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The British Art of Colonialism in India: Subjugation and Division

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Abstract

This article utilizes a three-pronged analytical model to examine the mechanics of British colonialism and its socioeconomic and political consequences in India. Those three elements are divide and rule, colonial education, and British laws. The British took some reformative initiatives that ostensibly deserve appreciation such as the development of a predictable legal system, investment in infrastructure development, and education in the late nineteenth and mid-twentieth centuries. However, most colonial policies and reforms were against the will and welfare of the people of India. The British took away India's resources and introduced the English educational system to create an educated and elite buffer class for its own interests. It also introduced positivistic and predictable laws and repressive and discriminatory measures, including force, to control the natives and prevent anti-British agitation, protests, and armed uprisings in India. Although the consequences of British colonialism in India has been explored from various disciplines, the legacy of British colonialism to present day Bangladesh, India, and Pakistan has not been examined from the Peace and Conflict Studies (PACS) lens. Johan Galtung's (1990) violence triangle framework helps us to understand the different forms of colonial violence, and the need for positive peacebuilding in the post-colonial context. This paper argues that the current educational policy, the legal framework, and the ethno-religious-cultural diversity of today, exhibiting the structural, cultural, and direct violence, are a continuation of the legacy of the British Raj.

Keywords: *Peace and Conflict Studies; Indigenous Studies; Colonialism;*

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The British Art of Colonialism in India: Subjugation and Division

Aziz Rahman, Mohsin Ali, and Saad Khan

India became a Crown colony in 1876, yet the origins of British colonialism can be traced back to 1757 when the British navy and merchants first arrived in India (Lyer, 2010). During the 1760s, the British acquired India from Mughal emperor (Baber, 1996, p. 110). The demise of the Mughal empire and the consolidation of British colonial power resulted from the intersection of internal and external, historical, conjectural, and structural factors (Baber, 1996; Condos, 2016; DeSousa, 2008).

Colonialism refers to “the conquest and control of other people’s lands and goods” (Loomba, 1998, p. 2), the forceful seizure of local land and economy, and the reshuffling of non-capitalist economies to speed up European capitalism (Loomba, 1998, p. 20). Mercantilism and political and military control were the driving forces behind the British colonial expansion in the Indian subcontinent (Lloyd, 2008). Britain employed the military in territorial colonialism in India while it used maritime commercial colonialism in North America (Lloyd, 2008). According to Lloyd (2008), “The depth of the penetration of British culture varies widely from Ireland or the Caribbean through India to the virtual apartheid regimes of British Africa” (Lloyd, 2008, p. 390). With India’s defeat on June 23, 1757, in the *Battle of Plassey*, the Indian subcontinent remained colonized under the British Empire for the next two hundred years (Lyer, 2010).

The British took two-thirds of the sub-continent under direct administration and achieved their economic and political objectives (DeSousa, 2008). In 1664, the British East India Company (EIC) competed with the French *Compagnie des Indes Orientales* and tackled the escalation of factional conflicts, wars of succession, and rivalries among the regional Indian powers (Baber, 1996, p. 119). The British took full control of Bengal after the 1757 *Battle of Plassey* and the 1764 *Battle of Buxar*, collecting revenues, and establishing its colonial domination in India (Baber, 1996, p. 123; Chatterjee, 1993, p. 284). After the 1857 mutiny, the British Crown established direct rule—giving up the policy of annexation, as a token of recognition to curry favour with some native states during the mutiny. However, the colonial administration maintained its right to intervene in the internal affairs of those native states whose rulers were considered to be treacherous to the crown (Lyer, 2010). Under the treaties of accession, these native states joined Pakistan or India in 1948, and followed the same legal,

administrative, and political systems as the colonial power. However, as history shows, the aftermath of accession is still felt to this day in the case of Balochistan and Kashmir.

With the 1784 India Act, Britain established direct involvement in India, initially through bringing EICs activities under the British Parliament's direct supervision. The 1813 Charter implemented full colonial administration and separate territorial and commercial jurisdictions for the EIC (Baber, 1996; Chaudhary, 2009). In the meantime, the EIC appointed the British ambassador, established permanent factories, and entrenched British settlements in India. Britain's colonial governments controlled 680 "princely states" or "native states" through hereditary local kings that constituted about 45 percent of the total area of British India (excluding Myanmar and Sindh) (Lyer, 2010, p. 610), with 23 percent of the total population (Lyer, 2010, p. 694). By co-ordinating its economic and political objectives, Britain ruled India—one of the largest colonies in terms of land and population (Stokes, 1973).

The British codified laws in India in terms of the rationalization of law in the Weberian sense to ensure "order," "certainty," and "uniformity" (DeSousa, 2008, p. 68), as well as Bentham's liberal ideas of the rule of law and equality principles (Kolsky, 2010). These laws, while giving a sense of uniformity to the rule of law, were also used against the local populace to suppress uprisings. The British abolished the Mughal Court and removed three-quarters of the warlord aristocracy. They eliminated many local feudal landowners and established a British-styled bureaucracy whose new aristocrats tended to follow a British life style. The British introduced the English language, its underlying culture, literature, and philosophy to strengthen its power base, as well as an elite class who were biologically Indians but culturally English.

This article discusses British colonialism in India with a specific focus on three interlocking areas: governance, education, and the law, as well as the legacy of British colonialism in Bangladesh, India, and Pakistan, by applying Johan Galtung's (1990) violence triangle framework. In each section, some cases or examples are used. The elements of the British colonial model applied by Britain to its former colonies include control over land, divide and rule, apartheid laws, ethnocentrism, education and language, religious suppression, native inferiority, depoliticization, and trauma and inward violence (Byrne, Clarke, & Rahman, 2018; Rahman, Clarke, & Byrne, 2017). From the common elements of the British colonial model, this article, however, focuses on three elements: divide and rule, colonial education, and draconian law, since they are applicable to the colonization of the Indian subcontinent.

Violence, conflict, and peace are explored extensively by Galtung (1964, 1990, 1996). Each of these interlocking terms is conceptualized as a triangle that has been less explored in a postcolonial peacebuilding context. According to Galtung (1969, p. 168), "...violence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations" (p. 168). Violence is "the cause of the difference between the potential and the actual, between what could have been and what is" (p. 168). Violence can take three forms: a) direct (physical violence that includes murder, assault, rape, torture, hate crimes, ethnic violence); b) structural (that results from the uneven distribution of resources caused by the structural mechanisms—social, political, and economic); and c) cultural (that includes religion, language, symbols, ideology, etc.) (Byrne & Senehi, 2012, pp. 34–36; Reimer, Schmitz, Janke, & Matyok, 2015, p. 24). Structural, cultural, and direct violence are intricately interrelated so that one form leads to another and vice versa (Byrne & Senehi, 2012, p. 3). Direct violence may be utilized to generate and perpetuate structural violence (Galtung & Fischer, 2013). Cultural violence can be used to maintain and legitimize direct and structural violence (Galtung, 1990).

Conflicts are mostly viewed from the lens of direct violence, overlooking indirect and invisible (structural and cultural) violence (Galtung, 1964). According to Galtung (1996), conflict is a triadic construct in terms of equally important aspects: attitudes (A), behaviours (B), and contradictions (C) (p. 71, 72). "The basic contradiction/content of the conflict lies in the verticality of the structure, the repression (of freedom) in the political case and exploitation (of well-being) in the economic case" (Galtung, 1996, p. 93).

Galtung's (1969) notion of peace has two sides: negative and positive (pp. 167, 183). He notes that "peace" is "absence of violence" (pp. 168, 183). The absence of personal or direct violence is negative peace, and the absence of structural violence or social injustice is positive peace or social justice (pp. 172, 183). Peace means the social goals agreed by many, if not most citizens, and that peace is attainable (p. 167). Consequently, as Byrne, Clarke, and Rahman (2018) state, "inclusive and just societies must explore their past and address the legacy of colonialism that continues to fuel and drive conflict" (p. 14). It is argued in this paper that the British sustained their colonial presence in India through the application of divide and rule policy, colonial education, and discriminatory laws promoting direct, structural, and cultural

violence, as conceptualized by Galtung (1969, 1990). This paper further argues that this British colonial legacy impacting ethno-racial and religious minorities requires positive peacebuilding in the post-colonial context.

Divide and Rule

The British used the strategy of “divide and rule” to provoke hostility between Hindus and Muslims. The divide and rule policy used religion to drive a wedge between Indians which eventually resulted in the death and displacement of millions of people, as well as the destruction of key economic assets (Lyer, 2010; Tharoor, 2017).

The British realized that India was a land of sociocultural diversity, and to exploit and control the lands, it was imperative to incite Hindus against Muslims and the masses against the princes, as well as provoking one caste against the other to augment caste divisions and class disparity among the Hindu community. For example, the British denied the legitimacy of the Muslim Sultan Tipu’s rule and used propaganda to violate the Hindu constitution around landed property (Baber, 1996, p. 127).

In the years following Britain’s victory in the *Battle of Plassey*, the British initiated policies that undermined India’s national cohesion and provoked communal division (Tharoor, 2017). In the 1857 mutiny, Hindu and Muslim soldiers were unified around loyalty to the Mughal prince, which worried the British rulers who devised policies and programs to fracture relationships between Muslims and Hindus. For example, the British ousted Muslims from power and they naturally were hostile to the British who favored Hindus, which further alienated Muslims. The colonizer’s policies were intended to purge Muslims from India’s sociopolitical landscape since they strongly protested and challenged British imperial rules. The divide and rule policy can also be traced to the English education policy that included Hindus while excluding Muslims. As a result, Muslims lagged behind, and the British took no steps to bring Muslims into economic parity.

This divide and rule strategy also surfaced in appeasing the Muslim community when the colonizer became wary of Congress’ popularity, because of the latter’s highly nationalistic undertones. The British knew it was critical that they develop a good relationship with Muslims if the influence of the Indian National Congress was to be countered. Hence, the British reached out to Syed Ahmed Khan, who was later knighted and who believed that co-operation with the

British would benefit Muslims more than forging an alliance with Hindus in national agitation (Lewis, 1962). Britain's anti-Muslim attitudes waned in favour of initiating anti-Hindu policies.

Another example of the policy of divide and rule was the 1905 partition of Bengal which sought to suppress the spirit of the progressive intellectuals of Bengal (Asiatic Society of Bangladesh, 2003). The partition was an astute project intended to drive a wedge between Hindus and Muslims and stifle their national movement (Lewis, 1962). The British rulers tried to destroy Bengal's integration through its partition by separating the largely Muslim eastern areas from the largely Hindu western areas to undermine people's unity. The British objective was to rule and exploit people, but Lord Curzon viewed it as a policy to promote his administrative efficiency (Asiatic Society of Bangladesh, 2003).

The scars of the divide and rule policy are still evident in modern day India, Pakistan, and Bangladesh. The Hindu-Muslim hostility, spawned by the divide and rule policy, is still prevalent in these countries. The antagonism often takes a serious form that contributes to marginalizing Muslims in India and Hindus in Pakistan and Bangladesh. As such, Hindus and Muslims view each other with suspicion and feel discomfort in co-existing as they did for years before the advent of the British. Hindus do not feel safe and secure in Bangladesh, so they migrate to India. As a result, the Hindu population is declining in the country. According to the 1951 census report, Hindus were 22 percent of the population in Bangladesh; by 1974, this figure declined to 14 percent, and the last 2011 census records only 8.4 percent Hindus living in Bangladesh (Trivedi, 2016). This gradual declining figure suggests that Hindus migrate to India for a safer and better life. Hindus also leave Pakistan for India because of a lack of security, among other things. Like Hindus of Bangladesh and Pakistan, Muslims as a minority group are often persecuted and victimized in India. In recent years, Muslims have often been harassed and tortured and sometimes even lynched by radical Hindus on the suspicion of indulging in selling or buying beef (Chatterji & Babu, 2017; Suri, 2015). However, while the legacy of British colonialism in the form of divide and rule still exists, to hold the British solely responsible for present day affairs in the Indian sub-continent would be unfair. Politicians in India, Pakistan, and Bangladesh have used religion to fan the flames of hostility and to garner votes, a policy which has had disastrous consequences for the region.

The legacy of British colonialism continues implanting divide and rule policies against ethnic and religious minorities in post-colonial India today. In Bangladesh, ethnic violence in the

Chittagong Hill-Tracts (CHTs) can now be briefly explored to demonstrate postcolonial violence in Galtung's terms. The CHT has been the home of over eleven Indigenous communities who have been living there from at least the fifteenth century onwards (Adnan, 2004; Chakma, 2010; Levene, 1999; Schendel, 1992; Schendel, Mey, & Dewan, 2000) The tribalism policy of the British colonizers divided the people of the CHT into tribal/hill people (*paharis*) and the Bengalis, to ensure political control (divide and rule policy) and for economic exploitation of environmental resources, such as forests. The Pakistani and Bangladeshi governments have inherited a similar colonial mindset by continuation of land-grabbing, displacement, and imposed dominant education and language on CHT Indigenous communities (Adnan & Dastidar, 2011; Chakma, 2010; IWGIA, 2012; Rahman, 2015, 2017; Schendel et al., 2000). The hilly *Jumma* (Indigenous) nation has experienced rape, arson, assault, kidnapping, and hate violence, as well as military violence (Adnan, 2004; Chakma, 2010; Rahman, 2015). This is direct violence by Bengali settlers and the state against the Indigenous people. Many view the communal riots, rape, murder, and arson attacks as a mechanism for pressuring Indigenous families and communities to leave their traditional land (Chakma, 2010). Postcolonial economic and development policies, such as the Kapati Electric Dam, the massive demographic and Bengali resettlement scheme, illegal or forceful land-grabbing, forced displacement for infrastructure projects, and the imposition of dominant education and language on CHT Indigenous Peoples, affect their land rights, traditional practices, and cultures across indigenous communities in the CHT (Chowdhury, 2008, 2014; R. Datta, 2015; IWGIA, 2012; Partha, 2016; Rahman, 2015, 2017). These political and economic measures and structures create and perpetuate structural and cultural violence among the CHT peoples. Postcolonial nation-building and assimilation policies have not addressed their needs and welfare including the recognition of the cultural rights and identity needs of the *Jumma* nation (Adnan, 2004; Chakma, 2010; R. C. Roy, 2000). The Bengali settlers have changed the original Indigenous names of localities/settlements and disturbed the *Jumma* people's celebration of religious and cultural festivals/rituals as a result of the resettlement schemes (Partha, 2016; Schendel et al., 2000). These are examples of structural and cultural violence that led the CHT peoples to resort to armed insurgency.

The Government's 1997 peace treaty with the CHT peoples appears to be cosmetic as it has failed to make any significant progress in resolving the land disputes, their rights to self-recognition and cultural identity as *adibhasi* (Indigenous people). (Bashar, 2011; Dowlah, 2013;

P. Roy, 2016; The Daily Star, 2016). For example, after almost two decades of the peace accord, only 26 out of 72 clauses are implemented; the government has not made necessary laws to effect the rest of the clauses (P. Roy, 2016). The invisible and enduring structural and cultural violence has been continued through the Bengali resettlement politics, the non-withdrawal of security forces, and the establishment of infrastructures for economic, religious, and political purposes in the CHT (IWGIA, 2012; Larma, 2016; Rahman, 2015, 2017).

Colonial Education in India

Education in a country is closely related to its culture, as it provides “intergenerational knowledge transfer” (McGregor, 2010, p. 9). Prior to the British arrival, India’s education system was small in scale but well organized with Muslim children being schooled in *madrasas* and *maktabs*, and Hindu children being taught in *pathshalas* and *tols*. These institutions taught children Arabic, Persian, Sanskrit, theology, grammar, logic, law, mathematics, metaphysics, medicine, and astrology (Chopra, Puri, & Das, 2003; Nurullah & Naik, 1943). The British government, however, ignored this faith-based education system and replaced it with a British system—an action that affirms a colonial motive the British government intended to fulfill by introducing English education into India.

Initially, however, the British showed no interest in education and religious affairs of India (Chopra et al., 2003). The British believed that any interference in Indian education and religious matters might endanger its political and commercial enterprise (K. K. Datta, 1975), and in order to ensure its domination and control of India and to keep Hindus and Muslims quiescent, the British founded madrasas and colleges to provide an oriental education within the relevant cultural framework of the country. The founding of Alia Madrasa in 1780 by Warren Hastings (Governor-General from 1772 to 1785), and Sanskrit College in 1823 by Lord Amherst (Governor-General from 1823 to 1828) are two such examples. To advance oriental studies, Governor-General Lord Wellesley founded Lord Fort William College in 1800 so that English officials could learn local languages (Chopra et al., 2003).

British Liberals and Evangelicals, however, demanded the introduction of British education with English as the medium of instruction. The British formed a Committee of Public Instruction, which was composed of two opposing groups, namely the Anglicists and Orientalists. The Anglicists argued in favor of British education by denigrating indigenous education, while the Orientalists argued in favor of indigenous education. Thomas Babington

Macaulay—an influential member of the Governor-General’s Council—recommended introducing English education and the following comment made by Macaulay (1965) indicates the colonial enterprise of Britain:

We must at present do our best to form a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect. To that class, we may leave it to refine the vernacular dialects of the country, to enrich those dialects with terms of science borrowed from the Western nomenclature, and to render them by degrees’ fit vehicles for conveying knowledge to the great mass of the population. (Macaulay, 1965, p. 116)

Based on Macaulay’s recommendation, Lord William Bentinck (Governor-General from 1833 to 1835) introduced British education in India on March 7, 1835, and devised a filtration model of education, according to which English education was first imparted to the upper classes from whom it would then filter down to the masses (Chopra et al., 2003). Sir Charles Wood, the President of the Board of Council, who drafted a report that provided for a comprehensive education system, followed Macaulay. The report recommended that English should be the medium of instruction for higher education, and local vernaculars remain the medium of instruction in schools. The report also recommended the founding of universities in Kolkata, Bombay, and Madras as teachers’ training colleges, and grade schools—elementary schools, middle schools, and high schools. To implement the recommendations, universities were founded in Kolkata, Bombay, and Madras, and English was introduced as a medium of instruction in the Indian sub-continent’s higher education system.

Introducing a British-styled curriculum did not impact the lives of most Indians as the new system failed to bring about qualitative changes in the educational system, since the curriculum in this English model pushed learners into rote memorization (Whitehead, 2005). The same was also true for *madrasas* and *pathsalas* which did not encourage students to question and share their views. Moreover, English education was not universal as it was designed only for the Indian and British elites, and individuals from humbler backgrounds did not come under the purview of this education project. People who received English education viewed themselves as superior as compared to those who were not educated under this system, and as such, the education system divided people into two classes: a class which received a British education and a class which was deprived of that education. Consequently, this education system encouraged

class distinction and engendered antagonism among India's natives, thus weakening cohesion and contributing toward fulfilling the British vision of domination and exploitation. The introduction of English education in India was a key component of Britain's divide and rule policy for engendering hostility and creating divisions among the natives.

The English education system introduced by the British lacked uniformity and homogeneity, which left far reaching effects. For example, the British rulers introduced an English educational system in India, but they did not abolish the traditional madrasa educational system—resulting in the creation of a dual education system. The sustainment of a dual education system continues to engender unrest and tension in educational institutions to this day. For instance, the students studying in mainstream educational institutions view themselves to be better than those studying in madrasas. On the other hand, the students of madrasas claim that they have better knowledge about theology and logic than those studying in mainstream institutions. Thus, students of both streams treat each other with suspicion, hostility, and antagonism. Records indicate that madrasa students are more hostile and are more vulnerable to violent radicalization. While madrasas have existed for centuries, many argue that these seminaries are breeding grounds for militancy and radicalization (Rahman, 2016b; Rahman & Kashem, 2011; Riaz, 2008a, 2008b). The study of Ahmed (2009) shows that the madrasa students, indoctrinated with jihadi ideology during Zia-ul-Haq's time, were sent to Afghanistan to fight against Soviet occupiers. The study also reveals that the University of Nebraska-Omaha developed and designed textbooks to inspire and justify the "holy war" against the Soviets. Radicalization of madrasa students is, therefore, manufactured and manipulated.

Radicalization and extremism among youths with non-mainstream education are complex and multidimensional, and the underlying issues of, risk factors for, and pathways to, violent extremism among youths in Bangladesh need empirical research (Rahman, 2016a, 2018b; Riaz & Bastian, 2011). The radicalization of madrasa students came to the attention of law-enforcement and scholars during 2005-2006 (Rahman, 2016b; Riaz, 2008b), and the students with private university and English medium schools have been found radicalized afterwards (Rahman, 2016b, 2018b; Riaz, 2016). Students of non-mainstream schools (madrasas and private university/English medium schools) fall victim to radicalization (Rahman, 2016b, 2018b, Riaz, 2008b, 2016). The existing discourses suggest that madrasa students with poor economic background are more likely to be easily radicalized (BEI, 2011; Rahman, 2016b; Rahman &

Kashem, 2011; Riaz, 2008b, 2016). On the other hand, private university and/or English medium students from economically solvent families keep themselves aloof from traditional social life, and are more engaged in internet and social media that can easily recruit and purchase them for terrorist activities. Moreover, it should also be noted that graduates with mainstream education background (Bengali) are rarely radicalized and involved in terrorist activities (Rahman, 2016b; Riaz, 2008b). This different trend stems from mainstream education based on indigenous cultural values as compared to the non-mainstream education system that impedes students from being apart of society. Division and discrimination in education systems contribute to generating radicalism and extremism (Rahman & Kashem, 2011; Riaz, 2008b).

