context and criticized it as full of shibboleth and prejudices. The British believed that deterrence in society would only be maintained by imposing strict punishment equal to the magnitude of crime and insisted on bringing every dispute to trial ignoring the sensitivity of the criminal act.

The early 19th century witnessed a completely altered face of Bengal's justice administration; the changes initiated in the name of reform between 1790 and 1807 shattered the edifice of qazi court beyond recognition. Private prosecution was replaced with prosecution by the state. In 1852, Sir George Campbell wrote, "the foundation of our criminal law is still the Muhammadan Code, but so altered and added by our own regulations, that it is hardly to be recognized; and there has,

infact, by practice and continual amendative enactments, grown up a system of our own well understood by those whose profession it is, and towards which the original Muhammadan Law and Muhammadan lawyers are really little consulted.”²⁴

Conclusion

If the British had really been concerned with the interests of the natives then they would have followed restorative instead of retributive practices; the flexibility and defenses of Islamic legal doctrines on which the sharia courts functioned would not have been outright abolished. The Committee of Secrecy viewed with cynicism its own officers’ act of condemning the old constitution without any apparent inconveniences and thrusting aside investigations to see whether complaints arose from some corrupt deviations. The British ignored the fact that a nation was by itself the best judge to safeguard its liberties and interests and imposition of an alien system, however enlightened, was to commit gross injustice, because laws were only good when they served the people in overcoming their inconveniences and the persons fittest to frame the laws were those who knew the peoples’ wants and erased their grievances. From this logic, an Englishman was fit to frame the laws for the English only and not for the Indians. While on one side were religion, humanity and sanctions of the countless ages the other of vanity and ambition combined with utter disregard and disrespect for the people obliterated the pride and glory of the sharia courts. The British Government’s duty of providing the natives the secure enjoyment of their rights was in a great degree omitted; their bad administrative arrangements and injurious juristic notions and maxims had injured the peoples’ right to survive in their own culture. Their act of pulling down the entire indigenous judicial edifice to build a new one based on their convictions and laws ended in the destruction and convulsions of the natives.

The application of Muhammadan Law was now restricted only to personal fronts of the Muslims. It was a move deliberately designed to wrest socio-religious control from the natives as part of a larger policy for future consolidation of their power not only in Bengal but much beyond her frontiers. Such acts generated much discontent because they ended up with wrong interpretations of the religious rulings. The qazi and his office deprived of any adjudicative power was now an ordinary subject. His functions were now limited to performing the social and religious ceremonies as marriage, divorce, funerals and circumcision. The Muslim judicial officer had become the favourite whipping boy of the colonial administration and it was quite humiliating on his active spirit to be forced upon doing something of lesser importance dislodging him from his royal assignments. The ruthless attack of the British had usurped the sanctity of Islamic Justice.

References

- [1] Aspinall A. (1931), *Cornwallis in Bengal: The Administrative and Judicial Reforms of Cornwallis in Bengal*. Manchester University Press.
- [2] Banerjee D. (1943), *Early Administrative System of the East India Company in Bengal 1765-1774*. Vol.1, Longmans, Green & Company, Ltd.
- [3] Banerjee, K. (1963), *Background to Indian Criminal Law*. Calcutta: Orient Longman,.
- [4] Bayly C. A. (1988). *The New Cambridge History of India: Indian Society and the making of the British Empire*. Part II. Vol. I, Orient Longman.
- [5] Field C. D. (1888). *Introduction to the Regulations of the Bengal Code*. 2nd ed., S. K. Lahiri & Company.
- [6] Firminger, K. (1758), *Proceedings of the Select Committee at Fort William in Bengal*, The Bengal Secretariat Record Room.
- [7] Grandy, G. (1870), *The ‘Hedaya’ or Guide, A Commentary on the Mussulman Laws*. 2nd ed., W^M H. Allen & Company.
- [8] Hill, C. (1905). *Bengal in 1756-1757 - A Selection of Public and Private papers dealing with the affairs of the British in Bengal during the reign of Siraj-ud-Daulah*, publications for the Government of India, John Murray.
- [9] Hunter W. W. (1872). *The Annals of Rural Bengal*. London: Trubner & Co.
- [10] Hunter, W. (1885). *Imperial Gazetteer of India*. Vol. 2, Trubner & Co.
- [11] Hunter W.W. (1894). *(Bengal ms records; A Selected List of 14,136 Letters in the Board of Revenue 1782-1807*, W.H. Allen & Co.
- [12] Husain V. (1934), *Administration of Justice during the Muslim Rule in India*, University of Calcutta.
- [13] Jones, M. (1918), *Warren Hastings in Bengal* Oxford; Clarendon Press.
- [14] Long, J. (1869), *Selections from Unpublished Records of Government relating mainly to the Social Conditions of Bengal in the Last Century*, Calcutta: Office of Superintendent of Government.
- [15] Majumdar N. (1960), *Justice and Police (1765-1793): A Study of the Nizamat in Decline*. 1st ed., Firma K. L. Mukhopadhyay.
- [16] Majumdar R. C. (1978). *The history of Modern Bengal 1765-1905*, G. K. Mukherjee.
- [17] Metcalf, D & Metcalf, D. (2002). *A Concise History of India*, Cambridge University press.
- [18] Mishra B. B. (1961). *The judicial administration of East India Company (1765-1782)*, Motilal Banarasidass.
- [19] O’ Malley L.S.S. (1914), *Bengal District Gazetteers-Murshidabad*, West Bengal District Gazetteer. Government of West Bengal.
- [20] Patra A. C. (1962). *The Administration of Justice under the East India Company in Bihar, Bengal and Orissa*, Asia Publishing House.
- [21] Rahim, A. (1978). *The Muslim Society and Politics in Bengal A.D. 1757-1947*. University of Dacca.

²⁴Tapas Kumar Banerjee. *Background to Indian Criminal Law*. (Calcutta: Orient Longman, 1963), 33.

- [22] Sarbulandjung, I.(1932). *A Dissertation on the Administration of Justice of Muslim Law in British India*, Juvenile Press.
- [23] William, G.(1857), *Letters, Despatches and other State papers preserved in the Department of Government of India 1772-1785*, Superintendent of Government Printing.
- [24] Zaydpuri, H. (1788). *Riyaz-Us-Salatin; A History of Bengal*, Asiatic Society.