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Chasms of 'Perfect Chaos': Medico-Legal Codifications of Criminal Insanity in Colonial Bengal, 1814–1860

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Abstract

The 19th century in British Bengal was a formative phase for 'modern' judicial administration. As integral part of the colonial enterprise, the function of criminal judicature not limited to disciplining an 'inferior' race, but also constructing a racial profile of an essentially Indian criminal. This entailed a larger program for the legal codification in the colonies which would put the entire imperial machinery in motion. One of the primary modes of such codification was through a burgeoning medico-legislation. As colonial authorities embarked on a detailed classification crime and criminality in Bengal, they were confronted with the problem of encoding criminal insanity. In a highly racist atmosphere, the Indian insane was sure to be viewed and categorized as everything negative with Indian biology. Touted as naturally prone to violent and often criminal fits of madness, the Indians in general were seen as predisposed to mental degeneration. The problem of distinguishing madness from common criminality in Bengal seemed a problem that had to be overcome by strict adherence to medical objectivity, especially modern psychiatry, but often the involvement of medical professionals in ascertaining criminal or dangerous madness led to a struggle between jurists and medical men in staking the ultimate claim over medico-legal space. This article argues that the medical professional in colonial Bengal, instead of being auxiliary to legal apparatus, shaped and re-shaped narratives of criminal insanity which went into the formulation of medico-legal codification.

1. Introduction

In September 1873, the trial of a certain Nabin Chandra Mukherjee of Serampore in the Hooghly district of British Bengal caused quite a stir. Nabin Chandra, a government employee, was accused of murdering his young wife Elokesi upon discovering her adulterous liaison with Madhav Chandra Giri, a *Mahant* or priest at the temple of Tarakeswar, a popular pilgrimage of the district. There were multiple witnesses who attested to both the affair and the consequent act of murder but despite such incriminating evidences, the jury recommended to acquit the man; while they did concede that Nabin was indeed guilty of murder, the jury found themselves sympathizing over an act that was done under extreme duress resulting in an 'unsound state of mind'. Emphasis was given on witness depositions which highlighted Nabin's "rage and grief" at the revelation of the affair, his "blood-shot eyes" and mannerisms betraying violent delirium as he "came out of the house, calling aloud that he had killed her". The Judge at the Session Court of Hooghly, underlining his dissension from the jury's verdict, referred the case to the higher court of justice for perusal. The justices of High Court agreed with the Sessions Judge and observed that the evidences presented in favour of 'unsoundness of mind' were not adequate and the conditions mentioned by the witnesses only amounted to a display of "great grief and passion", which in themselves did not extenuate the gravity of the crime. The question of sanity, the judges stated, required careful and detailed examination which was omitted in this case as "not a single medical witness, nor even the jailor who has had him the custody since the murder… has been called upon to speak as to the prisoner's mind being unsound". They repudiated the proposition that at the time of committing the crime, Nabin was devoid of his faculties to such an extent that rendered him "incapable of knowing the nature of the act' or that 'he was incapable of knowing that he was doing what was wrong or contrary to law". The Jury's verdict superseded, Nabin was declared sane and was duly convicted of wilful murder and sentenced to deportation (Note 1). The case stirred the sentiment of the *bhadrolok* intelligentsia who took an exception to the verdict pronounced, expressing compassion for Nabin Chandra and his status as the victim of the entire episode. Among the major newspapers and journals that had taken up Nabin Chandra's cause was *The Bengalee*; in an article published therein on 1st November 1873, the editors insisted that Nabin had killed his wife not out of a sense of fiendish retribution, but as a last ditch measure to rescue her from the clutches of the licentious *mahant*. Even if his actions did not betray a complete unawareness of legal repercussions—the editors opined—there was no doubt that Nabin had "lost the power of taking a rational view of his position' evidently because 'it didn't occur to him that the meanest policeman could safely place her beyond the influence of the powerful seducer". Offering a compassionate account of Nabin's plight as a humiliated husband under the grip of an insane impulse, the *bhadrolok* advocated in favour not of acquittal but of leniency, since Nabin's predicament could "overthrow the balance of even a strong intellect" (*The Bengalee*, November 1st, 1873).

Queen vs. Nabin Chandra Banerjee is perhaps the first criminal trial in colonial Bengal that received wide popular attention, signalling the commencement of an era marked by the growth of the public as opposed to the private sphere of social existence. Social historians

