लाल बहादुर शास्त्री प्रशासन अकादमी
Lal Bahadur Shastri Academy of Administration
मसूरी
MUSSOORIE

पुस्तकालय
LIBRARY

103235

अवाप्ति संख्या
Accession No.

वर्ग संख्या
Class No. 305.56

पुस्तक संख्या
Book No. Bovm

GL 305.56
BAN

103235
LBSNAA

SLAVERY IN BRITISH INDIA



SLAVERY IN BRITISH INDIA

First Thesis submitted to the University of Bombay
for the degree of Doctor of Letters

BY

D. R. BANAJI, M. A., LL. B.,

Author of
"Bombay and the Sidis"

BOMBAY
D. B. TARAPOREVALA SONS &
"KITAB MAHAL", HORNBY ROAD

Printed by M. N. Kulkarni at the Karnatak Printing Press
318 A, Thakurdwar, Bombay
and
Published by Jal H. D. Taraporevala, for D. B. Taraporevala Sons & Co.,
Kitab Mahal, Hornby Road, Fort, Bombay.

To

THE HON'BLE SIR JOHN WILLIAM FISHER BEAUMONT,
KT., K. C.

CHIEF JUSTICE

OF

THE HIGH COURT OF JUDICATURE AT BOMBAY

This Work

is

By Kind Permission

Most Respectfully Dedicated.

FOREWORD

Mr. D. R. Banaji has already established his reputation as a historian by his brilliant monograph on *Bombay and the Sidis*, which was based upon unpublished documents in the Bombay Record Office. He has now continued his researches into another unexplored field, and the result is an important contribution to social history, a study of slavery in British India. Here, again, he breaks fresh ground. Everyone knows that the English put an end to Infanticide, Sati and Thagi in this country, but very few realize that they had to tackle a far more important question in that of slavery. As a matter of fact, the English at one time kept slaves themselves: A negro page-boy was as common a sight in an English lady's household in Calcutta or Bombay as in London, about the middle of the eighteenth century. But Mr. Banaji is not concerned so much with the question of imported slaves. He deals principally with domestic and agrestic slavery, which offered a variety of perplexing problems, because it received a kind of sanction from both Hindu and Mahomedan law, and the British Government, while determined to put down inhuman practices, was extremely reluctant to interfere with the social and religious customs of the people. In fact the position of Government was not dissimilar to that in which it finds itself to-day over the vexed question of child marriage. The problem was partly economic. The traffic was mostly in female children. The iniquitous dowry system prevailing in India made girls largely unwanted. The British Government had put an end to infanticide. The unfortunate girl, therefore, had to be disposed of in some other way, either as a Devadasi, a prostitute or a domestic servant. There were, however, a number of other cases which were reported by District Officers, and had to be dealt with. The Thugs made a practice of kidnapping as well as murdering. Men sold their wives, and mirable dictu, even themselves, in times of famine. To write more, however, would be to trespass beyond the proper limits of an Introduction. Mr. Banaji has treated the question both from the historical and the legal point of view. His survey of the subject is thorough and exhaustive and his attractive presentation of it absolves it from the charge of dullness so often levied against theses of this description. As I remarked above, Mr. Banaji has produced a very valuable and original contribution to the study of a sociological subject of great importance.

Poona, April 1933. H. G. RAWLINSON

PREFACE

The aim and object of this study is to give a comprehensive account of slavery in British India from 1772 to 1843.

With this end in view the book opens with a general survey of slavery in India, wherein attention is briefly called to the fact that in the days of the Company slavery was a widespread institution in India; with ramifications in the Presidencies of Bombay, Calcutta and Madras, where in spite of the miseries inherent in this degrading practice and in spite of well-known concomitant evils, slavery found many defenders whilst those who presided over the destinies of the people in the British territories were not anxious to tackle the intricate questions involved in slavery and did not take the trouble impartially to investigate its manifold wrongs. This preliminary chapter is not in the nature of an exhaustive inquiry; it is merely meant to provide the reader with that initial knowledge about slavery in India, without which he would find it difficult to enter on a detailed study of such a comprehensive subject.

After this introductory preamble slavery in British India is dealt with under the three following great headings—history of slavery, legal aspect of slavery and abolition of slavery.

The history of slavery deals with the sources of slavery (Chapter II), slavery in Malabar (Chapter III), slavery in Assam, (Chapter IV), slavery in Native States under the British Protection (Chapter V), slavery in Goa, Diu and Daman (Chapter VI), and by way of conclusion there is an enquiry into the number of slaves in Brithish India (Chapter VII).

The legal aspect of slavery deals with the early Hindu Law of slavery and its administration in British India (Chapter I), the early Mahomedan Law of slavery and its administration in British India (Chapter II), the vain attempts at ameliorating the law of slavery (Chapter II), the partially sucessful attempts at ameliorating the law of slavery (Chapter IV) and concludes with an attempt to define the British attitude towards slavery (Chapter V).

The abolition of slavery is a detailed study of the various measures that ultimately led to the passing of Act V of 1843.

Thus by means of divisions and sub-divisions the history of slavery in India is dealt with a comprehensiveness of detail hitherto not attempted.

In treating of slavery under the various aspects mentioned above, it would have been folly to ignore the already existing publications dealing with this subject. Among these published sources of information may be mentioned the legal works, Parliamentary papers, books published at the instance of the Hon'ble the Court of Directors, Bombay and Madras Governments, historical works published by scholarly writers at their own risk, a miscellany of articles which in the course of years appeared in leading journals and reviews, notably in the Asiatic Journal, the Fortnightly Review, the Journal of the Asiatic Society of Bengal and the several other periodicals and pamphlets. The full list of all the published sources, consulted and quoted, is given at the beginning of the book under the title Bibliography, Published Sources. It would be sheer ingratitude on the author's part not to acknowledge his great indebtedness to the painstaking labours of the good and great men who went before.

At the same time it is no exaggeration to say that in his eagerness to break new ground the author has left no means untried to get hold of every unpublished document that might help to elucidate the intricate question of slavery in the Bombay Record Department, the Bengal Record Department and the Imperial Record Department.

In the Bombay Record Department slavery was dealt with in (1) Letters from the Hon'ble the Court of Directors, (2) Letters to the Hon'ble the Court of Directors, (3) General Department, (4) Diaries, (5) Political Compilations and (6) Judicial Compilations.

In the Bengal Record Department slavery was mentioned in (1) Extracts from General Letters from the Court of Directors; (2) Extracts from General Letters to the Court of Directors; (3) Revenue Proceedings and (4) Judicial Criminal Proceedings.

In the Imperial Record Department slavery was reported on in (1) Judicial Proceedings, General Letters from the Hon'ble the Court of Directors, (2) Home Department, (3) Public Department, (4) Political Department, (5) Government of India Proceedings, (6) Law Proceedings, (7) India Office Records and (8) Body Sheets.

A full list of the unpublished documents of which type-written copies have been made is given in the beginning of the book under the heading Bibliography, Unpublished Sources. But the list there printed gives but a very inadequate idea of the wide range of research work and of the wealth of hitherto

unknown information resulting therefrom. For many of the items mentioned under the heading Bibliography, Unpublished Sources, as for example the Diaries, refer to volumes covering the events of a whole year; and in one volume there may be as many as a dozen references to slavery. For further information it may here be mentioned that the type-written copies of the unpublished documents, all of them the result of several years research, run to 2,000 foolscap pages, the number of various unpublished documents amounting to about 1,500.

These unpublished documents have made it possible to throw light on a number of points as yet not touched upon in the extant published sources, and to give a comprehensive account of the intricate history of slavery from a political, judicial and social point of view; for it happened that the Bombay Record Department, the Bengal Record Department and the Imperial Record Department supplied each of them items of information which do not repeat but complete one another.

It is a hundred years ago that by act of Parliament slavery was in 1833 abolished throughout the British Empire (the new law to take effect from August 1, 1834). It is true that the law was only enforced in India when Act V of 1843 was passed. Nevertheless the year 1933 may rightly be looked upon as the centenary of the abolition of slavery; and the present work by showing what slavery stood for, its inherent miseries and concomittant evils, may perhaps usefully serve us as a reminder of that great landmark in the history of civilisation—the abolition of slavery.

I am thankful to the Trustees of Sir Ratan Tata Charities and the N. M. Wadia Charities for their benevolent help, which has made possible the publication of this work.

Bombay,
August 15, 1933.

D. R. BANAJI

CONTENTS

CHAPTER		PAGE
	FOREWORD	vii
	PREFACE	ix
	BIBLIOGRAPHY: PUBLISHED SOURCES	xv
	„ UNPUBLISHED SOURCES	xvii
	PART I	
	History of Slavery	
I.	A GENERAL SURVEY OF SLAVERY IN BRITISH INDIA ...	1
II.	SOURCES OF SLAVERY IN BRITISH INDIA	33
III.	SLAVERY IN MALABAR	80
IV.	SLAVERY IN ASSAM	132
V.	SLAVERY IN NATIVE STATES...	147
VI.	ATTEMPTED SUPPRESSION OF THE SLAVE TRAFFIC IN THE PORTUGUESE PORTS OF GOA, DIU AND DAMAN	180
VII.	NUMBER OF SLAVES IN BRITISH INDIA	195
	PART II	
	Legal Aspect of Slavery	
I.	EARLY HINDU LAW OF SLAVERY AND ITS ADMINISTRATION IN BRITISH INDIA	207
II.	EARLY MAHOMEDAN LAW OF SLAVERY AND ITS ADMINISTRATION IN BRITISH INDIA	226
III.	VAIN ATTEMPTS AT AMELIORATING THE LAW OF SLAVERY	241
IV.	PARTIALLY SUCCESSFUL ATTEMPTS AT AMELIORATING THE LAW OF SLAVERY	285
V.	SIDELIGHT ON BRITISH ATTITUDE TOWARDS SLAVERY ...	314
	PART III	
	Abolition of Slavery	
	ACT V OF 1843.	333

BIBLIOGRAPHY

PUBLISHED SOURCES

Law

(1) Baillie, ...Mahomedan Law of Sale. (This book is available only in the Bombay Government Secretariat Liberary) 1825.

(2) Bühler, ...Sacred Books of the East, Vol. XXV, "Laws of Manu" (Translation).

(3) Colebrooke, H. T. ...A Digest of Hindu Law on Contract and Succession with a commentary by Jagannatha Tercapanchanour (Translation from the original Sanscrit, Vol. II, 1801).

(4) Halhead, N. B. ...Code of Gentoo Law, from a Persian Translation made from the original written in the Sanscrit language, 1781. (Law College Library).

(5) Hamilton, C. ...Hédaya (Translated from Persian by Grady).

(6) Harington, J. H. ...Analysis of Laws and Regulations, Vols. I-III.

(7) Jones, W. ...Institutes of Menu, 1825.

(8) Macnaghten, W. H. Principles and Precedents of Hindu Law, Vols. I-II.

(9) Macnaghten, W. H. Principles and Precedents of Mahomedan Law, Vol. I.

(10) Sevestre, ...Sudder Dewanny and N. A. Report, Vol. V.

(11) Steele, Arthur, ...Custom and Customary Law.

(12) Strange, Sir Thomas. Hindu Law, Vols. I-II.

(13) Sudder Dewanny and N. A. Reports, Vol. III, 1827.

(14) Galdvin's Ayeen Akbary, Vol. II.

Parliamentary Papers

(1) Appendix to the Report from the Select Committee, Vol. IV (Public), 1832.

(2) Appendix to the Indian Law Commission's Report, 1839-41.

(3) Indian Law Commission's Report, 1841.

(4) Parliamentary Papers on Slavery in India, Published by the order of the House of Commons, 1828.

(5) Fifth Report of the Select Committee, By Ferringer, 1812.

(6) Report from the Select Committee of the House of Lords, appointed to inquire into the present state of the affairs of the East India Company &ca. together with the Minutes of Evidence and an Appendix, 1830.

Books published at the instance of the Hon'ble the Court of Directors, Bombay and Madras Government

(1) Buchanan, Dr. F. ... Journey through Mysore, Canara and Malabar, Vols. I-III, specially appointed by the Court of Directors to inquire into the state of these countries, 1807.

(2) Chaplin, William, ... A Report exhibiting a view of the Fiscal and Judicial System of Administration under the authority of the Commissioner in Dekhan. (1824), Courier Press.

(3) Wilson, H. H. ... The Mackenzie Collection—A descriptive Catalogue of the Oriental Mss.

Other Sources

(1) Adam, W. ... Letters to Thomas Fowell Buxton in America 1840. (N. B. This book is in an extremely brittle condition and is available only in the Imperial Library, Calcutta.)

(2) Balfour, E. ... Cyclopedia of India and of Eastern and Southern Asia, Vol. III, 1885.

(3) ... ... Bengal, Past and Present, Vols. X, XI, XIII, and XVII, (Bengal Secretariat Library).

(4) Bhandarkar, D. R. ... Asoka.

(5) ... ... Catholic Encyclopedia.

(6) Chevers, ... Medical Jurisprudence.

(7) Dalton, ... Ethnology of Bengal.

(8) Dutt, R. C. ... A History of Civilisation in Ancient India, Vol. I.

(9) Dutt, R. C. ... Epochs of Indian History, Ancient India, 1893.

(10) Elphinstone, M. S. ... History of India.

(11) Griffith, T. H. ... The Hymns of the Rigweda (Translation), Vol. II.

(12) Hamilton, ... Hindustan, Vols. I-II.

(13) Hamilton, ... East India Gazetteer.

(14) Hobhouse, L. T. ... Morals in Evolution.

(15) Hunter, Sir William ... Bengal Manuscript Records.

(16) Hunter, W. H. ... Imperial Gazetter, Vol. VI.

(17) Logan, W. ... Malabar, 2 Vols.

(18) Long, Rev. ... Selections from Unpublished Records of Government.

(19) Macdonnel, A. A. ... A History of Sanscrit Literature.

(20) Malcolm, Sir John ... Work on Central India, Vol. II.

(21) Muir, Sir William ... The Life of Mahommad. (Edited by T. H. Weir.)

(22) Peggs, James ... India's Cries to British Humanity.

(23) Risley ... ... Tribes and Castes of Bengal.

(24) Shore, Sir Frederick John. Notes on Indian Affairs, 2 Vols.

(25) Sleeman ... Rambles and Recollections.

(26) Smith, Vincent ... Oxford History of India, 1925.

(27) Smith, Vincent ... Asoka.

(28) Smith, Vincent ... The Early History of India.

(29) Wilson ... ... Glossary of Anglo-Indian Words, (Imperial Library).

(30) Westermarck, E. ... The Origin and Development of the Moral Ideas, Vols. I-II.

Literature etc.

(1) Busteed, H. E. ... Echoes of Old Calcutta.

