

CHAPTER - 4

1698 - 1790

ZEMINDARI TO DIWANEE IN BENGAL

4.1 TERRITORY TO ZEMINDARI

In 1696 the Hindu Rajahs westward of the Hugli broke into open rebellion. The Rajah of Burdwan was at the head of the rebels. Wheeler (1) records, "The so called army of the Raja of Burdwan was routed by fifty English soldiers in front of the factory of Chutanutti.... Aurangzeb appointed one of his grandsons to be Viceroy of the three united provinces - Bengal, Behar, and Orissa... The Hindu rebellion was lucky for the Europeans. The Nawab had told them to defend themselves, and they had run up walls and bastions round their respective factories. This was the origin of the three European forts or towns, namely, the English at Calcutta, the French at Chandernagore, and the Dutch at Chinsura." He adds, "Azim-u-shan, the new Viceroy of Bengal, was like the run of Moghul princes. He was idle, fond of pleasure, and ready to grant anything for money. By a suitable present the English obtained a grant of the three villages of Chutanutti, Govindpore, and Kalicotta."

4.2 UNAUTHORISED CRIMINAL JURISDICTION

Keith (2) records, "In 1698 the Company purchased at the cost of 1,200 rupees a year the right of zemindari over the three villages of Sutaneti, Calcutta and Govindpur. The fortified factory was named Fort William in honour of the King and in 1700 became the seat of Presidency. As Zemindar the Company was entitled to collect the revenues and exercise civil judicial authority. It appears also that by judicious exercise of bribery the Company was able to exercise the criminal jurisdiction over Muhammedan and

Hindu subjects of the Empire without interference either by the local faujdar of Hugli or his superior authority, the nazim of Murshidabad."

4.3 ENGLISH ZAMINDARI COURTS

Datta writes, "For discharging the duties connected with the "zemindari rights" thus gained, the Company appointed in 1700 a special officer known as the Collector (or the zemindar). Ralph Sheldon being the first Collector of Calcutta. The Collector was to "gather in the revenue of the three towns and to keep them in order," for which, in accordance with zemindari customs, he exercised till 1758 both civil and criminal justice through some zemindari courts established in Calcutta. The Collector had under him an Indian deputy, styled the 'Black Collector'. Govindaram Mitra, held this post for over thirty years till he was dismissed for some malpractices by orders of the Court dated 16 January, 1752." Wheeler (4) writes, "The Mughul Governor at Hugli did not like to see the English acting as Zemindars. He wanted to send a Kezi to Calcutta to administer justice in accordance with Muhammedan law. But the English made another present to the Viceroy, and the Governor of Hugli was told to leave the English alone."

Jain (5) comments "The acquisition of the zemindari was a significant event for the Company which thus secured a legal and constitutional status within the framework of the Mughal administrative machinery. As a zemindar, the Company became entitled to exercise all those functions and powers within the zemindari territory as other zemindars in Bengal commonly exercised at that time within their domains."

Sarker (6) writes that during the palmy days of the Mughal Empire, the zamindars of Bengal enjoyed no significant judicial power, yet they collected all the land revenue and maintained law and order within their zamindari limits. There used to be a Kazi in each sarkar (district), in each parganah, in each city and even in a large village, but litigation coming before the Kazis was small.

Referring to 'The Regulations of the Bengal Code' Jain (7) writes, "The Kazis' courts in the country-side did not function at all or functioned in a very corrupt and indifferent manner....In the absence of regular judicial tribunals in the country-side, people had none else to look to except their zamindar and they came to him in search of justice. This encouraged the zamindars to assume judicial powers which they exercised with a view, not to justice, but in their own selfish interests." Jain (8) adds, "Zamindars came to administer justice in all cases, civil, criminal and revenue....The proceedings of the zamindar's courts were very summary and unsatisfactory and were hardly impartial. Fines imposed by them were appropriated by them for their own use. Judgments were mostly discretionary; there was no definite body of law which they administered; they maintained no register of proceedings in the courts. They used the judicial powers not impartially but in their own self-interest, not for justice but for oppression."

4.4 JUDICIAL SYSTEM AT CALCUTTA

The English law for the government of the Company's settlements and territories was clear. Keith (9) writes, "the rule being as recognised in Calvin's Case by the judges of James I and asserted as indisputable by Lord

Mansfield in *Campbell v. Hall*, that the laws of the conquered or ceded territory remained unaltered until replaced by the command of the sovereign, so far, of course, as such laws were not incompatible with the substitution of English for Portuguese sovereignty." When Chernoock established at Sutanati in 1690, the position was clear. As far as the English subjects were concerned, "At the close of 1699, however, Bengal was declared a presidency and the governor and council thus became possessed of full judicial authority. In 1704, they established a committee of three members for the decision of minor cases, but the sittings of this body seem to have been irregular." Keith (10) adds, "Over Indians the Company had acquired jurisdiction by the purchase of the three villages, Sutanati, Govindpur and Calcutta, which gave it the rights of a zemindar. (Wilson, *Early Annals of the English in Bengal*, 1, 163) Under the regime then existing in Bengal, a zemindar was wont to exercise a wide criminal jurisdiction, whipping, fining, and imprisoning at discretion. The Company took full use of this authority, and a member of council regularly held a Zemindari Court for both civil and criminal business... Besides these courts was that called the Collector's Cutcherry, which was simply the mode in which the Company exercised the coercive powers of the zemindars as collectors of land revenue over the tenants or farmers of the revenue. (Bolts - 1,80: Consideration on Indian Affairs.) Its practice of ordering whipping of delinquents was merely in accord with native practice, as was the complete injustice of allowing punishment to be inflicted at the discretion of an interested party who acted as judge in his own case."

