HISTORICIZING THE CRIMINAL JUSTICE ADMINISTRATION IN INDIA: TRACING ITS EVOLUTION IN BRITISH COLONIAL ERA OF 1757-1947

Abhijeet Nandy
Ph.D. Scholar and University Junior Research Fellow, The West Bengal National University of Juridical Sciences, Kolkata, email: abhijeet.crsgpp@nujs.edu

Abstract

The essay attempts to trace the evolution and development of Criminal Justice Administration during the British colonial era. The paper particularly focuses on the colonial era of 1757 – 1947. Firstly, the paper draws from the legal literature and religious books prevailing during the ancient and medieval India such as the Manusmriti, Dharmashastra and Arthashastra, Quran, Sunnah and Hadis, and has explored the initial sources of law and Criminal Justice Administration in India. Before the arrival of the British, the Muslim laws were prevailing under the Mughals in the Indian Justice system. The British found that there were irregularities in the prevailing Muslim laws that needed amendments. The Muslim laws were found to be illogical, irrational and even inhumane to the British. Therefore, the British started to initiate various amendments in the laws, which finally culminated in the formation of the Indian Penal Code 1861. Secondly, the paper identifies the major pillars of Criminal Justice Administration that includes the police, prosecution, courts and correction in dispensing justice. Lastly, the paper locates the changes and reforms of these pillars of Criminal Justice Administration under the British colonial rule and tries to identify the motives behind such reforms.

Keywords: *Criminal Justice, Muslim Law, Colonial Era, Police, Court, Prison*

1. Introduction

The administration of criminal justice is one of the most pivotal duties of the State. Since human beings rule society, conflicts are bound to occur. And in order to solve such conflicts, laws are need to be enacted, and in this regard, the courts play a vital role. The British has ruled the nation for around two hundred years which is, at times, considered as 'a long nightmare of hateful crime and oppression'.[1] Such views usually tend to undermine the contribution which the British rule has made in suppressing the anarchy that existed in the country under the weak

[1] TAPAS KUMAR BANERJEE, BACKGROUND TO INDIAN CRIMINAL LAW 1,1-2 *(*R.Cambray and Co Pvt Ltd, Calcutta 1990)

 ISSN: 2456-4605(O)

Mughal government since the death of Aurangzeb in 1707. They brought about in the country a new era of law and order guided by principles of logic and rationality. The change did not come immediately. Rather it was a slow and evolutionary process and took decades. It was discovered from time to time there were some loopholes in the laws that needs to addressed and based on such idea's different reforms in the field of law came from time to time until in 1861 when the Indian Penal Code came into force. This was not something which the British has inherited from the previous rulers of India. Rather it was completely a new system characterized by new system of courts, laws, police, procedures and punishments too.[2]

1.1 Ancient Period and Criminal Justice Administration

Criminal justice administration has been prevailing in Indian societies since historical times. The social structure of the ancient period needs to be kept in mind while one studies the administration of justice of that period. The Law Codes of that period very clearly show that the Indian society was oriented spiritually very much. The ancient era began with *Satyajuga,* which was more of a utopian kind of society. All people lived in harmony, and no one broke the laws or harmed others, for that matter. They did not have a king or leader and were ruled by Dharma. In order to fulfill their desire for expansion, which could also result due to their population increase, the Aryans left their original home and, after traveling many countries, finally settled in India. In order to check the offensive instincts of humans and avoid an anarchical rule in society, specific laws of social conduct were promulgated. The Rig Veda, the oldest text in the world, has the concept of Rita that has played an important role in shaping the Indian culture and civilization. The important texts that played a crucial role in shaping the legal framework during this period are the *Dharmasastras*, *Arthsashtra* by Kautilya, and the *Smritis* like the *Yajnavalkyasmriti* and the *Manusmriti*, *Narada*, *Parasara*, *Brihaspati*, *Katyayana,* etc. *Dharmasastras* defines crime as an act performed to cause harm to others. This text states that offenses against the king like treason are the highest form of crime.[3] Punishments varied from fines to imprisonments and depended upon the nature of the crime. In Hindu law, the origin of crime can be found in the violation of socio-religious laws. In Kautilya's *Arthasastra,* there are two chapters on the law. One of them is *Dharamsthiya* that is civil courts, and the other are *Kanatakasodhana* that is criminal courts. [4]Arthasashtra deals

[2] Ibid
[3] M. RAMA JOIS, LEGAL AND CONSTITUITONAL HISTORY OF INDIA 22,22-23 (N.M. Tripathi Pvt Ltd, Bombay 1990)
[4] Ibid

with different kinds of crime like robbery, gambling, defamation, etc., and the punishments imposed upon the offender for such acts. According to Kautilya, the administration of justice is the most sacred duty of the king. He even specifies the various qualities that a judge should imbibe. The Smriti literature, like the *Manusmritis,* for example, believed that the laws had been created by God, and the king only executes that law. It states that God is the creator of the State, and the king has been the power to administer the State by God. If the king goes against the laws, then he has to face severe consequences. Like the *Arthasastra*, the smritis also deal with various kinds of crimes and the various kinds of punishments associated with such crimes. The severity of punishments for any particular crime varied according to the varna of the person. It was most severe for the *Sudras* while it was least for the brahmins. Thus, it clearly shows that the administration of justice was not just or uniform during the period of the Smritis.

1.2 Medieval Period and Criminal Justice Administration

The Muslim attacks in India, starting with Mohammad bin Qasim in 712 ADS, ended the illustrious era of Hindu rule in India. However, the real beginning of the Muslim rule in India began with the reign of Qutub- ud- din Aibak and they ruled till 1857 when the last Mughal emperor, Bahadur Shah Zafar, was ousted by the British government and deported to Rangoon. The Muslim rulers introduced various important changes in the legal system of India. They brought the Islamic jurisprudence to India, which again was inspired by countries like Arabia, Persia, Egypt, etc., and modified it to a certain extent in order to satisfy the aspirations of the native people.[5]

The primary source of Muslim Law is Quran and Sunnah or Hadis which means the practices and traditions of the Prophet Muhammad.[6] On the matters where the Quran have not said anything, Sunnah and Hadis were the highest authority.[7] With the passage of time, various views on the different provisions of Quran were taken by famous Muslim jurists. Out of such views four popular branches or schools of Islamic laws came to recognized- the *Hanafi* School, the *Maliki* School, the *Shafii* School and the *Hanbali* School.[8]by So far as civil laws were concerned, the medieval rulers did not interfere with the Hindu laws. Thus, as far as civil laws are concerned, both Hindu and Muslim laws proceeded on parallel lines. But when it comes to

[5] S. P. Sangar, *Proceedings of the Indian History Congress,* 26 ADMINISTRATION OF JUSTICE IN MUGHAL INDIA, 41, 41–48 (1964).
[6] TAPAS KUMAR BANERJEE, BACKGROUND TO INDIAN CRIMINAL LAW 35,35-36 *(*R.Cambray and Co Pvt Ltd, Calcutta 1990)
[7] Ibid
[8] Ibid

 ISSN: 2456-4605(O)

criminal law, it was most common for both the Hindus and Muslims. The only exception in this regard was perhaps the application of ordeals and oaths. The criminal justice administration was completely based on Islamic criminal law, and punishments were inflicted based on that law only. Crime under the Islamic laws is of three kinds- against God, against king, and against a private individual. [9]Acts like adultery, drinking wine, stealing, fornication, etc., were considered crimes against God. Abuse of power, misrule, rebellions, etc., fell under crimes against the king. And any wrong done to an individual was considered crime against citizens such as counterfeiting, selling wines etc.[10] The emperor was considered to be "the fountain of justice" and had control over all courts that were created by him. The chief Qazi was the next most important person in the administration of criminal justice. He had a multi-faceted role and was solely appointed by the emperor himself. Under the chief Qazi there were the Qazis that operated in provincial courts, district courts and the courts in big towns and cities. The Panchayat system was also prevalent that decided mostly minor criminal offences. The Muslims practiced granting justice at a quick pace without making unnecessary delay because they believed in the principle of 'justice delayed is justice denied'. Qazis relied on discretion and reason while deciding on cases and sometimes 'extra-ordinary' methods are also adopted in order to bring out the actual truth. The state and society under the Medieval rulers were based on *'Shar'* or the legal sovereign and no one, not even the King was above it. According to the '*Shar'* the emperor is the servant of God and it is only God who is the highest sovereign authority of this world. '*Shar'* and '*Urfi'* are the two aspects of Muslim laws. The '*Shar'*, which is based on the principles of Quran, had three main components viz, '*Hadis'*, '*Ijma'* and '*Qiyas'*. [11]At the initial stages the Quran was considered as the principal source of law but as time passed and social problems became more complex and difficult to administer the Quran proved to be insufficient as the sole source of law. Thus came the '*Haddis'* that became the second-best source of law after the Quran. Wherever a matter is raised in which the Quran was silent, in such circumstances the reference of the '*Haddis'* was sought after. After a while the Islamic society was faced newer problems and the existing laws proved to be insufficient to solve them and thus came the '*Ijma'* and '*Qiyas'*. '*Ijma'* (universal consent) was the consensual opinion of the learned theologians and '*Qiyas'* was inferences, which are analogous in nature, based on Quran.[12] During the medieval era evidences were of different kinds including, oaths,

