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The Beginning Of British Interference In Judicial System Of Colonial India

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Abstract

East India Company justified its presence in India through Mughal grants which were utilized as a mean to establish the colonial state of political identity with sovereign rights. English officers gradually moved from a position of co-operator to supervisor, and from supervisor to superior. British claimed that Muslims were 'governed' by Islamic law which was the British attempt to neglect the truth that they had displaced the power and sovereignty of Mughals. When the British took power in India, they gradually found that some parts of shariat were not according to the changing conditions of life in India. The decision in Shebaz beg actually assigned a right to British officers-appointed to supervise the workings and mechanism of qazis and pundits- to interfere and override and also to remove the shortcomings and rectify the anomalies in Islamic sentencing and punishments contained in Hastings' Regulations and new courts. The British always misinterpreted and denied the claim of Mughals that Islamic law was the supreme law of the land. They used a hybrid term 'Anglo Muhammadan law' which was a conceptual invasion by English utilitarian ideals to put Islamic law in a procedural straitjacket designed by colonial courts that is not devoid of criticism regarding its effect on Islamic Laws in the sub-continent.

Introduction:

British East India Company came to Subcontinent for the purpose of trade in 1604.The arrival of British in India led to two types of experiences- one was the experience of slow and gradual attainment of the position of power particularly by East India Company and second was the displacement of Muslims from their former positions of authority. Apart

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from business incentives, company started to interfere the local justice system. At first, it authorized its officers of revenue collection of 38 villages in 1717 near Calcutta. British formulated two court systems working parallelly in British India: The Company Courts administered and ran by the officers of the East India Company, and the Presidency Courts which were ran directly by the representatives of British government in Bombay Calcutta, and Madras. The focus of this paper is particularly is on legal interference made by Company courts during the sixty-years period from 1771 to 1832 better known as "formative period of Anglo-Muhammadan jurisprudence". During this period, the Company courts expanded its authority and jurisdiction to the whole of Bihar, Orissa and Bengal and then to almost all India while the Presidency courts were limited to the three major cities of Bombay, Madras and Calcutta. Functioning under the direct control of the Parliament in London, East India Company transformed from a mercantile company into a government and political administration with the aim to transform traditional India into a colonial state. The last three decades of eighteenth century, British Raj under the governorship of Warren Hastings brought significant legal changes in colonized India resulting in a hybrid legal system replacing native Islamic legal system. The end of eighteenth century can be rightly considered an end for a pure Islamic law to be the law of land anymore despite the fact that there always exists an intimate connection between law and religion in Muhammadan law. Judicial decisions of the British Courts had indirect impact on the native laws of the Subcontinent.

Arrival of Muslims in India and Mughals:

A seventeen-year-old general, Muhammad bin Qasim, was the first Muslim who made a conquest in India in 712 A.D on the local ruler of Sind. Later during 11th and the 12th centuries A.D, Mahmud of Ghazna and Muhammad of Ghor made the invasions and conquests in such a manner that brought a chance to close -knit the Muslims paving towards the foundation of the establishment of Muslim administrative system in India. However, the administration of Govt was left to people with different religions which resulted into weak foothold of Muslims in India until 1206 A.D when Qutub Uddin Aibek, a slave of Muhammad Ghori, King of Ghor, took-over the whole of Northern India. This laid the foundation and proved to be permanent footing for Muslim administrative system and introduction of Islamic law in India. Five dynasties of salatins categorized as the Slaves, the Khaljis, the Thughluqs, the Sayyids, and the Lodhis ruled India.[3]

The establishment of Mughal dynasty took place in 1526 and continued till 1857. However, it was on constant decay after the death of Aurangzeb in 1707.Within half a century from the death of Aurangzeb to the grant of the Diwani to the East India Company in 1765 A. D, the grand and wonderful structure of the Empire gradually collapsed. During all this time till the complete takeover by Crown in 1857, East India Company paved the way and

[3] Muhammad Munir, " The Judicial System of the East India Company: Precursor to the Present Pakistani and Legal Systems" accessed http://ssrn.com/abstract=1820122

laid the foundation stone for colonization of India. The Government of Company took the first step to interfere the administration of justice after seven years of the acquisition of the Diwan.