4.5 ENGLISH ASSERT EXTRA-JUDICIAL POWERS

Jain (11) comments, "The above-mentioned judicial scheme at Calcutta, though generally modelled on the pattern prevailing at the time in other zeminderies in Bengal, yet had a few distinctive features. In case of other zeminders, as noted above, a capital sentence was executed only after confirmation from the Nawab and appeals in civil cases lay to the courts at Murshidabad. But, unlike this practice, the English, within the precincts of their zemindari, sought confirmation of death sentences from the Governor and Council without making any reference to the Nawab, and appeals from the collector's court in all cases went to the Governor and Council and not to the Nawab's courts. These features of the Calcutta judicial system show that, from the very beginning, the Company's representatives at Calcutta asserted and exercised more powers than belonged to them as a zemindar under the customs prevailing in the land."

4.6 THE GAOLS-jails.

When Fort William was constructed, Brian Gardner (12-A) writes that, "there was a room built of solid masonry against one of the massive walls. It had been used as a temporary jail for soldiers and sailors, mostly for the common offence of drunkenness. Four, or at the most five, men had spent the night there."

Brian Gardner adds, "The real jail of Calcutta was a building outside the fort."

4.7 PRESIDENCY OF FORT WILLIAM : OFFICIAL BUSINESS

The official business of the Presidency of Fort William in Bengal, which related more or less to trade and cognate subjects in the early days, was disposed of

by the Governor in Council and the records were called "Consultations" and later on "Proceedings", etc. This arrangement continued till the capture of Calcutta by Siraj-ud-daula in 1756. (12-D)

The grant of Diwani of Bengal by the Mughal Emperor conferred on the Company the right to conduct the civil administration of Bengal, Bihar and Orissa. After some years the Company began to exercise their right and indeed extended it in such a way that it became the de facto ruler of Bengal with the Emperor as a kind of suzerain. It thus had two different foundations for its authority. In Calcutta and the ceded areas it was governed by its charter and exercised jurisdiction on behalf of the Crown, while in the rest of Bengal it was in theory it was the representative of the Mughal Emperor. For over a century and a half, two separate sets of courts of justice existed, - the Royal Courts in Calcutta and, in the rest of Bengal, the Company's Courts based on the Moghul's grant. Two separate sets of laws were also in force. Outside of Calcutta the Company made Regulations, but, they were not binding on the Royal Court in Calcutta. (12-C)

Lord Clive, on appointment as President and Governor, with command of the Company's military forces in 1765, replaced the Secret Department by a Select Committee of five members and work was distributed between the Committee and the Council. (12-B)

4.2 MURSHED KULI KHAN SETS NEW DEMANDS

After the death of Aurangzeb in 1707, Azimushan left for Delhi and Murshed Kuli Khan succeeded him. Stewart(13) writes, "Murshed Kuli Khan...was too keen a politician not to observe with jealousy the fortified factories of the Europeans, and the great advantage which the English

had over the merchants, in consequence of the firmans and nishans, which they had obtained (he said) by means of bribery and corruption, and which permitted them to trade, either by duty free, or for the paltry consideration of 3,000 rupees per annum."

"When, therefore, Murshed Kuli Khan felt himself perfectly secure in his government, he set at nought the order of the prince Shuja, and of the emperor Aurangzeb, and demanded from the English, either the same duties that were paid by Hindu subjects, or a constant renewal of presents, both to himself and to all inferior departments. Such conduct, of course, irritated the English agents, who wrote a detail of their grievances to the Directors of the Company in England, and solicited permission to send an embassy to Delhi, to complain to the emperor Farrukh Siyar." This was permitted.

4.9 FARRUKH SIYAR HELPS ENGLISH

Majumdar (14) writes, in 1715, "Hamilton succeeded in curing the Emperor Farrukhsiyar of a painful disease, and he, thus being pleased with the English, issued firmans complying with their request and directed the governors of the provinces to observe them. The privilege enjoyed by the English of trading in Bengal, free of all duties, subject to the annual payment of Rs. 3,000 per annum, was confirmed; they were permitted to rent additional territory round Calcutta;"

4.10 ADDITIONAL FORTIFICATION BY ENGLISH

Majumdar (15) says that the firmans greatly furthered the interests of the Company and "It has been aptly described by Orme as the "Magna Charta of the Company". The trade of the Company in Bengal gradually

prospered....The English not only mounted guns on the old fort but also commenced to build additional fortifications without the permission or even the knowledge of the Newab."

4.11 SIRAJUDDAULLAH SEIZES FORT WILLIAM

After his accession to the throne in 1756, Siraj-ud-daullah wrote a letter to Mr. Drake, the governor of Calcutta, repeating his orders to demolish the additional fortifications, which was not complied with. Siraj-ud-daullah marched his forces against the English settlement, seized the English factory at Cassimbazar on 4th June, 1756 and on 20th June Fort William surrendered to him after a feeble resistance as many prominent Englishmen had earlier abandoned the fort to its fate and sought their own safety on board the ships, in which they sailed away. (16)

4.12 COMPANY BECOMES ZEMINDAR

Michael Edwardes (17) writes, "When news of the loss of Fort William reached Madras, an expedition was fitted out under the joint command of Clive and Admiral Watson, who recaptured Calcutta without any great difficulty in January, 1757." and adds, "They finally decided to replace the Newab with his general, Mir Jafer, and, after the French had been neutralised by the capture of their settlement at Chendernagore, fought the untidy but fateful skirmish at Plassey on 23 June, 1757....The political results were immense. The East India Company became landlords (zemindars) of the 'twenty-four Perganas'-nearly nine hundred square miles of territory South of Calcutta, yielding substantial rents." He adds, "When, after the battle of Plassey in 1757, the British first began to exercise power in Bengal, they were forced to improvise an administration. In Bengal,

as else where, any man strong enough to bully others did so until someone stronger took his place. Initially, the British were no better than their predecessors, allowing chaos and oppression to continue and profiting from it." and "the English had become arrogant and lordly- presumably because of the Company's successes in the South- and acted as if they were independent and sovereign power."