[9] Supra note 5
[10] Ibid
[11] Supra note 6
[12] Supra note 1

written documents or witness statements. The oath was taken on the Quran. It is important to note here that slaves, handicapped persons or relatives of the accused was considered incompetent to be witnesses. Punishment, according to Islamic laws, are of four categories- '*Hadd'*, '*Dia'*, '*Tazir'* and '*Kisa'*. '*Hadd'* means limit and in this category the punishments are fixed for certain specific crimes and it cannot be modified. Usual forms of punishment under '*Hadd'* included scourging, stoning, cutting of limbs etc. '*Kisa'* is basically based on the principle of revenge or 'tit for tat' like an eye for an eye, a tooth for a tooth. Substitute of '*Kisa'* was '*Diya'* which is blood money. This money or compensation is provided by attacker to victim's kins or relatives and no further actions are taken in this regard. And '*Tazir'* means punishments that are reformative or discretionary in nature. Besides these four, at times the judges or kings introduced new forms of punishment that were not found in the Islamic laws to deal with certain specific forms of crimes.

1.3 British Period and Criminal Justice Administration

The English East India Company was granted a charter from the Queen Elizabeth I on 31st December 1600 that granted them the exclusive trading rights with the East Indies, and parts of Africa and Asia for a period of fifteen years. The charter had no such provisions regarding the acquisition of any part of India. For the proper regulation of the working of the company and maintenance of discipline among its servants, certain legislative authorities were given to the company. However, from time to time the British government continued to give more and more powers to the company. And when the company saw this constant support of the British government, they started to expand their sphere of influence in India. From being a trading company, they slowly started to interfere in the political arena of the country. The company gained its first political success after the victory at the Battle of Plassey in 1757. However, the real foundation of its political authority was formed after the Battle of Buxar in 1764. From there till 1857 the Company continued to expand its rule. However, after the Revolt of 1857, the Company lost all its political power in India.[13] The Government of India Act, 1858 was passed by which the administration of India was completely transferred to the British Crown. The President of the Board of Control was replaced by the Secretary of State for India, who became the "fountainhead of authority as well as the director of policy in India". This rule of the British Government continued till 1947, when India gained independence.

[13] S. BANDYOPADHYAY, FROM PLASSEY TO PARTITION: A HISTORY OF MODERN INDIA 169,169-70 (Orient Blackswan 2012)

 ISSN: 2456-4605(O)

India is a vast and densely populated country and in order to rule this country the British government had brought about several significant changes to the existing criminal justice system. They had to change the laws that were existing at that point of time. They also passed various new laws and introduced certain principles. The criminal justice system, that is presently active in the Indian society, is very much inspired from the British laws.[14] In order to establish a criminal justice system that is properly defined and uniform in nature the British government had to take a series of steps which are discussed below.

2. Police System in Colonial India

In 1765, the English East India Company acquired the Diwani rights from the Mughal Emperor Shah Alam II. This treaty gave company the rights to acquire the land revenues of the Bengal subah and also to decide civil cases. During this time the police system that was prevailing was the Mughal police system. Under this system the rural districts were under the authority of the Faujdars while the towns were under the control of the Kotwals. The village watchmen kept an eye on the villages. The Zamindars controlled the entire police system in the villages and he also paid the controlled the watchmen.

In course of time, when the Company's authority started to rise, the need to create a police force for the purpose of maintaining law and order was felt. The crime rates were continuously increasing during this time and the Company felt that it was a challenge to their authority. Thus, a new system emerged by which the Magistrates came into play replacing the Faujdars. Thus, in the districts the English Magistrates were in control of the police system while in the villages the Zamindars continued to have their authority like before though they worked under the Magistrates.[15] However, this new system did not prove to be fruitful in reducing the crime rate. Moreover, due to the weakness of the system, the Zamindars started to take undue advantages of the situation. Realizing the need to bring about reforms in the police system, that will purge the system of its inherent weaknesses, Lord Cornwallis brought about certain important changes in the system. Firstly, he made the Zamindars get rid from their policing authorities. He then divided the entire district into units of police jurisdiction or *thanas*. These *thanas* covered an area of about thirty to fifty kilometers. The officer who was in charge of each of these *thanas* was called the *Daroga*. The Magistrates appointed the *Darogas* and they worked

[14] S.K. DOGRA, CRIMINAL JUSTICE ADMINISTRATION IN INDIA (Deep and Deep Publications Private Limited 2009)

[15] E. Kolsky, *Law and History Review*, 23(3) CODIFICATION AND THE RULE OF COLONIAL DIFFERENCE: CRIMINAL PROCEDURE IN BRITISH INDIA, 631, 631–683 (2005).

under him. Thus, these *Darogas* were a representation of the power and control of the Company over the rural areas. This *Daroga* system was completely new in the rural areas and moreover this system functioned in association with the powerful Zamindars of the region. This is new association between the *Darogas* and the Zamindars turned out to be a new tool of oppression for the people of rural areas in Bengal during the nineteenth century. Madras started this *Daroga* system in 1802 while the in 1803 it was introduced in the Ceded territories and in 1804 to the Conquered Upper Provinces.[16] However, this Cornwallis system of police reform by introducing the *Daroga* system failed to live up to its expectations in maintaining law and order. One of the primary reasons behind its failure is that it "was not founded in the usages of the country". The British authorities blamed the Indians for its failure as they complained that there was a dearth of morality and integrity among the natives. As a result of this the Cornwallis system had to be scrapped.[17]

In 1812 the *Daroga* system was abolished formally. By that time the Tehsildars were already stripped off from their police duties. Now the village police were completely under the authority of the District Collector. Thus, the District Collector was now in charge of police, revenue and magisterial functions and this made his office all the more powerful. Thus, the subordinate officials, who worked as revenue collectors, became the new instruments of plight for the villagers.

This system also failed to bring about fruitful results which led the Company to devise a new method to maintain law and order in the country. In 1843 Sindh was captured by Sir Charles Napier. And a new model of police system was introduced in Sindh on an experimental basis. Under this new model a police department was created which was completely separate. It had its own officers which was established keeping in mind the "Royal Irish Constabulary" which was thought to be suitable in the prevailing situation. Under this Sindh Model an Inspector General was appointed who was going to supervise the whole territory.[18] Superintendents of Police were also be appointed who will work under the Inspector General as well as the District Collectors. The ordinary staff of the police department were Indians while all the officers were British. This model was later adopted in Punjab in 1849, Bombay in 1853 and Madras in 1859

[16] THE DAILY STAR, https://www.thedailystar.net/news/our-police-in-perspective (last visited Mar. 30, 2023)
[17] B. Lindsay, *British Justice in India*, 1(2) THE UNIVERSITY OF TORONTO LAW JOURNAL, 343, 343–348 (1936).
[18] Ibid

 ISSN: 2456-4605(O)

with minor modifications. This model proved to be quite successful in maintain law and order in dealing with political uprisings of that time until the great revolt of 1857.

The Revolt of 1857 served as an eye opener for the colonial authorities, and it made them realize the need to bring about certain reforms in the police system of India. They felt the necessity to have an efficient system for gathering information and policing the territories of the British empire. Thus in 1860 a Police Commission was appointed that brought to the limelight the basic structure for the police system that is required by the colonial government. And thus, the Police Act of 1861 was passed.[19] Under this new system organization of the civilian police was done on a provincial basis while the services of the military police were dispensed with. The Inspector General's directly answered to the provincial government while for the district superintendents it was the collector. The civilian authorities controlled the police organization and the post of the inspector generals were given to civil servants only for a long time. The rural police came under the charge of the district superintendents while the *Daroga* was changed to sub-inspector. The problem of integration of the rural police system into the Imperial structure was solved under this new system. A significant development in police system during the colonial rule took place in 1902 when the Police Commission was appointed which allowed Indians to be appointed in the officers' ranks. However, despite this provision the natives still remained under the Europeans in matters of post in police service.

Thus, the police system under the British government proved to be quite a successful instrument in maintaining law and order, preventing crimes like dacoity and also conspiracy and rebellions of various kinds. But the question arises as what was the true purpose behind the introduction of this new police model that was based on the Irish model in India? Was it truly meant for the protecting the law and order and providing a safer environment to live for the Indians or whether there was something more than meets the eye? In 1813, a Committee of the British Parliament stated that "the police in India committed depredations on the peaceable inhabitants of the same nature as those practiced by the dacoits".[20] The Indian police turned out to be an actual reflection of the colonial government. It did not trust their native subordinates and worked under the civilian authorities. In the event of continuous peasant unrests and the rising political movements, the police became an important weapon of

[19] PERCIVAL JOSEPH GRIFFITHS, TO GUARD MY PEOPLE: THE HISTORY OF THE INDIAN POLICE 87,87-88 (Ernest Benn Ltd 1971)
[20] T.K. Vinod Kumar & A. Verma, Hegemony, *Discipline and Control in the Administration of Police in Colonial India,* 4 ASIAN CRIMINOLOGY, 61, 61–78 (2009).

repression for the colonial government. It also played crucial role in suppressing the freedom movement as well. Thus, the main purpose behind the introduction of the police force was to rule over the Indians. Strict and militaristic discipline was imposed along with a hierarchy of race. The British reluctantly trusted the "mixed" races in the lower ranks while the dark-skinned Indians were put under very strict supervision. This goal of the British Government was achieved through the creation of the esprit de corps.[21] The British ensured loyalty from the lower ranks by isolating them from the rest of the community. They were granted powers and had the unofficial right to abuse them at their own will.[22] They were given special privileges like housing etc. Moreover, they were posted far away from their home which further degraded the relationship of police with the native population.[23] This discipline helped the colonial government in maintain control through force rather than constitutionalism. Hence its main intention was not to protect but to control. It mainly turned out to be a device of to suppress rather than to support.[24]

3. Judicial System in Colonial India

Criminal justice system which was established by the rulers of Medieval India were inherited by the officials of East India Company. The English East India Company, that was established in 1600 by the Charter of Queen Elizabeth, was given the exclusive right to carry on trade to the countries lying to east of the Cape of Good Hope which included India as well. The entire authority of the Company was vested on the Governor and twenty-four Directors which together formed the Court of Directors, that was to be elected by the General court every year. In 1623, a Charter Act was passed by James I that gave authority to the Company in matters of law enforcement and capital punishment. Since then, many charters were enacted from time to time that strengthened the authority of Company in India. The Charter of 1661 granted judicial authority to the Governor of a factory, the Act of 1668 the Company was transformed form a trading enterprise to a sovereign authority and by the Act of 1726, the Company gained supreme control in each of Presidency towns and this marked the beginning of a judicial system on a uniform basis in the territories of the Company.[25]

[21] COMMONWEALTH HUMAN RIGHTS INITIATIVE, https://www.humanrightsinitiative.org/blog/the-police-we-have-and-where-it-came-from-an-analysis (last visited April 1, 2023)
[22] Ibid
[23] Ibid
[24] Supra Note 19
[25] M. Brown, *Ethnology and Colonial Administration in Nineteenth-Century British India: The Question of Native Crime and Criminality*, 36(2) THE BRITISH JOURNAL FOR THE HISTORY OF SCIENCE, 201, 201–219 (2003)

 ISSN: 2456-4605(O)

Towards the end of the seventeenth century the Company has strengthened his hold over towns like Surat, Bombay, Madras and Calcutta as a trading company and in order to regulate the affairs of these towns the British Parliament has enacted various charters from time to time which eventually helped in forming the foundations of the British Empire in India. Each of these Presidency towns had developed their own set of judicial system. In Surat the President and the Council formed a court that decided all the cases which included only the Britishers. And this was done according to the British laws. However, in cases where the natives were involved, the Indian law was taken into account. They were also authorized to hear criminal cases and even awarded death sentences for certain severe crimes. In Madras the Company had built a fort called the Fort St. George, and this was called the White Town because the Britishers lived there. They were also given the full authority to govern *Madrasapatnam*, a small town near the fort. Since all native people lived their it was called the Black town. In the White town the civil and criminal cases were heard by the Agent and the Council. Whereas the criminal justice system in the Black town was administered by the *Choultery* Court. It was headed by the village headman who was called the *Adigar*.[26] The Charter Act of 1661 gave the Company the authority to appoint their own Governor and Council who again had the full authority to try both civil and criminal cases according to the English laws. By the Charter Act of 1683, Admiralty Courts were established in Madras. These courts mainly looked after piracy and illegal trafficking. And with the establishment of this court the Governor and the Council lost their judicial authority. By the Charter Act of 1687, a Mayors Court was established in Madras in 1688. There was civil court that was formed the mayor and one Alderman whereas the criminal court was formed by the Mayor and three senior Aldermen. The court sat once in every two weeks and tried cases with the jury's assistance. For matters relating to small offences or petty civil cases people turned to *Choultery* court where two Aldermen sat two times a week. Thus, three types courts existed in Madras, *Choultery*, Mayor's and Admiralty and from Admiralty cases went to High Courts in the last phase. The Charter Act of 1688 gave the Company the power to make ordinances and laws and also to establish courts.[27] Gerald Augier started the system of courts in Bombay. In the two divisions of Bombay two courts were established. The judges were honorary and also included Indians. Each division had a separate court of judicature. Besides these there was also a court of the Deputy governor and Council

[26]A. Lakshminath, *Criminal Justice in India: Primitivism to Post-Modernism*, 48(1) JOURNAL OF THE INDIAN LAW INSTITUTE, 26, 26–56 (2006)
[27] Ibid

which had both original and appellate jurisdiction. By the judicial plan of 1672, criminal justice administration was reorganized. Bombay was divided into four main divisions- Bombay, Mazagaon, Mahim and Sion, and each of those division had a justice of peace. He performed an examination on a preliminary basis and after that he send the case to the Court of Judicature. There the case was tried with the assistance of the jury. Under the Court of Judicature there was also a Court of Conscience. This court had no jury in order to provide speedy redressal of grievances. An Admiralty Court was established in 1684 which functioned for a brief period of time and finally in 1718 a new court of judicature was formed. In Bengal courts were established pretty late than the other Presidencies. In 1728 the Mayor's Court was formed. One of the Council also held the post of the Magistrate and he heard both civil and criminal matters in the zamindari court. The court of criminal jurisdiction was formed by the Governor and five seniors most member of the council, all appointed by the crown.[28]

The Charter of 1726, which is also known as the Judicial Charter, established three Mayor's court in the Bengal, Madras and Bombay. It had no criminal jurisdiction and only could punish offenders for some minor crimes. In every Presidency, the Governor and the five senior Council formed the justice of peace and these three formed the court of record collectively. The Charter of 1753 brought about significant change. Now the Court of the President and Council would hear appeals from the Mayor's Court in matters of criminal justice and would act as justice of peace.[29]

With the passage of time the Company began to acquire many new territories and controlled their civil and revenue administration. However, the criminal administration was still at the hands of the Nawab. The first Adalat system started in 1772 which, in course of time, was modified. In 1772, Governor General Warren Hastings introduced a new plan for the better administration of the Bengal subah which comprised of Bengal, Bihar and Orissa. He divided the entire Diwani area into many districts and each districts had a Provincial court called the Mofussil Diwani Adalat. This court heard only civil cases. For criminal cases a separate court called the *Faujdari* court was established. The *Sardar Nizamat Adalat* controlled the *Faujdari* Adalat. The *Daroga*, who was appointed by the Nizam and in turn represented the Nawab, presided over the court. The *Daroga* received the assistance of the Qazi, Mufti and three *Maulavis*. The Governor and the Council supervised the proceedings of the *Nizamat Sadar Adalat.* The *Faujdari* Adalat did not have the power to pronounce death sentences. In such

[28] Ibid
[29] *Id.* at 5.

 ISSN: 2456-4605(O)

matters the Adalat used to transfer all materials regarding the case to the *Sadar Nizamat Adalat* which used to pronounce the final verdict in such matters. [30]

The Regulating Act was passed in 1773 and one its provisions was the establishment of a Supreme Court. Thus, a Supreme Court was formed in Calcutta and its first Chief Justice was Sir Elijah Imphey. It consisted of one chief justice and three other Puisne judges.[31] All the judges were appointed by the Crown and they should all be barristers with at least five years of experience. The court exercised its authority over civil, administrative, criminal and ecclesiastical jurisdictions. The Supreme Court was a court of record and it had the full authority to hear any cases regarding any crime that has been done against any of the Crown's subjects.[32] All the offences were to be tried by a jury consisting of only British residents who were staying in Calcutta. Any accused can also a mercy petition to the court as the court had the authority to decide such matters.

The Act of Settlement was passed in 1781 and this had an important provision that all the acts done by the Governor and the Council during their tenure was beyond the authority of the Supreme Court. Thus, they cannot be brought to court for any act done by them during their official tenure. An act was passed by the British Parliament in 1793 by which Recorder's Court was established in Bombay and Madras. However, the court in Madras was abolished in 1800 due to an act passed by the British Parliament, which also suggested to form a Supreme Court at Madras.

Warren Hastings was succeeded by Lord Cornwallis and he brought about certain important changes in the judicial system of India which included civil and criminal justice administration. Based on the principle of equity and justice he introduced a newly reformed judicial system. He also brought about certain changes in the criminal law, established a few civil courts and introduced the new "Code of Regulations". He abolished the right of the Indians to deal with the administration of criminal justice. The *Sadar Nizamat Adalat* was re-established. It had a Governor and Council and they received the assistance of a Qazi and two Muftis. The Circuit Courts replaced the *Faujdari* Courts which were presided over by Indians. The Circuit used to use to hear all criminal offences but when it comes to capital offences the *Nizamat Adalat* had the final say. After Cornwallis, Lord William Bentinck became the Governor General in 1823.

[30] Ibid
[31] M.P. JAIN, OUTLINES OF INDIAN LEGAL HISTORY 78,78-79 (N. M. Tripathi Pvt Ltd 1952)
[32] Ibid

He was very interested in improving the working of the administration of justice. The entire system of civil and criminal courts was reorganized by him. He found that the Circuit Courts, that are in existence for more than forty years by then, was not functioning effectively as a result of which civil and criminal justice administration was getting delayed. The number of arrear cases started to rise and thus he abolished the system of Circuit courts because he thought that it was not serving its true purpose.