To further note, most employers prefer general (Bengali medium) and English medium students to madrasa students, and thus, the society sustains structural inequality. Remarkably, students of these two streams of institutions have a close similarity in a point: English medium students trained in the English education system advocate western values more than national values, and madrasa students trained in theology practice and plead Islamic values. Thus, they keep apart from each other and cannot unify with mainstream students. These employer perceptions, stereotypes, and negative attitudes of the mainstream society towards madrasa education, indicate the persistence of structural and cultural violence against students and graduates with non-mainstream graduates. The student community of the former British colony—India, Pakistan, and Bangladesh—have been experiencing this triadic division. As the students of the two non-mainstreams are not formally trained in national values, cultures, and traditions, they are less careful about nation and country—a tendency that leads them to radicalization and terrorism. Some key informant interviews suggest the negative attitudes of society toward madrasa education and the unfair treatment by employers who often decline to hire madrasa graduates lacking adequate skills compared to mainstream students (Rahman & Kashem, 2011). The profile of Islamist terrorists in Bangladesh indicates largely non-mainstream educational backgrounds (Rahman, 2016b; Riaz, 2016). To specify, on July 1, 2016, six youths attacked Holey Artisan Bakery (a bakery shop located in Dhaka), where they killed 29 innocent people, including 20 hostages (18 were foreigners), two police officers, and two staff (Fair & Abdallah, 2017, p. 3). Of the six terrorists, five were identified as private university students with English medium education backgrounds, and the last was schooled in a madrasa.

From the viewpoint of justice, Britain's education policy in India was not only an instrument of domination but also a weapon of oppression meted out to Indians. This education system can be compared to the banking education model (Freire, 2012), where education is viewed as a process that deposits knowledge into students. Teachers are the supreme authority in this system while students' pre-existing knowledge is ignored (Freire, 2012). "The more completely they accept the passive role imposed on them, the more they tend simply to adapt to the world as it is and to the fragmented view of reality deposited in them" (Freire, 2012, p. 73). Similarly, the British colonizers imparted British education, science, and philosophy to Indian learners. This indoctrination and oppression imposed on the colonized as an "undue strain inflicted upon pupils" who felt difficulty in expressing their ideas in English (Sundaram, 1946, p. 518).

An effective education must ensure the consent and participation of learners, teachers, and administrators. The British ignored this issue and did not research what students wanted from their education. The British viewed their system of education as superior, and to make superior Indian citizens, they introduced the Western education system to them. This model manufactured skilled clerks who helped the colonizer to collect revenue. Moreover, this new system of education destroyed local cultures and stifled people's political consciousness (DeSousa, 2008).

From a practical point of view, the British taught the Indian elite the English language to get services and benefits from them. By providing British education and culture, and the English language to the Indian elite and the masses, the British made them produce goods for European markets and also consume European goods (Pennycook, 1988). British education was for profit for the colonizers. This kind of profit mongering is reflected in Shakespeare's (1623) play *The Tempest*, where the colonizer Prospero confesses to Miranda that he (Prospero) must not disown Caliban: "We cannot miss him; he does make our fire, fetch in our wood, and serves in offices, that profit us..." (1.2.312-14). To explain, Caliban is one of the major characters in this play whose inherited island is usurped by colonizer Prospero who enslaves and uses him for his colonial enterprise. Like Prospero, the British colonizers made Indians Shakespeare's Calibans from whom they would get profit, cheap labor, and information about the wealth of India.

However, it can also be argued that learning the English language can be viewed from an empowerment perspective. The British taught Indians Western knowledge and the English

language, which eventually enabled them to be aware of their rights. It can be argued that, enriched with the power of knowledge from Western education, the Indians began to think of their freedom. They spoke about their independence, reclaimed their land, and finally after ninety years of complete British rule, they succeeded in taking back their land from the colonial masters.

In British India, the colonial education policy imposed English upon the local populace, subjugated local languages, and even created a buffer class to serve the colonists. This language subjugation is an integral component of the colonial power's structural and cultural violence as viewed by Galtung (1969, 1990) that still exists and affects the Indigenous communities in the Chittagong Hill Tracts (CHT) of Bangladesh. The dominant language (Bengali) was imposed by the state on the Indigenous people in Bangladesh. Indigenous languages are not recognized, and the Indigenous people's language rights to this day are not protected despite their demands for having mother tongue education and recognition in their schools (Partha, 2016; Yasmin, 2014). The same applies to ethnic and religious minorities in India and Pakistan, where to this day English is the official language in a majority of educational institutions and in the judicial system (Mahboob, 2017).

The British Raj and the Law

“The foundation of our empire in India rests on the principle of justice, and England retains its supremacy in India mainly by justice. Without justice we could not hold India for a moment” (Kolsky, 2010, p. 1). This section examines the legal system constructed by the British Raj to govern the Indian subcontinent. Laws used by the British to further their own interests are also examined and finally the impact of the “legal” colonial legacy is explored.

To begin, the codified English law administered by the courts was initially applied only to Europeans residing in the sub-continent. However, by 1773 it was proposed that in matters of marriage, inheritance, and other individual affairs, Islamic laws should be applied to Muslims, and Hindu laws to Hindus (Otter, 2012). While it is not clear whether this bifurcation of the law was proposed to introduce the policy of divide and rule, it had long lasting impacts that ultimately led to the division of the sub-continent based on religion.

During the initial 150 years of the British Raj, the colonial masters deferred to Indigenous and local laws for the resolution of disputes (Giunchi, 2010), even though at that stage Islamic law was applied to Muslims and Hindu Law to Hindus. This application of religious laws was

convenient for the British, since unlike some other British colonies, the Indian sub-continent already had codified religious decisions such as the *Fatawa-e-Alamigiri* (The Edicts of Emperor Alamgir), which could be relied upon by judges. Moreover, during this period, anything that was indigenous and local was romanticized, including religious texts and laws. To achieve the colonizer's goals, key religious texts such as the *Fatawa* and the *Hedaya* for Muslims, and the *Dharma Sastra* for Hindus were translated into English by William Jones, Neil Baillie, and Nathaniel Brassy Halhead, respectively (Giunchi, 2010).

This idealization of Indigenous Indian customs and laws was, however, short lived. For instance, the British philosopher James Mill considered Indigenous Indian laws to be “a disorderly compilation of loose, vague, stupid, or unintelligible quotations and maxims selected arbitrarily from book of law, book of devotion, and books of poetry; attended with a commentary which only adds to the absurdity and darkness; a farrago by which nothing is defined, nothing established” (Judd, 2004, p. 38).

The reason for the eventual disillusionment of the British with Indigenous religious laws was a result of their attempts to categorize the monolithic, fluid, and diverse religious identities within both Hinduism and Islam. For example, Islam can be broadly divided into two major sects: *Sunni'ism* and *Shi'ism*. In *Sunni'ism* itself, there are four different schools of thought, with each school of thought having its own sub-school. Hence, trying to lump the diversity of opinions produced by these scholars into one, single, uniform code would logically entail a failure of the system.

There is another way this change in attitude can, however, be looked at in a manner which is less judgmental of the British. Replacement of religious law with Western positivist law in the public sphere could have stemmed from the desire of the British to legitimize their rule over the sub-continent and to appear to be more accountable to the native population (Judd, 2004). For example, the codified law would turn the colonizers into “the prisoner of their own rhetoric,” which presumably was meant to create a “feel good effect” amongst the colonizer (Kolsky, 2010, p. 72). However, detractors of the “benign” colonization argument view the sub-continent as a laboratory for the British to experiment with their legal test-tubes before implementing them in Britain (Giunchi, 2010; Kolsky, 2010; Otter, 2012).

After the failed 1857 rebellion, the 1858 British India Act was introduced, which transferred the power to rule from the EIC to the British Crown directly. Moreover, a Secretary

of State for India was established, who would be counselled by a 15-member council (Judd, 2004). This was the first of many steps that would lead to a complete and formal control of the Crown over its Indian subjects.

The eventual British disdain for all Indigenous religious laws led to a complete purge of religion from criminal law and a partial purge from civil law. For example, in 1860 the Indian sub-continent was given a new set of laws, the Indian Penal Code. Among other things, the code outlawed adultery, fornication, and struck down corporal punishment for women in cases of adultery (Giunchi, 2010); all of these provisions were part of *Shariah* law. In addition, the British continued to treat women paternalistically by using the law. Section 506 (i) of the Indian Penal Code provided a jail term for up to three years for:

Whoever, (i) intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman. (The Indian Penal Code, 1860, s. 506 (i))

The provision is still part of the penal code of Bangladesh, India, and Pakistan that may be seen as either a sign of times or as a tool to emasculate men by elevating the status of women and placing them on a pedestal. However, as Justice Willy Brennan once aptly pointed out, “Our nation had had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of romantic paternalism, which in practical effect put women not on a pedestal, but in a cage” (Frontiero v. Richardson, 411 U.S. 677, 1973).

The key change, in the context of the laws came in 1862 with the enactment of the Code of Criminal Procedure. The Code prohibited Indian judges from issuing arrest warrants or indicting European or British individuals for crimes (Kolsky, 2010). Moreover, the code provided that only British born judges could try the cases of British born accused persons, and where the alleged crime carried the death penalty, the accused had the right to be tried by a jury, half of whom would consist of British-born persons (Kolsky, 2010). This was, indeed, quite the digression from the implementation of the “principle of justice” as was initially proclaimed by the British when they colonized India.

During 1900-1947, British “illegal laws” governed the Indians. By the turn of the century, it became clear that the British had adopted a carrot and stick policy as a tool of governance. On the one hand, they created the Indian Civil Services by which they would control

the Indians through Indians by appointing educated locals in the bureaucracy. On the other hand, the British were quite ruthless when it came to legislation and crimes. For instance, the 1901 Frontier Crimes Regulation (FCR) contended that individuals convicted of certain crimes, such as homosexuality, could be whipped; the jurisdiction of civil courts was barred; a whole tribe could be held responsible for the acts of an individual (their properties could be seized and demolished) and whole villages could be found accountable collectively (Ss. 6, 10, 21, 22, Frontier Crime Regulations 1901). The FCR was not the only draconian law enacted by the colonial masters. The Indian Press Act, for example, outlawed any publications which aimed to “bring into hatred or contempt his Majesty or the Government established by law in British India or the administration of justice in British India or any Native Prince or chief under the suzerainty of his Majesty...” (s. 4(1)(c) The Indian Press Act, 1910). As Otter (2012) points out, curtailment of civil liberties did not just stop with restrictions on the press. For instance, under the Prevention of Seditious Meetings Act, a district magistrate was given power to prohibit any public meeting: “...if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity” (s. 5, Prevention of Seditious Meetings Act, 1911). This legacy of the British Raj is still present in Pakistan wherein the government has the right to outlaw a public gathering of more than four individuals (S.144, Code of Criminal Procedure, 1898) and to subject speech:

...to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court.
(Article 19, Constitution of the Islamic Republic of Pakistan, 1973)

These laws are still operative even after seven decades of independence in these countries for political reasons or to oppress opponents/ dissidents.

While the British were repressing free speech and expression, they were also leaning toward power-sharing with the locals. Under the 1908-1909 Reforms Act, commonly known as the Minto-Morley reforms, Indians would be elected to the legislative councils, both in the capital and in the provinces. While the reforms did reserve power at the center for people nominated by the crown, they enabled the provinces to elect natives who would be in the majority (James, 1997). The reforms also gave Muslims the right to a separate electorate. Whether this move was meant to exacerbate the divide between Muslims and non-Muslims, or

whether it was an effort to recognize the demand of the All India Muslim League for a separate electorate, remains open to interpretation.

The watershed moment of draconian legislation leading to massive violence and the ultimate victory of the wretched of India can be traced back to the two Rowlatt Acts of 1918 and 1919, respectively. After WWI, the British, keeping in line with their earlier attitude towards free speech and assembly, enacted laws that enabled an accused person to be arrested without a warrant, detained indefinitely, and not allowed to confront her/his accuser(s) (Vohra, 2002). This law was arguably passed to suppress Gandhi's *satyagraha* movement and the *Khilafat* Movement. The recently enacted stricter laws didn't prevent people from protesting and eventually on April 13, 1919, the worst attack by British law enforcement on unarmed protestors occurred. A group of roughly 10,000 protestors were protesting in *Jallianwala Bagh*, and on the orders of the officer commanding, General Dyer, the walls of the garden were locked and the British Indian Army opened fire on unarmed citizens leading to the deaths of almost 400 people (Judd, 2004, pp. 131–132). The *Jallianwala Bagh* massacre eventually resulted in weakening the British position in India and arguably, it led to the enactment of the 1935 Government of India Act, which provided that provincial powers would be devolved to the elected legislatures, and the provinces could function autonomously. However, London still had the final word when it came to federal affairs (Judd, 2004).

The importance of the 1935 Government of India Act cannot be overemphasized. The 1937 elections held under the new Act resulted in a sweeping victory for the Indian National Congress, which alarmed the Muslim League as it had presumed that even if the British left, they would be replaced by a Hindu tyranny (Judd, 2004, p. 149). Moreover, the Act was the *de facto* Constitution in the newly formed state of Pakistan, and even after Pakistan enacted its own Constitution, many features of the Government of India Act were included in it. Both Pakistan and India followed the Westminster model of democracy as set out in the 1935 Act, but amended it to suit their own interests. For instance, both newly formed nation states were highly centralized, and the provinces were not granted powers for many years (Otter, 2012).

Several civil and procedural laws were enacted during the next decade so that the usual legal battles were over the devolution of powers in the Indian sub-continent, a tool employed by the British to hold onto the region. The most important of these plans was introduced in 1946 by the considerably weakened Raj and is known as the Cabinet Mission, headed by Sir Stafford

Cripps. He proposed that India would remain united in the form of an All-Indian Union that would be divided into three provincial governments: Bombay, Central Provinces, Madras, Orissa and the United Provinces predominantly populated by Hindus. The second cluster included Muslim majority regions such as Baluchistan, Khyber-Pukhtunkhwah, Punjab and Sindh. The final cluster included Bengal and Assam. While the provinces could not secede from the Union, they had the liberty to enact their own constitutions. The clusters along with the princely states could also elect a constituent assembly (James, 1997). While the Muslim League agreed to the plan, Nehru and the Indian National Congress rejected it, reinforcing the League's belief that Hindus would never be willing to share power with Muslims. Eventually, a year later, two independent nation states, India and Pakistan, joined the comity of nations.

While there is no doubt that the introduction of British positivist law changed the future of the Indian sub-continent, the legal legacy of the British Raj can be viewed both negatively and positively. On the negative side, it can be argued that by introducing Western law, the British destroyed the quasi-legal practices of native Indians that provided swift justice, which was acceptable to the local population. That system was replaced by a highly bureaucratic system that was mired in red tape. The counter to this argument is that those Indigenous systems/practices were at times unfair, especially when it came to women; the *Jirga* system and *Wani* are two such examples. Moreover, the laws introduced by British were flawed, yet they ultimately wrested power from the hands of the ruling monarchs. Furthermore, democracy on the subcontinent may be a flawed system, yet it was because of the Raj, and its legacy, that some 1.5 billion people can cast their votes to elect individuals who can represent their interests. Moreover, the banning of the Sati custom, the permit of widow marriage, and the passage of the 1910 Child Act that fixed the age of majority as 18, are some steps that deserve credit. While it can rightly be argued that the process of divide and rule continues to haunt the region for decades and has resulted in the deaths of hundreds of thousands of people, it is also true that the "rule of law," which is a legacy of the Raj, provides a modicum of security to individuals in establishing their justiciable and non-justiciable rights. Seen through this lens, the introduction of positivist law in the Indian subcontinent, whatever its intentions may have been, can be perceived as beneficial to the people in the long run.

As illustrated earlier, many of the British laws are draconian and apartheid, and were against the will of the natives of India. The 1862 Code of Criminal Procedure separated

jurisdictions of judges along racial lines. The FCR, the Indian Press Act, The Prevention of Seditious Meetings Act, the Rowlatt Act, the Public Safety Bill, and the Trade Dispute Bill were used to suppress and discipline Indians by the British, and their fellow Indians by elite Indians (DeSousa, 2008; Kolsky, 2010). These laws and legal structures provided vast powers to the rulers that fueled direct violence and perpetuated structural violence against Indian natives. The legacy of these colonial discriminatory laws has been present in today's criminal justice system. Bangladesh still inherits the penal code, criminal procedure code, police code, jail code, and evidence act, which were introduced by the British Raj (Khondaker, Kashem, & Rahman, 2018; Rahman, 2011; Rahman & Hossain, 2014; Senese & Kashem, 1997). After seventy years of independence, the rulers today perceive those systems to be useful tools in suppressing their own people, and these laws and legal structures have promoted both structural violence and direct violence as conceptualized by Galtung.

The United Nations Development Program (UNDP) has implemented a police reform project and facilitated the government's use of a draft ordinance during the non-party interim government in 2007 (Patil, 2012; Rahman, 2018a; UNDP Bangladesh, 2018). Yet no legislation has been enacted because of the resistance of the political elites, as they want to use the colonial law to oppress dissents and govern the people with immunity and impunity (Khondaker et al., 2018; Patil, 2012; Rahman, 2011, 2016b, 2018a; Rahman & Hossain, 2014). Finally, while the legacy of British colonialism under the guise of the law continues to haunt the Indian sub-continent, ultimately the responsibility to enact new laws that cater to the needs of indigenous people lies with the elected representatives of Bangladesh, India, and Pakistan.

Conclusion

Prior to British colonialism, previous conquerors could not control India completely. (Stokes, 1973). However, within four years of the *Plassey Battle*, the British conquest unprecedentedly broke Indian social structures, basic institutions, and the self-sufficient village system. The consequences of the *Battle of Plassey* influenced the rule and the modes of the British cultural contact in the subcontinent. According to Stokes (1973), "The peculiar multi-cellular character of Indian society made it both highly resistant to change in its social and cultural aspects and *ipso facto* subject to constant political change and to conquest from within-highly resistant to change" (Stokes, 1973, p. 122).

In the post-colonial period (1956-1987), British areas were found to have higher levels of investments in agriculture and production, but lower levels of investments in schools, roads, canals, and health centers (Lyer, 2010). The public goods in terms of the access to schools, health centers, and roads was minimal in areas that experienced British direct rule because of the heavy taxation and extraction of resources. Poor policies were installed in areas remote to the colonizers. On the other hand, areas that experienced indirect rule exhibited opposite developments. Native rulers had longer tenure to invest in public goods provision, than British administrators (Lyer, 2010). The native rulers' families played an important role in post-colonial politics by manipulating elections and controlling resources.

The British used India to supply raw materials and provide a rich market for Britain. The Permanent Settlement Act introduced in India undermined the land ownership of the peasants. British colonizers forced Indian cultivators to provide goods for export to Britain and the new railway system, and whilst being beneficial to the local population, it also served the economic interests of the colonial power (Das, 2011; Tharoor, 2017). Famines were deliberately created by the colonizers who forced the Indigenous population to seek relief work, such as road-building, so that goods could be transported from factories to ports and shipped to Britain (Tharoor 2017; Lazzaro, 2013).

The formulation of Anglo-Indian law toward having a unified and predictable modern legal system was meant to regulate economic, political, and social relations between individuals and groups. However, the British justified their codification of laws in India to show that they would guarantee the rule of law and justice, yet in reality, those laws were also used to discriminate between Indians and Europeans (DeSousa, 2008; Kolsky, 2005). The "Legal" legacy of the British Raj continues in India, Pakistan, and Bangladesh today. The Police Act, the Evidence Act, the Penal Code, the Jail Code, and many other laws have been inherited from the British (Khondaker et al., 2018; Rahman, 2011; Rahman & Hossain, 2014). While the Indian sub-continent has been independent for seventy years, the continued existence of these laws may depict the utility that sub-continental rulers may find in using them to govern their populations.

The British introduced Western education, the English language and culture, literature, and philosophy to strengthen their power in India. The British demonized Indians, viewing the natives as "incapable of understanding what was in their best interests" (DeSousa, 2008, p. 10).

They succeeded in creating an elite class that worked for the British and helped prolong colonial rule, and they provided a legacy that survives to this very day.

Unlike other colonies such as Canada, British rule in the Indian sub-continent can be viewed as being somewhat beneficial to the local populace, particularly in the fields of education and law. Learning the English language empowered the native population, and local elites (zamiders/babus) were very happy about this system. The positive “side effects” of British colonial rule also deserve appreciation for bringing about an impressive awakening in cultural, social, and scientific fields in India in the late 19th and mid-20th centuries. The colonial measures addressing Sati, widow remarriage, infanticide, witchcraft, child marriage, polygamy, and dowry had some remarkable effects. Because of social movements and significant roles played by individuals like Raja Ram Mohan Roy, many of these superstitions and iniquitous practices were removed from the society.

In India, the British colonizers faced several resistance and nationalist movements. Britain established institutions to justify and secure colonial rule, and used force to curb any challenges to its rule (Condos, 2016; DeSousa, 2008). Ultimately, these repressive measures empowered Gandhi’s nonviolent resistance against the British, which culminated in their departure in 1947, as divide and rule became divide and depart.

Despite some positive social transformative steps, the British policy of divide and rule fueled and nurtured conflict in the Kashmir valley, the port city of Karachi between Mohajirs and other ethnicities, and the Rohingya and Bihari ethnic conflicts in Bangladesh. These conflicts are a legacy of British colonialism that have claimed many lives and abused the human rights of hundreds of thousands of innocent people in the Indian subcontinent. Given the direct, structural, and cultural violence of colonial policies of divide and rule, education, and laws, the post-colonial states must not sustain the legacy of British colonial policy of forced assimilation, division, and subjugation by imposing the dominant language, religion, and culture against ethnic and religious minorities. For example, state policies in the CHT in the name of development, security, and environmental conservation must not create, and promote structural and cultural violence against the Indigenous communities. Positive peacebuilding approaches are imperative for addressing the ongoing religious divide and regional conflicts in Kashmir valley, Arakan State of Myanmar, and the Chittagong Hill Tracts (CHT) of Bangladesh, by granting the right of self-determination to the natives of this region.

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