4.13 CLIVE OBTAINS MANSABDARI

Wolpert (18) comments, "Clive reaped an immediate personal fortune of £ 234,000 for his role in the coup and was made a mansabdar of six thousand with an annual salary of £ 30,000 in rent from the Twenty-four Parganas ("regions") of Bengal, some 880 square miles south of Calcutta, which became his private jagir. Overnight, at the age of thirty-two, he became one of England's wealthiest subjects, first of the reviled "nabobs", soon to return to London with bags of Indian jewels and gold."

Shrinivasecheri (19) writes, "...when Mir Jafar was restored to the throne in 1763, he was treated as more than a banker for the Company's servants who could draw upon him as often and to as great an amount as they chose. On this occasion the nominal sovereignty of Bengal was put up for sale. On this occasion the English even went to the extent of reinforcing their demands for presents by threats. Every member of the Council received a gift becoming his rank."

4.14 COMPANY SERVANTS : MISUSE POWER

Wolpert (20) adds, "The war-bloated cadre of company servants in Bengal were now in a unique position of power without responsibility, and they fanned out on their own initiative to Bengal's village hinterland

(nafussil), trading at enormous personal profit without paying a rupee in revenue or taxes of any sort. As Nawab, Mir Jafar found himself presiding over a bankrupt kingdom, stripped of his specie by Clive....by 1760 he could endure it no longer and stepped down in favour of his eager son-in-law, Mir Kasim, who won the company's backing by promising to turn over revenue from several more provinces of East Bengal to Clive and his insatiable cohorts. Thus another half million pounds in silver poured annually from the soil of Bengal into the bottoms of British vessels, dramatically reversing the specie drain that had so long distressed Western European mercantilists."

4.15 BATTLE OF BUXAR

"The company's plunder of Bengal became so rapacious by 1762 that even Mir Kasim, willing puppet though he was, found his position as nawab intolerableHe was forced to flee Murshidabad in 1763 and was replaced by the tottering Mir Jafar, who served less than two years as puppet nawab before his death in February, 1765. In a fit of frenzied frustration, Mir Kasim ordered every Englishmen in Patna murdered, then fled to Lucknow, where he appealed for aid from Shuja-ud-Dullah and his imperial guest, Shah Alam.....The army raised by this Mughal alliance was soundly beaten by Major Hector Munro and his far smaller force at Buxar," on October 22, 1764. (21)

4.16 COMPANY BECOMES A POLITICAL FORCE

Michael Edwardes (22) comments, "Buxar was the real foundation battle of British dominion in India. It was a bloody and determined engagement. Opposed to British were not only the Nawabs of Bengal and Oudh, but

the Mughal Emperor, Shah Alam, and his prime minister. As a result of the battle, 'the Company ceased to be a company of merchants and became a formidable political force.'

4.17 DIWANI OF BENGAL, BEHAR & ORISSA

Melleson (23) writes, "In August, 1765, the Mughal Emperor granted the Diwani of Bengal, Behar and Orissa to the East India Company. In exchange the Company agreed to pay the Emperor a sum of Rs. 26 lakhs of rupees and to the Nawab of Bengal a fixed sum of 53 lakhs of rupees annually. The Nawab in return agreed not to keep any military force independently and left it in the hands of the Company's authorities."

Sir George Renkin (24) writes, "When the East India Company acquired the divani (i.e. became the Diwan) of the Mughal Emperor in respect of the provinces of Bengal, Bihar and Orissa, the fundamental law, as the conditions of the appointment show, was Islamic law. The Islamic law however explicitly recognised the jurisdiction of Hindu referees and arbitrators to settle disputes amongst Hindus according to their own laws and customs, reserving to itself exclusive jurisdiction in matters of crime and the constitutional and fiscal administration."

Derrett (25) writes, "All the British courts were believed to be like those that had functioned in Calcutta. They had combined a readiness and sureness of execution and attachment with a willingness to consult native opinion in technical matters, and they had been very popular."

4.18 THE BRITISH STRATEGY

The Select Committee at Fort William, in their letter dated 30 September, 1765, addressed to the Court

of Directors in England set forth their policy and nature of the grant of Diwani to the Company as follows :-

"The time now approaches when we may be able to determine, with some degree of certainty, whether our remaining as merchants, subjected to the jurisdiction, encroachments, and insults of the country government, or supporting your privileges and possessions by the sword, are likely to prove most advantageous to the Company.....

"The perpetual struggles for superiority between the Nawabs and your Agents, together with the recent proofs before us of notorious and avowed corruption, have rendered us unanimously of opinion, after the most mature deliberation, that no other method can be suggested of laying the axe to the root of all those evils, than that of obtaining the Dewanny of Bengal, Behar, and Orissa, for the Company.....

"By this acquisition of the Dewanny, your possessions and influence are rendered permanent and secure, since no future Nawab will either have power or riches sufficient to attempt your overthrow, by means either of force or corruption.....

"The more we reflect on the situation of your affairs, the stronger appear the reasons for accepting the Dewanny of these provinces, by which alone we could establish a power sufficient to perpetuate the possessions we hold, and the influence we enjoy....."

The Court of Directors, in their despatch to the Select Committee, dated 17 May, 1766, if and but apart, approved the arrangements as follows :-

"When we consider that the barrier of the country government was entirely broke down, and every Englishman throughout the country armed with an authority that owned no superior, and exercising his power to the oppression of the helpless native, who knew not whom to obey; at such a crisis, we cannot hesitate to approve your obtaining the Dewanny of the Company."