(2) Carys, W. H. ... Good Old Days of Hon'ble John Company.

(3) Cotton, Evan ... History of Old Calcutta.

Journals, Periodicals and Pamphlets

(1) Asiatic Journals, Vols. XV, XXIII, XXIV, XXVI, XXVII, 1830, Vols.III, V, VI, VII, X, XI, XII, XVI, XIX, XX, XXI, XXIII, XXV, XXVI, XXX, XXXII, XXXIII, XXXV, XXXVI.

(2) Fortnightly Review, March, 1883.

(3) Friend of India, (Quar. Ser.), December 1823.

(4) Journal of the Asiatic Society of Bengal, 1837.

(5) Monthly Review, June 1840, London.

(6) Moslem Review, April to June, 1930.

(7) Oriental Herald, Vol. XIV, pp. 515-33.

(8) Slavery in Old Calcutta. A Lecture delivered before the Sociological Society in 1916, H. Stark (Imperial Library.)

UNPUBLISHED SOURCES.

(Bombay Record Department.)

Letters from the Hon'ble the Court of Directors

1. Political Department, 1794-1807.
2. Political Department, 1820-1822.

Letters to the Hon'ble the Court of Directors

1. Political Department, 1794-97.
2. Judicial Department, Vol. 26, 1841.
3. Secret Department, Vol. 39, 1842.
4. Letters to the Hon'ble the Court of Directors, Vol. 46, 1849.

General Department

1. General Department, Vol. 44-48, 1821-23.

Diaries

1. Political and Secret Department, Vol. 44-53, 1821-23.
2. Political and Secret Department, Vol. 1212, 1840-41.
3. Political and Secret Department, Vol. 1293, 1841-42.
4. Political and Secret Department, Vol. 1407, 1842-43.
5. Political and Secret Department, Vol. 1621, 1844-45.
6. Political Department, Vol. 385, 1830-32.

7. Political Department, Vol. 98, 1844.
8. Political Department, Vol. 65, 1851.
9. Political Department, Vol. 169, 1852.
10. Judicial Department, Vol. 44, 1821-22.
11. Judicial Department, Vol. 25-126, 1826.
12. Judicial Department, Vol. 264, 1832.
13. Judicial Department, Vol. 288, 1833.
14. Judicial Department, Vol. 24, 1835.
15. Judicial Department, Vol. 76, 1838.
16. Judicial Department, Vol. 1143, 1845.
17. Judicial Department, Vol. 1363, 1847.
18. Judicial Department, Vol. 1499, 1848.
19. Judicial Department, Vol. 95, 1853.
20. Judicial Department, Vol. 96, 1859.

Political Compilations

1. No. 19 of 1835-36, Porbundar, Vol. 685.
2. No. 119 of 1837, Cutch Government, Vol. 880.
3. No. 32 of 1837, Kathiawar, Vol. 880.
4. No. 454 of 1837, Kathiawar, Vol. 880.
5. No. 289 of 1837, Pahlunpore, Vol. 880.
6. No. 646 of 1837, Sind, Vol. 880.
7. No. 363 of 1837, Vol. 880.
8. No. 447 of 1837, Vol. 880.
9. No. 869 of 1837, Vol. 880.
10. No. 488 of 1837, Vol. 880.
11. No. 628 of 1838, Ahmedabad, Vol. 990.
12. No. 297 of 1838, Maheecaunta, Vol. 990.
13. No. 864 of 1838, Ahmednagar, Vol. 990.
14. No. 653 of 1838, Baroda Government, Vol. 990.
15. No. 437 of 1838, Baroda Government, Vol. 990.
16. No. 557 of 1838, Cutch Government, Vol. 990.
17. No. 767 of 1838, Cutch Government, Vol. 990.
18. No. 301 of 1838, Kathiawar, Vol. 990.
19. No. 191 of 1838, Kathiawar, Vol. 990.
20. No. 599 of 1838, Kathiawar, Vol. 990.
21. No. 668 of 1838, Goa, Diu & Daman, Vol. 990.
22. No. 212 of 1838, Goa, Diu & Daman, Vol. 990.
23. No. 656 of 1839, Persian Gulf, Vol. 990.
24. No. 147 of 1839, Vol. 990.
25. No. 819 of 1839, Vol. 990.
26. No. 523 of 1840, Persian Gulf, Vol. 1212.
27. No. 985 of 1840-41, Vol. 1212.
28. No. 372 of 1841, Vol. 1212.
29. No. 662 of 1841, Satara, Vol. 1212.
30. No. 340 of 1841-42, Vol. 1323 (Secret Department).
31. No. 620 of 1842, Diu, Vol. 1407.
32. No. 268 of 1842-43, Muskat, Vol. 1407. (Secret Department).
33. No. 973 of 1843, Vol. 1407.
34. No. 660 of 1843, Vol. 1407.
35. No. 770 of 1843, Vol. 1407.

Judicial Compilations

1. No. 28 of 1834, Vol. 327.
2. Judicial Department Compil, Vol. 681, 1840.
3. Judicial Department Compil, Vol. 771, 1841.
4. Judicial Department Compil, Vol. 944, 1843.

(Bengal Record Department.)

Extracts from General Letters from the Court of Directors

1. Original Consultation No. 4 of 22nd February, 1831.

Extracts from General Letters to the Court of Directors Judicial Department

1. Paras 24-25 of 18th October, 1774.
2. Para 17 of 2nd August, 1816.
3. Paras 147-70 of 29th October, 1817.
4. Paras 121-38 of 30th August, 1827.
5. Paras 27-28 of 9th November, 1830.
6. Para 4 of 9th September, 1833.
7. Para 21 of 11th February, 1842.
8. Para 131 of 11th December, 1846.

Revenue Proceedings

1. Original Consultation No. 24 of 12th April, 1774.
2. Original Consultation No. 22 of 12th July, 1774.
3. Original Consultation No. 4 of 29th July, 1774. (Extract)
4. Original Consultation No. 15 of 2nd August, 1774.
5. Original Consultation No. 17 of 2nd August, 1774.
6. Original Consultation No. 10 of 16th August, 1774.
7. Original Consultation No. 18 of 20th September, 1774.

Judicial Criminal Proceedings

1. Consultation No. 8 of 10th April, 1795 (Extract).
2. Consultation No. 16 of 16th May, 1812.
3. Consultations Nos. 11-15 with orders of 26th September, 1812.
4. Consultations Nos. 48-49 of 19th December, 1812.
5. Consultations Nos. 47-53 of 15th March, 1816 (Extract).
6. Consultation No. 13 of 29th December, 1826.
7. Consultation No. 14 of 29th December, 1826.
8. Consultation No. 15 of 29th December, 1826.
9. Consultations Nos. 24-25 of 13th April, 1830.
10. Consultation No. 26 of 13th April, 1830.
11. Consultation No. 28 of 13th April, 1830.
12. Consultations Nos. 47-50 of 12th October, 1841.

(Imperial Record Department.)

Judicial Criminal Proceedings

General Letters from the Hon'ble the Court of Directors

1. Public Proceedings, 1755-58.

Home Department

1. Legislative Despatch from Court, 1837-38.
2. Legislative Despatch from Court, 1839.
3. Legislative Despatch from Court, 1840-41.
4. Legislative Despatch from Court, 1842.
5. Legislative Despatch from Court, 1843.
6. Legislative General Letters to Court, 1835.
7. Legislative General Letters to Court, 1836.
8. Legislative General Letters to Court, 1840.
9. Legislative General Letters to Court, 1840-41.
10. Legislative General Letters to Court, 1842.
11. Legislative General Letters to Court, No. 4 of 1847 (Judicial Department).
12. Public Proceedings, January—August, 1757.
13. Public Proceedings, 24th August—2nd October, 1780.
14. Public Proceedings, 1st July—29th July, 1789.
15. Public Proceedings, 2nd September—25th September, 1789.

Public Department

1. Consultation No. 1 of 22nd August, 1765.
2. Consultation No. 7 of 9th June, 1777.
3. Consultation No. 1 of 28th May, 1787.
4. Consultations Nos. 6-8 of 3rd June, 1789.
5. Consultation No. 20 of 5th August, 1789.
6. Consultation No. 6 of 12th August, 1789.
7. Consultation No. 20 of 21st August, 1789.
8. Consultation No. 12 of 2nd September, 1789.
9. Consultation No. 14 of 1st December, 1790.

Political Department

1. Political Proceedings, 21st January-11th February, 1831.
2. Political Proceedings, 13th-20th August, 1832.
3. Political Proceedings, 17th-24th September, 1832.
4. Political Proceedings, 1st-8th October, 1832.
5. Political Proceedings, 22nd-29th October, 1832.
6. Political Proceedings, 1832.
7. Political Proceedings, 6th-13th June, 1833.

Government of India Proceedings

1. Legislative Proceedings, 28th September-28th December, 1835, Vol. II.
2. Legislative Proceedings, February, 1839.
3. Legislative Proceedings, 1st April-27th May, 1839.
4. Legislative Proceedings, 1st-15th July, 1839.
5. Legislative Proceedings, January-March, 1841.
6. Legislative Proceedings, 5th August-25th November, 1842.
7. Legislative Proceedings, January-March, 1844.
8. Legislative Proceedings, 6th April-22nd June, 1844.
9. Legislative Proceedings, April-June, 1845.

Law Proceedings

1. Law Proceedings, 3rd July-16th October, 1837.
2. Law Proceedings, 15th October-26th November, 1838.

3. Law Proceedings, 3rd June-24th June, 1839.
4. Law Proceedings, 22nd July-30th September, 1839.
5. Law Proceedings, December, 1839.
6. Law Proceedings, 30th March-11th May, 1840.
7. Law Proceedings, 25th May-29th June, 1840.
8. Law Proceedings, 6th July-17th August, 1840.
9. Law Proceedings, 6th July-17th August, 1840.
10. Law Proceedings, 24th August-12th October, 1840.
11. Law Proceedings, 19th October-28th December, 1840.
12. Law Proceedings, 2nd August-20th September, 1841.
13. Law Proceedings, November-December, 1841.
14. Law Proceedings, January-March, 1842.
15. Law Proceedings, April-May, 1842.
16. Law Proceedings, October-December, 1843.

India Office Records

1. Copies of Records obtained from India Office, Vol. 33, 1789, Part II.

Body Sheets

1. Public Body Sheet, January-June, 1789.
2. Judicial Body Sheet, 9th May, 1846,

CHAPTER I

A General Survey of Slavery in British India

PLAN: 1. Slavery in India 2. Slavery in the three Presidencies 3. Legality of slavery 4. In vain defence of slavery 5. Conclusion.

No. 1. SLAVERY IN INDIA

SUMMARY: I. Introductory II. In the first days of the Company

SOURCES: PUBLISHED: H. Stark, *Calcutta in Slavery Days.* UNPUBLISHED: Consultation No. 47, Judicial Criminal Proceedings, 1816.

I. INTRODUCTORY. This chapter is intended to give a general survey of slavery in India. It is not a detailed study of slavery—this detailed study will be attempted later on; but neither is it a bird's-eye view giving only a hazy impression of the prevailing conditions in the land of Hind. Relying both on published and unpublished documents, it is our purpose to show that slavery existed in India, notably in the Presidencies of Bombay, Bengal and Madras. At the same time the question of the legality of slavery and of Government's attitude towards it will be touched upon. It is hoped thereby to provide the reader with that initial knowledge about slavery in India, without which he would find it difficult to enter on a detailed study of such a comprehensive subject.

II. IN THE FIRST DAYS OF THE COMPANY. Slavery was no doubt one of the greatest evils from which India suffered. When the East India Company first took the reins of government into their own hands, they found slavery an established institution, wide-spread and universally acknowledged. Hence they administered, legalised and perpetuated Hindu and Mahomedan slavery; or in the words of H. Stark, "The enactments and practices relating to slavery were not reversed, although only attempts were made to check the trade in human beings."[1] It is sufficient for our purpose here to remark that in those days the Hindu Law

1. Stark, *Calcutta in Slavery Days*, (1916), p. 2. (Imperial Library, Calcutta).

recognised fifteen different kinds of slaves, and that the Mahomedan Law recognised two different kinds of slaves. We shall later on have occasion to give a detailed exposition of these laws and of the individuals whose lives and destinies were to a large extent, if not entirely, controlled by these laws.

Furthermore, whatever may have been the characteristic features of Indian slavery, whether it was of a mild form, or whether it was ruthlessly oppressive, it will always remain true to say that it was a great evil. As J. Richardson, Judge and Magistrate of Bundelkhand, contended: "Slavery, while it existed, was all the same of such a nature that it checked the improvement of human character and the development of human society, was productive of many concomitant evils, and impeded all other good influences at work from being effectual." [1]

First of all slavery made the lives of millions of people in India a fearful ordeal, replete with every kind of suffering. Next it created a separate class, the slave-owners, who looked down upon their slaves as mere chattels, and were inclined to forget the duties which every man has towards his fellow-men. In the third place it had a nefarious influence on the minds of the younger generation. The children of the slave-owners, being from early years attended on by slaves, learnt how to walk in their parents' footsteps and looked down upon the slaves as a race unworthy of the rights of humanity. Very often they began in their childhood to practise petty tyrannies, and, so to say, became from an early age adepts in the art of making others suffer. As regards the children of the slaves themselves, they grew up despised, helpless, neglected and doomed to lifelong drudgery.[2]

Therefore the removal of slavery at an early period by the East India Company would not only have put an end to a large amount of positive injustice, degradation and suffering, but it would also have become a prime factor essential to the successful enforcement and operation of any other measure devised for the advancement of the people and the country. For as J. Richardson wrote in a letter dated March 23, 1808: "No progress in arts or science can be expected from unhappy beings whose daily reflections reiteratedly press their forlorn condition upon their thoughts."[3]

1-3. From J. Richardson, Judge and Magistrate of Zillah Bundelcund, dated March 23, 1808, to the Court of Sudder Dewanny and Nizamut Adawlut, Extracts from Consultation No. 47 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

No. 2. SLAVERY IN THE THREE PRESIDENCIES

SUMMARY: I. Slavery in Bombay II. Slavery in Calcutta III. Slavery in Madras.

SOURCES: PUBLISHED: Busteed, *Echoes from Old Calcutta*; W. H. Carey, *Good Old Days of Hon'ble John Company*, I; H. Stark, *Calcutta in Slavery Days*; Indian Law Commission's Report, 1839/41; Hickey's Gazette; Parliamentary Papers published by the House of Commons, 1828, Judicial.
UNPUBLISHED: Political Department 1835/36 (Sind), Vol. 880; Political Department 1837 (Sind), Vol. 880, Judicial Department, 1821/23, Vol. 44/53.