The law of the land under Mughal emperors was the Islamic law of the Hanafite school and the justice courts were either secular or ecclesiastic. The law was generally ascertained from the ulama. Apart from these courts, there were qadis to function as a judge assisted by Mufti who mostly performed advisory role only. The British never admitted or recognized the Mughal's claim of Islamic law as the law of the State. The courts of qadis were stopped working and were replaced by secular courts following the principle of the personality of the law (based on the religion of the litigant). Al-Marghinani's Heddya (Hidayah by,Burham Uddin Ali bin Ali B.Marghinani),was the work of twelfth century which had also been used under the Mughals, continued to be used by English officials and judges (translated into English in 1795 by Charles Hamilton and published in four volumes while its second edition , omitting the obsolete material, was published in one volume by Grove Grady in 1870). Being a famous commentary on Muslim Law, it was adopted in the Courts in Medieval India for guidance and interpretation till it was replaced by Fatawa-e-Alamgiri in about 1670 A.D. Fatawa al-Almgiriyya, which was not just a collection of fatwas, as its title suggests, but also contained excerpts from authentic and authoritative works of the Hanafite school,[4] was also used in this regard. Fatawa al-Almgiriyya was the result of the efforts of the Emperor Awrangzib Alamgir (1658-1707) to restore the neglected orthodoxy of Islamic law.[5]

The Colonisation of India:

The superstructure of the Mughal law and administration, built by Aurangzeb remained, more or less in its original form, in existence till the death of Muhammad Shah in 1748. There were frequent changes in the Government which resulted in the weakening of the whole administrative machine. The people who, since sixteenth century from establishment of Mughal empire, had been used to a succession of strong and able rulers were left to find their feet on land of rebellious Governors, recalcitrant Chieftains and the marauding armies of rival claimants to power. The Mughal Emperors after 1750 could neither lead their people nor support their Judges, and the system so elaborately planned by Akbar and Aurangzeb broke down completely. With different cultural, political, and legal disturbances, this proved an ideal time for the Company to gradually expand its hold from administration of Factories to whole of India.

Company reached subcontinent in 1604. Full Official name of the company was "The Governor and Company of Merchants of London Trading into East Indies" that later proved

[4] Herbert Liebesny, "English Common Law and Islamic Law in the Middle East and South Asia: Religious Influences and Secularization" (1985-1986)34 Clev. St. L. Rev ,19 -33
[5]Ibid., 21.

to be the foundation stone of the Great British Empire in India. Company under charter-granted by Queen Elizabeth I on 31st December 1600 for 15 years-could work out rules and laws for its own officials to give punishment by way of fine and imprisonment but no capital punishment was company's jurisdiction. However, it got Royal Prerogative to inflict capital punishment and inflicted first death penalty to Gregory Lillington for killing Henry Barton in 1616. Company, on establishing the most important Factory in Surat and then in Madras, was granted important charter by Charles II in 1661 which had further expanded its authority. This Royal Charter granted authority to the Governor and Council of each Factory to trial all persons under English law whether they belong to company or living there. So the application of English law was clearly prescribed by the Charter. Later George I in 1726 on request of company issued a Charter (its provisions applied primarily to Europeans and was optional in case of Muslims and Hindus) which established royal courts in the three Presidency Towns of Bombay, Madras and Calcutta. Mayor courts were there to administer civil matters, however, criminal jurisdiction in each Presidency Town was exercised by the Governor and five members of his council of the Factory.[6]

Before 1757, the East India Company was dependent on both local authorities and local customs for resolving the legal disputes and issues of the community, however, the focusing point and main interest of Company was in trade.[7] During this period, the 'rule of law' can be best interpreted as commercial order to Company only and not Law in its organized and codified sense. Panchayats or village councils (local councils of elders who serve as arbitrators to oversee the religious life of a community) were established by Aungier who was the governor of Bombay in 1673.[8] These were empowered to settle judicial disputes and controversies through mediation and settlement amongst persons of their own castes. Later in 1694, a commission was given to a qazi by a Governor of Bombay who appointed him as a Chief Judge to decide all difference that may happen in Muslims. The activities and application of laws of the Company were limited to Factories which were trading posts, however, Muslims and Hindus were permitted to consult their own religious laws in place of judgments in the company's courts under Company's charter of 1753.