4.19 "DUAL GOVERNMENT"-NO RESPONSIBILITY

Clive in the Treaty of Allahabad agreed to collect all the revenues of these three provinces, out of which 26 lacs was to be paid to the Emperor, and another Rs. 53 lacs to the Nawab of Bengal as his allowance and expenses on Nizamat i.e. the administration of law and order and criminal justice, for which the Nawab was wholly responsible. This was known as the 'Dual Government' of Clive. The allowances to the Nawab were reduced from Rs. 53 lacs to Rs. 32 lacs only/ ^{by Warren Hastings.} Consequently, the Nawab neglected the Nizamat responsibilities and criminal justice became a personal and private concern of the feudars and kazis, resulting in corrupt and tyrannous practices to extort money. (26) Shrinivasachari (27) comments, "Administratively the dual system resulted in the total instability of the Nawab's government; in fact it came to mean in practice the abandonment of all control of the machinery of government."

Discussing the working of dyarchy Keith (28) records, "The reputed riches of the country had the result predicted by Clive. Influence was exerted from the royal family downwards to secure posts in India for hanger-on and younger sons of noble or rich families, and the new comers were intent only on acquiring fortunes.

The easily won wealth was brought home and expanded on the purchase of seats in the Commons, with the result of offending the territorial magnates, who found themselves outbidden, and disgusting moderate men with the insolence and overbearing character of the newly enriched ex-servants of the Company.....Supreme as was in theory the council, it was wholly incapable of inducing moderation in the desire of the servants of the Company to enrich themselves, and its own members were inevitably subject to the same urge to attain easy fortunes and to leave a land for which they had no affection. Nor was the position improved by the activity of Parliament which, like the proprietors, desired to share in the plunder."

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4.20 COMPANY'S INSOLVENCY PROVOKES PARLIAMENT

Wolpert (29) reports, "What finally roused British parliamentary concern over the state of Bengal was not the plight of Indian peasantry, but the company's professed inability to pay a promised annual tax of £ 400,000 to the treasury in 1767.....Parliamentary enquiry forced John Company to make some effort to reform and drove its directors to turn from swashbuckling bullying of Clive to the coldly methodical leadership of Warren Hastings (1732-1818), who was appointed governor of Fort William in 1772. Like Clive, Hastings had been reared in the Company's service, but his was a personality more stuned to study Latin, Persian and Urdu than to make forced marches or defend breached walls."

4.21 FIRST STEP TO OWN RESPONSIBILITY

Keye (30) writes, "No noticeable changes in the internal administration of Bengal took place under the governments of Mr. Vereest and Mr. Carter....on 11th May, 1772, it was proclaimed that the Company had determined

to "stand forth publicly in the character of Dewan" and the whole fiscal administration of the country now passed avowedly into our hands. This was the greatest step in the progress of Anglo-Indian administration ever made by the Company - the greatest administrative revolution, perhaps, to which Bengal had ever been subjected."

Kaye (31) had rightly described it as a revolutionary change for he had earlier recorded, "We traded; we conquered; we governed. It was long before this matter of government came very palpably before us. At first, all that we had to do was to govern ourselves, and this we did in a very loose manner - rather according to laws of power and impulse of passion, than to principles of justice and reason. At the outset of our career the Company's factors were under the immediate orders of their own chief -.... The laws under which our people lived at this time were necessarily two-sided. In regard to all our transactions with the native inhabitants of the place, we were subject to the judicial tribunals of the country....But our people had no great liking for these native courts, and when it could be done without manifest danger, took the law into their own hands." Thus, indeed, the Company's decision to take up, at least, the 'Diwani' administration in right earnest, was an important step forward. Warren Hastings was called upon to formulate a scheme for the execution of the diwani functions.

First of all, Hastings attended to Diwani and redesigned the revenue collection of Bengal. Despite the aftermath of Bengal's famine, then, Hastings was able to restore a positive balance to the company's ledgers. (32)

4.22 CRIMINAL JUSTICE ADMINISTRATION

On 15th August, 1772, the Committee of Circuit, with Warren Hastings as President, drew up a plan which was adopted by the Council on 21st August, for administration of criminal justice. (33) The administration of criminal justice was left to the Muslim law officers, but supervision of the English functionaries was interposed over them. (34) The British supervision over the administration of criminal justice could not be maintained for long, because, on the reinstatement of Mohd. Reza Khan, as Naib Nazim, in 1755, the Sedar Nizamat Adawlat was placed under his control and supervision. Throughout this period, enforcement of law and order and administration of criminal justice, was the responsibility of the Nawab, who executed it through the Naib Nazim, with the following set up :-

Mofussil Foujdari Adawlat, was provided in each district to try all kinds of criminal cases. The Adawlat consisted of Muslim law officers, Kazi, Mufti and Moulvis. The Collector was required to exercise a general supervision over the Adawlat. The Adawlat could not finally determine cases involving sentences of death or forfeiture of property of the accused ; proceedings of such cases had to be submitted to the Sedar Nizamat Adawlat for final orders.

Sedar Nizamat Adawlat, was established at Calcutta, and consisted of an Indian judge known as the Darogah-i-Adawlat, assisted by the Chief-Kazi, Chief-Mufti, and three Moulvis. All these persons were formally appointed by the Nawab. The function of the Adawlat was to revise the proceedings of the Mofussil Foujdari Adawlata and approve finally sentences of death and forfeiture of property. In case of a death sentence,

the death warrant was prepared by the Adawlat, and was signed by the Nawab as head of Nizamet.

4.23 PRISONS

There was no centralised system of prisons; and these existed as an adjunct of the Foujdari Thana and the Criminal Court of the district. Thus, the chief town of every large district, with a certain number of chaukis or inferior police stations, was provided with a Foujdari Thana; usually covering between 120 and 140 miles. The total number of Foujdari Thanas was Twenty-six.