working on class consciousness, gender identities and even nationalism in colonial Bengal have identified it as a watershed event. For our purpose though, this infamous trial must be reconsidered from a different historical perspective altogether. The primary points around which Nabin's culpability rested were: a) whether he was of 'unsound mind' while committing the crime and more critically b) what could exactly be defined as 'unsoundness of mind', or to put it another way, what were the perceptible contours of such a proposition. Together, these two problems not only dominated the proceedings within the court, but also dictated the popular opinion outside the purview of judicial domain. Nabin's conduct during the act and immediately following it had not betrayed any signs of apparent 'madness', and as the High Court observed, no medical opinion could be procured to that effect either. In short, the jury and the judges sought to determine whether Nabin could be adjudged criminally insane or not. Setting aside the scandalous circumstances of the case and its cultural implications, the course of the trial itself was neither extraordinary nor unprecedented. Even as *Queen vs. Nabin Chandra Banerjee* stands out in the historical landscape of Bengal, it can be safely stated that the trial itself followed a proceeding that was common and recurring to say the least. Since the very first days of its judicial administration in Bengal, the colonial authorities had encountered criminal insanity as one of the most overwhelming medico-legal issues in colonial Bengal. A minute study of the criminal cases during the first half of the 19th century shows innumerable occasions where suspected insanity forced the colonial courts of criminal justice to employ en enquiry of the medico-legal nature. In their eagerness to dispense justice, the Governor-General-in-Council repeatedly passed and modified a slew of legislations between 1814 C.E. and 1860 C.E., appropriating modern psychiatric principles and more importantly the counsel of medical experts to define and regulate criminal insanity. While it was inarguably acknowledged that 'unsoundness of mind' warranted a reduction of penalty and even complete acquittal, the parameters for bestowing such legal immunity appeared dubious and highly contested among the jurists and the medical men. It is at this point of interaction between psychiatry and legislation that the study of criminal insanity in colonial Bengal must be situated, for while the judiciary was bent on dispensing justice to the criminally insane, it was imperative for colonial rule as a whole to come to terms with its own inherent contradictions and fallacies. As an essentially racist rule based on supposed inferiority of the Indian, in body and in mind, criminal insanity posed a peculiar problem to both the European jurists and their medical associates as the aspirations towards an objective and rational judicial ethic remained counterpoised to notions of racial degeneracy of the indigenous population. As many of the leading medico-legists of the colonial times asserted over the years, Indians could never be judged in isolation of their 'Indian-ness' which carried a connotation of mental and physical abomination. To put it simply, criminal jurisprudence operated in an environment where Indians were considered to be racially/biologically pre-disposed towards both madness and crime. It is in this cultural context that this article seeks to unveil, study and analyse the medico-legal discourses of criminal insanity in colonial Bengal; by making a nuanced reading of the legislative measures as well as the debates and discussions that unfolded inside the courtrooms, it attempts to locate criminal insanity within the broader patterns of the codification of crime and criminality in Bengal. The period in focus begins with the first instances of judicial engagements with crime and madness,

effectively as early as 1814 C.E. and ends with 1860 C.E., the year of the promulgation of the Indian Penal Code. In that context, the trial of Nabin Chandra Banerjee serves as an apogee; the questions raised on Nabin's purported insanity, the ground on which the verdict of the jury was overturned and the points highlighted by the popular media in a sympathetic remonstration had a long background in medico-legislation that must be revisited and carefully interpreted.

2. Situating the Context

In Europe, studies on medico-legal discourses of criminal insanity have come to acquire a crucial importance, especially during the 19th century where post-revolutionary Enlightenment values held sway over the socio-cultural landscape. The 19th century in England and France had opened with a revolution in the study of psychiatry which, coupled with Enlightenment values, forced the judiciary to re-orient their stances towards crime and insanity. Protracted wrangling between jurists and psychiatrists, both within and beyond courtroom proceedings, went on to redefine not only the perception of clinical insanity but also the legal parameters of a culpable act. One of the major by-products of this entire discourse was the creation of a distinct category which came to be known as the criminally insane; while it was grudgingly acknowledged by the jurists that prevailing insanity could impede with the process of rational thinking and action, criminal impulses came to be associated with recurring mental disorders of one form or the other. The other primary feature of this growing medico-legal perspective was the function of the medical professionals as expert witnesses in criminal trials. In their dogged pursuit of scientific objectivity, it was these psychiatrists and physicians who sought to ascribe a pathological design to all types of madness and crimes, effectively shaping the fundamental ideas of criminal insanity. As part of a larger transition that showcased significant re-figurations of extant social ideas under the aegis of modernism, medico-legal discourses of criminal insanity came to be closely linked to the modern body politic. Historians of Legal Medicine working on this era have identified an increasingly hegemonic nationalism in England and France that advocated stringent standards of health, both physical and mental. By developing pathological and neurological models of the ideal human organism, rational medicine sought to explain criminality and madness, in distinction from one another as well as in connection, as biological aberrations. Moreover, as Ruth Harris (1989) has argued, such divergence in *Belle Epoque* France was compared to racial degeneracy, invoking strict legal measures against the poorer and non-genteel sections of the society. While the common mad was a social irritant, the one with a criminal record was dangerous because of their proclivity to violence. On this note, the judiciary appeared to be in agreement with the proponents of new medical science. However, enormous differences arose on the definition, classification and legal treatment of such potentially criminal madmen. The initial engagement between the judiciary and the medical posse was in the form of external forays, as the Alienists (an epithet for psychiatrists) started questioning the quotidian perspectives of madness; in France, P. Pinel and his disciples, especially J.E.D. Esquirol, provided hints of a multifaceted classification of insanity, distinguishing common forms of intellectual diminution from other more malignant mental conditions. A crucial assertion was that *mania*, or anomalies in rational behaviour, could be displayed in different

shades and variations not always amounting to an overall lack of common sense or rationality; according to Pinel (1806), this state could be temporary or intermittent and was called partial mania or 'mania without delirium' (*manie sans delire*). In England, the model of complete insanity and partial insanity (*monomania*) was reconfigured into intellectual and moral insanity by James Cowles Prichard, who is considered one of the most influential theorists on criminal insanity. According to Cowles Prichard (1837, pp. 20–30), morally insane individuals possessed a mind "strangely perverted and depraved" which drove them to act, at times, against socially accepted norms of ethical behaviour, although it did not inhibit their power of overall reasoning or cognition to any considerable extent; in other words, they appeared quite sane in all other instances except the one that made them excitable. This was followed by *monomania*, a stage where such perversions were implanted over illusions or "erroneous convictions impressed upon the understanding, and giving rise to a partial aberration of judgement". Abstract theories incited more tangible neuro-physiological arguments during the following decades, especially General Paralysis of the Insane as propounded by A.L.J. Bayle which explained insanity as functional anomalies of the brain and the nervous system, having its own discernible pathology (Ruth Harris, 1989, pp. 26–27). The conception of human brain as an organ made up of separate functional units was refurbished into a neuro-physiological theory that construed human will as controlled reflexive behaviour. In other words, human consciousness was configured into morphological codes which determined everything from social behaviour to moral character of an individual (George Combe, 1860, pp. 180–263). These vanguards of the modern rationalism clamoured for a change not only in traditional therapeutics but also in the legal definition of madness. In effect, the Alienists demanded changes in criminal jurisprudence and also claimed an exclusive expertise in deciding insanity and consequent responsibility of a criminal act. Ruth Harris (1989) argues that in 19th century France, direct involvement of medical professionals in courtroom proceedings created an ambiguous atmosphere wherein the scientificity of medical science was ostensibly held in high regard even the medical men themselves were often belittled and ridiculed. This led to an oppositional and often contradictory development of regularizing medical counsel during criminal trials and offering judicial/legal rebuttal of their claims on the subject inside the courtrooms. In England, the psychiatrists' dogged insistence on supplanting legal interpretation with medical connotations triggered a protracted dispute with the jurists; Roger Smith (1981, pp. 124–125) has claimed that it was objectivity that remained the bone of contention between the jurists and the medical experts, the former reluctant to secede ground to the latter.

At the periphery of an expanding cultural hubris, colonial Bengal was one of the locales where such discourses were implanted. The expedient necessity of governance drove the colonial authorities to replicate the functioning of legal/judicial institutions even as pre-colonial criminal jurisprudence was largely retained. To put it very bluntly, the causal link between madness and capital crimes and the culpability of an act committed in the grip of insanity had formed the pivot of medico-legal enquiries since the days of the reorganization of judicial administration under Cornwallis. With the increasing frequency of purported madness leading to murders, assault and even rape, medical jurisprudence on the matter gradually took shape, comprising an array of legal Regulations and Acts, culminating finally

into a lengthy chapter (Section 84) in the Indian Penal Code of 1860. It is quite surprising then, that the scholarship on colonial India have largely ignored criminal insanity till date, even as medical jurisprudence has attracted an increasing number of studies of late. One of the major strains of this scholarship has been to assess the function of legal medicine in realizing colonial ideologies of rule. The entire governance was executed along racial fissures that segregated the superior 'white' European from the inferior dark Indian; in more than ways than one, colonial rule portrayed itself as strict masters disciplining a recalcitrant savage. Highly talked of as one of the elementary 'tools of empire', medical science in colonial Bengal was the cherished avant-garde of this European civilizing mission. Indeed, medical service had swiftly become the spearhead of Anglican-Utilitarian mission which sought to legitimize white supremacy through western scientific discourses and its institutional application (Anil Kumar, 1998; Deepak Kumar, 1995). Ishita Pande (2010, pp. 1−16) has noted that at the heart of this enterprise was a racist dogma that conceived Indian degeneracy in its corporeal forms, the tangible loci of colonial spatiality that subsumed not only the body but the minds of the Indians as well. Elizabeth Kolsky (2002) has argued that colonial judiciary in the 19th century had increasingly taken recourse to medical opinion as it was thought to be objective and infallible in determining criminal responsibility as well as the nuances of the act. Yet, a more detailed analysis would reveal that the beneath such apparent 'objectivity', medico-legal formulations on colonial crime and criminality traversed through overlapping layers of narratives. One of the most striking lacuna in the existing scholarship is in the treatment of medical evidence as part of criminal procedure; careful study of the available resources indicate that the medical professionals in colonial Bengal did not always see themselves as collaborators in colonial administration but the flag-bearers of a rational scientificity that was both hegemonic and sacrosanct. In their resolute desire to acclaim for themselves a medico-legal expertise similar to their counterparts in Europe, these medical servicemen in colonial Bengal actively resisted attempts by the colonial judiciary to dictate the terms of legal medicine, including that of criminal insanity. Any account on the medico-legal developments of Bengal cannot overlook the patterns of engagement between the colonial jurisdiction and its medical force.

Production of medico-legal knowledge on criminal insanity in colonial Bengal followed two pivotal routes, one closely linked to the other. The initial brushes with criminal insanity almost invariably came in the form of criminal proceedings and trials. The second stage unfolded in the public asylums of Bengal, large institutions where the mad was to be kept confined under observation. As early as 1797 C.E., the administration was thinking of creating a network of asylums to hold vagabonds, addicts, common lunatics and even religious fanatics who were considered to be nuisances to the public. Gradually, an arrangement of sending under-trial prisoners to the asylums were put in motion, with magistrates and judges of the courts of circuit empowered to submit a suspected madman with criminal disposition under the custody of the asylums. The entire infrastructure remained oriented around two core issues: a) laying down a *de facto* code of criminal procedure to deal with the criminally insane, and b) distinguishing criminal insanity from common madness. As the decades wore on, medical men became significantly involved in both. Circular Order No. 137 of 1814 issued by the *Nizamat Adalat* (apex court of criminal

judicature in Bengal before the establishment of the Calcutta High Court), had enabled the Courts of Circuits to have any prisoner "either standing mute", or "exhibiting symptoms of mental derangement" be examined by the medical Surgeon (employed by the EIC as part of the Indian Medical Service), in order to "ascertain the fact of his real insanity". In case the prisoners were unresponsive to the trial proceedings, the surgeon would also have to opine whether that is due to "obstinacy", impediment of speech or from "affection of the mind" (Note 2). It is important to note that this deposition was recorded as witness and not as evidence, specifying the exact capacity in which a medical person could engage in a legal matter. Over the following decades, the role of the medical professional was gradually made more fundamental to criminal procedure. Regulation IV of 1822 and Circular Order No. 307 of 1825 issued by the *Nizamat Adalat* deemed it expedient to stall the trial in cases of suspected insanity and directed the lower courts to place the criminally insane in public asylums till they were deemed fit for trial, certified to that effect by the authorized medical personnel of the asylums, usually a Civil Surgeon (Francis, 1850, pp. 19–31). These public asylums, generally referred to as Insane Hospitals, had been provided with their own set of rules by the year 1833, carefully stipulating the authority and jurisdiction of medical officers in charge of criminally insane prisoners (Note 3). By this time, a dual authority on criminal insanity had started taking shape; even as the medical officers in charge of the asylums were regarded as experts and for that matter indispensable in the entire procedure, the Magistrates and Session Judges were legally recognized as the only competent authorities in deciding the fate of an under-trial criminal lunatic. In the regulations of Insane Hospitals, it was stated in no uncertain terms that criminal lunatics would be detained in the asylums till the judicial authorities, who were allowed regular visitations, were satisfied as to the recovery of the patient. This was stressed in Act IV of 1849 which stipulated that the discharge of criminally insane from asylums were to take place as per the 'discretion' of the government (Note 4). In between 1814 and 1849 C.E., the *Nizamat Adalat* issued four separate Circular Orders on the matter and yet criminal insanity remained a thorn on the side of judicial administration. One of the chief reasons was the confusion in demarcating the contours of judicial authority in dealing with madmen accused of crimes. How was one to determine a dangerous madman from the other? In cases where the insane was accused of murder or assault, what would be the parameters of ascertaining guilt and subsequent conviction?

3. Courtroom Encounters

In the Preface of his *Manual of Medical Jurisprudence*, the first and perhaps the most celebrated work on Medical Jurisprudence in the history of colonial Bengal, Norman Chevers (1856, p. 5) opened the section titled *Criminal Characteristics of the People of India* with the statement:

> It would probably be impossible to point to any races of men whose great crimes more distinctly emanate from and illustrate their national character, than is the case with those various classes of natives who inhabit the British possessions in India.

At a latter section in the same text, Chevers warned the prospective medical officer further:

> … trying must the task be to a young civil surgeon, upon whose fiat depends the life or

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> death of a native… in whose mind a perfect chaos of absurd superstitions stands in the place of imagination…in whom the faculties of cunning…exist in their fullest and most active development (p. 533).

The sense of swift translatability existing between racial identity, criminality and insanity is almost unmistakable in these statements; for Chevers, and for many of his peers, the propensity to descend into mindless crime seemed innate to 'Indian-ness', an aspect that dominated his medico legal perceptions. Thus, in a colonial context, both criminality and insanity as forms of social divergence remained firmly implanted within the womb of a structured and perpetual process of racial alienation. In other words, the codification of criminal insanity in Bengal was encapsulated within a larger racial profiling that was part and parcel of the colonial rule. Chevers, who later became the Principal of the Calcutta Medical College and remain one of the most decorated medical officers ever to serve the *Raj*, made it evident in the preface of his work that it was the peculiar medico-legal experiences during his tenure that had inspired him to write a treatise on the typical features of 'Indian' criminality. Similar arguments resonated in the writings of Alfred Swain Taylor (1850), one of the pioneers of medical jurisprudence in England, who had argued that moral degeneracy in an individual would have to be invariably caused by some sort intellectual impairment, making all forms of insanity intellectual insanity, whether it be categorized as *dementia, monomania* or *idiocy*. Chevers, who had probably come under Taylor's influence as a young student at Glasgow, extended this very tenet of Taylor's argument to its logical extreme when he argued that the nefarious and perfidious character of the common Indian was but an epitome of their racial profile which in itself could explain diminution or disability of intellectual faculty, if not a total retardation (Note 5). Frequent brushes with criminal justice in his career had convinced Chevers that Indian crime was the result of unbridled passion or instinctive malice, both of which reflected a deep moral turpitude typical of the Indian race.

