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Revisiting Medico-Legal Discourse on Insanity Defence under the Era of Nizamut Adawlut in Colonial Bengal

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ABSTRACT

Under British regime, Bengal being the place of culture and heritage had always been considered a centre of legal administration. Even before the colonial era, the shadow of modern thoughts and advanced theories in legal field started to be prominent in the undivided Bengal. History speaks very loudly that the age-old culture in socio-legal aspect was profound and rich in the soil of Bengal. A semblance of different religion as well as different policies of different rulers had created an unparallel and unique legal atmosphere in Bengal, where the principles and finer values of old Hindu legal philosophy and Islamic legal jurisprudence were deep-rooted. While the East India Company came into the scene, very naturally, the presence of them had also made an impact in Bengal's legal culture. This research paper sticks its focal point on the specific issue of 'insanity defence' and its related medico-legal discourse in colonial Bengal during a particular period with a special reference to the Nizamut Adawlut. Basic research objective here is to explore the history and historicity related to insanity defence under the superior criminal court in colonial Bengal under pre-Indian Penal Code era. The exploration within a specific period of time is vital in the sense that the legal context related to non-compos mentis and insanity defence was chaotic at that time and after the coming into force, Section 84 had settled down all the chaos. Therefore, the legal analysis on this path during few years in Bengal will lead the readers to understand the entire process of evolution of insanity defence.

Keywords*: Colonial Bengal, Medico-legal discourse, Non-compos mentis, Insanity defence, Nizamut Adawlut.*

I. INTRODUCTION

With the advent of modernization, especially during the time when post-revolutionary enlightenment swayed over the socio-legal landscape of Europe especially in England and France, those values of enlightenment along with scientific approach forced the then judiciary for the reorientation of stances towards many new theories. Insanity, crime, penalty, criminal

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liability and the nexus amongst these four concepts had always been a key issue under the socio-cultural platform. Very naturally, its reorientation too was the part of the process. The impact of revolutionary and modern approach was not confined into the territory of Europe. From all perspectives, Bengal was the prime concern for the British rulers. It is noteworthy to mention that Bengal under the British regime especially during 19th century was considered as one of the prominent places in regard to modern and advanced legal administration. Under this broad facet of legal administration, judicial discourses as well as the legislative discourses both have always been vital parts. India especially Bengal during late 18th and early 19th century had also gone through renaissance in manifold areas including socio-legal periphery. During the stage of blooming, there had been plethora of examples in colonial Bengal where medico-legal issues came into a bright space. Out of them, many issues were related to insanity or unsoundness of mind. A minute study has revealed the historical facts that led towards the heavy existence of insanity driven culpability. As a consequence of this, the issue of medico-legal examinations or enquiries, the application of medical jurisprudence into criminal cases, became very important. As the focus of discussion in this research work is on colonial Bengal with special reference to the working of the Nizamut Adawlut in dealing with insanity defence, it is pertinent to discuss foremostly the evolution of the Nizamut Adawlut in Bengal and the related historical facts.

II. SITUATING THE BACKGROUND AND EVOLUTION OF NIZAMUT ADAWLUT IN BENGAL

From the strict sense of history, the colonial era had been started with the end of Battle of Plassey and ended with the beginning of India's long desired independence.[2] The year 1757 was remarkable in the pages of history book. The reason was that on and from this year, the East India Company started taking over all sectors under their control. As the last independent Nawab of Bengal was defeated and died in the above-mentioned battle, by the end of 1790s, there was hardly any existence of Nawab in Bengal who didn't became puppet in the hands of British rulers. The entire province of Bengal and its neighbouring territories were under the assertion of Bengal Presidency which was officially named as Presidency of Fort William. Moreover, Calcutta was made the capital of British territory of India in the year 1772.