Misra (35) writes, "A prison was attached to each Foujdari thana as well as to the Criminal Court of the district under the superintendence of the Foujdar. The foujdari prison was intended only for a temporary stay of the prisoner who was to be presented to the court and then put in the Criminal jail after his commitment. As superintendent of prisons, the foujdar was to maintain regular accounts of prisoners for the reviewing of and supervision of the daroga or Judge of the Court."

"The jail appears to have been formerly, any building in the vicinity of the court of justice, which could conveniently be hired or appropriated for the purpose." (36) The foujdari gaols, were all sorts of makeshift arrangement made with no genuine concern for the life and living of the inmates. "Sometimes Government found it more convenient to rent than to build a gaol. The one at Decca was hired for Rs. 30 a month, the Diwan gaol at Murshidabad for Rs. 15." (37)

4.24 PATTERN OF EXPENDITURE ON GAOL

In 1778, Mr. Evelyn (38) submitted an account of expenditure on Deewany Adwlut at Dacca, covering the period from August, 1777 to September, 1778, showing expenditure on the jail and jail establishment, which is quoted to present a picture of that period :-

*Received the following letter from Mr. Evelyn.

To the Honourable Warren Hastings Esqr.
Governor General & Council of Revenue.

Honourable Sir and Gentlemen,

I beg leave to lay before you an account charges of the Dacca Dewanny Adwlut; this does not include my own allowance as Superintendent, which I hope your Hon'ble will make adequate to the importance of the trust and very great labour attending a faithful discharge of the duties of this station - a bad state of health has rendered me unequal to the business and lays me under the necessity of requesting your permission to resign the office.

Calcutta
29 September, 1778.

I have the honour etc.

1777 August	To a moreher	100	
	Book binder	4	
	Geol tent	30	
	Flahonary	20	
	House tent	200	
	Cordles & Maund	80	
	Oil, Matts. etc.	10	
			474
September	to charge as last month		474
October	" "		474
November	" "		474
December	" "		474
1778 January	" "		474

To additional servants employed this month

To a Head Moonshy	40
" One Head Mohrer	12
" Five Under Mohrer (@ Rs. 8/- each)	40
" One Duftoree	4
" a Gaoler	30
" Deputy	10
" 12 Peons for the Gaoler (@ Rs. 4.8 each)	54
" 1 Mohrer for Gaoler	8
A Portuguese writer for comparing Bengali & English proceedings	30

702

February To charges as last month " 702

" Darogha and the seven
servants immedi-
ately under him,
their salaries for
Augun, Poose and
Meug, The Dewan having
stopped payment

390 1092

March To charges as last month 702

" Darogha etc. this
month salary 130
" Repairing the Geol 104.56
" Badges for peons 31.6
" Bureau for the sheris-
tadar's office 50
" Bureau for Moonshy's
office 26
" Chest for the Geol 10

1053.11.6

April	To	fixed charges as last month	832
May	To	Do	832
June	To	Do	832
July	To	Do	832
Aug.	To	Do	832
Sept.	To	Do	832

Deduct 30 Rs the Portuguese Mohrer
being dismissed on the arrival of
Mr. Hindmen who was appointed
assistant.....30

- 802

10179.11.6

To my allowance as Superintendent from the 22nd July, 1777 to September, 1778 inclusive per month.

Sd. E.E.

Calcutta, 29th September, 1778."

Misra (39) referring to Calendar of Persian Correspondence writes, "In the absence of adequate authority and means to enforce decisions, the re-establishment of foudar could not achieve the purpose of their institution. In some cases even the decrees of the court remained unexecuted. In one case, an ordinary agent of the Company raided the office of the foudar of Tirhut for the simple reason that the letter had prevented his men from chopping a log of wood already settled with another person. In the company of four to five hundred armed men that agent proceeded to the office of the foudar, plundered all his effects, beat him severely and dragged him to his house in a state of unconsciousness. The prisoners took this opportunity to escape from the jail, and it was not until some of the people of the locality intervened that the Company's agent released the foudar and allowed him to be brought back to his home."

4.25 EXTENSION OF CRIMINAL JURISDICTION

In 1781, a court of justice, vested with criminal jurisdiction, was established for the city of Benares. The Governor-General-in-Council vested the President at Benares with authority to superintend, revise and sanction the proceedings of these courts.

In 1788, courts similar to the ones set up in Benares, were erected in the towns of Gazeepoor, Jannepore, and Mirzapur.

4.2.6 CONDITIONS WITHIN GAOLS

Aspinell (40) observes that in 1787, "the shadow of the Nawab's authority in criminal matters was still suffered to exist, and the administration of criminal justice remained entirely in Indian hands. But the system was notoriously defective. In every District, the gaols were overcrowded." He adds, "Until 1790 the prisons, being part of Foujdari Department, were under the general management of the Naib-Nazim and his subordinates, the judges of the Foujdari Courts....The judges were in the habit of confining accused persons for long periods before bringing them to trial; their subordinates, the thanadars, frequently imprisoned people without any show of legality."

The sad state of neglect of the gaol buildings was the subject matter of the letter dated 25 May, 1778, sent by the Council to the Court Directors in England, which reported :-

"20. The repeated Representations made to us by the late and present Sherriffs, of the ruinous state of the Town-Gaol, and the necessity of either giving it a substantial Repair or of erecting a new One, confirmed by the Opinion of our chief Engineer, have obliged us to take the necessary measures for providing another place of Confinement for the Security of the Prisoners. The latter expedient appearing from the different Estimates which were laid before us to be the most eligible. We determined that a New Prison should be Built by contract, and accordingly advertised for Proposals to undertake it, agreeably to a Plan, and Conditions, which were fixed on, and published for that purpose.

22. In the meantime we have authorized such immediate Repairs to be given to the Old Prison, as are absolutely necessary to prevent particular parts of it, from falling down."

The Town-Geol referred to the Calcutta geol which had ever been the charge of the British. In June, 1785, the rooms in this geol were knee-deep in water, the floors being on a lower level than the surrounding land; many of the inmates were naked. (41) The same year in April, 1788, the Governor General in Council announced that it was not the intention of the Government to build geols with expensive materials or to erect permanent buildings. (42)

The posts that supported the walls of the Diwani geol at Rangpur had rotted in the marshy ground, and the building was blown down in a violent gale in May, 1790. (43) It was a new building, and though the Collector had paid the bills, he had not had the time to apply to Government to be reimbursed before the gale levelled the prison with the ground, so that his application was accompanied by a new estimate for another building. (44)

The condition, discipline and sanitation of most of the geols of the Nizamat, which were under the charge of the Nwab, was seriously bad and objectionable. Aspinall (45) referring to Bengal Revenue Consultations recounts, "Many geols were terribly overcrowded, and criminals and debtors, men and women, were often confined in the same building and even in the same room. The prison in Sylhet District was so small that it would hold only the debtors; the foudari prisoners were kept in a small mosque that was said to be damp and unhealthy."

The gaols in the Province, consisting almost invariably of mud walls and straw-thatched roofs, were built at very little cost; the labour charges in particular being negligible. A foudari gaol at Tirhut cost Rs. 271. (46)

The new Diwani gaol at Chittra was rebuilt for Rs. 142, the chief items of expenditure being Rs. 28/2 for 5,000 bamboos; Rs. 42 for 600 bundles of straw; and Rs. 40 for labour. (47)

Gaol buildings of mud, bamboo and straw, though initially meant a small expenditure, in the long run proved very expensive to repair, besides being unhealthy, insecure and easily damaged by fire and storm. Aspinall (48) recounts that many of the Bengal gaols were burnt down between 1786 and 1793, and one was gutted three times during that short period.

In 1789 a disastrous fire broke out in the Foudari gaol at Chapils, and although everything possible was done to extricate the terrified prisoners, the flames fanned by a strong breeze, spread so rapidly that the place was soon a roaring furnace, and out of 444 prisoners 211 were either suffocated or roasted. When day dawned the bodies were seen piled up in a heap a yard and a half high. (49)

The Magistrate reported that the gaol at Chittra was in so ruinous a state as to be in imminent danger of collapsing altogether when the rains set in. Three times within twelve months prisoners had escaped by cutting holes through the surrounding mud wall, and they had also set the place on fire in the hope of being able to escape during the confusion. (50)

The gaol at Murshidsabad was tumbling down, the stench during the hot weather was abominable, and the prisoners, crowded in a small space, were kept alive only by being frequently washed. (51)

The fact that a new building was destroyed by the first gale that blew up, and that another gaol erected in October had to be repaired in November (at Rajshahi in 1787) shows how flimsily they were constructed at this time. The combined Diweni and Foujderi gaol at Rajshahi cost Rs. 625. One hundred and seventy carpenters were employed, each being paid fraction less than three annas; 35 blacksmiths were each paid two annas; and 768 coolies shared Rs. 90. (52)

On October 27, 1790, the convicts at Gaya gaol made a daring attempt to escape. Heavy rains coming at the very end of the monsoon had partially washed away the prison walls. The prisoners' wives surreptitiously supplied the means of filing off the iron fetters, the men attacked the warders and sentinels, who, after a desperate struggle in the darkness, were overpowered, and when morning came 132 prisoners were missing. By the 30th October, only 22 had been recaptured. (53-A)

4.27 INDIAN PENAL SETTLEMENT - BENCOCOLEN

Traversing the history of the Indian Penal System, Adam (53-B) records that the first Indian Penal Settlement was Bencoolen, known to the Malays as Banks-ulu, situated to the south-west of Sumatra. "Convicts were first transferred from India to this place in the year, or about the year, 1787, when the transportation system between England and America was inaugurated. When we took Bencoolen in 1685 it was not a very populous place, nor had the population much increased when it became a

penal settlement, for which it was considered to be admirably adapted, in 1787. The records concerning the treatment of the convicts first transported there are few and vague, but it seems certain that they were employed principally upon road-making and clearing estates." He adds, "The first authentic record of the penal system at Bencoolen is contained in a letter written by Sir Stamford Raffles to the Government, from Bencoolen in 1818." This letter, which was included in his Life, written by his widow in 1830, was as follows :

"There is another class of people that call for immediate consideration. Since 1787 a number of persons have been transported to this place from Bengal for various crimes of which they have been found guilty. The object of the punishment, as far as it affects the parties, must be the reclaiming them from their bad habits, but I much question whether the practice hitherto pursued has been productive of that effect. This I apprehended to be, in a great measure, in consequence of sufficient discrimination and encouragement not having been shown in favour of those most inclined to amendment, and perhaps to the want of a discretionary power in the chief authority to remit a portion of the punishment and disgrace which is the common lot of all.

"It frequently happens that men of notoriously bad conduct are liberated at the expiration of a limited portion of transportation, whilst others, whose general conduct is perhaps unexceptional, are doomed to servitude till the end of their lives. As coercive measures are not likely to be attended with success, I conceive that some advantage would arise from affording inducements to good conduct by holding out the prospect of again becoming useful members of society, and freeing themsel-

ves from the disabilities under which they labour. There are at present about 500 of these unfortunate people. However, just the original sentence may have been, the crimes and character of so numerous a body must necessarily be very unequal, and it is desirable that some discrimination should be exerted in favour of those who show the disposition to redeem their character.

"I would suggest the propriety of the chief authority being vested with a discretionary power of freeing such men as conduct themselves well from the obligation of service, and permitting them to settle in the place and assume the privileges of citizenship. The prospect of recovering their characters, of freeing themselves from their present disabilities, and the privileges of employing their industry for their own advantage would become an object of ambition, and supply a stimulus to exertion and good conduct which is at present wanting. It rarely happens that any of those transported have any desire to leave the country; they form connections in the place, and find so many inducements to remain, that to be sent away is considered by most a severe punishment. While a convict remains unmarried and kept to daily labour very little confidence can be placed in him, and his services are rendered with so much ^{tardiness} and dissatisfaction that they are of little or no value; but he no sooner marries and forms a small settlement than he becomes a kind of colonist, and if allowed to follow his inclinations he seldom feels inclined to return to his native country.

"I propose to divide them into three classes. The first class to be allowed to give evidence in court, and permitted to settle on land secured to them and their children; but no one to be admitted to this

... until he has been resident in Bencoolen three years. The second class to be employed in ordinary labour. The third class, or men of abandoned and profligate character, to be kept to the harder kinds of labour, and confined at night. In cases of particular good conduct a prospect may be held out of emancipating deserving convicts from further obligation of services, on condition of their supporting themselves and not quitting the settlement. Upon the abstract question of the advantage of this arrangement I believe there will be little difference of opinion. The advantage of holding out an adequate motive of exertion is sufficiently obvious, and here it will have the double tendency of diminishing the bad characters and of increasing that of useful and industrious settlers, thereby facilitating the general police of the country and diminishing the expenses of the Company."

4.26 PENAL SETTLEMENT - PENANG

Penang, situated at the northern extremity of the Malacca Straits was acquired by the English from Rajah of Kedah in 1785. Adam (53-C) writes, "When Penang came into our hands it was almost uninhabited and covered with dense jungle..... in the year 1792, the population had increased to 10,000 souls. The present population of Penang numbers 2,40,000." He adds, "The first prison... was situated on the Penang road, and was known as 'Charcoal's lines'. As the number of convicts from India continued to increase the jail was found to be too small, so another larger jail was erected on the opposite of the road... Prior to the transportation of convicts from Bencoolen (in 1823), Penang had already been made a penal settlement, convicts having been sent there direct from India. These had been looked after

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by a staff of free warders, but, in consequence of vacancies and dismissals, and the difficulty of obtaining the services of free warders, it was sought to enlist the services of the best behaved among the convicts to ever see their fellow prisoners. It was, however, an experiment which was then anything but successful, and was regarded by the authorities with strong disfavour."

4.29 CONTEMPORARY SCENE : 18th CENTURY ENGLAND

The foregoing description of the conditions prevailing in the Town Gaol (Calcutta), Diwanee Gaols at Rengpur and Chittra, Foujdari Gaols at Tirhut, Chapla, and Rajahahi, and the Gaols at Murshedabad and Gays, is a sample presentation which depicts the then state of affairs of the Gaols in general. The buildings in use to house gaols were not only inadequate, unhealthy, insanitary, but several of these were even dangerous to life and unfit for human occupation. A socio-political background of the long continuing upheavals has also been discussed, which immediately appears to explain the serious defects and defaults observed. Possibly there is more to it. In the interest of an objective assessment of how and why these conditions came to a pass, it may be helpful to have a fleeting view of the contemporary scene of this field in England during the eighteenth century.

Hinde (54) discussing 'Prison Conditions in the Eighteenth Century' in England, writes, "Sometimes places of confinement were underground "into which prisoners were lowered, to fight with rats for the meagre pittance of food thrown to them through the 'trap-door", often they were damp or even many inches deep in water. Open sewers running through the centre of the floor were not unknown. There were no chimneys,

no fire places, no beds but bundles of straw and these were left so long that they became "reeking with foul exhalations". As for food and drinks, water was rationed daily. In one prison, it was 3 pints per head; in another $1\frac{1}{2}$ d. per 3 gallons. The ration generally was too small for washing purposes and not large enough for the sufficient assuaging of thirst. The ration of food was equally meagre. In some prisons, nothing was given; in others, there was water-soup - "bread boiled in mere water"..... The second great evil was the goal tap-room for the sale of spirits. Although in 1751 it had been enacted that "no license shall be granted for the retailing of spiritous liquor within any goal, prison or house of correction," and that no goaler was to allow such things within his goal at all by any means or for any purpose except when ordered by a doctor", the practice continued unabated.....The extent of this trade can be realised when the same writer informed us that there were no less than 30 shops in the Kings Bench Prison at one time and "120 gallons of gin were sold weekly, besides other spirits in proportion." It was not until 1784 that it was illegal to sell wines, beers and ales."

John Howard (55) pointed out that "many of these prisons were privately owned. The Duke of Portland owned, Chesterfield Gaol which consisted of one room with a cellar beneath and he received a rent of 18 guineas a year from the keeper. The Duke of Leeds got £ 24 a year from Halifax Gaol, and the Bishops of Durham owned the County Gaol at Durham."

Hinde (56-A) adds, "Writing of the New Prison, Newgate, in 1776, Dr. Smith commented : "Even within this rock of strength, the barbarous trade of fettering

is continued when there is no excuse, no shadow of excuse for it. The practice should be utterly abolished and no gaoler should have a power to put double, heavy or light irons, or any at all, according as the prisoner's purse is heavy or light..... The infamous trade of chains is a disgrace to the nation, humanity and civilization, especially before conviction."

The then criminal law also presents an erratic picture. Aspinall (56-B) comments that in England glaring disparities of punishment existed, "If, for example, a criminal was seen stealing goods from a shop, he was transported; if he was not observed in the act he was hanged. In England it was a capital felony to steal goods valued at forty shillings from a vessel on a navigable river, but not from a vessel on a canal. In 1772 two persons were whipped round Covent Garden, one for stealing a bunch of radishes, the other for debauching and polluting his niece."