To the colonial jurists and medical men alike, criminal insanity presented a large spectrum of problematic behaviour displaying all the caprice of an exotic colonial mind. In their desperate attempt to locate the major hues on an obscure spectrum, these medico-legists inadvertently created a labyrinth of meandering confabulations around the subject. Records of trials at *Nizamat Adalat* show that the jurists grappled with the problem of distinguishing 'false' madness from true insanity as well as 'dangerous' madmen from harmless 'idiots'. At *Govt. v Lal Khan* in 1823, although the circumstantial evidence for the act of murder remained inconclusive, the officiating Judge of *Nizamat Adalat* W. Dorin insisted that the witnesses be re-examined to ensure that the judiciary was not releasing a 'dangerous madman' at large as the manner of the accused branded him an insane 'beyond doubt' (Note 6). At the same time, the jurists were also conscious to the precocity of arriving at such conclusions without medical accreditation. At *Arjun Manjhi v. Lakhan Manjhi* in 1823, Chief Judge W. Leycester noted that the absence of reasonable motive cannot serve as a presumption for insanity; even if the accused did show symptoms of mental derangement during trial, these could easily be feigned (Note 7). Attempts at finding a viable compromise between colonial anxiety and scientific rationale was futile as racial convictions of an erratic Indian psyche, the sort of which we have already discussed with relation to Chevers' medical jurisprudence, could

never be truly reconciled to European medico-legal values, making the entire exercise pull at opposite ends. As a result, medico-legislation throughout this period switched back and forth between mutually discordant and often contradictory application of tropes borrowed from European psychiatric practices. One of these was the obvious and perceptible physicality of madness. Chevers' discussion on criminal insanity in India revolved mostly around periodical outbursts of an inexplicable and brutal passion; following English and Portuguese travelogues of 18th century, Chevers described these periods as 'running amuck', a term that underscored the mindless murderous savagery of the inhabitants of Asia. The problem was that the dimensions or the extent of what was construed as 'normal' physical conduct was never laid out in any detail; the violence and malice in Indian criminals depicted so well by Chevers were common tropes of not only madness, but racial degeneration as well. In their eagerness to project Indians as both mad *and* racially decadent, colonial medico-legislation used physical tropes to substantiate as well as to deny the presence of credible insanity. At *Ajodhya Prasad v. Zora* in 1821, the medical Surgeon reported on the prisoner's 'love of solitude' while in custody, and how he would "eat ashes among other filth from the ground" (Note 8). Again, not all cases bore marks of such abject behaviour; as mentioned earlier, the *Nizamat Adalat* took care to ensure that an accused 'standing mute' during a trial must be subjected to medical examination. Even as the association between a deranged Indian mind and inexplicably erratic physical display appeared self-evident to the colonials, the recognition of abnormal physicality remained arbitrary. On most occasions, presence of profound physical symptoms of derangement even encouraged the court to eschew medical deposition altogether. At *Ram Mani Chung v. Radhakant Chung* in February 1825, despite the absence of the medical Surgeon in charge of the jail hospital, the accused was adjudged sane and duly convicted of murder as established by the testimonials of the Uncovenanted Indian doctor, three guards and three prisoners of the jail, all of whom opined that the prisoner had shown no signs of madness during his time in custody (Note 9). In almost all of the cases cited and those that follow, there appear recurring mentions of the brutality of the murders and an unmistakable sense of caprice on the part of the murderers. However, similar literary representations of physical aggression could and often did lead to completely opposite conclusions. Let us consider the details of the trial of *Tufuzzul Ali* in the April of 1852; the man had hacked his wife and infant child to death and pleaded that he had sufficient provocation as a result of his wife's alleged infidelity. The Session Judge duly reported that the prisoner appeared to have been in a violent state when apprehended and the ferocity of the crime was attested to by the medical examiner who found severe wounds on the victims. Insanity was assumed but the medical officer, sub-assistant Surgeon Nilmani Dutta, declared the prisoner sane. Dismissing this initial testimonial citing the "insufficient time or opportunity" the medical officer had in forming a viable opinion, the Session judge asked Dutta to re-appear before the Court where he had to reiterate his statement under cross examination. The case was referred to the *Nizamat Adalat* who observed that the murder was done with exceptional rancour and without sufficient excuse:

> The place and the hour of the murder preclude all idea of immediate cause of irritation. There does not appear to have been any quarrel between the prisoner and the deceased… He, however… cut her to pieces on the spot, in the room where she had slept with him

and her infant child (Note 10).