After the battle of Plassey, few incidents are noteworthy to be mentioned on the outset of the background of the establishment of Nizamut Adawlut. One of them was the Battle of Buxar. The British India Company in the year 1764, at the Battle of Buxar, won the right of chief administrative body in Bengal for the purpose of collection of taxes on land. It is needless to

[2] FALI S. NARIMAN, INDIA'S LEGAL SYSTEM CAN IT BE SAVED? 10 (Penguin Books 2017).

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repeat that during that particular era, Bengal (undivided Bengal- Bangla, Bihar, Orissa) was the most populous territorial State in India as well as the largest territory. Moreover, Calcutta was considered as one of the most influential cities not only in India but also in the world where the British reigned. Swiftly, the focus should be moved on the tenure of Warren Hastings. Being the Governor of Bengal, he started his journey from the year 1772.[3] Remarkably, the transformation from rigid bureaucratic governance to a systematic tax oriented administrative body had been prominently seen. Especially, during his tenure, Committee of Revenue had been established and Mughal Administrators had been replaced by Employees of East India Company. Apart from the above-mentioned transformations, a pertinent centralization in justice delivery mechanism had also been occurred during his tenure. The split between civil and criminal courts was done. In Civil courts (Diwani Adawluts) Diwan was the head while in Criminal Courts (Faujdari Adawluts) the head was the Judge (Faujdar). This is how, in both the sectors related to tax and litigation, the East India Company took the charge from the hands of Mughal. Under his administrative plan, he had divided the territory of undivided Bengal into different districts. Each district had its court. Along with the establishments of Mufussil Diwani Adalat and Small Cause Adalat and Sadar Diwani Adalat, the Nizamut Adawlut had also been done. The Nizamut Adawlut was the institute of criminal court. The structure of Nizamut Adawlut was basically classified into two forms, namely, the Mofussil Nizamut Adawlut and Sadar Nizamut Adawlut. Sadar Nizamut Adawlut was not the court of appeal. It was the only court which could pass death sentence. It was the superior criminal court of the entire territory. Sadar Nizamut Adawlut was consisted of Indian Judge assisted by three moulavis, chief mufti and chief kazi. With the advice of the Governor, the Nawab appointed those persons. Being the head of Nizamut, the Nawab's signature was essential in case of giving capital punishment. Over all supervision was made by the Governor. After the two years of its establishment i.e., in the year 1774, the Sadar Nizamut Adalat was shifted to Murshidabad from Calcutta with the purpose of avoiding any conflict for the establishment of Supreme Court of Judicature at Calcutta as Court of Record by the Letters of Patent.[4] Moreover, with the passing of the Indian High Courts Act 1861, Supreme Court of Calcutta, Madras and Bombay were abolished and High Courts were established. Even before this, the Nizamut Adalat was also abolished by the Mutiny (Indian Mutiny of 1857) and all the powers were transferred to the newly established High Court of Calcutta. As the entire focus of this research work is on the colonial Bengal, it is pertinent to note that the dual judicature system had been followed there. There were courts of

[3] FALI S. NARIMAN, *supra* note 3, at 11.
[4] HISTORY- SUPREME COURT OF INDIA 2, https://main.sci.gov.in. (last visited Dec. 27, 2024).

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the British crown prevalent in the three presidency towns including Calcutta. Outside the presidency town, in Mufassil, there were company's courts i.e., the courts of East India Company. For hindu, hindu laws were there and for mulsim, mulsim laws were prevalent. With the advent of Indian High Courts Act, 1861, dual judicature had been abolished.[5]

III. DISCOURSE ON *NON-COMPOS MENTIS* UNDER NIZAMUT ADAWLUT BEFORE 1830

'Non compos mentis' is a term which is deep rooted in Roman origin. Ethically and legally, it has its basis. '*Non compos mentis*' is equally applied in civil litigation as well as in criminal proceeding. The very phrase non compos mentis does not imply only 'mental maladies', it does imply the concept of partial or total absence of reason either for idiocy which might happen since birth or as a consequence of any illness, grief or accident. It has been rightly said that there are different kinds of variations and modifications in regard to lunacy or insanity. Along with this, there exists degree of reason or parameter of rationality in every individual. In different occasion, in different cases, the Nizamut Adawlut had laid down its opinion in different ways. An attempt has been made through this research work to provide most important views, observations and initiatives under the era of Nizamut Adawlut in a comprehensive manner. For the sake of lucid understanding, the entire era of Nizamut Adawlut is classified into two phases. Firstly, under this part, discourse on pre-1830s has been discussed and on the next part, post-1830s era has been analysed.