4.30 THUS FOLLOWED

Keith (57) recounts, "With Plassey and the following arrangements with successive nawabs of Bengal, the real authority has passed into the hands of the Company." He comments that the anarchy of Bengal was plainly intolerable, and Parliament was certain to intervene. In its own interest, what the Company could do was to end the system of dyanry and require the President and Council to stand forth as Diwan and to take upon themselves the entire care and management of revenues per Director's letter of August 29, 1771. The man to accomplish this mission was Warren Hastings, who in April 1772 succeeded Cartier. (58)

The Directors issued only overall guidelines to Warren Hastings to "adopt such regulations and pursue such measures as shall at once ensure to us every possible advantage and free the ryots from the oppression of zemindars and petty tyrants."

Warren Hastings had risen from the ranks, in the service of the Company, where he had begun his career as a writer. He was very well up in his desk-work. He was fully acquainted with the background in which the Company Directors had planned and picked him up to carry out their two mandates: First, "at once ensure us every possible advantage", and second, "free the ryots from the oppression of Zemindars and petty tyrants." It could not miss the 'scholarly' and 'coldly methodical' Hastings to realise that whereas the first mandate was a fundamental and immediate need to save the Company by an increased flow of revenues and its income, the second mandate was just a pious wish. In the words of Wolpert (59) "What Hastings did, first of all, was to redesign the revenue collecting system of Bengal so that more money actually reached the coffers of the company rather than sticking to the fingers of its Indian agents and their English supervisors.... Though Bengal's nawab remained on his throne, Hastings cut his stipend in half....stopped payment of the annual tribute Clive had promised the Mughal emperor and other several remunerations from the company's ledgers; these retrenchments saved over half a million pounds annually."

Thus, the first mandate of the Company Directors to 'at once ensure us every possible advantage' was expeditiously set in motion, yielding instantaneous achievements when "Hastings was able to restore a

positive balance to the company's ledgers and revive the deflated spirits of the share holders." (59)

The second mandate of the Directors to 'free the ryots from the oppression of zemindars and petty tyrants' was not only not open to a touch of the magic wand, but raised basic issues, which in the words of Bisheshwar Prasad (60) "The commercial interests of a dividend seeking proprietary body came into conflict with the welfare and prosperity of the vast millions subject to its rule." To a budget-conscious Hastings effective action under the second mandate meant unprofitable expenditure and reduction of revenues, which he could ill-afford at the moment. Yet, he could not report back that he could not carry out the mandate. A modern technique of the bureaucracy to deal with such situations is to appoint a committee to look into it or refer it to a commission and forget all about it. As a seasoned bureaucrat Hastings passed on the buck to the District Collectors ordering them to exercise a general supervision over foudari adawlat. Further, "Dacoity was rampant in the country and to suppress the same, it was laid down that dacoits on conviction would be executed in their villages which shall be fined and their families made slaves to the state. Though the rule was very severe, Warren Hastings was convinced that nothing less than that would suffice to meet the depredations of the dacoits." (61) Monckton comments, "However, in practice, this provision remained a dead letter and was never enforced owing to the resistance shown by the Muslim law officers who would not deviate from the text of the Muslim law." (62)

Forrest (63) points out that to give the people confidence in the new courts, and to enable the new

tribunals to decide with certainty and despatch, Hastings caused a digest of the Hindu Law to be prepared by ten of the most learned pundits in the province.

The thirteen years period of Warren Hastings, characterised as 'the formative period of British policy in India in which the transition from a commercial to an imperial role was clearly in evidence' and to which 'The foundations of the entire structure of Anglo-Indian administration as it emerged in later years and the whole edifice of the political policy followed by successive Governors General may be traced back' (64) proved highly successful in giving power, pelf, territory and wealth to the Company; while, on the other hand, fund for the peace and security of the local inhabitants was drastically cut down. Nawab, the head of Nizamst, with dwindling resources, abandoned the criminal courts and jails to the mercy of Kazis and Foujdars, who deployed these institutions for extortion of money and amassing wealth. The jail buildings started tottering, sanitation disappearing, sickness rising and this misery of the inmates being exploited for all kinds of corrupt practices.

4.31 A NEW CHAPTER OF CRIMINAL JUSTICE

So far, in short, we have seen that the post-Mughal administration of justice, specially after the battle of Plassey, gradually lost all its purity because of the abuse of administrative power by anyone who could wield that. The Committee of Secrecy in its Sixth Report, 1773 had remarked that not only the subjects of Bengal derived little protection or security, but that the interposition of governmental authorities, most often led to perversion of justice.. (65) The

Company's Agents began to influence the administration of justice, in order to suit their commercial interests, mostly personal. (66) The Company for all practical purposes, came into the place of the country Government by His Majesty's grant of the Dewanee. (67) Wolpert (68) comments, "After 1765 John Company sought to establish its raj (rule) over Bengal, Bihar, and Orissa on as sound and permanent a basis as possible." It was during this period of nominal control of the Nawab and de facto control of the East India Company that the judicial administration, in common with the general administration, underwent a rapid degeneration. (69) The administrators in those early days had also their business preoccupations leaving to them little leisure for study and reflection. (70)

In 1786, Cornwallis succeeded Warren Hastings, who formulated a new scheme which was promulgated on December 3, 1790, which abolished the last vestiges of the authority of the Nawab, which had lingered long till then, in the area of criminal justice. The administration of criminal justice, which had so far been in the hands of the Muslim law officers was henceforth to be in the hands of the Company's English servants and the Nawab was to do nothing with it, in the future. This opened a new chapter in the history of criminal justice in India.