More than the crime itself, emphasis was given on the manner of the crime in this statement, expressing horror at the sheer cruelty of the act. In their confident affirmation on the sanity of the prisoner, the *Nizamat Adalat* insinuated that violent disposition in an Indian was no marker of madness.

One of the most complex medico-legal intrigues unfolded over pleas of intoxication. In medico-legislation, the term had come to include inebriety as well as abuse of opium, cannabis and hemp. It is important to note that tramps, vagabonds and religious mendicants engrossed in a perpetually drug-induced revelry had become one of the most identifiable tropes of an exotic orient. Memoirs and travelogues spoke frequently of the distasteful countenance and revolting practices of the *fakirs* and their penchant for all sorts of odious consumption (Rianne, 2012). Even among the more regular inhabitants, intemperance was reported to have been common, with drunken brawls and delirious tantrums occupying local administration (Graham, 1878, pp. 239–240). James H. Mills (2000) has noted that the records of the public asylums of Bengal displayed a ragtag assortment of habitual addicts and public miscreants who were incarcerated alongside the raving mad. As the singular most corrupting state that could flay the human mind and rob it off its rational capacities, intoxication could fetch mitigation of punishment and pleas to that effect were not uncommon either. However, jurists displayed an ambivalent attitude towards such pleas from time to time. While they acknowledged that intoxication could and usually did inhibit rationality in an individual, they would, more often than not, choose to treat the intoxicated as culpable criminals rather than *non-compos mentis*. At *Govt. v. Hussain Syrung* in 1853, the *Nizamat Adalat* observed that whereas “Intoxication, voluntarily caused, cannot of course excuse crime”, allowances could be made for instances where the accused was “scarcely…conscious of his acts” (Note 11). The judges were careful not to use the terms ‘insane’, but even vague references to ‘consciousness’ seemed to have placed inebriety in close medico-legal proximity to insanity. The key question was if intoxication could be a valid ground for declaring a person *non compos mentis*. The term had its roots in Roman legal ethic and was used both in criminal justice as well as civil legislation as a form of legal disenfranchisement. To put it simply, a *non-compos mentis* was a person who did not have the level of intelligence required to be punished or enjoy civil rights. According to Cowles Prichard, Roman law had traditionally laid down certain mental maladies which could cause unsoundness of mind, but in general the wider connotation of the term involved mental handicap which could “prevent a person performing correctly the duties of life, and of maintaining over himself those restraints which are necessary for the intercourse of society” (Prichard, p. 252). By Prichard’s own admission, the customary English jurisprudence offered less clarity on the matter; disavowing the Roman precedent of ‘mental maladies’ *per se*, the English legal code insisted on the ‘use of reason’, the complete or partial absence of which either since birth (as in the ‘idiots’) or as a result of “disease, grief, or other accident” could be labelled as *non-compos mentis*. Prichard went on to assert that such a classification was narrow and that it ignored ‘the various shades and modifications’ of idiocy or lunacy, which could dictate the degree of rationality or consciousness in an accused, of which intoxication

was undoubtedly one the most grey areas on this wide spectrum. He was of the opinion that intoxication could and did impede 'conscious' action; in fact, he considered it to be one of the most common physical causes of intellectual impairment among the English, other than ailments. Francis L. Beaufort echoed this opinion and included intoxication as one of the contributing factors to 'unsoundness of mind', although he hastened to add:

> if it be voluntary, it cannot excuse a man form the commission of any crime, but on the contrary must be considered as an aggravation of whatever he does amiss. Yet if a person by the unskillfulness of his physician, or the contrivance of his enemies, eat or drink such a thing as causes phrenzy, he is excused (Beaufort, p. 25).

Therefore, even as intoxicating oneself was not be legally condoned, it was acknowledged that wanton indulgence could inhibit consciousness and rational thinking in an individual, forcing him to commit a crime. At *Govt v. Bhagirathi and Bijuliah* in 1853, the confession of the murderers laid down in detail the act of crime which they had allegedly committed in a drunken state. The incident had taken place among the labourers of a tea estate in the Shibsagar district of Assam during a night of social gathering, and although it was clear that the act was carried out with precision and the body disposed of afterwards, the court decided to withheld a capital sentencing as the murderers were "excited by the consumption of excess liquor" and appeared "not to be aware of the crime they were committing" (Note 12). Of significance was the report of the Magistrate of Shibsagar who seemed to indicate that such behaviour was common among the people of Chota Nagpore from where the labourers hailed. In his *Medical Jurisprudence*, Chevers presented reports of several trials at the *Nizamat Adalat* and in the majority of these cases, intoxication was suspected as the immediate cause of temporary derangement in an individual. More importantly, such derangement was as much physiological as it was moral, often visible on the prisoners' countenance. Referring to a certain trial at the district of Dinajpur from 1845, Chevers highlighted the opinion of the civil surgeon Dr. Wilkie who believed that unrestrained use of drugs might have led to permanent damage of the prisoner's brain and nervous system, which was evident in the "suffusion of eyes, much cerebral excitement, and fever" (Chevers, 1856, pp. 539–540). In another report from Backergunge in 1853, Chevers pointed out the opinion of a certain Dr. Green who had claimed that the accused had developed "fits of madness" as a result of prolonged and continuous smoking of weed (Chevers, 1856, pp. 547–548). The transition from a moral interpretation of 'consciousness' and 'reason' to a neuro-physiological one was swift in Chevers' narrative and he switched back and forth between them during the entire length of his discussion. The dominant notion of congruity between insanity and neuro-physical disorders emphasized by the physiological school of thought would enable Chevers to establish intoxication as a viable causal link. In other words, his narrative composed a harmony between racist dogma and medical objectivity by weaving race, illness and clinical insanity into a single cultural fabric.

