BACKGROUND TO INDIAN CRIMINAL LAW (1990). By Tapas Kumar Banerjee. R. Cambray and Co. Pvt. Ltd., Calcutta. Pp. xx+402. Price Rs. 170: £20 : $30.

THERE ARE a number of erudite books on substantive criminal law and procedure in India. But there is hardly any work on the legal history of criminal law and procedure in India. It is very gratifying to read the book under review,[1] which is an excellent, erudite and scholarly research work on the legal history of substantive criminal law, criminal procedure and administration in India. The book is primarily based on the Ph. D. thesis submitted to the University of London in the year 1955. It was first published in the year 1963 and the present work is the reprint version of the first edition. The work is the result of painstaking research work pursued with careful and laborious examination and analysis of numerous old documents, regulations, records, and letters available in the India Office Library in London and other libraries. The book received excellent opinion and reviews from academics, jurists, lawyers and judges in India and abroad which in itself is sufficient testimony to the fact that the work is a treasure in the field of legal history of criminal law in India.

The main thesis which the author has tried to present is "that the Indian Penal Code did not, as is commonly believed to have been, come out of the head of its draftsman Macaulay, but was a co-ordination and methodisation of the principles and provisions laid down by the regulations and decisions of the highest courts in the land. The same is also true, more or less, about the Criminal Procedure Code."[2] This he has tried to prove by critically analysing the historical records primarily between 1773 to 1861 which period has been the field of study of the work.[3] He has taken substantial interest in the legal history of Bengal because he finds that "it is there that every new system of administration was first tested experimentally 'as if in a laboratory'. The result, if found favourable, was then transplanted to other parts of India; if not, it was abandoned, or reformed once again."[4]

The book has been divided into seven chapters including its Epilogue. The first chapter deals briefly with the general historical background of the advent of the Britishers as traders and how they gradually had the acquisition of Bengal by having an indirect rule by interfering in *nizamat*. The State of Bengal before the advent of Britishers was quite peaceful but

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1. Tapas Kumar Banerjee, *Background to Indian Criminal Law* (1990).
2. *Id.* at ix.
3. *Id.* at x.
4. *Ibid.*

at the time when they took over the administration there was a huge increase in crime.[5] While tracing the general causes of this increase he finds that by the middle of the 17th century the Mughal Empire's internal administration started deteriorating. He observes, "Company caravans were looted; company agents were murdered without hope of redress."[6] The problem of unemployment also became acute during the early years of the British rule because Meer Jafar disbanded 80,000 soldiers and the British also disbanded the remaining soldiers of the *nawab* in 1765.[7] Many *zamindars* were dispossesed of their land and sometimes reduced to beggary because of the crushing demand of land-revenue of Meer Kasim and the English Company.[8] At that time even the geography of the country was favourable to professional criminals.[9] Even drunkenness and allegations of the unchaste conduct of female relatives provoked the commission of murders.[10] Added to all these was famine in the year 1770 in which one-third of the Indian population was killed, compelling many survivors to become professional robbers.[11] There were some of the crimes only peculiar to India like *thagi*, *sati*, infanticide, sitting *dharna*, Even '*zihwa-bail*'. the sacrifice of one's own tongue and self-immolation at the '*churruck puja*' was among the repulsive practices prevalent at that time.[12]

In chapter two entitled 'The Substantive Criminal Law' the author gives a lucid account of the state of criminal law before the Britishers took over the reins from the Mughals and the steps the former took to modernise and change criminal law to satisfy the needs of administration and the wants of people in general. According to him the process of change started in the eighth decade of the eighteenth century and ended at the beginning of the seventh decade of the nineteenth century.[13] Before the advent of the British the penal law applicable to Indians was the Muhammedan law. The basis of the Muhammedan criminal law was the *Quran*. *Quranic* law was found to be inadequate and uncertain which led to the process of change in penal law in India. It was not at one stroke that the penal law was enacted but it gradually evolved through various regulations, enactments and statutes starting from the year 1772 when the existing penal law about dacoity was changed which provided for the execution of dacoits in their villages, the villagers to be fined and the families of the dacoits were to become slaves of the state.[14] Then from the year 1797, when the law of homicide was changed, gradually laws about *dharna*, perjury, treason,

5. *Id.* at 1-10.
6. *Id.* at 11.
7. *Id.* at 12-3.
8. *Id.* at 13.
9. *Id.* at 14.
10. *Id.* at 14-5.
11. *Id.* at 16.
12. *Id.* at 28.
13. *Id.* at 33-4.
14. *Id.* at 70.

infanticide, changes in the law of discretionary punishment, theft, transportation for life, burglary, preventive detention, *begari*, abolition of *sati*, slavery prohibition, breach of trust, against mutinous practice, and other offences affecting property were promulgated. And ultimately the process culminated with the drafting of the Indian Penal Code by Macaulay which was passed in 1860.[15]

The author opines very rightly and with authenticity that there were two guiding principles of the British administration in India, at the end of the eighteenth century and beginning of the nineteenth century, *viz.*, (*a*) to change the laws of the country as little as possible; and (*b*) to apply the maxim of justice, equity and good conscience, where and when it was necessary to change such laws. Under this process of change the English notion of crimes and punishment crept in into the structure of the Muhammedan law and the system was 'gradually anglicised.'[16]

Chapter III to VI deal with the historical process of change from Mughals to the modern British period with respect to the courts of criminal justice, structure and functions of the police and its administration, rule of criminal procedure for prosecution of criminals, and policy and types of punishments provided to the convicts of various crimes. During the Mughal period the criminal justice was administered by the *quadis*. But the British introduced the system of magistrates and district and sessions courts for the trial of criminal offences and ultimately the offices of *quadis* and *muftis* were abolished in the year 1832.[17] This system still forms a part of the present structure of the criminal courts in India.

For bringing improvement in police administration Lord Hastings and Lord Cornwallis introduced a number of significant reforms by promulgating a number of regulations between 1774 and 1805. These police regulations were consolidated between 1805 and 1817.[18] Ultimately in the year 1861 on the basis of the recommendations of the Police Commission the Act of 1861 was passed. It may be emphasised that the structure of the police as provided for in that Act is primarily the same even today. It was Lord Cornwallis who realised that for proper administration of justice a learned, honest, and well-regulated legal profession was necessary. Towards this end by a Regulation in 1793, for the first time, he created the regular and organised profession of lawyers or *vakeels* who were supposed to work under a government licence.[19]

In the Epilogue the author critically tries to summarise the contribution of the British during the period under study particularly with regard to the reforms introduced by Lord Hastings and Lord Cornwallis. It is

15. See, *id.* at 75-138.
16. *Id.* at 137.
17. *Id.* at 174.
18. See, *id.* at 188-211.
19. *Id.* at 241.

found that from the beginning the Britishers became so conspicuous by their honesty, integrity and impartial justice that many of the Chiefs of Bengal welcomed them to overthrow the existing government.[20] The author is of the view that the period from the time of Cornwallis to that of the passing of the Indian Penal Code, Criminal Procedure Code, and Indian High Courts Act, is one full of changes and modifications. But he considers that these changes were of detail rather than policy. These changes were essential for good administration from time to time.[21] It may however be mentioned that though Britishers did not come to India in the first instance for the good of the Indians nor the extension of British political power was primarily guided by such consideration, yet the result of changes and reforms in the criminal justice system and general administration brought with it the modern concept of 'justice' and 'rule of law' in India.[22]

On the whole it may be mentioned that the work is a welcome literature in the field of legal history of Indian criminal law. The publishers need to be congratulated for having published the book in a very attractive cover and flawless printing. The students and scholars of law and history would benefit immensely by reading this book. It will fruitfully serve as a useful reference work, guide and methodology for conducting historical and legal research in the field of criminal law.

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20. *Id.* at 372.
21. *Id.* at 378.
22. See, *ibid.*

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