Approximately during 1790s, the recognition of insane in society and the acknowledgment of insanity in criminal proceedings were institutionalized in colonial Bengal through two different ways. Firstly, various mental asylums had been established. So that insane people in society especially those who were considered as 'vagabond', 'destitute' etc they were sheltered under those asylums. Moreover, the under-trial prisoners who suffered from insanity they were also sheltered as well as treated under those homes. Secondly, distinction between ordinary madness or mental infirmity and insanity causing exemption or immunity in criminal proceeding had been started taking attention in legal discussion. In both the issues, collaboration between legal men and medical men had been seen.

It was seriously felt by the legal men that without the involvement of medical science, this issue would not be settled. Even at that time also, a mere suspect to the existence of insanity in the accused person led towards the employment of medical enquiry by the colonial courts of law. With the purpose of incorporating certain medical rules related to modern psychiatry, the then

[5] HYDEBOOKS BEFORE THE COURT: PRIOR LEGAL STRUCTURES IN BENGAL https://hydebooks.njit.edu (last visited Dec. 21, 2024).

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Governor General in Council made few enactments passed as well as amended in between 1814 to 1860 especially on those matters where the need was felt that the opinion of medical professionals should be accompanied.[6]

As the time revolves around, the one of the orders passed by the Nizamut Adawlut in Bengal provided that if any prisoner showed the muteness or the symptoms of mental infirmities must be examined by the medical man or doctor, called as 'Surgeon', who was supposed to be a part of Indian Medical Service.[7] This examination had to be done to ascertain the existence of insanity in a definite manner. The muteness or unresponsiveness during the proceeding might be caused by any kind of impediments in speech or mental dysfunction. Report of surgeon would also highlight such cause and effect. It is noteworthy to mention in this context that, during this period, the concept of 'expert evidence' was not very popular. That was why, the opinion of medical professional above-mentioned was considered as evidence from witness not as 'expert testimony'. With the progress of time, this kind of engagement by the medical professionals in criminal proceedings in colonial Bengal became more prominent. It is also noteworthy to further mention that there were two other legislative actions by the Nizamut Adawlut provided an instruction to the lower courts to send the under-trial prisoners to the asylum if the court observed that the under-trial prisoner was not fit for trial or any suspicion on insanity emerged.[8] Regulation IV of 1822 where specifically u/s 4, it had been laid down the rule or the procedure to be followed by the judge of the court if it appeared before the court that the accused went mad or exhibited any symptom of lunacy or insanity subsequent to the commission of the offence and prior to the conviction. Apart from section 4 of this Regulation, there existed another important provision i.e., section 7 of the same Regulation which laid down the discretionary powers of Nizamut Adawlut in this regard. Before this, the Regulation XVII of 1817 was also very important in regard to resolving few issues of insanity. However, 1822 Regulation was far more concise and detailed from the perspective of implementation.[9]

The first noteworthy case related to this topic of 'insanity defence' was Bhuwan Singh. In this case, the accused was convicted of a charge of wounding six individuals. The plea of insanity as a defence had been raised. However, it had been overruled by the court. The accused was

[6] Sayantan Bose, *Chasms Of 'Perfect Chaos': Medico-Legal Codifications of Criminal Insanity In Colonial Bengal 1814-1860*, 10(2) INT'L J. OF SOCIAL SCIENCE RESEARCH. 130, 132(2022).
[7] Circular Order No. 137 Nizamut Adawlut, 1814.
[8] Regulation IV of 1822 and the Circular Order No. 307 of 1825.
[9] WILLIAM H. MORLEY, AN ANALYTICAL DIGEST OF ALL THE REPORTED CASES DECIDED IN THE SUPREME COURTS OF JUDICATURE IN INDIA IN THE COURTS OF THE HON. EAST-INDIA COMPANY, AND ON APPEAL FROM INDIA BY HER MAJESTY IN COUNCIL WITH ILLUSTRATIVE AND EXPLANATORY NOTES CONTAINING THE CASES TO THE END OF THE YEAR 1850 VOL 1 152 (London, Ostell and Lepage Calcutta 1850).

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convicted and sentenced to imprisonment for life. It had been referred in this case and many other cases that the offences like culpable homicide, grevious hurt, maiming etc., the suspicion of the existence of mental infirmity in the accused would disrupt the rules of *kias* or *qiyas* and *diyat*. Under the Islamic jurisprudence, these two terms represented the ideas of equal penalty for the offence committed and damages payable to the victim respectively. That means, if there was only a mere suspicion existed in regard to the insanity or lunacy it did affect the principles of *kias* and *diyat*. If the offence was related to any of the afore-mentioned category and there was a suspicion on the presence of defective mind or mental malady, the accused would not receive similar kind of punishment as well as the compensation would not be payable to the victim or the legal heirs of the victim. That means a clear exemption or immunity could be availed by the accused. However, it had also been mentioned that even if the acquittal had been granted, the imprisonment could not be avoided as the accused seemed to a suspected insane. The imprisonment in those cases would be treated as a protection to the society at large.[10]

In this context, it is noteworthy to mention the case of Ajodhya Prasad v. Zora in the year 1821 where it had been stressed in the proceeding itself that how the attitude or the behaviour of the accused or the under-trial prisoner was considered very crucial in making a decision. Here, in this case, the accused while in custody used to eat ashes from the filth from ground. The report made by the medical surgeon was considered as prime piece of testimony in the case.[11] The case of Govt. v. Lal Khan in the year 1823, where the circumstantial evidences were inconclusive in nature and the presiding officer had stressed on the fact that how it would be crucial factor whether the judiciary released a violent lunatic and for that purpose he had insisted for the re-examination of the accused. In regard to this specific case, a heavy discussion was made on the fact that before arriving on such conclusion that whether any accused was violent madman or not, how far the corroboration from medical testimonial was essential.[12] In another case, the accused was charged for beating a girl on her head by a stone. As a consequence to this, the girl was dead. Here, neither malice nor motive was proved. Shortly after the incident, the accused became mad. The court directed for his detention. Also, the court of law had opined that the absence of motive could not attract the fact of the presence of insanity in the offender. Mere symptoms of lunacy during the proceeding or trial would not be considered as sacrosanct for determining the presence of insanity in reality. The court of law had opined that the absence of motive could not attract the fact of the presence of insanity in the offender. Mere symptoms

[10] Govt. v. Bhuwun Singh, 1st April, 1818, 1 N.A. Rep. 357.
[11] W. H MACNAGHTEN, REPORTS OF CASES DETERMINED IN THE NIZAMAT ADAWLAT VOL 2, 12-13 (Baptist Mission Press Circular Road Calcutta 1827).
[12] *Id*. at 68-70.

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of lunacy during the proceeding or trial would not be considered as sacrosanct for determining the presence of insanity in reality.[13]

IV. DISCOURSE DURING POST-1830S

After 1830, a slight change had been located in regard to the role of the medical professionals as well as the nature of opinion given by them. Criminal courts started recognizing them as experts. Not only that, their observation on the mental conditions of the under-trial insane prisoner was considered almost indispensible. Apart from the above-mentioned circulars and orders, even after 1830s, there were several other orders and circulars which were vital in the sense that they were dealt by the matter of discharging of insane prisoners or lunatics from the mental asylums on the basis of the Govt.'s discretion. Amongst them Circular Orders Passed by the Nizamut Adawlut for the Lower and Western Provinces, Bengal Medical Regulations, Calcutta, 1851, Lunatics Act IV of 1849, The Legislative Acts of the Governor General of India in Council, 1834-1855 etc. were important.

Despite several judicial observations and legislative initiatives to the legal experts as well as medical professionals belonged to colonial Bengal, insanity in criminal proceeding as a valid defence seemed to be a problematic spectrum. Its implementation both in theory and practice, in excusing an offender from criminal liability as well as treating the offender as a patient when he didn't understand the meaning of the proceeding, was considered a complex field where the views from law and medical science both could work in a complementary and supplementary manner. The confabulations around this particular issue sometimes forced the experts from both the fields to create inadvertent complexity. A detailed analysis of cases from the Nizamut Adawlut has shown the fact that since then the issue of medical insanity and legal insanity and most importantly the weight of one over the other hold a very prominent space. At that time, the terms like 'legal insanity' or 'medical insanity' were not acknowledged and recognised. However, the similar concepts were very much there. Apart from the idea choosing legal insanity over the medical insanity, the crucial and most difficult task was to differentiate the real insanity or real lunatic from the unreal or fabricated one and the 'Idiot' from the 'harmful mad'.

In the year 1845, the Calcutta Nizamut Adawlut had made a proposal in the context of making a law to empower the Session Judge in district and sessions court as well as in Nizamut court in providing custody to the insane or lunatic acquitted person until the recovery by issuance of certificate by the proper authority. On the basis of such proposal, Act IV was passed in the year

[13] Arjoon Manjhee v. LukhunManjhee, 1st May, 1823, 2 N. A. 260.

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1849. Altogether, it was consisted of seven provisions. The sole purpose of this short enactment had been enshrined under its preamble. It ran in the following manner:

"*Whereas it is expedient to declare what unsoundness of mind excuses the commission of criminal acts, and to provide for the safe custody of the accused persons found to have committed such acts, but acquitted by 'reason of unsoundness of mind', it is enacted as follows….*"[14]

Apart from drafting the sole objective of such enactment very clearly, u/s 1 of this Act IV, the draftsmen attempted to explain the 'test of insanity'. Section 1 of this enactment laid down this test as "*No person who does an act which, if done by a person of unsound mind, unless the court or jury, as the case may be, in which, according to the constitution of the court, the power of conviction or acquittal is vested, shall find that by reason of unsoundness of mind, not willfully caused by himself, he was unconscious and incapable of knowing, at the time doing the said act, that he was doing an act forbidden by the law of the land*."[15]

Under post-1830s era, there were several cases where the plea of insanity was taken.[16] Few cases are noteworthy to be mentioned here. In the year of 1852, in the case of Govt. v. Tufuzzal Ali, the fact of case was such that the conduct of the accused was severely violent. Despite the ferocity of the incident and violent state of the accused, the concerned medical officer had opined that he was not insane. Later on, this case was referred to the Nizamut Adawlut which also reaffirmed its extraordinary and exceptional nature of violence. However, these did not trigger to the presence of insanity in the accused.[17] Apart from stereotype mental impairment like insanity or lunacy, idiocy etc., intoxication might impede the rationality or consciousness in any individual.[18] As there is a very close relationship between the concept of evaporating consciousness and rationality by intoxication and mental infirmity, a legitimate question, at that time, was raised that whether intoxication could be treated as a valid ground for non-compos mentis or not. However, since then, the court had been very careful in dealing with the cases of intoxication especially in dealing with the matters where the immunity had been given to the accused on the ground of intoxication and in resolving the close proximity with non-compos mentis. There were different cases under the Nizamut Adawlut where intoxication was

[14] TAPAS KUMAR BANERJEE, BACKGROUND TO INDIAN CRIMINAL LAW 119-120 (Orient Longmans Bombay 1963).
[15] K.M Sharma, *Defence of Insanity in Indian Criminal Law*,7, JILI, 325, 331-332 (1965).
[16] Bundhoo Dhangur v. Fago, 12.2.1849, 6, N.A. Rep. 107. Govt. v. Kelley Singh, 18.04.1849, 6 N.A. Rep. 144. Mt. Sookre v. Boodhun Bhooya 21.09.1849. 6 N.A. Rep. 163.
[17] Reports of Cases Determined in the Nizamut Adawlut 487 2(1) Calcutta (Thacker, Spink and Co., W. Thacker and Co. London. Thacker and Co., Forbes' Street, Bombay 1854).
[18] JAMES COWLES PRICHARD, A TREATIES ON INSANITY AND OTHER DISORDERS AFFECTING THE MIND 252 (London Sherwood, Gilbert, and Piper, Paternoster-Row 1835).

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considered as the immediate reason for mental disarrangement. In this context, it is worthy to mention the trial in the year 1845 where the civil surgeon had a strong observation on the point that unfettered use of drug might hamper the nervous system in any individual and the similar impact had occurred in this case with the accused who was from the district of Dinajpur (united/undivided Dinajpur).[19] Even fits of madness arose in case of continuous weed smoking. Different types of problem related to neuro-psychology might occur for intoxication.[20] Softening of brain might be caused by intoxication which could affect the common intellect of an individual.[21]

During 1850s, the general trend of courts under colonial Bengal, started thinking about framing and reframing few rudimentary questions which are summarized in the following manner:

1. During the very first diagnosis, whether the offender seemed to be insane
2. If yes, how was the nature and duration of that particular mental state
3. If it could be possible, for the doctor to form an opinion on the mental state of the accused, previous to the detention or the imprisonment
4. Detailed reasoning for the discharge of the accused.

These questions are compiled here after the analysis of several case laws. These questions were not the outcome of any specific case.

V. CONCLUSION

In the context of analyzing the evolution of insanity defence under Indian criminal justice delivery system, legal literatures always focus on the journey since the advent of Indian Penal Code, 1860, when colonial India for the first time got the uniform law to be relied on. A few literatures mention the draft of Indian Penal Code especially its provisions enshrined under section 66 and 67 where the principles related to insanity defence came into being.[22] Although in the year 1837, Sir Macaulay had drafted this, later on, these provisions didn't get intact shape in Indian Penal Code, 1860 u/s 84 (corresponding provision u/s 22 of Bharatiya Nyaya Sanhita, 2023).[23] However, the era of the Nizamut Adawlut being the superior court is the just prior era

[19] N. CHEVERS, A MANUAL OF MEDICAL JURISPRUDENCE FOR BENGAL AND THE NORTH-WESTERN PROVINCES 539-540 (Calcutta F. Carbery, Bengal Military Orphan Press 1856).
[20] *Id* at 547-548.
[21] Govt, vs. Kirtinarain Shaha, Reports of Cases Determined in the Nizamut Adawlut,416-423 3(2) Calcutta (Thacker, Spink and Co., W. Thacker and Co. London. Thacker and Co., Forbes' Street, Bombay 1855).
[22] "Section 66: Nothing is an offence which is done by a person in a state of idiocy.
Section 67: Nothing is an offence which is done by a person in consequence of being mad or delirious at the time of doing it."
[23] "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

of Indian Penal Code, 1860. Therefore, the analysis on the working of the Nizamut Adawlut on the issue of medico-legal discourse on insanity defence is evidently of prime consideration for tracing the developmental journey of insanity defence plea holistically. By the process of exploration over case laws and various regulations under the era of Nizamut Adawlut, it is quite transparent now that the issue of medico-legal discourse on insanity defence in criminal proceedings was very much relevant and got attention even at that time and few cases afore-mentioned had shown how the collaboration between legal science and medical science became effective in resolving the plea of insanity defence even at that stage when psychiatry and law both in colonial India especially in Bengal, were in crawling stage.

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