When Nadir Shah invaded in 1739, the Nawabs of Bengal controlled autonomous administration. The separately dominant offices of Diwan (treasurer) and Subhadar (governor) during Mughal were combined by Bengali Nawabs, however, Mughal administrative patterns and heritage was followed otherwise. The military control of Bengal by East India Company in 1757 increased both its investment in army and expansion of Company's network. With these progressions, the status of "Diwan of the Mughal Emperor" was attributed to East India Company in 1765. With this status, company was allowed to control and collect the revenue from the territory of Bengal. With this new

[6] ibid
[7] Asim Kumar Dutta, *'Why did the East India company recognize Hindu and Muslim Law*?' in N. R. Ray (ed.), Western Colonial Policy (Calcutta: Institute of Historical Studies, 1981) ,173.
[8] Ibid., 175

authority of company, it initially focused on trade advantages. However, the authority and presence of the Company led to many political and legal problems.

Legal Transplantation of Warren Hastings:

Warren Hastings was appointed as a governor of Fort William in Bengal which was titled as Diwan to legitimize British power under the guise of forms and titles of Mughal authority. Hasting took the following steps to disguise his authority under the pretense of Mughals' sovereignty.

i. Hastings continued to be called and known as the Nawab Governor-General than Governor-General.
ii. Persian was retained as the administrative language during his time.

However, he actually attempted to strengthen the authority of British rule to pave their way towards complete sovereignty in India.

Two types of courts were created in each district by Hastings. One was Diwani Adalat to handle civil cases and the other was the Foujdari Adalat, to deal with criminal trials and punishments. As for as the nature and application of the law was concerned, Muslim law to Muslims and Hindu law to Hindus was applied in civil courts, however, criminal courts would apply Muslim law universally. Company officers- revenue collectors of each district who to preside over the civil courts- were given authority to collect taxes but also to directly control the settlement of disputes particularly control over revenue and property disputes - a basis for arbitration between Indians- in contrast to wording of Hastings' Regulations.[9] In Hastings' new courts, Company officers were authorized to interfere and override the decisions of Qazis and Muftis, structuring and shaping Islamic law into Anglo Muhammadan law. R. K. Wilson defined that the Anglo- Muhammadan law was an obvious attempt made by British magistrates to "ascertain and administer Islamic law" to Indians which resulted into first of its nature situation both legally and culturally where the work of qazis and muftiz was supervised by British officers.[10] However the historical and civilizational irregularity of this assumption of power in form of Anglo-Muhammadan law was admitted by R. K. Wilson who defines Anglo-Muhammadan jurisprudence as a "the special law, administered as Muhammadan to Indian Muhammadans' which has become over time very different from 'pure Muhammadan law' as administered by Muslims for Muslims in other Muslim states."[11]

Under Warren Hastings' administration, British magistrates were allowed to interfere with native courts in order to overcome the insufficiencies of native laws particularly to correct

[9] Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia" (May 2001) 35 Modern Asian Studies, 262. (Hereafter Kugle, Framed ,Blamed)
[10] Ibid., 263
[11] Roland Knyvet Wilson, Anglo-Muhammadan Law: a digest. (fourth edition London: W. Thacker and Co, 1912; first edition published in 1895) ,50.

the irregularities' in Islamic sentencing. To justify this unprecedented interference and intrusion, Hastings took the protection of ‘siyasa’ which was the political right and a procedural justice of Mughal rulers of a type to side-step the formal procedures of Islamic fiqh.[12] “Siyasa is more specifically a method of negotiation, of finding resolution to a problem through manipulating or mobilizing relationships between people or groups and is a necessary element in the very genesis of shari'ah as a religious ideal.”[13] Thus the term 'siyasa' was interpreted as a right of the ruler to interfere in juridical matters. By doing this, Hastings actually made an attempt to reshape the meaning of siyasa of Islamic law to erase its “multi centered practice and flexible application”. Hastings, therefore, continued efforts to balance the legitimacy of both Mughal and English laws (pretending to work under Mughls’ umbrella) but the so called balance could not be sustained after 1784. It took the power and right of Nizamat meaning by to control of criminal courts and other executive powers never exercised before by English. British magistrates took much wider powers to encourage prosecution and punishment to control the situation they identified as a ‘law and order situation’- as well as the right of Diwan in 1790.
Under the cover to preserve Islamic law, the common English law formula of acting according to “justice, equity, and good conscience’ was introduced. Fayzee, who is the general follower and supporter of Anglo-Muhammadan Law, criticized the lack of precision in defining the formula by English.

“Justice, equity and good conscience ... Practically speaking these attractive words mean little more than an imperfect understanding of imperfect collections of not very recent editions of English text books.” (J. F. Stephen Law Commission, 31 March 1871).

English jurists introduced and justified amendments to procedural law on the grounds of Siyasa and particularly through the use of phrase 'Justice, Equity and good Conscience'. A commission consisting of Ghulam Yahya, Taj Uddin,Mir Muhammad Husain and Mulla Shariatullah was made by Warren Hastings to translate Al-Marghinani’s Heddya from Arabic into Persian in 1772 A.D.[14] The arbitrary authority granted to the Hedaya by Hamilton to reshape the procedural law by not understanding the philosophy of Islamic legal policy can be seen in the following example. For example, when the Hedaya was translated by Hamilton, not an Islamic law scholar, he could not understand and explain why Abu Yusuf and Imam Muhammad would give opinions which contravened their 'master', Abu Hanifa. Hamilton tried to handle with this 'irregularity' through a self-

[12] Kugle, Framed ,Blamed, 264.
[13] Aziz al-Azmeh, ‘ Islams and Modernisms’ in Ibn Muqaffa' (ed, The early Abbasid period. (New York: Verso Press, 1993) ,91.

[14] Muhammad Bashir Ahmad, *Administration of Justice in Medieval India* (The Aligarh Historical Research Institution 1941) ,40. (Hereafter Ahmad, Administration)

consciously formulated policy to always follow and adopt the opinions of the students above the opinion of the teacher.[15]

Among other irregularities, distinction was made between the legal procedure and substantive law. Fatwa too lost its creative function and no longer it existed to expanded the body of law. If we refer to the case of "Abul Fata v. Russomoy Dhur Chowdhury",[16] it becomes obvious that how the opinion in favor of family grants was overrode by British magistrates of the Privy Council. Justice Amir Ali claimed that family waqf was valid and binding as charitable institutions and he supported his argument by referring to the hadith of Prophet saying that the best charity is to support and assist one in need from family or other needy dependents. This fatwa was rejected by British magistrates of the Privy Council conversely declaring family waqf grants to be void. Further Muslim jurists were cautioned not to draw legal decision from sacred texts. Muslim Jurist could expound law in the light of only those authorities approved by British judges. Fatwa can be rightly called 'fatwa of the law officers' or Anglo-Muhammadan fatwas which were binding on the parties to the adjudication unless it was deemed appropriate by the magistrate to interfere. As a result, fatwa could not continue to be the body of law itself and was restricted to singular case.

Native Law of the Time:

British criticized the Mughal system of procedure and justice as a tool to defend their invasion and taking up of executive, administrative and penal authority. Initial objection levelled against Mughals was the arbitrary and ununiformed use of the shari'ah. Later, Mughal were accused of not following their own shari'ah in its letter and spirit. However, the application of Shariah as a matter of policy was initially tolerated by British Colonial Power. It may be because of the following three considerations

I. First, they did not want abrupt break with the past.
II. Second, their main objective was to have security and advantage in social conditions so to specially facilitate trade.
III. Third, they did not desire to interfere with religious susceptibilities of their subjects.[17]

However, with the consolidation of power in India, the British slowly abandoned this policy. The erosion of Shariah started with Bangal Regulation VII of 1832.