After the Great Revolt of 1857 the Company lost its authority to govern India and its control was transferred completely to the British crown in 1858. The British government passed uniform codes and for the proper implementation of the administration of justice on a uniform basis, the *Sadar Adalats* and the Supreme Courts were amalgamated. Two sets of courts, the Royal courts and the Company's Adalats, functioned for a period of more than eighty years. Both the systems had separate sources of authority, their jurisdictions were vaguely defined and this brought about various conflicts and confusion which gradually declined with assumption of power by the Crown. The crown took the decision of uniting the two sets of court system which was finally fulfilled in 1861 when the High Court's Act was passed.

High Courts of judicature were established in Bengal, Bombay and Madras in 1861. As a result of this the other courts like the *Sadar Diwani* and *Nizamat Adalats* and the Supreme Courts were abolished.[33] The Act stated that each High Court will have one Chief justice and fifteen Puisne judges at the most. The qualifications of the judges were as such that at least one third of them would be barristers of at least three years of experience or civil servants with ten years of experience out which at least three years should be in judicial services. The judges were to be appointed by the Queen and would hold the office during her pleasure.[34] These High Courts had original and appellate jurisdiction. In matters of criminal justice administration, the courts had the supreme authority to hear all the cases regarding the crimes that were committed within their jurisdiction. Besides this, it can also act as a Court of Reference based on the verdicts of other subordinate courts. The courts could also admit advocates and necessary qualifications required for that were laid down by the court itself. It can also take disciplinary actions against them. In matters of criminal offences, the High Court's decision was final. The High Court Act of 1911 brought about certain changes in the composition of the high courts. The number of judges were increased to twenty from sixteen. It also gave the crown the authority to

[33] *Ibid.*
[34] A. Mukhopadhyay, *Crime and Criminality in Colonial Bengal*, 63 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS. 968, 968–986 (2002).

 ISSN: 2456-4605(O)

establish any additional high courts. The Government of India Act 1915 declared the high courts to be the Court of Record. The limitation on the number of judges was removed and the King in Council was to decide that number. Besides the retirement age of the judges was fixed at sixty.[35]

The Government of India Act, 1935 was passed with the aim in view of introducing a federal administration in India. By this Act, the Centre and the Provinces divided among itself the power to grant jurisdiction to the high courts. And since one of the prime aims of this Act was to introduce federal system of government a Federal Court was also established, at Delhi in 1937, that function as an independent court. It had original jurisdiction in matters involving any provisions of the Government of India Act 1935 or of federal laws. However, it was not a court of Criminal Appeal and in that matter the Privy Council functioned as the highest court. Appeals from the high court in criminal cases were taken to the Privy Council. The Privy Council was situated outside India and acted as the highest court of appeal for Indian people. It heard appeals against the decisions of high courts and federal court and also granted the right of special leave to appeal. It played a very important role in expansion of British Empire in India. Highly qualified and learned professionals were its members. Its jurisdiction over India only ended after "India gained independence and ever after that it continued to be an inspiration in matters of judicial administration in India.[36]

4. Prison System in Colonial India

The administrative structure of India took a new form with the beginning of the British Rule in India. In 1773 the Supreme Court of Calcutta was established which exercised all the civil, criminal, admiralty and ecclesiastical jurisdiction. It also pointed out that the ultimate motive of the British government which was the introduction of English Rules of Law and English superintendence of law and justice. In 1859 and 1860 the Indian Penal Code and the Criminal Procedure Code were enacted. In 1773, imprisonment as a form of punishment was applied in India and from 1860 onwards it started as a uniform basis.

The smallest unit of the prison system is the Jail. The institution of jail is of British origin and this system began in India as a part of British administration. Initially the English East India did not want to spend much on such a system of punishment. As a result, this the condition of

[35] Ibid

[36] Mark Brown, *Colonial States, Colonial Rule, Colonial Governmentalities: Implications for the Study of Historical State Crime*, 7(2) STATE CRIME JOURNAL. 173, 173–198 (2018).

the jails became very deplorable. The inmates did not have proper food, clothing or even medical services. Under the Company's rule there were 143 civil jails, 75 criminal jails and 68 mixed jails which had a total capacity for 75100 prisoners. With the enactment of 1824, reforms of the Indian prison system got attention for the first time. In 1836, the Prison Discipline Committee was set up of which Lord Macaulay was a member. The president of the committee was H. Shakespeare. [37]It submitted its report in 1838 which highlighted the corruption in the system and laxity of discipline. Prior to the formation of this committee prisoners used to work on roads but this committee terminated this practice. And the first Central prison was established in Agra in 1846. In 1855, for the first time, the Inspector General of Prisoners was appointed. He was the chief administrator of the prison in India whose main function was to preserve discipline among the prison authorities as well as the prisoners.

In 1864 a second commission of Enquiry into Jail Management and Discipline was appointed by Lord Dalhousie mainly to look into the reasons behind the high death rates inside the prisons in India. And as per the recommendations of this commission it was decided that there should be Civil Surgeons as Superintendents of District Jails in all provinces. It also made certain suggestions regarding changes in the condition of diet, accommodation, bedding, clothing and medical care of the prisoners. In 1877 a third jail committee was formed which reviewed the general jail management was more concerned with details in prison work. A fourth Jail Committee was appointed in 1888 which suggested the separation of prisoners and also certain important reforms in prison administration. The All-India Committee of 1892 expanded the works on the fourth jail committee and the final result of the working of this committee was the Prison Act of 1894 which governs all the prisons of India. This Act tried to make the treatments of the prisoners as much uniform as possible throughout the country and also divided the different classes of prisoners.[38]

The landmark year for the history of prison reforms in India was 1897 when the Reformative Schools Act was passed. According to this act the courts are supposed to send the offenders who are below the age of fifteen years to reformative schools rather than jails. Despite such efforts the Indian Prison System failed to apply the humanising and civilising influences on the prisoners. Their food, medical wellbeing labour were still neglected.

[37] A. MOHANTY & N. HAZARY, INDIAN PRISON SYSTEM 24,24-25 (Ashish Publishing House 1990).
[38] Ibid

 ISSN: 2456-4605(O)

The last Jail Committee before independence was set up in 1919 under the Chairmanship of Sir Alexander G Cadrew which examined not only the jails in India but also of other countries like USA, UK, Japan etc. its report included a number of recommendations on certain subjects like prison staff, classification of prisoners, medical facility, prison hygiene, prison labour etc. 'Reformation and Rehabilitation' were recognised as the aims and objectives of prison for the first time in the history of prison. [39]With the passing of the Montford Reforms in 1919, Jails came under State subject and the provinces made serious efforts to bring about certain reforms in jail as well as the conditions of the prisoner's life in there. And with this aim in view a number of Jail Committees were enacted like the Punjab Jail Reform Committee (1919) the Uttar Pradesh Jail Reform Committee (1929, 1928, 1946) etc. With the passing of the Government of India Act 1935, provincial governments began to control jails which resulted in the elimination of the possibility of uniform implementation of prison policy throughout the country.

5. Conclusion

The introduction of the British government in India and their idea of the administration of the criminal justice system was a big leap from what was prevailing in India before their arrival in the political scenario. India was then ruled by the Muslim powers and all their laws and punishments regarding every crime was guided by their religious book, the holy Quran. The punishments were very brutal, harsh, irrational and inhumane at times. The British found that under the Muslim law crime was not considered as an offence against the State rather it was just an attack on the particular individual. Moreover, they also found that in cases of offence against individuals, like murder, the punishments were more of a retaliatory nature. [40] Along with these the Muslim law usually made a confusion in understanding between sin and crime and usually gave more importance to former than to the latter. Further, laws which state that until the aggrieved party does not come forward with their complaint no punishment would be inflicted upon the offender. Along with this the offender can escape punishment if he agrees to pay blood money or compensation for his crime. The principle of intention was also considered while pronouncing judgements against the crime.[41] And one of the ways of determining the

[39] Ibid
[40] Supra note 1
[41] Supra note 6

intention was the kind of weapon that was used while committing the crime which even the Governor General Warren Hastings found to be absurd.

The British government has successfully able to pull out the country from that medieval mindset regarding criminal justice administration. The laws, that were created by them, were very much guided by rationalism. [42]The punishments were toned down and were comparatively humane in nature and most importantly not arbitrary in nature. And the most important point in this regard is that the British successfully introduced the idea that a crime is also an offence against the State and not the particular individual or its family. However, the British system of criminal justice had its flaws as well. And one of the biggest flaws in it was that the laws were, most of times, biased in favour of the Englishmen. Many laws were passed which stated that European accused would be tried by European judges only and not Indian judges.[43] Moreover, their treatment inside the prison was quite better compared to the Indian counterpart. And most importantly the so-called pillars of the criminal justice administration – the police, court and prison, played a crucial role in maintaining their rule in India for around two hundred years. It was their key weapon in suppressing various movements that took place against their reign and for the freedom of the nation. But whatever might be the reason behind the changes of the criminal justice administration which the British has brought about in the country it cannot be denied that it was the British government that introduced the criminal justice administration in India on modern lines and helped in establishing the foundations upon which the laws regarding criminal justice system in post-independence India rests.

[42] L. Sebba, *The creation and evolution of criminal law in colonial and post-colonial societies*, *3*(1) CRIME, HISTOIRE & SOCIÉTÉS / CRIME, HISTORY & SOCIETIES, 71, 71–91 (1999).
[43]D. Bhattacharyya, *History of Eminent Domain in Colonial Thought and Legal Practice,* 50(50) ECONOMIC AND POLITICAL WEEKLY, 45, 45–53 (2015).

 ISSN: 2456-4605(O)