I. SLAVERY IN BOMBAY. Slaves formed a marketable article both in the home trade and in the foreign trade. The official documents of the Presidency show that slaves were imported in Arab vessels into the Native States of Cutch, Kathiawar, Porbandar, Sind, even to a very large extent into Bombay[1] and into the Portuguese ports of Goa, Diu and Daman, whence they were distributed all over the Bombay Presidency. J. P. Willoughby, the Political Agent at Kathiawar, in his Memorandum, dated December 23, 1835, recorded that his notice was first attracted towards this subject on his observing African boys in attendance upon the Native Chiefs who visited Rajkot. On making further inquiries he discovered in the Customs House Books at the Port of Porbandar entries of regular duties being levied on imported slaves. These slaves were chiefly imported from the dominions of the Imam of Muscat and from several other ports in Arabia—the chief of them being *Mozambique, Malaca, Muscat, Bucca, Judda, Maculla, Sohal* and others. The captains of the ships were paid at a certain rate for each voyage, and were allowed to trade to a limited extent on their own account, for which purpose a portion of tonnage was assigned to them. By such means they were enabled to import slaves, for whom they found a ready market amongst the various communities of the Presidency.[2]

As a rule it would seem that slave-merchants experienced apparently no difficulty in disposing of their wares. "African children are so valuable in Bombay," the Senior Magistrate of Police remarks in a letter dated January 16, 1836, "that I have been afraid to let them go about, lest they should be stolen."[3] Thus for example, in 1835, seventy-four African slaves

1. Stark, *Calcutta in Slavery Days*, p. 2.
2. Memorandum, by J. P. Willoughby, dated December 23, 1835, No. 3578/79, No.19, Political Department, 1835-36, Porebunder Vol. 685. Bombay Record Department.
3. From the Senior Magistrate of Police, to the Secretary to the Government of Bombay, dated January 16, 1836, Bombay Record Department.

were rescued at the port of Porbandar by the efforts of J. P. Willoughby, and brought down to Bombay to be liberated. As soon as the knowledge of this fact came to the notice of the private individuals, they applied to the Senior Magistrate of Police in the following terms:

" My dear Sir,

I understand that there are some slaves brought to Bombay, and they will be given to those who will promise to take care of them, if so, I shall be very happy to take two of the girls, in the meantime let me take my choice if you please."[1]

Fort, 7th February, 1836.

Yours truly,
J. Drummond.

An unpublished document entitled " Statement of Applications from Christian families for the African children " shows that various Christian families in Bombay applied for 61 slaves.[2]

But the market was liable to undergo unexpected fluctuations, and on a sudden the supply of slaves exceeded the demand. The famine of 1790 threw an excess of slaves into Bombay. There were so many that attempts were made to export them, which the police prevented by insisting on their being registered in the police office. This rendered it easy to ascertain the number of slaves and their various owners. At the same time the transfer of unfortunates, who had submitted to servitude from want and for a subsistence, was easily controlled. As a matter of fact the slave-trade was checked by so many restrictions that slave-dealers were careful not to bring their merchandise to Bombay ; and the trade almost ceased to be heard of for the time being.[3]

Again war and famine raged in the Deccan in 1803, and brought an ever-increasing crowd of famine-stricken people to Bombay. " Mothers sold their children and themselves to escape perishing from want; young women gave themselves up to prostitution, lived as mistresses with strangers resident in the country, or abandoned themselves to the guidance of procuresses, both of whom considered them as their property, although possessed of no legal right.[4]

1. From J. Drummond to the Senior Magistrate of Police, dated February 7, 1836, No. 19, Political Department, 1835-36, Porebunder, Vol. 685, Bombay Record Department.
2. Statement of Applications from Christian Families for the African Children, *Ibid.*, Bengal Record Department.
3-4. From P. T. Travers, Custom Master, to the Hon'ble Jonathan Duncan, President and Governor-in-Council, dated September 10, 1807, Judicial Department, 1821-23, Vol, 44-53, Bengal Record Department.

As is but natural the slave-traders were careful to conceal as much as possible their nefarious activities. In the disposal of children however, no management was requisite; but with grown-up slaves it was customary to sell them and to cancel the bargain, until the new purchaser found a fair opportunity of securing his bargain; and as it was impossible to transfer a woman to a perfectly new situation without exciting her fears, art, force and every means were used to get them away with the least possible noise, and whilst they, ignorant of being sold and not even wishing to think so, supposed they were kidnapped.[1] These helpless victims, kept by strangers, accompanied them without the slightest hesitation, to their own country; and there, from motives of interest, family quarrels, or other causes, they were sold and were thus reduced to the vilest state of slavery, without having ever been slaves.[2] Those who abandoned themselves to the procuresses were stowed away on ships and dows, and concealed there as long as required. Generally the Arabs found little difficulty in procuring the bawd's consent, through means of a bribe, to carry them off, which they could always do with impunity, as there was no one to inquire after them.[3]

By way of conclusion it may be stated that the slave-trade was practically carried on without restraint or control. For the registration of slaves decided upon by the orders of the Supreme Government in 1805,[4] gradually fell into abeyance, and the ever-increasing demands of luxury as well as the clamourings of passion greatly contributed towards extending the dreadful traffic.

II. IN CALCUTTA. The salve-trade was also extensively practised in Calcutta, where it was chiefly carried on by Arab dealers. The British nation, which had forbidden this nefarious traffic in every portion of the British dominions by the year 1820, wherever the British flag waved, had not yet made it a criminal offence punishable by British law in her Eastern possessions. Mr. Landford Arnot wrote in the *Calcutta Journal* of November 1, 1823: "This great capital is in short at once the depot of the commerce and riches of the East and the mart in which the manacled African is sold like the beast of the field to the highest bidder. What may be said to this by the enlightened community we address, we need not anticipate. It is our duty to announce

1. From P. T. Travers, Custom Master, to the Hon'ble Jonathan Duncan, President and Governor-in-Council, dated September 10, 1807, Judicial Department, 1821-23, Vol. 44-56, Bombay Record Department.

2-3. *Ibid.*

4. From Thomas Brown, Secretary to the Government of India to James Bombay Grant, Secretary to the Government of Bombay, dated January 10, 1805, *Ibid.*, Bombay Record Department.

to them the disgraceful fact. We are informed that 150 eunuchs have been landed from the Arab ships this season, to be sold as slaves in the capital of British India. It is known too that these ships are in the habit of carrying away the natives of the country, principally females, and disposing of them in Arabia in barter for African slaves for the Calcutta market. Can it be possible that such degradation, such wicked scenes are passing around us, and that the actors are suffered to escape unnoticed? We fear the fact too true, but we hope that the publicity, thus given to it, will lead to the prevention of such gross violations of law and humanity in future. We can conceive the difficulty of detection in such cases; but let all those who are aware of the illicit practices of these followers of Mahomet remember that they are imperiously called on as Christians and as British subjects in particular to bring to punishment these violations of law and humanity. Nature shudders at the thought of the barbarities practised by these abusers of God's noblest creatures, who are led by accursed thirst for gold to brutalise the human species. Only one fact shall suffice to show the savage and murderous barbarity resorted to by the wretches engaged in a traffic so revolting to humanity. A gentleman has informed us that of 200 African boys, emasculated in India, only ten survived the cruel operation. After such a statement it would be to suppose our fellow-subjects totally destitute of all the best feelings of nature, to doubt that every exertion will be made by such of them as can in any way add in putting down a traffic so inhuman and abominable, and in the capital of British India from being disgraced by it.[1] "

Landford Arnot's article caused a considerable stir at Government headquarters. To begin with, the Government declared that the incidents were grossly exaggerated. But at the same time Government saw to it that some measures were taken to check the exportation of slaves from, and their importation into Calcutta.[2]

Meanwhile the slave-trade flourished in Calcutta. The 'Coffrees', as the slaves were usually called, seemed to have been in great demand in Calcutta city; for as far back as the year 1780 Hickey's Gazette contained a number of interesting advertisements that constitute an irrefutable proof both of the wide-spread exis-

1. An article in the *Calcutta Journal* of November 1, 1823, by Landford Arnot, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.
2. Resolutions of the Governor-General in Council, passed on November 27, 1823, *Ibid*, Bombay Record Department.

tence of slavery and the shameful practices to which slavery gave rise.

" WANTED—Two Coffrees who can play well on the French horn, and are otherwise hardy and useful about a house relative to the business of consumee (Khansamah), or that of a cook; they must not be fond of liquor. Any person or persons, having such to dispose of, will be treated with by applying to the printer."[1]

"TO BE SOLD—A Coffree boy that understands the business of a butler, kidmutgar and cooking. Price 400 Sicca Rupees. Any gentleman wanting such a servant may see him and be informed of further particulars by applying to the printer."[2]

The following advertisement is so flagrantly indecent in parts that only a portion of it can be quoted here:

" WANTED by a gentleman now in Calcutta, two very handsome African ladies of the true sable hue, by the vulgar commonly called Coffrees. They must not be younger than 14 years each, nor older than 20 to 25. They must be well-grown girls of their age, straight-limed and straight-eyed and have a rational use of all their faculties—the better of (if) a little squeamish. But beware of spot or blemish. They will be joined in the Holy Banns of Wedlock to two gentlemen of their own colour, caste and country. A dowry is not expected with them, nor will there be any jointure settled on them. As the master of those African gentlemen would not wish to have them disappointed, he hopes no ladies will apply but those who are really and truly spinsters."[3]

The following advertisement shows that the trade was openly carried on even by persons in Holy Orders:

TO BE SOLD BY PRIVATE SALE—" Two Coffree boys, who play remarkably well on the French horn; about 18 years of age, belonging to a Portuguese Padrie lately deceased. For particulars enquire of the Vicar of the Portuguese Church."[4]

Besides these, there are a number of other advertisements all of them bringing home to us how the inhabitants of Calcutta acted little more than 125 years ago. Dr. Busteed in his *Echoes from Old Calcutta*, without mincing matters, says that "they not

1. Hickey's Gazette quoted in *Calcutta in Slavery Days*, by H. Stark, p. 3.
2-3. Hickey's Gazette quoted in *Calcutta in Slavery Days* by H. Stark, a paper read before the Sociological Society in 1916.
3. Carey: *Good Old Days of Hon'ble John Company*, I, quoted from a Calcutta paper of 1781, p. 470.

only bought and sold African slaves, but also went in for breeding them for the slave-market"[1].

The treatment of those slaves was far from kind. In the words of J. Ravenshaw, Collector in the Southern Division of Canara 1801 : "Slavery is an obligation to labour for the benefit of the master, without the contract or consent of the servant, the master at the same time having the right to dispose of him by sale, or in any other way to make him the property of a third person."[2] Whatever definition of slavery we choose to adopt, slavery stands for drudgery of the worst kind; for the luckless slave was treated with incredible cruelty.

Thus for example in Calcutta slave-girls received corporal punishment for the slightest offence and on the most trivial occasions. The word 'sympathy' was missing in the slave-owner's vocabulary. These poor creatures were dealt with more severely than an ordinary criminal who had offended against the laws of his country. The methods of punishment resorted to were barbarous in the extreme. If a slave-girl committed any wrong, she was tied, stripped to the very skin in the presence of the male slaves, and flogged without mercy with a rattan. During the cold season another equally cruel form of punishment was often used. The slaves were taken to a well on one of December's coldest mornings, and there several 'kulsies'[3] of water were thrown over them in quick succession so as to give them hardly any time to breathe.[4]

There is one more specific instance of cruelty which was brought to the notice of the Magistrates of Calcutta on July 18, 1837. There was brought to the Magistrate a slave-girl about eight years old, whose outward state was such that it beggared description. Her bones appeared through the flesh, her hands near the wrists were smashed, and pieces of flesh were cut off from them ; in her shoulders there were large holes, evidently burnt into them with coals, and her sides were lacerated. As if these injuries were not sufficient, there was also a wound on her head. She appeared to be in a dying state. Immediately she was taken to the police hospital, where she died the very next day. The perpetrator of this atrocious crime was a Moghul lady. She was tried for the murder of the slave-girl, but was

1. Busteed, *Echoes from Old Calcutta*, p. 137.

2. From J. G. Ravenshaw, Collector in the Southern Division of Canara, to George Garrow, Acting Secretary to the Board of Revenue, dated August, 12, 1801, Parliamentary Papers published by the House of Commons, (Judicial) 1828, para 4, p. 550.

3. A small vessel.

4. Stark, *Calcutta in Slavery Days*, p. 7.

shown every possible indulgence, and was finally acquitted.[1] Such was the state of justice in the year 1837.

At times this cruelty was openly denounced in unexpected quarters. The words of the Chief Judge of the Supreme Court of Fort William, Sir William Jones, in a charge to the Grand Jury, in 1785, witness to the misery of these poor creatures who were daily brought into his presence. "I am assured", he began, "from evidence, which, though not all judicially taken, has the strongest hold on my belief, that the conditions of slaves within our jurisdiction is beyond all imagination deplorable; and that cruelties are daily practised on them, chiefly on those of the tenderest age and the weaker sex, which, if it would not give me pain to repeat, and you to hear, yet, for the honour of human nature, I should forbear to particularise. If I except the English from this censure, it is not through partial affection to my own countrymen, but because my information relates chiefly to the people of other nations who likewise call themselves Christians. Hardly a man or a woman exists in a corner of this populous town, who has not at least one slave-child either purchased at a trifling price, or saved perhaps from death, that might have been fortunate, for a life that seldom fails of being miserable. Many of you, I presume, have seen large boats filled with such children, coming down the river for open sale at Calcutta. Nor can you be ignorant that most of them were stolen from their parents, or bought perhaps for a measure of rice in time of scarcity."[2]

But such public remonstrances were of little avail; and full 46 years later, *i.e.*, in 1831, a correspondent in the ***Bengal Chronicle*** vouched for the continued prevalence of slavery in Calcutta in the following terms: "That slavery exists in Calcutta is a fact too notorious to be denied. I am led to this remark from a thorough knowledge of its actual existence as also from being a frequent eye-witness of the extreme cruelty practised towards the generality of that neglected class, who are kept in such an abject state of blind ignorance and dread of the police that, although suffering the greatest of hardships, hardly one would have the courage to enter the precincts of justice."[3]

1. Stark, *Calcutta in Slavery Days*, a paper read before the Sociological Society in 1916, p. 8.

2. Extract from the Charge, delivered by Sir William Jones, a Judge of the Supreme Court at Calcutta, to the Grand Jury in 1785, Parliamentary Papers, (Judicial) 1828, pp. 9-10.

3. *The Bengal Chronicle*, February 15, 1831; *Cf.* Stark, *Calcutta in Slavery Days*, p. 8.

"Slaves of both sexes were purchased from indigent Hindu or Hindustani mothers for a price varying from Rs. 16 to Rs. 100 according to the girl's age. The traffic was resorted to generally by Catholics to supply themselves with domestics, and I am sorry to say a few who profess the Protestant faith are also concerned in this inhuman traffic."[1]

Another evil connected with slavery in British India, which existed in Backergunge, Tippera, Dacca, Jelalpore, Mymensingh, Sylhet, Rajshahi, Purnea, Saru and parts of Tirhut, was the custom of marrying female slaves to a person called a Byakara. Marriage with such a person was called a "Punwah-Shadee".

The Byakara, who was generally a slave, was the husband of many female slaves, whom he visited in turn once a month or once in two months. At each of his marriages he received a present of four or five Rupees from the female slave's master, and at each visit to any of his wives he received food and a small gratuity.

According to Mr. Mytton, the Magistrate of Sylhet, the main object of this arrangement was that the slave-girl might remain in her master's house, and that all her children might belong to him. The same reason was assigned to this practice by one of the native witnesses, who was examined by the Members of Bengal Law Commission; and he added, that it was her master's interest to marry her to a Byakara, when he had a female slave, and no male slave was found as a fit match for her.[2]

Two of the judicial functionaries looked upon this kind of marriage in a somewhat different light. They regarded it as a cloak thrown for the sake of decorum over an intrigue which the master carried on with his female slaves.[3]

Mr. Cheap, Judge of Mymensingh, described the "Punwah-Shadee" as a marriage by which the bridegroom stayed for a night after the ceremony was performed, then departed, and was generally not called upon to visit his wife till her confinement. This nominal marriage served the purpose of safeguarding the slave-owner's reputation; and in order to do away with all suspicion and scandal, the Byakara was again called in after her delivery. The Judge of Mymensingh was of opinion that in such marriages the putative father could claim every alternate child, but that he rarely availed himself of this privilege.[4]

1. Stark, *Calcutta in Slavery Days*, p. 8.
2–4. Observations of the Indian Law Commission, 1839–41, pp. 354–55.

Mr. Stainforth, Magistrate of Backergunge, speaking of this class of husbands, characterised them as "professional bridegrooms" who received three or four Rupees, married scores, cohabited with them for a short time, and quitted after the fashion of Kooleen Brahmins ".[1]

Though this evil was fully known to the Law Commissioners in 1841, it is a surprise to find " that they had no specific remedy to propose for its correction. "[2]

III. IN MADRAS. Finally the form of slavery prevailing in Madras is known as praedial slavery, *i.e.*, slaves attached to the soil. The details of the abuses relating to praedial slaves, are treated at full length in a subsequent chapter, and need not be dwelt on here. However, one fact is worthy of note. When in 1801, the question of the emancipation of this class of people came before the Board of Revenue, J. G. Ravenshaw, Collector of Canara, observed that, by encouraging these slaves to desert their masters, they would be disturbing a system sanctioned by the usages of the country and the ordinance of their law. He also remarked that it would be of considerable detriment to the revenue ; for not only in Canara, but also in several parts of India, this class of people cultivated the soil, and on their industry the landholders depended for the payment of the dues to the Sirkar and for their own support.[3] Praedial slavery was thus allowed to continue, because of the loss that would accrue to the Government from its abolition.

No. 3. LEGALITY OF SLAVERY

SUMMARY : I. Divergent views II. Government's attitude.

SOURCES : PUBLISHED : Sir John Shore : *Notes on Indian Affairs*, II ; Appendix XIII to the Indian Law Commisioner's Report, 1839/41 ; Appendix to Report from Select Committee (Public), 1832.

UNPUBLISHED : Consultation No. 47, Judicial Criminal Proceedings, 1816.

I. DIVERGENT VIEWS.—That slavery should ever have been marked with the seal of official approbation in any civilised community is as incomprehensible to reason as disgraceful to human nature.[4] However, there is no doubt about it that it

1-2. Observations of the Indian Law Commission, 1839-41, p. 356.

3. Extracts of a letter from the Board of Revenue, to the Right Hon'ble Edward Lord Clive, Governor-in-Council, dated September 9, 1801, *Parliamentary Papers* (Judicial) 1828, p. 552.

4. From J. Richardson, Judge and Magistrate of Zillah Bundelcund, to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, Extracts from Consultation No. 47 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

existed legally under the Company's Government in India as an effect of the legal existence it possessed under the former Hindu and Mahomedan Governments. As such it was affirmed, administered and enforced with certain restrictions. What is still more astonishing is that there were strenuous defenders of it, who pretended that they did not maintain its propriety, but that they upheld it only on grounds of political or economical expediency.[1]

Among the defenders of slavery there were some who maintained that, since India came under the control of the East India Company, slavery existed merely in name. But this allegation is so diametrically opposed to all that we know of Indian slavery and of its concomitant evils, that it cannot stand the test of historical investigation. It is too fanciful to be taken seriously. Accordingly slavery was generally defended on the principle that it was a necessary evil, with which it would have been dangerous to interfere. This was the private opinion of many Government officials.

However, it should be noted that there were a number of officials who did not support the legality of slavery. On the contrary they wholeheartedly condemned it. Among them J. Richardson was one of the most outspoken critics of Indian slavery. In Richardson's own words: "The Great Author of creation, matter, motion, and existence made all men equally free. By what act then can that freedom be forfeited or given up; liberty can be forfeited by no act, that does not militate against the general security and well being of society,—from which mankind acquire their happiness and protection. Nor has man more right to sell, or give up the natural freedom of his person than he has to lay down his natural life at pleasure; much less can he have any title to dispose of the liberty of another, even of his own child or wife in times of famine." J. Richardson admits that in times of famine some would no doubt perish, but those would chiefly be the infirm and the very poor in towns, not the industrious cultivators to whom their properietors in villages would have given the necessary food. If slavery had been abolished, the population would have increased much faster among the surviving freemen than it could possibly have increased with a population held in bondage.[2] What is more, the abolition of slavery and the granting of a permanent tenure in the soil to the natives would have become a powerful preventive of famine. This scourge to the human race would have scarcely recurred;

1. From J. Richardson, Judge and Magistrate of Zillah Bundelcund to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, Extract from Consultation No. 47 of March 18, 1816, Judicial Criminal Proceedings, Bengal Record Department.

2. *Ibid*.

because every man being at liberty to dispose of his labour, would by greater industry and more active foresight have provided himself against the effect of drought.[1]

Furthermore Richardson reiterates his firm belief that slavery is against the law of nature, which is above every other law, as is made evident by the following words which he quotes from Blackstone. "The Law of Nature, being coeval with mankind and dictated by God Himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries and at all times; no human laws are of any validity, if contrary to this, and such of them as are valid, derive all their force and all their authority mediately or immediately from this original."[2]

Though we admire Richardson's well-meant, unselfish endeavours to abolish slavery, we cannot help remarking that his principles are not beyond criticism. It seems to us wrong to say that slavery as such is against the natural law. According to de Lugo, one of the greatest Catholic moralists, slavery consists in this, that a man is obliged for his whole life to devote his labour and services to his master. Now as any body may justly bind himself for the sake of some anticipated reward to give his entire services to a master for a year, and he would be in justice bound to fulfil the contract, why may he not bind himself in a like manner for a longer period even for his entire life-time, an obligation which would constitute slavery ?[3] This argument derives an additional force from the fact that slavery, tempered with many humane restrictions, was permitted under the Mosaic Law. Likewise St. Paul implicitly accepted slavery as not in itself incompatible with the Christian Law, for the Apostle counsels slaves to obey their masters and to bear with their condition patiently. One way of explaining Richardson's wholesale condemnation of slavery is to suppose that when he wrote, he was thinking, not of slavery as such, but of the form of slavery which prevailed in India.

II. GOVERNMENT'S ATTITUDE. It cannot be denied that the responsible rulers, who presided over the destinies of the people in India, were not anxious to tackle the question of slavery; they did not take the trouble impartially to investigate the matter. In the words of Sir John Shore: "The British Indian Legislators, though they had come to rule over India, on the whole were perhaps more interested in personal profit to their Company than in

1. From J. Richardson, Judge and Magistrate of Zillah Bundelcund to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, Extract from Consultation No. 47 of 81, 1816, Judicial Criminal Proceedings, Bengal Record Department.
2. *Ibid.*
3. *Catholic Encyclopaedia*, Vol. XIII, p. 40.

the welfare of the people."[1] This sweeping condemnation does not of course brand with the stigma of indifference men like Richardson, Harington, Leycester, Baber and others who wanted that slavery should be abolished altogether. But these men were not listened to. The Government shrank from shouldering the responsibility of sponsoring innovations, they followed the beaten track, and thought that silence was the safest reply to those who proposed a deviation from the existing state of affairs, even for the sake of humanity.[2] Government did not think it either wise, or prudent, or expedient to interfere. What is more Government were positively annoyed at being reminded that slavery was an evil. Thus for example, when as late as 1834 Colonel Fraser brought the question of slavery to the fore, W. H. Macnaghten wrote to him to the following effect: "You are aware," he writes, "that the question of slavery in India has deeply engaged the attention of the British Legislature. The subject is one of considerable delicacy, and the Governor-General in Council thinks it exceedingly unfortunate that an officer of your approved judgment and discretion should at this juncture reside in a district where slavery is so prevalent."[3]

Government were, however, made aware of the fact that their policy of non-interference did not meet with universal approval. As far back as March 1808, Richardson protested against this wide-spread evil. "The most strenuous defenders of this imposition of the powerful on the weaker part of mankind pretend not to maintain its propriety but on ideas of political utility. Impartial and minute inquiry would at once remove the special veil by which the diabolic principle is sometimes hidden, and the system decorated in the eye of sensible and virtuous men under mistaken notions of humanity."[4] But his protest was disregarded, because many notable persons were nervous about interfering with a custom which seemed in their eyes to have the sanction of religion as well as of usage. Such was the attitude towards slavery of the British rulers in India, and such was the attitude of the Home Authorities. Accordingly when the India Bill of 1833 was introduced, with clause 88 providing for the general abolition of

1. Sir John Shore, *Notes on Indian Affairs*, Vol. II ; Cf. W. Adam, Letter VIII to Thomas Fowel Buxton.

2. Answers of A. D. Campbell, to the Questions circulated for the affairs of India, Appendix to Report from Select Committee, 1832, (Public), p. 458.

3. From W. H. Macnaghten to Colonel Fraser, dated August 24, 1834, para 9, Appendix XIII to the *Indian Law Commissioner's Report*, p. 547.

4. From J. Richardson, Judge and Magistrate of Zillah Bundelcund to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, Extract from Consultation No. 47, of March 15, 1816, para 6, Judicial Criminal Proceedings, Bengal Record Department.

slavery, the Duke of Wellington objected to it on the ground that it was politically inexpedient. He remarked: "Though I entertain no doubt whatever that slavery does exist in that country (India), domestic slavery in particular to a very great extent,.....I would recommend the striking off the clause from the Bill....I know that in the hut of every Mussalman soldier in the Indian army there is a female slave who accompanies him in all his marches, and I would recommend your Lordships to deal lightly with that matter if you wish to retain your sovereignty in India."[1] The clause was modified accordingly, and the final abolition of slavery only took the shape of a pious hope, a hope that did not see the dawn of fulfilment till the good old days of John Company had come to an end. Meanwhile every possible argument was brought forward in order to throw discredit upon the efforts of those who were agitating for the abolition of this dreadful evil. It was stated that Indian slavery was of a mild form, that the slaves themselves were satisfied with their condition, that in time of famine slavery was a true blessing, that the abolition of slavery was for the time being most inexpedient, and that the rights of the slave-owners could not be simply ignored. But all these pleadings were plausible rather than founded on solid reason, as will presently be shown.

No. 4. IN VAIN DEFENCE OF SLAVERY

SUMMARY: I. Alleged mild form of slavery II. Alleged inexpediency of abolition III. Alleged rights of slave-owners.

SOURCES: PUBLISHED: W. Adam, *Letters to Thomas Fowell Buxton*; J. H. Harrington, *Analysis of the Bengal Laws and Regulations*, V. I; W. H. Macnaghten, *Principles and Precedents of Mahomedan Law*; *Hindu Law*; H. Stark, *Calcutta in Slavery Days*; Appendix XIII to the Indian Law Commission's Report, 1839-41; Parliamentary Papers published by the House of Commons, Judicial, 1828.

UNPUBLISHED: O. C. 13, Judicial Department; Con. No. 47, Judicial Criminal Proceedings, 1816; Judicial Department, 1821/23, Vol. 44/53; Law Proceedings, Aug. 2–Sep. 20, 1841; Letters from the Hon'ble the Court of Directors, Political Department, Vol. IV, 1820; Government of India Legislative Proceedings, February 1839; Government of India Legislative Proceedings, April 1, May 27, 1839.

I. ALLEGED MILD FORM OF INDIAN SLAVERY. One of the most common objections against the discontinuance of the then existing state of slavery in British India was the supposed mild nature of East Indian Slavery. This was often used by the

1. Stark, *Calcutta in Slavery Days*, p. 10; Cf., Monthly Review, 1840, p. 420.

supporters of slavery as a reason for its continuance. It was even said that "its abolition would be a great evil, the consequences of which were beyond comprehension".

Thus for example, in the Bengal Presidency H.T. Colebrooke neither saw any occasion for abolishing slavery, nor for preventing enslavement, nor for prohibiting the sale of slaves within the territories of British India. According to him it appeared "that neither the method by which free persons were made slaves, (who for the most part were children of tender ages), nor the frequency with which such cases occurred, nor the common treatment of those who were already slaves by their masters, was an objection which demanded any mediation of legislative enactment".[1] "I trust not to be an advocate for slavery," Colebrooke writes, "nor indifferent to the miseries incident to the most degraded condition in human society, when I observe that in this country slaves are in general treated with gentleness and indulgence. The slave is a confidential servant rather than an abject drudge, and is as often held superior to the hireling in his master's estimation and his own, as placed beneath him in the scale of employment and of comforts, while mildness and equanimity of temper, (or his apathy as to his slowness, if this better describe the general position of the people) contribute to ensure good treatment of the slave. I should, however, only demonstrate my unacquaintance with the human character, if I affirmed this to prevail universally without any exception. I cannot doubt that bad temper and disposition constitute a harsh, severe and cruel master. Nor have I been without occasions of being convinced that such characters are to be found amongst the owners of slaves."[2]

The same opinion was held by the Court of Nizamut Adawlut. When they dealt with Leycester's proposal of completely abolishing slavery in India, they said: "The state of slavery is not so injurious to the objects of it as in other countries where it is still maintained."[3] Again W. H. Macnaghten informs us that there was little moral necessity for the interposition by means of legislation. "In India, (generally speaking)," he writes, "between a slave and a free servant there is no distinction but in the name, and in the superior indulgences enjoyed by the former; he is exempt from the common cares for providing

1-2. Colebrooke's Paper on Slavery supposed to have been written in 1812, but missing when J. H. Harrington prepared his minute in 1816, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.

3. Remarks and Orders of the Court of Nizamut on a Report from the Second Judge of the Bareilly Court of Circuit, dated September 9, 1815, Parliamentary Papers, 1828, (Judicial) p. 346.

himself and family; his master has obvious interest in treating him with lenity; and the easy performance of the ordinary household duties is all that is exacted in return."[1]

The same writer speaking of Hindu slavery adds: "Whatever objections may be theoretically advanced to its existence, the condition of the slave himself differs in not much more than in name from that of a hired servant. I have no reason to believe that the system of slavery, as it exists amongst the Hindus, is productive of much individual misery, however baneful its effects may be to the society at large. The Courts of Justice are accessible to slaves as well as to free men; and a British Magistrate would never permit the plea of proprietary right to be urged in defence of oppression."[2]

The question naturally presents itself: What must we think of the statements made by Colebrooke, Macnaghten, and the Court of Nizamut Adawlat? First of all, it must be borne in mind that they spoke of conditions prevailing in Bengal; so that their assertions regarding the mildness of slavery are in no way applicable to the whole of India. Yet in spite of the limited field of their investigations, they did not hesitate to conclude against the abolition of slavery "within the limits of the British territories in India".[3] Their defence of the prevailing system of slavery is all the more extraordinary, when it is remembered that Colebrooke himself, speaking of Bengal, cannot help saying: "I cannot doubt that bad temper and disposition constitute a harsh, severe and cruel master".[4] In the light of this admission we naturally feel inclined to doubt, whether even in Bengal these cruel masters were so rare as Colebrooke would have us believe. Moreover we have already had occasion to point out that domestic slaves were ill-treated in Calcutta. Hence we do not see our way to attach great importance to the findings of Macnaghten, Colebrooke and the Court of Nizamat Adawlut. We feel rather inclined to say that these protagonists of the system of slavery were swayed by motives of political expediency, and succeeded in seeing the silvery lining, but failed to see the black cloud. When the investigations, made by Graeme, Baber, Campbell and Francis Buchanan, clearly evidence the deplorable condition of slaves in Malabar, when slaves were harshly treated in Madras and Bombay, it is indeed difficult to believe that in Bengal slavery was of such a mild and

1. Macnaghten, *Principles and Precedents of Mahomedan Law*, Preliminary Remarks, p. XXXV.
2. Macnaghten, *Principles and Precedents of Hindu Law*, 1874, p. 116.
3-4. Colebrooke's Paper on Slavery, O. C. No. 13, of December 29, 1826, Judicial Department, Bengal Record Department.

unobjectionable form as not to call for any legal interference on the part of Government.

This conclusion is confirmed by the following extract taken from Letter VIII of William Adam to Thomas Fowell Buxton. "To judge of the treatment of agrestic slaves, read the statements made from personal observation and knowledge by Baber, Graeme and Francis Buchanan, and then pronounce whether the two hundred thousand in Malabar, Canara and Arcot, and the many thousands more in Tanjore, are treated by their masters with gentleness and indulgence, are exempt from the common cares of providing for themselves and their families, are protected by British Magistrates and Courts of Justice, and differ in name only from hired servants. I think it not improbable that an investigation into the condition of the alleged 80,000 slaves in the Bengal district of Sylhet, would prove that many of them are agrestic slaves, and that the treatment they receive is not widely dissimilar from that of those in the Madras Presidency. With respect to the female domestic slaves, read the statements of Campbell and Baber, and then also pronounce whether, kept as they are almost universally for sensual purposes, immured in the harems of Mahomedans, secluded from access to the society of free persons and from all appeal to Courts of Justice, often treated with caprice, frequently punished with much cruelty, and sometimes murdered with impunity, their condition and treatment are such as has been described by the Bengal authorities. There are facts which tend to show that female domestic slaves are treated as ill in Bengal as in the Madras Presidency; and I am not acquainted with any reasons, ignorant as all Europeans are of the internal economy of native families, particularly those of wealth and consideration, that render their better treatment probable. With regard to male domestic slaves, let it be borne in mind that many of them—certainly however a minority—are eunuchs: that fact alone speaks intelligibly as to their treatment. It is to the remaining number of male domestic slaves and to them only that the picture of gentle and indulgent treatment that has been drawn can be deemed to apply, and even to them the exceptions (are) acknowledged by Colebrooke, produced by occasional examples of harsh, severe and even cruel masters."[1]

By way of additional information let us further inquire into the so-called mild form of slavery in Bengal. J. Richardson, who

1. W. Adam, Letter VIII to Thomas Fowell Buxton, (Imperial Library, Calcutta).

for many years lived in the country, draws a pathetic picture of the lot of the agrestic slaves. He speaks of the twang of the whip raising them from a sleepless bed of filth and uneasiness. He makes mention of the dreaded voice of the master calling forth these unhappy victims to a renewal of their daily toil. He writes: "Perhaps exposed to the burning heat of the electrical sun, immerged to the knees in water, stagnant and unwholesome, respiring a vapour inimical to existence—perhaps buried alive in mines replete with noxious minerals and baneful air, which slowly consumed the human frame—they died by piecemeal.[1] Furthermore it very often happened that by his owner's death or misfortune, the slave was transferred with the cattle or lands of his master to a less lenient lord.[2]

Again, in spite of the fact that very often the master provided his slave with money for marrying, in the majority of cases the slave was deprived of all family happiness. There being no established mode of providing for or bringing up his family, a slave generally shirked from entering into a marriage bond, and the result was that the population suffered.[3] However, the impulses of human nature being what they are, it was of course to be expected that unlawful connections were bound to exist, and a number of children were born out of wedlock.[4]

Moreover, continual oppression and implicit obedience certainly obliterated the finer qualities of the human mind which are found in a free man. They were mostly slaves from their birth, throughout their life they remained neglected, and without ever breaking away from their imbecility of childhood they sank into the grave. So dire was their lot that, according to Richardson, parents, contrary to the usual tie of nature, rejoiced at the early death of their offspring. Reason, humanity and paternal affection did not make them grieve at the thought that their children were snatched away from them in the early dawn of their childhood, because they were fully aware of the harassing misery which they themselves suffered and daily endured.[5] And J. Richardson, from whom most of these details are drawn, concludes with the significant remark: "This is no fanciful unveiling of an ideal

1-2. From J. Richardson, Judge and Magistrate of Zillah Bundelcund to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, extracts from consultation No. 47 of March 15, 1816, paras 7/8, Judicial Criminal Proceedings, Bengal Record Department.
3-4. *Ibid.*
5. *Ibid.*, paras 8-9.

(imaginary) case."[1] It is therefore our firm belief that there was very little, if any, difference between slavery in India and slavery in America.

In spite of this, some enthusiastic advocates of Indian slavery would have us believe that the slaves were quite content to be slaves; and they make capital out of the indifference and the apathy of the slaves themselves as regards emancipation. This is indeed a poor reason which does not carry conviction, because it is practically impossible to prove whether this apathy was universal or exceptional. Moreover, it was practically impossible for the slaves to express any individual opinion disadvantageous to their masters' interests. It is more than likely that it was not the slaves but the masters who asserted that there existed in the country a supposed indifference and apathy as regards the abolition of slavery.

There was only one occasion on which slavery proved beneficial. In times of famine slavery was instrumental in preserving thousands of lives, both of children and of adults, who were fed by their masters, when they would otherwise have perished from want. First of all a mild and mitigated form of slavery is of course preferable to exposing the poor classes of the community to the risk of perishing from want by depriving them of the only ostensible means of support.[2] At the same time it must be remarked that an institution like slavery is of its nature likely to contribute towards the distress which ultimately results in famine. For slavery does away with the factor of personal interest, and makes men act like automatons without a thought of improving their condition by a greater display of energy and eagerness in order to increase the produce of the fields.

II. ALLEGED INEXPEDIENCY OF ABOLITION. Another plea, made on behalf of the British Rulers in India to justify their reluctance to tackle the question of the abolition of slavery, may be gathered from the writings of William Chaplin, the Commissioner of the Deccan in 1823. He wrote: "Policy and humanity perhaps dictate that slavery at some future time shall entirely be prohibited, but all at once to stop the purchase or sale would be equipollent to the destruction of what has always been deemed a marketable commodity, and would be at variance with the spirit of rule which is to follow the usages of the country."[3]

1-2. From J. Richardson, Judge and Magistrate of Zillah Bundelcund, to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, extracts from consultation No. 47 of March 15, 1816, Bengal Record Department.

3. From William Chaplin, Commissioner of the Deccan to J. Henderson, Secretary to the Government of Bombay, dated August 1, 1823, Judicial Department, 1821-23, vol. 44-53, Bengal Record Department.

As this is the common, stock in trade argument brought forward in and out of season by other apologists who would fain uphold that slavery was a necessary evil, it may be worthwhile here to examine this statement more in detail.

First of all, was it really necessary to postpone the abolition of slavery to some future time? In 1816, when W. Leycester in his memorable Minute[1] proposed the complete abolition of East Indian slavery, the Court of Nizamut Adawlut rejected his proposal on account of the legalised existence of slavery in the West Indies. "Whilst it (hereditary slavery) is allowed to remain with respect to the progeny of existing slaves, born under the British Government in the West Indies and South Africa, the abolition of it on general principles of justice and humanity, the court apprehend, cannot be consistently proposed for India."[2]

In answer to this it may be doubted whether slavery in the West Indies was so closely connected with slavery in India that the one must necessarily stand or fall with the other.

If some one in the West Indies had suggested the complete abolition of slavery there, as W. Leycester did in India, it is not likely that the same argument would have been urged for its non-abolition. For, as William Adam remarks, "Perhaps in that case the defence would have appeared flimsy and the reasoning weak; but when it was employed for a contrary purpose, the reasoning became more substantial and strong."[3] Evidently the Court of Nizamat Adawlut seemed to be, if anything, anxious to maintain slavery. This is also made plain by the lamentable decision of 1798, when they decreed: "That the spirit of the rule for observing the Mahomedan and Hindu laws was applicable to cases of slavery, though not included in the letter of it";[4] and thereby legalised and perpetuated Hindu and Mahomedan slavery from 1798 to 1843.

In the next place, it may be rightly asked to what extent the abolition of slavery would have been at variance with the spirit of British rule, which is to follow the usages of the country. At first sight it would seem that innovations introduced into ancient laws and customs were bound to cause universal discontent among the people. But there was at the same time in the minds of many

1. Extract of a Report from W. Leycester, the Second Judge of the Bareilly Court of Circuit, dated September 9, 1815, extract para 95, Bengal Judicial Consultations, February 14, 1817, Parliamentary Papers, 1828, Judicial, p. 342.
2. Remarks and Orders of the Court of Nizamut Adawldut, on a Report from the Second Judge of the Bareilly Court of Circuit, dated September 9, 1815, *Ibid*, para 53, p. 346.
3. W. Adam, Letter VIII to Thomas Fowell Buxton.
4. Harintgon, *Analysis of the Bengal Laws and Regulations*, I, p. 68.

Government officers a tendency to exaggerate the would-be popular opposition. For, if innovations are truly designed for, and plainly tend to, the benefit of the people, there is, as a rule, little reason for apprehending unmanageable opposition. There are several other instances of suppression by the British Government of perhaps greater evils than slavery, without producing more than a temporary dissatisfaction which can hardly be described as a disturbance of the peace. Thus for example, at one time the custom prevailed of mothers offering their children to the Ganges and the Ganga Sagur only to be devoured by sharks and alligators. Nor can it be denied that other forms of infanticide were formerly largely practised. Again the cruel burning of Hindu widows with the corpses of their deceased husbands had also been for years in use throughout the country. Yet these three evil customs had been suppressed without causing any wide-spread dissatisfaction. And here we wish to point out that the suppression of these three evils tended towards one aim, namely, the saving of human life from degradation and suffering. Now the abolition of slavery would have been productive of the same effects; and if the above mentioned evils could be, and were, suppressed, we fail to understand why Government looked upon the abolition of slavery as something more dangerous than playing with fire.

Accordingly W. H. Macnaghten was quite right when he observed: "It is hardly possible indeed to imagine a state of society in which the acquisition of personal freedom would not prove an incalculable blessing to those on whom it was conferred, though the degree in which the benefit in the first instance be felt may doubtless be affected by peculiar circumstances."[1] The correctness of this opinion is borne out by what had eventually taken place, when in several parts of India a partial abolition of slavery had actually been decided upon.

In 1840, Captain C. F. Le Hardy, the Officiating Secretary to the Commissioner for the Affairs of Coorg, commenting on the liberation of the Punnah slaves in Coorg (where slavery prevailed in its worst form), remarked that the consequent results were not on the whole such as to occasion any feelings of discontent, nor had he ever heard that this partial emancipation had caused great disturbances, although, previously to its taking place, this was the principal objection which had been urged against the measure. On the contrary many natives, who were questioned by him on the sub-

1. Mr. Macnaghten's Letter to Col. Fraser, dated August 29, 1834, Appendix XIII to the Indian Law Commission's Report, 1839-41, para 11, p. 548.

ject, informed him that the liberation of the Punnah slaves was regarded by the rest with perfect indifference, and that it had not to their knowledge given rise to any dissatisfaction.[1]

Hence we feel inclined to think that J. Richardson was right after all, when, about 30 years prior to the emancipation of the Punnah slaves in Coorg, he wrote: "Can there exist any good reason, either political or humane, against the British Government prohibiting the purchase or sale of slaves?"[2]

Nor is it a matter for astonishment that J. Richardson, in his disappointment at seeing all his efforts come to naught, should have made bold to affirm that the spirit of British rule in India, was to follow the usages of the country and the customs of the people for the profit of the rulers and not for the benefit of the ruled.[3] Similarly W. Adam pointed out that these long established customs and usages never stood in the way of any plan or project which promised an increase of revenue, and that the increase of revenue was uppermost in the minds of the legislators and was the most prominent in their objects and calculations. He does not hesitate to say that history has taught us that, in the external administration of the Government, native institutions, standing in the way of increase of revenue, have been systematically superseded, neglected and despised.[4] The revenue system added tax to tax, monopoly to monopoly, unsettling property in the soil, lessening its value and attacking individual rights.[5] This is so true that the provinces of the Bengal Presidency had been for years verging on a state of rebellion because of the British attempts to tax lands, immemorially held tax free.[6] Such was Government's anxiety to add to their revenue that a distinguished Civil servant, the Honourable Sir Fredrick John Shore, wrote: "Whether true or false, there is an undoubted impression amongst the Government servants, both in India and in England, that a man who treats the native with much civility and attention will be in bad odour with the Government."[7] Commenting on this statement, W. Adam pointedly observed: "Sure enough, a Government, conducted on such principles and in such a spirit, must not be permitted to cloak its hostility to a measure, such as the pro-

1. From Captain C. F. Le Hardy, Superintendent of Coorg, to the Officiating Secretary to the Commissioner for the affairs of Coorg, Bangalore, dated June, 6, 1840, Appendix XIII to the Indian Law Commission's Report, 1839–41, para 5, p. 541.

2-3. From J. Richardson, to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, extract from Consultation No. 47 of March 15, 1808, Judicial Criminal Proceedings, Bengal Record Department.

4-7. W. Adam, Letter VIII to Thomas Fowell Buxton.

posed abolition of slavery, under the mere pretext of its respect for ancient institutions and long established usages."[1]

To give a last instance that neither humanity nor justice had anything to do with the continuance of slavery, we will quote an extract from a letter written on February 11, 1841, by H. M. Blair, Magistrate of Udappy. "The existing system of slavery in Canara, having been recognised by Government, it would seem absolutely necessary that the right of the master to the services of his slave should be protected by law, and as difference of opinion seems to exist among the Mahomedan Law Officers as to whether a slave, having deserted his master and refusing to return to him, is liable to punishment by the Criminal Courts, it is desirable that a definite rule should be established on this point, as any uncertainty existing on this question must seriously affect the landed interest of this Province and produce a corresponding influence on the Government revenue."[2]

However these staunch defenders of the principle of safeguarding the Government revenue might perhaps have changed their minds, if they had realised what was meant by slaves being treated as a marketable commodity.[3] An unpublished document of the Bombay Government Records which is found in the Political Department Vol. IV, entitled "Letters from the Hon'ble the Court of Directors" provides us with a graphic description of the manner in which slaves were exposed for sale in the open markets at Zanzibar, where merchants from Cutch, Sind, Seinee and other parts of India flocked in great numbers to purchase and carry on a regular traffic in human beings.

"Slaves are brought to the market place early in the day. But the principal exhibition commences at about 3 or 4 o'clock in the afternoon.

"They are ranged in a line composed of both sexes and all ages, beginning with the least and increasing to the rear, according to their sizes.

"To set them off to the best possible advantage, their skins are cleaned and burnished with oil, their faces painted with red and white stripes; their wooly hair plastered and filled with yellow powder, esteemed amongst the poor creatures as a mark of beauty

1. W. Adam, Letter VIII to Thomas Fowell Buxton.

2. From H. M. Blair, Magistrate of Udappy, to the Register to the Provinclal Court of Circuit, Western Division, Tellicherry, dated February 11, 1841, Law Proceedings 2nd August—20th September 1841, Imperial Record Department.

3. From William Chaplin, Commissioner of the Deccan to J. Henderson, Secretary to the Government of Bombay, dated August 1, 1823, Judicial Department, 1821-23, Vol. 44-53, Bombay Reoord Department.

and elegance; their hands and feet were ornamented with rings and plasters, and round their loins is wrapped a new striped or plain coloured cloth.

"At the end of the file stands the proprietor, and on each side two or three of his domestic slaves, armed as a guard.

"Thus arranged the procession begins and passes through the market place and principal streets, the owner in a sort of song sounding the good qualities of his slaves and proclaiming the prices he had been offered for them.

"When one of them strikes a spectator's fancy, the line is halted, and an examination ensues, which for minuteness of detail is not equalled in any cattle market in Europe. The purchaser first ascertains that there are no defects in the faculties of speech or hearing; and takes the assurance of the seller that the Slave neither snores nor grinds his teeth in his sleep, which are deemed great objections. The mouth and teeth are inspected and afterwards every part of the body in succession, not excepting those parts, which a sense of decency in the most savage tribes conceals from view, and which the very slave so inspected would not expose without a blush which the lighter cheek of his future master could not display. After this examination he is made to run, and if there be no defect in the limbs and no indication of any disease, the bargain is concluded.

"At the close of the day these wretched beings are stripped of their decorations and sent to the houses of their respective purchasers. Women with infants hanging at their breasts and others feebled from age are seen thus marshalled and driven about the streets. Some groups had been so ill fed that their bones appeared as if they would penetrate the skin.

"Children of six years are sold for five or six dollars. The value of a prime slave was about 50, and that of a young girl about 60 dollars. Women with infants did not fetch so high a price as those without them.

"The various tribes of slaves," concludes the author of this memorable document, "brought annually to Zanzibar for sale, and of which 10,000 are supposed to be sent annually to India, could not be accurately described."[1]

We shall add one more instance in order to show the irrelevancy of William Chaplin's apology and the vagaries of the other

1. *Observations on the Slave Trade*, Letters from the Hon'ble the Court of Directors, Political Department, Vol. IV, Bombay Record Department.

defenders of slavery on the plea of its alleged mild form. Accordingly we shall describe the operation of the Mahomedan law of slavery respecting female slaves and its recognition by the British Rulers. When C. H. Cameron submitted, in 1839, a separate Minute to the Supreme Government, he stated that a Mahomedan master had a different kind of right over his female slaves, of which the abolition ought to be made universally and certainly known.[1] What this so-called right was we learn from J. Richardson, according to whom a Mahomedan owner of slaves was recognised as the legal lord of their persons, not only for the purpose of exacting from them laborious services, but also for the sensual or rather beastly gratification of unnatural passions.[2] C. H. Cameron himself was less outspoken. He was satisfied with saying: "The answer of the muftis is of such a nature, where it touches the topic, as to be expressed in Latin instead of English in the translation from the original Persian."[3] He also adds the following detail, that according to the existing Mahomedan law a master might compel his French slave to be his concubine, though he is of opinion that every Court of Justice would condemn the perpetrator of such grievous crimes.[4] But C. H. Cameron's colleague, A. Amos, did not think that this evil practice should be dealt with in the discussion of the Bengal Law Commission. In his Minute of April 1, 1839, he objected to this proposal, because he thought it inexpedient to go beyond the directions of the Court of Directors by legislating directly and expressly with reference to this practice.[5]

It is almost incredible that such a practice was part of a law recognised by the British Government, and the shameful treatment to which these female slaves were submitted can surely not be excused on the plea of the prevailing usages and customs of the country. J. Richardson observes: "This lewdness or rather carnal appetite, was not only authorised to set every tenderness and delicate feelings of the opposite sex at naught, but also legally

1. A separate minute by C. H. Cameron, No. 16, enclosed in a letter from the Law Commission, dated February 1, 1839, Government of India Legislative Proceedings, February 1839, Imperial Record Department.

2. From J. Richardson, Judge and Magistrate of Zillah Bundelcund, to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, extracts from consultation No. 47 of March 15, 1816, para 12, Judicial Criminal Proceedings, Bengal Record Department.

3-4. A separate minute by C. H. Cameron, No. 16, enclosed in a letter from the Law Commission, dated February 1, 1839, Government of India Legislative Proceedings, February 1839, Imperial Record Department.

5. Minute by the Hon'ble A. Amos, dated April 1, 1839, No. 17, Government of India Legislative Proceedings, from April 1 to May 27, 1839, Imperial Record Department.

to outrage the very laws of nature."[1] And yet in spite of this, H. Stark, a Sociologist, ventures to remark about Mahomedan female slaves, that " kindness to them was enjoined by religion ".[2] What is meant by the so-called kindness of a Mahomedan master, the following few remarks of J. Richardson will make manifest: Youth, beauty, debauchery, prostitution and all its concomitant vices go hand in hand. With the passing away of the two former, the wonted luxury of the Mahomedan master no more existed; and he turned away with satiety and disgust from his former paramours to look for other victims to pander to his lust. He only thought of purchasing more female children for the avowed purpose of prostitution.[3]

Had slavery been abolished, instead of being countenanced by the Company, these very women would have become useful members of the community, and would have added to the prosperity of the State by the increase of their species. They would have married industrious labourers and mechanics, and innumerable numbers would have escaped the risk of exposing themselves to the venal and promiscuous intercourse of the sexes, which was highly prejudicial to the population.[4] But it would seem that the legislators never had at heart the welfare of these unfortunate women.

III. ALLEGED RIGHT OF SLAVE-OWNERS. The only remaining ground of objection to the abolition of slavery in India was the alleged inroad on individual rights and the injustice of interfering with the private property which masters possessed in their slaves. This places the question on the footing of right and justice; and viewed in this light, there is no question of morality or of law that admits of an easier solution. " In any disputed question of property," says Mr. Adam, " there are at least two parties; and in the present instance those parties are the master and the slave. The property in dispute is the body and labour of the slave. Of these, the master claims the exclusive proprietary right; whilst the slave asserts that his body and the fruits of his labour are his own. In a civilized country, in a civilized age, under a civilized Government, the mere statement of the case is decisively in favour of the slave's claim. It is impossible that any man can possess any property by a more intimate and perfect right than that by which every man possesses the property in his own person; and the property

1-3. From J. Richardson, Judge and Magistrate of Zilla Bundelcund to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, Extracts from Consultation No. 47 of March 15, 1816, paras 12/13, Judicial Criminal Proceedings, Bengal Record Department.

4. Stark, *Calcutta in Slavery Days*, 1916, p. 9.

in the profits of his lawful labour follows as a necessary consequence; all acts of capture and violence, buying and selling, being vitiated and rendered null and void by the previously existing, permanent and indefeasible right of the man to himself, a right which, like many other rights, may be long in abeyance, but which can never be lost, and may be always resumed when the fear of violence or the pressure of actual force is removed.

"But it will be said that the question does not lie between the master and slave, but between the master and the Government which has legalised slavery and legalised the master's property in the slave. To this it may be replied that human law is merely an expression of the will of individual man, and that no man or number of men can change wrong into right. The right therefore of the slave to himself is unaffected by the act of any Government. But a Government cannot be expected to admit its own solemn act to be wrong without any good reason assigned, which may or may not convince; and therefore let it be further remarked and repeated, if necessary a thousand times, that even according to the existing law of slavery in British India (1840), on the high authority of Mr. Macnaghten 'thousands are at this moment in a state of hopeless and contented though unauthorised bondage.' Let it be further observed that slavery in India has not been legalised by a formal enactment of the British Parliament, nor even of the British Government, but by a mere interpretation, and, as I firmly believe and maintain, by a gross and palpable misinterpretation of a rule of law which, it is admitted by the expounders, makes not the slightest mention of, or allusion to, slavery. If this alleged misinterpretation of the law should be established by a competent authority, then the whole question of slavery in India is settled, and in no instance does the master possess a legal any more than a rightful property in the slave."[1]

No. 5. CONCLUSION

By way of conclusion we should like first to call attention to three important statements made by defenders of the slavery system. Colebrooke himself admitted that slavery even in its mildest form is "the most degraded condition in human society to which peculiar miseries are attached," and at the same time trusts "that he would not be considered an advocate of it".[2] The Court of Nizamut Adawlut acknowledged that they fully

1. W. Adam, Letter VIII to Thomas Fowell Buxton.
2. Colebrooke's Paper on Slavery supposed to have been written in 1812, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.

"participated in the sentiments of Mr. Leycester, and earnestly wished that slavery could be discontinued".[1] Macnaghten declared that "the evils of slavery were manifold, and that its effects baneful to the society at large". Now keeping in mind these three statements, it seems to us somewhat of a puzzle to be asked to believe that a mild form of slavery prevailed throughout India.

Furthermore as regards the abolition of slavery, it is scarcely necessary to enlarge further on this point. Slavery in India was either of a mild form, as it was described to be, or it was not. In either alternative the conclusion is that slavery ought to have been abolished. First of all, if Richardson, Harington and Baber were right in their estimate of the evils of slavery, there was all the more reason to put an end to such a disgraceful state of society. In that case the pity of it is that till the year 1843 the rulers tolerated such abominable practices under the mistaken notion of following the usages and customs of the country, and allowed them to be carried on in their own name.

In the next place even if Indian slavery was free from cruelty and oppression (which is far from being the case), it does not follow that the abolition of slavery was to be indefinitely postponed. This is made clear by the following extract from the Madras Board of Revenue. "Because no immediate measures are urgently called for, it does not follow that the most useful, the most laborious, and one of the most numerous classes of our subjects in these territories should, from generation to generation, continue the hereditary bondsmen of their masters, incapable of inheriting property of their own, deprived of that stimulus to industry which possession of property ever inspires; and, because they are fed, clothed and reconciled to their present condition, it does not follow that the Government should confirm institutions which doom those who have thus fallen into this condition incapable of ever recovering their liberty or of rising to a level with their fellow-men. Independently of those principles, hostile to any restraint on liberty, which are innate in every British Government, and which, as contained in our Judicial Code, without any express enactment on the subject, have operated to check abuses of masters towards their slaves, and independently also of those feelings among freemen, which naturally prompt them to extend to everyone under their government the blessings which freedom

1. Remarks and Orders of the Court of Nizamut Adawlut, on a Report from the Second Judge of the Bareilly Court of Circuit, dated September 9, 1815, Parliamentary Papers, Judicial, 1828, para 53, p. 346.

confers, it appears to the Board, on the mere calculating principle of self-interest and policy, to be desirable that no one should be deprived of the means of acquiring property, or of diffusing those benefits among society, which proceed from an increase of capital and of wealth."[1]

In this connection the observations made by Mr. Warden, a member of the Council in Bombay, are quite to the point. He said: "The general opinion that prevails in support of slavery, that it is so leniently conducted as to weaken the objection arising from the principle, is precisely of the same nature as the arguments that have been invariably used by the advocates of the slave-trade; a principle that is in its nature inhuman and abhorrent can, in any estimation, derive no support from such an argument."[2]

From all that has been said in this introductory general survey it is obvious that the practice of slavery was wide-spread throughout the land; that up to 1843, and perhaps even later, men, women and children were bought and sold like the beasts of the field; that girls were deprived of their liberty, and for a few rupees disposed of to become prostitutes; and that slavery was for ever entailed on their descendants.

There were no doubt a number of officials who were of opinion that slavery in India was not of such a nature as to call for Government's interference. It would seem that slaves were well treated, and had no reason to complain of their lot. But in spite of the great amount of special pleading expended on the question of the alleged mildness of Indian slavery, the fact remains that slavery was an unmitigated evil,—an evil known and acknowledged by Government, undenied and undeniable—and ran counter to every principle of humanity. The persevering and the disinterested representations of some of the most enlightened and unselfish servants of the Company left the Government no plea of ignorance. This conclusion may be further corroborated by the attestations of a host of men who had occasion to write official documents on the subject.

SIR WILLIAM JONES: "I make no scruple to declare my opinion, that absolute unconditional slavery, by which one human creature becomes the property of another, like a horse or an ox, is happily

1. Extract paras 43-44 from the Proceedings of the Board of Revenue, dated November 25, 1819, Parliamentary Papers, Judicial, 1828, p. 899.

2. *Monthly Review*, 1840, p. 426.

unknown to the law of England; and that no human law could give it a just sanction."[1]

SIR CHARLES T. METCALFE, RESIDENT AT DELHI: "It is impossible to think without horror of whole generations being born to slavery."[2]

WILLIAM THACKERAY, CHIEF SECRETARY TO GOVERNMENT, CALCUTTA: "The British retain the rights of their birth, and ought also to retain all the relations connected with the British character to which, it is equally abhorrent to be the master of slaves, as to endure slavery."[3]

LORD MINTO: "Slavery is a practice which is always liable to be attended with the greatest abuse, and which, however mild and unobjectionable it may sometimes be in its application, must still be viewed as a violation of one of the first principles on which society is constituted."[4]

SIR STANFORD RAFFLES: "Slavery under any shape, or if it bears only the name, is so repugnant to every principle of enlightened administration and so inconsistent with your Lordships' benevolent plans, that I fear I should not stand excused in my defence of such a system, under any modifications or circumstances whatever."[5]

GOVERNOR FARQUHAR: "Slavery is the greatest of all evils, and the attempt to regulate such an evil is in itself almost absurd. There is no excuse for continuing the practice in India, a country fully peopled, and where cultivation and commerce can be carried on by free men."[6]

W. LEYCESTER, JUDGE OF BAREILLY: "Nothing perhaps, is so revolting as the idea of hereditary slavery. It might be considered an adequate inducement to deeds of charity to compensate them by the labours of the object of it during one genera-

1. Extract from the charge, delivered by Sir. William Jones, a Judge of the Supreme Court at Calcutta, to the Grand Jury, June 1785, Parliamentary Papers, 1828, Judicial, pp. 9-10.

2. From Charles T. Metcalfe, Resident at Delhi, to John Adam, Secretary to the Government of Fort William, dated January 3, 1813, *Ibid.*, p. 103.

3. Extract of a Report from the Advocate-General, dated January 5, 1813, *Ibid.*, p. 147.

4. From Lord Minto, to the Honourable Thomas S. Raffles, Lieutenant Governor in Council of Java, dated October 17, 1812, *Ibid.*, p. 172.

5. From Sir. Stanford Raffles to the Right Honourable Gilbert Lord Minto, Governor-General, Fort William, dated June 13, 1812, *Ibid.*, p. 157.

6. From R. T. Farquhar, to the Secretary to Government, dated November 8, 1805, No. 3, *Ibid.*, p. 434.

tion, instead of aggravating the sorrows of accidental necessity by slavery through all generations."[1]

If such sentiments as these had been general among those who held in their hands the destinies of India, there is little doubt that Indian slavery, far from being countenanced for many years by the Government, would long ago have been made a criminal offence, punishable by law. Much indeed was said on the abolition of slavery in Hindustan, but much more remained undone: "For good thoughts towards men are little better than good dreams, except they be put in act, and that cannot be without power and peace."

1. Extract of a Report from W. Leycester, the second Judge of the Bareilly Court of Circuit, dated September 9, 1815, *Ibid.*, p. 345.

CHAPTER II

Sources of Slavery in British India

PLAN: 1. Existence of slavery 2. Sources of slavery in general 3. Sources of Slavery in detail.

No. 1. EXISTENCE OF SLAVERY IN ANCIENT INDIA

SUMMARY: I. Greek writers II. Earlier testimonies III. Indigenous origin of Indian slaves.

SOURCES: PUBLISHED: D. R. Bhandarkar, *Asoka*; G. Bühler, *Laws of Manu*—Translated; R. C. Dutt, A *History of Civilization in Ancient India*, I; *Epochs of Indian History, Ancient India*; M. S. Elphinstone, *History of India*; Ralph T. H. Griffith, *The Hymns of the Ṛgveda*—Translated, II; A. A. Macdonnel, *A History of Sanskrit Literature*; V. A. Smith, *Asoka*; *Early History of India*; *Oxford History of India*; Asiatic Journal 1827.

I. CONTENTION OF GREEK WRITERS. From the very outset it must be borne in mind that slavery had been practised from time immemorial through the length and breadth of India. It is true that this assertion runs counter to what we read in the accounts of the ancient Greek writers. In their description of Hindustan, they concur in stating that at the time of Alexander's invasion (326 B. C.) slavery did not exist there. "All the Indians," remarks Arrian, (1st century A. D.) "are free; they have no slaves amongst them."[1] Strabo writes: "None of the Indians employ slaves"[2]; but he afterwards adds that this remark applies more especially to that portion of India, which was under Musicanus, and which was subject to a superior kind of Government.[3] This Musicanus (Mousikanos) had his ancient capital at Alor or Aror, in Sind, now included in the Shikarpur district, and situated in 68° 59′E. and 27° 39′N. Both the social institutions of this kingdom and the peculiarities of the people excited the admiration of the Macedonians.[4] Waiving the question whether Strabo is right or wrong in saying that slavery had no place in Musicanus' kingdom, it remains a fact that the existence of slavery in Hindustan, at the

1. *Asiatic Journal*, 1827.
2. *Ibid.*
3. *Ibid.*
4. V. A. Smith, *The Early History of India*, p. 93.

earliest period of its history, can be as little doubted as its existence under the Company's Government; and Vincent Smith remarks, "In reality praedial and domestic slavery of a mild form seems to have been an institution in most parts of India from very remote times." [1] In order to prove that this is so, we have only to mention historical sources prior by hundreds of years to the Greek historians.

II. EARLIER TESTIMONIES. To begin with the Vedic times, it is generally admitted that those of the conquered race who were not killed or did not escape to the hills were captured and became slaves.[2] This assertion is corroborated by various passages occurring in the Rig-Veda (2,000–1,000 B. C.)[3] in which, according to the testimony of an eminent Sanskrit Scholar, Ralph T. H. Griffith of Benares College, mention is made of slaves. In Book VIII, Hymn 19, V. 36, we read: "A gift of fifty female slaves, hath Trasadasyn given me, Purukutsa's son, most liberal, kind, lord of the brave." [4] Again another Hymn tells us "A hundred asses hath he given, a hundred heads of fleecy sheep, a hundred slaves and wreaths besides."[5]

Furthermore explicit mention of the existence of slavery is made in Manava Dharma Shastra or the Laws of Manu, probably compiled in their present form in 500 B. C. Thus for example, according to G. Bühler, another recognised authority on Sanskrit literature, Chapter IV of the Laws of Manu deals with classes of slaves[6] and forbids quarrels with slaves.[7] Chapter VIII mentions seven kinds of slaves[8] and the social disabilities under which they laboured.[9] Again in Chapter IX slaves are repeatedly mentioned.[10] Furthermore the author of an article in the *Asiatic Journal* of 1827 suggests that there even appear in the Laws of Manu some traits in respect to slavery, coinciding with the enactments of the Levitical Law of the Jews.[11] For instance the rule of "partus sequitur ventrem" (the offspring follows the mother)

1. V. A. Smith, *The Early History of India*.
2. Dutt, *A History of Civilisation in Ancient India*, Vol. I, p. 6.
3. Macdonnel, *A History of Sanskrit Literature*, (1909), p. 152.
4. Griffith, *The Hymns of the Rgveda*, translated, Vol. II, (1897) p. 147, V. 36.
5. *Ibid.*, Valakhilya, p. 266, V. 3.
6. Bühler, *Sacred Book of the East*, Vol. XXV, *Laws of Manu*, translated Chap. IV, V. 253-56, p. 168, Oxford 18-86.
7. *Ibid.*, Chap. IV, V. 180, p. 158.
8. *Ibid.*, Chap. VIII, V. 415, p. 326.
9. *Ibid.*, V. 416, 417, 70, p. 267.
10. Bühler, *Sacred Book of the East*, Vol. XXV, *Laws of Manu*, Chap. VI, VII. 48, 50 and 55, translated.
11. *Asiatic Journal*, 1827.

was recognised by the Hindu as well as the Hebrew lawgiver, though Western nations adopted a different principle as in the English law of villeinage.[1]

As regards the Puranic period, R. C. Dutt writes: "Domestic slaves were bought and sold in India as in every ancient country, and probably most domestic servants were slaves; but slaves could obtain their manumission by payment of a sum which was fixed as the price of their liberty."[2]

Similar testimonies might easily be multiplied; but from what has been said we may surely conclude that slavery was a well-known institution in the land, long before the Greek writers made bold to assert its non-existence in India. In this connection we may point out Elphinstone's suggestion. "It is possible that the mild form in which slavery appeared among the Sudras, may have deceived the Greeks, accustomed to so different a system at home."[3] But even if this be the case, it has to be carefully borne in mind that the statements of the Greek writers did not refer to the whole of India; they only described the prevailing conditions in a comparatively small part of a very extensive country; whence it would be more than rash to conclude that slavery did not exist in the whole of India.

Nor must it be forgotten that slavery is admitted as a recognised institution in the days immediately following upon Alexander's invasion. Thus for example, slavery existed in the Maurya Empire. The existence of slaves is also witnessed by the Law of Piety promulgated by Asoka (273–232 B. C.); for we are told that the Law of Piety consists in the kind treatment of slaves and servants.[4] This existence of slavery in 273 B. C. makes it more than probable that slavery also obtained in 326 B. C., when Alexander invaded India. Finally whatever may have been the social economy at the time of Alexander's invasion, it is an undeniable fact that slavery became afterwards a recognised institution in the country. Both under Hindu and Mahomedan rule slavery was a recognised institution; and when the British laid the foundation of their Eastern Colonial Empire, slavery was one of the social problems which they had to face.

1. *Asiatic Journal*, 1827.
2. Dutt, *Epochs of Indian History, Ancient India*, (2000 B.C.-800 A.D.) 1893, p. 161.
3. Elphinstone, *History of India*, 1866, p. 261.
4. Smith, *Asoka*, p. 131; *Cf.* Bhandarkar, *Asoka*, Chap. VI, p. 184.

III. INDIGENOUS ORIGIN OF INDIAN SLAVES. By way of additional information it may be added that in all likelihood the slave-population of India consisted for the most part of natives of the country. Indian slavery did not in any way resemble West Indian slavery. In the West Indies slaves were chiefly supplied from Africa. No doubt a portion of the slave-population of India also comprised slaves imported from the eastern coast of Africa, the Persian Gulf, Madagascar, Java, Aden and other British possessions. But for all that, it cannot be denied that the overwhelming majority of the slaves in India were sons of the soil. It is perhaps possible that the number of imported foreign slaves was greater than that of the Indian-born slaves in certain coastal plains. But such was surely not the case with the many bondsmen and bondswomen subject to praedial slavery all over the country. For we must take into consideration that in those long-forgotten days it was not easy to transport large numbers of slaves to a great distance inland. Moreover the sources of slavery seem clearly to indicate that most of the slaves were Indians by race.

No. 2. SOURCES OF SLAVERY IN GENERAL

SUMMARY: *N. B.* Preliminary remarks I. Sources of slavery among Hindus II. Sources of slavery among Mahomedans.

SOURCES: PUBLISHED: W. Adam, Letter VI to Thomas Fowell Buxton; Ameer Ali, *Life and Teaching of Mahomed*; W. Chaplin, *Report of the Dekhan* (Deccan) 1824; H. T. Colebrooke, *Digest of Hindu Law*, II; Charles Hamilton, *Hedaya*, Book IX; E. B. Lane, *Account of the Manners and Customs of Modern Egyptians*, I; W. H. Macnaghten, *Principles and Precedents of Mahomedan Laws*; Edward Westermarck, *The Origin and Development of Moral Ideas*, I; H. H. Wilson, *A Descriptive Catalogue of the Oriental MSS*; Appendix VIII to the Indian Law Commission's Report, 1841; Appendix to Report from Select Committee, 1832, IV, (Public); Asiatic Journal, XXIII, 1837; Parliamentary Papers, Judicial, 1828, Evidence before the Select Committee of the House of Lords, 1830.

UNPUBLISHED: Original Consultations, Judicial Department, Criminal, 1826.

N.B. PRELIMINARY REMARKS. Addressing ourselves now to the question how slavery originated in India, we may say that the sources of slavery were much the same, wherever that form of bondage prevailed. As a fair sample of the theories accounting for the origin of slavery we may mention the Roman Legislator Justinian, according to whom there were two main titles by which a man could claim to possess a slave, *viz.*, Jus Gentium

and Jus Civile. First of all by Jus Gentium is meant the body of legal rules prescribed by the Peregrine Prætor for the Government of aliens subject to Rome and for the intercourse of Roman citizens with aliens. This body of laws was based on the laws found to be generally observed among alien nations. In the next place Jus Civile, or civil law, relates to the private rights of individuals in a community and to the legal proceedings connected with them. But for all practical purposes, when Justinian assigns Jus Gentium and Jus Civile as titles by which one human being can claim another as his slave, he simply means capture in war and the right based on the principle of contract. Thus it comes about that Justinian's classification of the titles to the possession of slaves seems all embracing and exhaustive. For a man is held in slavery either perforce or of his own free will. In the second case we may infer that his position as a slave is of his own making and the result of a contract. In the first case he has become a slave, because some one stronger than he triumphed over him, either in national warfare, or in a personal feud, or perhaps in a raid.

I. SOURCES OF SLAVERY AMONG HINDUS. After these preliminary remarks we are naturally prepared for the statement that, speaking in general, the chief source of Hindu slavery was capture in war. Both Manu and Narada, the most ancient Hindu lawgivers, concur in this. Again Jagannath's *Digest*, translated from the original Sanskrit by H. T. Colebrooke, records a speech to a vanquished barbarian king by his conqueror, exemplifying in a striking manner the commutation of death for servitude. " Fool," the conqueror says to his captive, " if thou desirest life, hear from me the conditions: thou must declare before a select assembly and in the presence of the multitude, 'I am thy slave.' On these terms will I grant thee life."[1]

As a further illustration of this, at a much later period, we find that, when Tippoo Sultan subdued Coorg in 1784, he caused 70,000 of the inhabitants to be driven like cattle to Seringapatam. He then forced them to submit to the rite of circumcision, after which he sent back the labourers among them to become slaves under his zamindars. In this connection William Adam wrote in his Sixth Letter to Thomas Fowel Buxton: " Without going into many details, it may be remarked that in the existing condition of the country there are four distinct classes of the

1. Colebrooke, Jagganath's *Digest of Hindu Law*, translated from the original Sanskrit, V. XXXIII, p. 16.

population : first Christians, the most recent conquerors ; second Mahomedans, whose authority the former superseded ; third Hindus, whom the Mahomedans subdued ; and fourth the aborigines whom the Hindus conquered and subjected. These four classes include each numerous subdivisions, and they are largely intermixed, but distinction of each from the others is clearly marked. As far as all accessible evidence enables us to judge, the aborigines were the first occupants of the soil, and the Hindus were their first conquerors ; and in completing their conquest they drove many of the aboriginal races into the forest and mountain fastnesses, where their descendants are still found ; many they consigned to slavery such as now exists, imposing upon them at the same time the Hindu religion ; and many they appear also to have incorporated with themselves as free, but still inferior and servile castes."[1]

Adam also quotes the following significant instance from the papers of Augustus Princep: "At the beginning of the seventeenth century, or a little more than 200 years ago, (his letter was written in 1840) a scion of one of the families of Bhojpoor Raja, whose estate lay near Rhotas in Shahabad, being urged by the spirit of adventure, and probably discontented with his subdivided heritage, proclaimed his intention of seeking lands above the Ghats or beyond the range of hills that rise on the south side of the river Soane, and invited followers to join in the undertaking. Some thousands of Rajpoots collected round the standard raised by Bhugwant Roy, who (in the year 1021 fussily, as the tradition of the Pergunnah finds the date) led his army into that part of the Ramgurh district which has been ever since and was perhaps before called Palamoo. One encounter with the inhabitants was sufficient to insure (ensure) the conquest of the country, which, containing several cultivable and some already cultivated plains between the lines of hills, became a valuable prey to a multitude in search of a vacant territory. The chief of the invaders, assuming territorial dominion, proceeded to divide the land of the Pergunnah between himself and his followers, who, increasing in numbers, as the fame of his success spread abroad, took possession of all existing villages to the exclusion of their former occupants. The revolution has been so complete, that at the present day the original and wilder inhabitants of the Pergunnah are found to have no fixed interest or property in the soil, and earn a livelihood only by slavery and hired labour."[2] Finally Adam

1. W. Adam, Letter VI to Thomas Fowell Buxton, (1840).
2. *Ibid.*

quotes Princep's pointed observation that this enslaving of a free people is according to his belief similar to the early practices of India's first invaders.[1]

It may also be safely affirmed that the caste system with its rigid exclusiveness did much to further the spread of slavery, as may be gathered from ancient legendary accounts whose very age seems to warrant that there is to be found in them a substratum of reality. With regard to the origin of the agrestic or praedial slaves of Malabar, the only ancient books that make any mention of slaves are Kerula-oolpati, Wiwahara Mala and Witynana Shooriani Granddham. T. H. Baber alluded to these books in his answer to the Commissioners for the affairs of India. (Date unknown, perhaps in 1832). He admitted that at that time he could not quote them word for word. But as far as he remembered, all that was narrated in them was that the slaves were the first and sole cultivators in Kerula Rajum (in the country or kingdom of Malabar) and that they had been created exclusively for the use of the Brahmans.[2] This is confirmed from *Wilson's Descriptive Catalogue of the Mackenzie Collection*, which contains among other Malayalam books an English translation of the Kerala Utpatti (Palm leaves). Therein we read: "They (the Brahman-colonists who had been settled in Malabar by Parasu Rama) also established Adama (bondage) and Kuddema (husbandry), and protected the Adiar (slaves) and Koddiar (husbandmen), and appointed Tara (villages) and Tara-vaatukar (heads of villages), and by their means took the duties of Kanna-Kye-Kalpana-Avakasam, and protected and preserved them from lessening and falling."[3] In the same work, eighteen different kinds of inferior castes are enumerated,[4] who all came from foreign countries into Malabar; but among these immigrants no mention is made of slaves, so that there is every likelihood that the Brahmans obtained their slaves from among the aboriginal inhabitants, whom they had subdued. In course of time the other castes shared with the Brahmans the right of possessing property and slaves, and went in for cultivation, an occupation which the Brahmans did not follow, because they either possessed slaves, or could

1. W. Adam, Letter VI to Thomas Fowell Buxton, (1840).

2. Answers of T. H. Baber to questions on Slavery in the East Indies, circulated by the Commissioners for the affairs of India, (M) para 1, Appendix to Report from Select Committee, 1832, (Public) p. 441.

3. Wilson, The Mackenzie Collection, a Descriptive Catalogue of the Oriental MSS., para 36, p. 352.

4. *Ibid.*, p. 360, para 112.

afford to employ hired labour. The slaves alone remained unaltered and stationary.[1]

Furthermore giving evidence before the Select Committee of the House of Lords, in reply to question 3180, whether the agrestic slaves were the aborigines of the country or not, Baber stated that they are supposed to have been the aborigines of the country. " Their history, which like all other Indian stories, is wrapped up in fable, is as follows : Sri Parasu Rama was incarnated to destroy the Rajahs (Kheterees), then oppressing the Earth. After twenty-one different battles he slew them all. To expiate which, it being a great sin to slay heroes, called virahatiyu dosham, he went to Gokarnum, and having there performed sacrifices, and prostrated himself to Varuna, he made the ocean retire, and thus created 160 kadums of land. He then went and brought the Arya Brahmins of the sixty-four grams, and to induce them to remain he went in search of the wild people who inhabited forests and mountains, collected them, and presented them to the Brahmins as adiars or slaves, since which period they have been considered as jelm property equally with the soil itself."[2]

Similarly Major Walker's Report on the Tenures of Malabar traces the origin of agrestic slavery to practically the same source. When the good (God) Parasharam divided the lands amongst the Brahmans, they represented to him that, if they were left to themselves without the assistance of anybody, the lands would remain uncultivated. Accordingly Parasharam went in search of the wild people, who at that time inhabited the jungles, collected them, and presented them to the Brahmans. The aboriginals were thenceforward considered as jemu and continued the occupation of tilling the soil in Malabar.[3] No doubt these are legendary accounts of the origin of slavery ; but this is a case in which the legend may help us to attain to the objective reality, for there is little doubt that caste tyranny was largely responsible for the spread of slavery.

As ruthless as the tyrannical customs of the caste system were the enactments of Hindu Law wherever slavery was concerned, so that Hindu Law was one of the most prolific sources of slavery ;

1. Answers of T. H. Baber, (M) para 1, Appendix to Report from Select Committee, 1832, (Public) p. 442.
2. Baber's Evidence before the Select Committee of the House of Lords, 2nd April 1830, para 3180, pp. 385-86.
3. Extract from Major Walker's Report on the Tenures of Malabar, Parliamentary Papers, (Judicial) 1828, p. 806.

for it legalised the principle of slavery of descent by birth. Thus for example among the fifteen different kind of slaves recognised by the Hindu lawgiver one consisted of those born in the house,[1] so that slavery was looked upon as a hereditary condition. Hence it was in the slave-owners' interests to see to it that their slaves married and bore children. As H. T. Colebrooke puts it: "Neither the disposition of the people, nor the accustomed mode of treating their slaves tends to impede the rearing of children by any discouragement of marriages.... A sense of propriety leads them very early to provide a match for the household slave; and the offspring following the condition of mother..... no requisite indulgence is wanting to enable the mother to devote due care to the rearing of her progeny."[2] William Chaplin is of the same opinion when he states that slaves become domesticated in the houses of the upper classes, who treated them with affection, and allowed them to intermarry with female slaves; and the offspring of this connection, though base-born, if males, were often considered free, but if females, they remained slaves.[3]

Finally by a rather strange extension of slavery because of descent by birth it may be mentioned here that according to Thomas Fowell Buxton, the custom prevailed as late as 1843, that in many parts marrying Sudras were according to the Hindu Code the slaves of any person who defrayed the marriage expenses, and their offspring to the third generation were doomed to be the slaves of the same person.[4]

Moreover Hindu Law was also responsible for the increase in slavery by many other means. To give but one instance Commisioner Graeme observes that there are many who say that agrestic slavery owes its origin to Hindu Law, which, to say the least, was surely instrumental in multiplying the numbers of agrestic slaves. Individuals became outcastes or chandalas, by sins against the laws of their castes, and were thus reduced to servitude.

1. Colebrooke, *Digest of Hindu Law*, II, V. XXIX, p. 14; *Cf.*, Appendix VIII to the Indian Law Commission's Report, 1841, para 2, p. 367; Sir William Jones, *Institutes of Manu*, Chap. IX; Steele, *Law and Custom of Hindu Caste*, para 49, pp. 56-7; Answers of Hindu Pandits in 1808 to the Questions of the Court of Nizamut Adawlut, Cons. No. 14 of December 29, 1826, Judicial Dept., (Criminal) Bengal Record Department.

2. Colebrooke on Slavery, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.

3. Chaplin, Report of the Dekhan, 1824, p. 149.

4. Adam, Letter VI to Thomas Fowell Buxton.

Thus for example it was a custom mainly, if not entirely limited to Bengal, that marriage or cohabitation with a slave of either sex resulted in slavery. In Rajshahi and Pachete in South Behar, a free female marrying a male slave descended to his condition.[1] In Tipperah it happened at times that the master did not allow a free man to marry his female slave, unless he agreed to become himself his slave.[2] One witness stated that, in all the territories to the west of Benares, if a free man married a slave girl, he became the slave of his wife's master so long as he cohabited with her. He was at liberty to put an end to his servitude at any time by relinquishing his wife. But if a free woman married a slave, she became permanently the slave of her husband's master.[3] Another witness, speaking of the customs in Behar and Patna, said that, if a free Kuranee or Kubar had illicit connections with a female slave, her master seized him and reduced him to slavery.[4] There are no documents to show that this source of slavery was also found in the Bombay and the Madras Presidencies.

By way of conclusion it may be pointed out that all these sources of slavery may be reduced to Justinian's famous classification, Jus Civile and Jus Gentium, as is evidenced by the reply of the Collector of Trichinopoly to the enquiries made by the Government. He traces the origin of agricultural slavery to the earliest ages of the Hindu Government. He declares that this form of slavery was widespread to an indefinite extent, and that its practice was not only sanctioned by prescription, but also upheld by law. He also admits his inability to obtain any specific information of the period at which agricultural slavery commenced. Yet taking everything into account he points out that the only reasonable explanation is that the establishment of slavery took its rise either from the voluntary submission of the indigent to the wealthy or from capture in war, of which the Pooliars were made the victims. Finally he observes that, as this species of bondage was generally the concomitant of barbarous governments, it was in all likelihood a very ancient institution of the Hindus. As is but natural, under their arbitrary government, the distinctions of caste were scrupulously maintained; and "adverting to the circumstance of the Meerassidars in Trichinopoly being Brahmans, it scarcely excites surprise that agricultural slavery should exist here unchanged and undiminished."[5]

1-2. Indian Law Commission's Report, 1841, p. 13.
3. Witness No. 28, Appendix I to the Indian Law Commission's Report; pp. 54-55.
4. Witness No. 23, *Ibid.*, pp. 49-50.

III. SOURCES OF SLAVERY AMONG MAHOMEDANS. Thus far we have been dealing with Hindu India. Coming now to Mahomedan India, it cannot be denied that the Mahomedan Law also acknowledged slavery as a recognised institution, but at the same time it restricted to a great extent the legal sources of slavery.[1] The Koran enjoined the slaughter of idolators in a war with infidels, unless they confessed the unity of God. Such confession alone entitled them to protection; otherwise the Imam would as a rule order them to be slain or to be reduced to slavery.[2] Hence it follows that the Mahomedan Law recognised but one source of slavery, namely, capture in war against infidels. Captives so taken were distinguished according to the circumstances, as Mamluk (acquired), as Mawrus (inherited), or as Mauhub (given). The offspring of all these were called Khanezadeh (children of the house). Other sources of slavery did exist, but they were mere abuses and came into existence either by fictions or by evasions of the law.[3]

Any further doubt regarding the sources of slavery among Mahomedans is set at rest by the answers of the Muftis, who were accredited Mahomedan law-officers in the service of the British Judicial courts. In 1808, they stated that only capture in a holy war, or descent from captives taken in a holy war constitutes legal slavery according to Mahomedan Law.[4] Nevertheless, the Hedaya, *i.e.*, a commentary on the Mussulman laws translated from the original Persian by Charles Hamilton, besides restricting the sources of slavery to capture in a holy war, also justified the bondage of descendants of a great number of men who were slaves prior to Mahomedan religious warfare.[5] However this interpretation was rather an unwarranted encroachment on Mahomedan Law, and in 1830 the Courts of Sudder Dewanny and Nizamut Adawlut in an appeal of Shekh Khawaj and others

1. Colebrooke's Paper on Slavery supposed to have been written in 1812, Bengal Record Depart., Cf., *Asiatic Journal*, Vol. XXIII (1827) p. 447; E. B. Lane's Account of the Manners and Customs of Modern Egyptians, I, p. 116, Ameer Ali, *Life and Teaching of Mahomed*, p. 376 ; Edward Westermarck, *The Origin and Development of Moral Ideas*, I, p. 606 ; W. H. Macnaghten's *Principles and Precedents of Mahomedan Law*, Preliminary Remarks.

2. Hamilton, *Hedaya*, Book IX, Chaps, I and II, pp., 140 and 145, V. 2. *Cf.* Appendix VIII to the Indian Law Commission's Report, 1839-41, para 2, p. 379.

3. *Asiatic Journal*, Vol. XXIII, 1827, p. 447.

4. A Regulation for the guidance of the Courts of Judicature in cases of Slavery submitted by J. Harington to the Court of N. A. with his minute of November 21, 1818, Judicial Department (Criminal), O. C. No. 14 of December 29, 1826, Bengal Record Department.

5. Hamilton, *Hedaya*, Book IX, Chap. IV, p. 149; *Cf.* Appendix VIII to the Indian Law Commission's Report, p. 379.

decided in favour of the opinion expressed by the Mahomedan Muftis in 1808. The result was that, whenever thereafter the master's claim to the possession of his slave was disputed, the law imposed upon the claimant the burden of proving his right by establishing the strict legal title of slavery.[1] It may therefore be finally concluded that capture in war was the only source of slavery recognised by Mahomedan Law. "Perhaps there is no point of law," W. H. Macnaghten comments, "which has been more deliberately and formally determined than this.[2]

But in spite of this, descent by birth was recognised among Mahomedans as a legal title conferring the right to possess slaves. The rule as stated by the Mahomedan Muftis is clear beyond all doubt. "If a female slave bore offspring by any other than her legal lord, whether the father be a free man or a slave, and whether the slave be of the said master or of any other person, in any of these cases the offspring was subjected to slavery."[3] Moreover there is a great probability that this rule was followed not only in the case of children of slaves captured in war, but also as regards the offspring of persons held in bondage in opposition to the strict capture in war principle of slavery.

No. 3. SOURCES OF SLAVERY IN DETAIL

SUMMARY: I. Sale of children in times of famine II. Kidnapping.

SOURCES: PUBLISHED: W. Adam, Letter VI to Thomas Fowell Buxton; W. