THE BRITISH RULE’S LASTING SWAY ON LIVES OF PAKISTANI’S

Pre-colonial & Post-colonial

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The British rule had a lasting sway on the lives of the Pakistani people. They exploited the Subcontinental territory for their own interests and left the land in more disorder and confusion than they found the inhabitants of the land in. Once called “Golden Sparrow” by the traders of its time is now a poverty driven land. It is said that during its glorious time it was a land treasured by the emerging powers like France, Britain, Portuguese; which is the very reason that the British Monarchy supported the later well-known company East India Company for a trade expedition to Mughal India then ruled by “Bad-shah Aurangzeb”. The glorious days of the Golden Sparrow were ending and the last blow was delivered by the British monarchy. The reasons for the crushing effects of post-colonial dilemma on natives of Pakistan are numerous but the following are the major ones.

The ethnocentric practices of Brits led to shattering of its subjects’ confidence and pride in their own ethnicity creating a society, which is, till date xenocentric from its very roots. Secondly, their agrarian revolution did not help improve yield and caused landholdings to become more fragmented creating further divide and castes. Thirdly, construction of railways although improved transportation and infrastructure permanently however it was not done keeping the Indian interests but the British interest of boosting in their industrial race with the European powers. Fourthly, though a global system of English education was introduced which led to the downgrading of the local education systems like madrasas’, in the long run it also led to the creation of hierarchy in the educational institutions’ which now in local jargon we refer to as English-Urdu medium divide.

*Macaulay’s aim was to create a nation of clerks, half westernized, half native, who could economically man the offices of the British Raj. Much of the weakness of the education system still stems from Macaulay’s attempts at reform. (Hussein, 1997)*

Fifthly, the Indian industry was not protected and many traditional ones were ruined. To boost the industrial revolution of Britain which was exercised primarily through de-industrialization of local industrial especially of textile, pottery and spice. India was forced to supply raw materials for triggering industrial revolution with greater rapidity in England.
India produced about 25 percent of world industrial output in 1750, this figure fell to only 2 percent by 1900. (Williamson & Clingingsmith, 2004)

Moreover, the new political system which lacked personal element was not more effective than the old one.

Perhaps the bitterest legacy of colonial rule is the scar left on the people’s psyche. Indians had been used to regard rightly themselves as a highly evolved and intellectual people. British officials treated Indians with undisguised contempt. This treatment was especially offensive to Muslims who for centuries past had been used to receiving special honour and privileges. (Saleem & Rizvi, 2011)

When the British came to India it was in a state of anarchy and hatred for each ethnic group was sprouting, as each kinship fought for imperial power to opportunistize the nearing demise of Mughal Empire. In his book, Jawaharlal Nehru comments with his characteristic sarcasm that

“We are often reminded, lest we forget, that the British rescued India from chaos and anarchy” (Nehru, 1961)

Before the British law was implemented, a more personal form of justice existed in the subcontinent. Civilians went to the durbars of the ruling classes with their issues and they were settled according to the personal judgment of the ruler. India has a recorded legal history starting from the Vedic ages and some sort of civil law system may have been in place during the Bronze Age and the Indus Valley civilization. The prominent legal systems that existed in the area were, Arian norms, Gupta Empire’s judicial system, Law administered by Sultans of Delhi Sultanate and Mughal Empire. Law was a matter of religious prescriptions and philosophical discourse. Hence had an illustrious history in India. Emanating from the Vedas, the Upanishads and other religious texts with varying interpretation from Hindu philosophical schools and later by Jains and Buddhists.

Secular law in India varied widely from region to region and from ruler to ruler. Court systems for civil and criminal matters were essential features of many ruling dynasties of ancient India. Excellent secular court systems existed under the Mauryas (321-185 BCE) and the Mughals (16th - 19th centuries) with the latter
giving way to the current common law system exercised in India, Pakistan and Bangladesh.

The year 1608 marked the first British contact with India as the newly chartered yet powerful British East India Company (BEIC) established its first trading route with the subcontinent at the port city of Surat. The East India Company was granted charter by King George I in 1726 to establish “Mayor’s Courts” in Madras, Bombay and Calcutta (now Chennai, Mumbai and Kolkata respectively) which marks the introduction of Common Law in India. At this point Common law applied only to English citizens and those charged by English citizens in common law courts. The first three established courts in India were created at the order of the British parliament to correct and control Company abuses in their Indian facilities.

Judicial functions of the company expanded substantially after its victory in Battle of Plessey and by 1772 company’s courts expanded out from the three major cities into the lands being annexed by the British army.

Following the First War of Independence in 1857, the control of East India Company’s territories in India passed to the British Crown. Resulting in a massive change in the Indian legal system. Supreme courts were established replacing the existing mayoral courts.

During the British Raj, the Privy Council acted as the highest ‘court of appeal’. Cases before the council were adjudicated by the Lords of the ‘House of Lords’. The state sued and was sued in the name of the “British sovereign in her capacity as Empress of India”. The search for a formal code in regulation and adjudication followed the introduction of a more secure rule of private property in India. The doctrine of precedent which is deep rooted in English Law, was first introduced in India in 1726, when the Mayor’s Court were established. Under Lord North the Regulating Act 1773 regularized the management practices of East India Company (EIC) in India. The act’s long title said: "for the better Management of the Affairs of the East India Company, as well in India as in Europe"
During 1790-93 Cornwallis introduced certain changes in criminal law which were regularized by a Parliamentary Act of 1797. Cornwallis, the Governor General of Bengal succeeding Hastings, introduced the Zamindari system there in 1793 which was called Permanent Settlement. Under Lord Cornwallis for the administration of civil justice there were the civil courts known as Diwani Adalats Cornwallis placed them under collectors who were given judicial powers. In addition, a court to try cases up to the value of Rs. 200 (of that time) was established presided by an Indian Registrar. At the time of Cornwallis there were English Magistrates who, however, had no power of punishment, but only that of apprehending the criminal, punishment being the function of Faujdari Adalats (Criminal Court) which were presided over by Indian judges’ apex by Sadr Nizamat Adalat (appellate court) presided over by Mohammad Raza Khan. So, he replaced the system with European Judges with defined powers. Mohammad Raza Khan was removed and his place was taken by the Governor-General and members of the Supreme Council assisted by Indian advisers, and the court was removed from Murshidabad to Calcutta. The Law to be administered was Muslim law in criminal cases and the personal law of the parties in civil cases, supplemented by the ideas of English law. Often there was a conflict between the two and English law was given supremacy.

Initially only whitemen were allowed to take part in the legal proceedings in the court but was later relaxed allowing the locals to solicit cases in the local courts as well through “Legal Practitioners Act of 1846”. The Mayors’ courts were converted to the High Courts through letters of patents authorized by the Indian High Courts Act 1862 passed by the British parliament. Which introduced the system of trial courts in the land as well similar to that present in England. Thus, gradually English Legal System was enforced in British India.

In Harrington’s Analysis of the Bengal Regulations, he states that it became like a patchwork quilt. Regulation VI of 18 of 1832 marked the end the Mohammedan Criminal Law which was not completely set aside till the penal code of 1860 and the Criminal procedure code of 1861 were enacted and the final blow was given by Indian Evidence Act 1872. The English Law, was gradually enforced to the limit it suited Indian Conditions, usage and customs. Thus, was
systematically imported into India under the British Raj. Under the notion of British parliament and in stewardship of Lord Macaulay. Which was “Uniformity where it was possible, diversity where it was necessary but in all cases certainty”. English Law was imported into India through the four Law Commissions.

Under the first Law Commission headed by Thomas Babington Macaulay the Indian Penal Code was drafted and enforced in 1862. Later Contracts Act 1872, Evidence Act 1872, Code of Criminal Procedure 1898 and Code of Civil Procedure 1908, were also enforced by the commission in British India.

In the scope of criminal law, the East India Company continued with use of Islamic law with exception of Bombay Presidency where Hindu law was in practice in pre-colonial India. Thus, the Company apparently let Indians possession of their laws, and concurrently replaced some with English law that appeared to be both unjust as well as impolitic. The result was that the Indians enjoyed their own laws, but so cleansed and improved by the British who abolished those elements which were contrary to humanity, reason, and justice and similarized it more closely to the English law than the old Indian law. Thus, to quote Bernard Cohn,

“What had started with Warren Hastings and Sir William Jones as a search for the “ancient Indian constitution” ended up with what they had so much wanted to avoid – with English law as the law of India”

In 1864, there was a major reform of the judicial system. The reform abolished the Hindu and Muslim law officers in the various courts of India. The codification of law and consolidation of the court system was further intensified in the quarter century after the takeover of India by the Crown. While the law applied in the courts before 1860 was extremely varied by 1882 "there was virtually complete codification of all fields of commercial, criminal and procedural law" except the personal laws of Hindus and Muslims.

However, it must be noted that during British colonialism all parts of India were not under the direct rule of the British. During British colonial rule there were in fact two India: The British India and the princely India. The later, consisting of a third of the Indian subcontinent, were ruled by the native princes and constituted
a relatively autonomous domain. In these princely states sometimes, progressive legislations were introduced especially in the domains of family and personal laws. During colonialism Hindus and Muslims were governed by their respective personal laws which were gender-biased and discriminatory towards women but British rulers did not want to interfere in these personal laws. But rulers of princely states undertook some steps to redress such gender-oppressive personal laws.

The English Orientalists were supportive of adhering surviving Indian law prevailing to a degree in India and revival of ‘ancient Indian constitution’, thus components of this law were continuously added into the constitution. Any endeavour to mess with nearby custom would have brought on a hullabaloo and to the English, this was not worth the trouble. British Imperial Strategy for India favoured Orientalism as a technique for developing good relations with the natives—until the 1820s when the influence of "anglicists" such as Thomas Babington Macaulay and John Stuart Mill led to the promotion of Anglo-centric education.

Along these lines, the legal framework is still in shambles and the credit goes to both the Whiteman and the locals involved in totalitarianism. Regarding the question of the extent of application of British law in India, Warren Hastings was in favour of keeping to more local law.

Muslim law of the 18th century was more tolerant and humane than English law. The English were horrified at the Muslim decree of amputating a thief’s hand, but in England at the time, there were 150 offences punishable by death. One of the most positive legislations passed by the British is seen as the ban of Suttee in India. Warren Hasting and Lord Cornwallis frequently condemned the rule of the Mohammedan Criminal Law exercised by the Mughals and whenever they got any opportunity, they introduced changes in it.

English legal system has a deep rooting in Pakistan’s legal system since it lays down the principles of administering justice. And gives guidelines and concepts including writs like, habeas corpus, mandamus, prohibition, quo warranto, certiorari and ex post facto (no one should be punished for a crime not previously defined in law).
In Pakistan, neither judiciary nor parliament has evolved as such to cater socio-economic justice and rightful conditions due to continuous interventions of military coups and autocratic administrative patterns. Interestingly the latter two are usually justified through Dicey’s perspective of ‘executive prerogative’ and ‘doctrine of state necessity’ which he had evolved in British model as a last resort to protect realm against any unusual perils.

“Notions like constitutional validity and constitutional supremacy is alien to the classic positivist jurisprudence as prevail in the Indo-Pak legal corpus. (Tariq, 2016)”

Much of chaos in our legislative system is also because of our shift in imperialism from British to Islamicization to American jurisprudence.

“As fallout of an incompatibility between English and American jurisprudential traditions an administrative penology under the auspicious of colonial administrative patterns prevails in Pakistan. (Tariq, 2016)”

In Pakistan the practiced constitution and legal system is basically an evolution of English Legal System which retaining its true spirit of incorporating the norms of the locals has evolved quite distinctly from the evolution course it has taken in its native land (England) hence now after almost seventy years it seems as if the law practiced in United Kingdom is separate from the law practiced in Pakistan. However, the traces of evolution in the corridors of time show that both the laws belong to the same ancestor but have varied due to adaptation with the local environment quite similarly as to how an organism might evolve biologically over time when it migrates to two almost opposite places.

Though the Britishers only enforced their norms through law and schooling but its impact was long-lasting and deep-rooted amongst the young natives. Who gradually and unnoticeably started to believe that if their speaking skills, style, norms and education matched the Britishers (Angraiz in local terms) they will be looked upon with more respect and will seem to belong to a well-established, progressive and posh family. It is because of this ideology that many educated Pakistanis prefer not just to study abroad but also settle outside of Pakistan and start their families there which is causing “brain drain” here. Our educational
standards are judged by our competency in the English language and our professional groundings are judged by our ability to enter a foreign job market.

Thus, the British rule still has a sway on us and we still unconsciously see them as our masters/ or a better race than us in terms of looks, language, traditions clothing style and hobbies.

Even the current architectural format of Pakistani buildings is inspired from British architecture as opposed to local designs and aesthetics specially regarding room aeration and lightening. Many of the botanical flowers and ferns that we see in Pakistan were introduced by Britishers which were than made part of the gardening aesthetics by the then influential Pakistanis to show-off their civilized family background and closeness of their ancestors to the former rulers.
References