To improve the judicial machinery existed in Bengal by that time, Lt. Colonel Alexander Dow, who was a civil servant under the East India Company, translated the history written by Ferishtah in the first 2 Volumes and prepared a third along with his report on the judicial

[15] Kugle, Framed ,Blamed, 282.
[16] *Abul Fata v. RussomoyD hur Chowdhury* (1 894) 22 I.A 76, 86-7; Cases, 388, 395
[17] Fayzee, A.A.A., *Outlines of Muhammadan Law*, 3rd ed. (Oxford , 1964) , 53- 54.

reforms and submitted them in 1772 A.D to Warren Hastings[18]. "Dasturul Amal Adalatha e Talluqah was a civil and criminal procedure code in Persian prepared in 1793 for the East India Company's districts in South India."[19]

As mentioned earlier, Fatwa given by Qazi was to be assessed on the grounds of natural Justice and equity, the Company's judge was to pass sentence accordingly but if he thought otherwise, the proceedings had to be referred to the Court of Appeal. If the Court of Appeal found "the fatwa to be in accordance with Mohammedan law, but opposing the rules of natural justice, the court used to give effect to the same, if it was in favor of the prisoner, but if it was against him, the Court had to recommend a pardon or a mitigation of the sentence, and to suggest a new regulation to prevent the recurrence of any injustice."[20] By 1832 Muhammadan penal Law stopped to be the general criminal law of the land. Thus slowly and gradually it was not until 1835 that the Sadr Court disproved to recognize a fatwa to the effect that a prisoner could not be convicted on the evidence of a minor female; and the rule excluding the testimony of non-Mohammedans against Mohammedans could only be set aside by the Appellate Court on a reference by the original Court, accompanied by a fatwa from the law officers setting forth what would have been their decision if the witnesses had been Mohammedan.[21]

Sharia fixes no limitations for anything though in criminal cases evidence was to be produced without delay. However, in case of summoning the evidence one month from the date of the presentation of the suit was prescribed in Hidayah. Similarly the old Turkish Empire too recommended definite periods within which evidence, either oral or documentary, had to be produced and this rule of law was not prohibited by any express rule of the Shara' and, therefore, the Ulema agreed to it.[22] The record does not show any evidence of existence of any such rule of evidence in Medieval India as the Dasturul Amal prepared in 1793 A. D. by the British Raj for its Courts in South India fixed a limitation period, but it did not show if the regulations about a fixed limitation period were borrowed from any previously existing system. When it comes to court fee, Aurangzeb's Order seems to prohibit the levying of any fee from a Plaintiff (Dar-tashkhees-e-Qazaya az muddai). The British Raj in 1774 "on the

advice of Muslim jurists", considered the question of abolishing certain dues which the Plaintiffs had to pay on their plaints, but later the practice was discouraged because of the increasing number of litigation.[23]

[18]Ahmad, Administration , 53.
[19]ibid ., p.44
[20]W.H.Rattigan, "The Influence of English Law and Legislation upon the Native Laws of India" (1901)3 Journal of the Society of Comparative Legislation, 49. (Hereafter Rattigan, The Influence)
[21]Ibid., 50.
[22]Ahmad, Administration, 195.
[23] O. L. Records. 7th Report of the East India Company (Committee of Secrecy, 1772-1773), 329.

In criminal law cases, certain crimes like murder were made actionable in the eyes of the state in 1792 by British contrary to the prevailing Muslim law which took it a private offence. Under Article 35 of 1772 Regulation, punishment for dacoity was extended from the individual offender to his family and village. Similarly, the deterrent punishment such as amputation for theft was considered cruel and heartless to the individual and society both as it makes the thief a burden on society. Mutilation was discouraged and replaced of hanging in a public square during business hours. It was considered both painless for the individual and instructive 'for society'.[24] In 1791 imprisonment with hard labor was substituted for mutilation. Changes in Criminal law were blurred by calling them a response to Great Famine of 1770 after which there had been an increase in the incidence of dacoity and banditry.

Concept of public justice was introduced. It was a successful attempt tried by English magistrates to defeat the practice of private justice (qisas- retaliation and diyah- pardon) which was a notable element of Muslim law to consider victim-centered justice. In Mughal time, a party was prosecuted only if a victim or their family would complaint at any stage of the case and the parties would be released if the a pardon is granted by the victim.[25] In the name of British reformed judicial system and in victim's want to pardon the aggressor , the magistrate would analyze the facts as if the victim did not want to pardon. This is an obvious British manipulation of procedural law to bring secret and silent changes in substantive law.

The application of English rules of interpretation worked gradually to structure laws into new shape under the false notion of merely interpreting the local laws both criminal and civil. For instance, a woman whose prompt dower remained unpaid but who had once cohabited with her husband may be compelled to cohabit against her will, if she refuses cohabitation in order to exact payment of such dower**.** Upon this point there had been three previous decisions by the Allahabad High Court, affirming the wife's right of refusal under the circumstances stated. But these decisions of the high court were dissented in above mentioned case and the decision was made on contrary that after cohabitation, non-payment of dower cannot be pleaded in defense of an action or restitution of conjugal rights. The decision was based on some analogies made by judge. "First analogy perceived to exist between the lien of a vendor upon the goods sold while they remained in his possession and the right of a wife to resist her husband so long as her prompt dower remains unpaid, and the further analogy between the surrender by a wife of her person to her husband and the delivery of the goods by the vendor before payment of the dower in the one instance and the price of the goods in the other."[26] Thus application of western modes of thought to solve legal problems in the India, has given a completely new character to some provisions of the Mohammedan or Customary law.

[24]Kugle, Framed ,Blamed, 289.
[25]ibid
[26]Rattigan, The Influence, 61.

Conflicting Jurisdiction and Hastings' Legal Order:

Regulations of 1780, 1781, 1787, and 1793 all were only to regulate proceedings in the courts of Company in the Bengal Presidency. However, the town of Calcutta had been brought under the criminal and civil jurisdiction of the Supreme Court established by the Crown in 1774 under the Regulating Act of 1773 by Hasting. It is evident that the establishment of the new court (initially to curb corruption in India by Company authorities) raised a conflict between the Supreme Court on one hand and the Governor-General in Council on the other. Hasting by sensing the danger of conflicting jurisdictions realized the necessity of introducing some sort of fusion between the Sadr Diwani Adalat, established to supervise the control of the Company's Courts, and the Supreme Court (the establishment of High Courts of Calcutta, Madras, and Bombay under the operation of the High Court's Act, 1861 l led to the abolishment of the Sadr Diwani Adalats and the Supreme Courts later.)[27]

A case of inheritance from Patna reveals about colonial legal policy and also exhibit the ability of indigenous litigants to force down individual claims by exploiting and exacerbating jurisdictional confusion. It was also a test of complex legal order devised by Warren., from Kabul, died without an heir in 1776 whereas he still had family in Kabul and was in military service of East India Company. As a recognition of his services, Shahbaz Beg was granted a large land/property by the Mughal emperor. The death of this wealthy man entitled his nephew, Bahadur Beg, to claim the estate of his uncle. His claim was that "Mirza Shaw Bauz Beg sent for me from Kabul, and said to me, you are my Brother's son. There is no difference between my Brother's son and a son; I make you the Master of my House ... This is known to everybody, and the English Gentleman also knew it, that he made [me] his Heir, and the Representative of himself."[28] He made a complaint that Naderah Begum, Shahbaz Beg's widow, was making off with goods from the house. Being remained in good and close ties with the Company, Shahbaz Beg had made him well-known person and, therefore, the qadi and mufti of the court were directed by the Court of the Provincial Council to immediately prepare a written Report based on "ascertained facts and legal justice" (the use of this term proved problematic for the nephew later).

The advice of Muslim court officials was seeked in this succession case who gave their fatwa in less than a month stating that though there was no sufficient proof to favor nephew's claim, however, court defied the evidence presented by the widow where her documentary evidence was declared forged. As a procedural irregularity, witnesses were deposed by notes rather than being examined in open court on one hand while no evidence to back nephew's claim was reviewed on the other hand. It was recommended in the report

[27]Ibid., 47.

[28] B. B. Misra, *The judicial administration of the East India Company in Bengal*, 1765-82 (Motilal Banarsidass, 1961) , 236.

submitted to grant 3/4 of the estate to the nephew and 1/4 to the widow as Muslim law does not permits a larger share for the widow.

As a result, the widow had to take shelter in a local shrine. Here is the most important element of the case when the accusation of forgery was presented to the criminal court resulting in the arrest of the five of the widow's closest supporters including her nephew cum legal advisor. They were held liable for the alleged forgery of the deeds.[29] Available with several venues of an appeal, appeal was made to Hastings, the Governor General at Fort William. On first learning about the case, it was acknowledged by Hastings that the procedure adopted to depose witnesses by note was irregular. The procedural questions turned on a distinction between fact-finding and legal interpretation structuring a plural legal order where Muslim legal experts were required to report simply their findings in Muslim law while the job to ascertain the facts was placed on British judges.[30] Supreme Court decided in favor of widow and she was awarded 300,000 rupees-half the damages she had claimed. The question of significance in case -as a requirement and the rules of the plural legal order- was that could legal rulings be precisely separated from the task of fact-finding? It was decided by the Hasting court that the Muslim Qazi has exceeded his assigned duty of interpreting the Muslim law only and has presided over the Fojdari court. The unusual impact of this case was the

I. drawing of Hastings' and other high Company officials' attention for so long
II. crystallizing the stress and tensions between two British courts and between two visions of colonial law in form of new plural legal order by Hasting.

Though the 1772 plan of Warren Hastings in its paragraph 23 explicitly laid down that "in all suits regarding marriage, inheritance, and caste, and other religious usages and institutions, the laws of the Koran with respect to Mohammedans, and those of the Shaster with respect to Gentus, shall be invariably adhered to"[31]however this case leaded to British Legal hegemony with aggressive claims almost half a century afterwards and established the following trends that the

- British enhanced and strengthened their control over criminal law,
- direct supervision of policing tighter British rule
- more dangerously, it sharpened cultural distinctions (bowing seeds of apartheid) between Indian groups who had been brought into the legal system as litigants and practitioners[32]

[29] Lauren Benton, "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State" (1999)41, Comparative Studies in Society and History, 568.
[30]Ibid., 572.
[31]Rattigan, The Influence, 46.
[32] A. Yang, ed., *Crime and criminalitv in BritishI ndia* (Phoenix: University of Arizona Press, 1985)

Conclusion:

East India Company justified its presence in India through Mughal grants which were utilized as a mean to establish the colonial state of political identity with sovereign rights. English officers gradually moved from a position of co-operator to supervisor, and from supervisor to superior. British claimed that Muslims were 'governed' by Islamic law which was the British attempt to neglect the truth that they had displaced the power and sovereignty of Mughals.

When the British took power in India, they gradually found that some parts of shariat were not according to the changing conditions of life in India. The decision in Shebaz beg actually assigned a right to British officers-appointed to supervise the workings and mechanism of qazis and pundits- to interfere and override and also to remove the shortcomings and rectify the anomalies in Islamic sentencing and punishments contained in Hastings' Regulations and new courts. This led them to modify it by statute. It can be best exemplified by the repeal of the Criminal Law of Islam and its replacement by Indian Penal Code of 1860. Sir Eoland Wilson says that:

"The system was gradually Anglicized by successive Regulations, the Muhammadan elements did not entirely disappear till 1862 when the Penal Code and the first Code of Criminal Procedure came into force, nor as regards the rules of evidence till the passing of the Indian Evidence Act in 1872."

The British always misinterpreted and denied the claim of Mughals that Islamic law was the supreme law of the land. They used a hybrid term 'Anglo Muhammadan law' which was a conceptual invasion by English utilitarian ideals to put Islamic law in a procedural straitjacket designed by colonial courts that is not devoid of criticism regarding its effect on Islamic Laws in the sub-continent. The case law discussed, and the decisions made shows all those restrictions placed upon juridical procedure in the Anglo-Muhammadan courts of the British East India Company.

Note;

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