It appears that by 1853 the courts had decided on a set of rudimentary questionnaire to be put before the medical witnesses. These can be summarised as follows: a) whether or not the prisoner was insane during the first diagnosis b) if insane, what was the duration of that state and if there were any alterations during the spell of custody c) if the doctor could, on the

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basis of this evaluation, form an opinion on the state of the prisoner previous to his imprisonment and d) whether the reason for the discharge of the prisoner was a complete recovery or just enough to render further medical attention unnecessary (Note 13). The questions confirm Elizabeth Kolsky's assertions that the colonial judiciary was keen to avoid false or feigned insanity which encouraged them to take recourse to objective medical evidence. After all, as Roger Smith has argued, the genesis of the entire medico-legal discourse on criminal insanity flowed from the claim that such knowledge was objective and possible only through scientific traction. However, the overt binary inclination of this questionnaire was resisted by medical officers who resented such simplification of scientific objectivity. At *Govt v. Abul Hossein* in August 1853, the Civil Surgeon of Dhaka Dr. William Abbott Green was asked to explain why he considered the accused to be "quite insane"; the doctor's curt response, that "the evidence of madness in his first coming under my notice were quite clear to my mind in a variety of ways", betrays an unyielding defiance in face of judicial incursions into strictly medical space (Note 14). Occasionally, such resolute defence was replaced by an offensive foray to reclaim the entire medico-legal space. At *Govt v. Kirtinarayan Saha* in September 1853, the Civil Assistant Surgeon of Dhaka confounded the jurists when he claimed that the accused was suffering from a "softening of the brain" which could impair common intellect. The Session Judge tried to bring his answers back to a strict binary fold and asked him to repeat if the prisoner was sane or not, to which Dr. Skinner replied that the accused was "not necessarily insane, although tending that way" (Note 15). This refusal to let conventional legal practice infringe on what was construed as an essentially medical space became only more profound with time. At *Govt v. Bishun Chandra Baboo* in 1858, the Surgeon Dr. Cantor, in charge of Dullunda Asylum in colonial Calcutta, was asked to state the characteristics of insanity; the doctor's response was blunt:

> Your question is so vastly comprehensive that it would take me a very long time to answer it, and it would require a very much larger acquaintance with the subject than, I fancy, the counsel for the defence possesses of it, to enable him to understand my answer when given… (Note 16).

The increasing air of dogged confidence in medical men and their assumption of command over medico-legal matters also helped to revise the equation between them and the jurists. Whereas at the trial of Radhakant Chung in 1825 the judiciary had altogether ignored the necessity to record the opinion of a medically qualified officer, the trial of Bishun Chandra Baboo saw the courts acknowledge the instrumental role of medical evidence in earnest. Indeed, the growing sway of medical theories within medico-legal discourses became apparent when the Justice D.I. Money, in connection to the trial of Bishun Chandra Baboo, offered a highly a technical rebuttal of both Dr. Cantor's methods of evaluation and his convictions regarding the sanity of the criminal by referring to a number of authoritative treatises on the subject, including that of Alfred Swaine Taylor (Note 17).

4. Conclusion

This brings us back to where had begun: the trial of Nabin Chandra Banerjee. In their verdict, the judges of the High Court had evoked, almost verbatim, the clauses of Section 84 of the

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Indian Penal Code of 1860 (unamended) which stipulated that:

> 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 (Note 18).

The IPC had a long precedent embedded into English juridical discourses. Section 84 was, in essence, a reproduction of these tussles and deliberations that had been going on since the trial of James Hadfield which led to the subsequent promulgation of the Criminal Lunatics Act of 1800 C.E (Roger Smith). Responding to a set of questions put before them by the House of Lords in connection to the infamous trial of Daniel M'Naughten in 1843, the judges had contended that:

> … to establish a defence on the ground the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong (Note 19).

The questions and their answers came to constitute a code of criminal procedure that was followed in all subsequent trials involving suspected insanity. Commonly referred to as M'Naguhten Rules, the propositions provoked vehement opposition from the English Alienists who contended that such observation was woefully oblivious of new medical research, especially because of the specific treatment of phrases like 'defect of reason' or 'disease of the mind' as constant and concrete categories which belied modern scientific arguments (Roger Smith). In textual form at least, s. 84 was a direct emulation of the M'Maghten Rules; to be more specific, it replicated the answer of the English judges to the 4th question placed before them by the House of Lords'. There is an overwhelming sense of imposition within the moderate span of this sentence, betraying an attempt to displace pre-colonial anachronisms in favour of modern legal ethic. Undoubtedly, the very project of the IPC was propelled by the need to conform to utilitarian standards of governance and such swift disposal of prevalent legal customs was in accordance with a spirit so assiduously promoted by Thomas Babbington Macaulay (See Kolsky, 2005). However, closer inspection would reveal an appropriation of existing discourses rather than a complete disavowal. Let us recount some of the critical points that emerged out of the episode of Nabin Chandra. The judges' contention that Nabin never "showed any symptoms of insanity" before, during or after the murder, and their stern denial to treat his physical tantrums as evidences of 'unsoundness of mind' betrays the familiar colonial discomfort in separating medico-legislation from an overwhelming racial prejudice. Despite having a detailed account of Nabin's display of "rage and grief", the High Court was not ready to accept this abominable behaviour as simply a loss of reason. Instead, their verdict was a tacit nod to the racial convictions of an Indian in the throes of irritable passion. As has been argued in this article so far, it was the medical men in colonial Bengal who exacerbated this discomfort by consecrating and codifying criminal insanity as coterminous to racial debasement. In their vehement remonstration against the verdict of the High Court, the indigenous press sought to

topple this race-criminality co-relation by projecting Nabin Chandra as a respectable, virtuous man and a loving husband. Repeated remarks on the nefarious machinations of the *mahant* pushing Nabin to the brink of his sanity signified a painstaking effort in dissociating Nabin's crime or criminality from his racial/national identity. In essence then, questions of insanity and criminality in colonial Bengal remained steeped in powerful textualities of colonial divergence. It was through the engagements that criminal insanity acquired specific textual connotations. The "unsoundness of mind" or the "inability to perceive the nature of the act" as explicated by the judges of High Court, were not used in a wanton manner but represented a medico-legal parlance that accrued over years of dialogue between a hegemonic rule resistance. It was over the explanation of these phrases that the jurists and their medical men contested each other, claiming complete authority in interpreting and defining these terminologies. In other words, such processes involving the production of knowledge were encapsulated within a textuality that shaped, and was in turn shaped by, medico-legal contentions on criminal insanity

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Notes

Note 1. *Queen v. Nobin Chunder Banerjee*, A Handbook of Criminal Cases Reprinted Verbatim from The Bengal Law Reports, Vols. I to XV, Calcutta 1889, p. 668.

Note 2. *Circular Orders Passed by the Nizamut Adawlu*t, for the Lower and Western Provinces, from 1796 to 1844, pp. 67–68.

Note 3. *Bengal Medical Regulations*, Calcutta, 1851, pp. 217–228.

Note 4. See **Lunatics Acts IV of 1849**, in *The Legislative Acts of the Governor General of India in Council*, *1834–1850*, 681–682.

Note 5. A biographical sketch of Norman Chevers can be found in an obituary published in the *Indian Medical Gazette*, January 1887, p. 25.

Note 6. See **Government v Lal Khan**, in W.H. Macnaghten, *Reports of Cases Determined in the Nizamut Adawlut*, Calcutta, 1827, vol. 2, 68–70.

Note 7. **Arjan Manjhi v. Lakhan Manjhi**, ibid., 260–261.

Note 8. **Ajodhya Prasad v. Zora***,* ibid., pp. 12–13

Note 9. **Ram Mani Chung v. Radhakant Chung**, ibid., pp. 365–367.

Note 10. **Govt. v. Tufuzzul Ali alias Tofail Ali,** *Reports of Cases Determined in the Nizamut Adawlut*, *2*(1), Calcutta, 1854, p. 487.

Note 11. **Govt v. Hussain Syrung**, *Reports of Cases Determined in the Nizamut Adawlut*, *3*(2), 1855, 98–103.

Note 12. **Govt v. Bhagirathi and Bijuliah***, Reports of Cases Determined in the Nizamut Adawlut*, *3*(2), 1855.

Note 13. This list of questions was compiled after careful perusal of multiple trial records. For a general idea, see **Govt v. Kirtinarain Shaha**, in *Reports of Cases Determined in the Nizamut Adawlut*, *3*(2) Calcutta, 1855, pp. 416–423.

Note 14. **Govt v. Abul Hossein**, *Reports of Cases*, *3*(2), 258–262.

Note 15. **Govt v. Kirtinarain Shaha**, *Reports of Cases*, *3*(2), 416–423.

Note 16. **Govt v. Bishun Chunder Baboo**, *Reports of Cases Determined in the Nizamut Adawlut*, vol. 8, Calcutta 1859, pp. 57–68.

Note 17. Ibid., pp. 66–67.

Note 18. Quoted in John D. Mayne, *Commentaries on the Indian Penal Code Act XLV of 1860*, Madras, 1869, 58, in connection to Section 84 of the Indian Penal Code.

Note 19. Ibid.

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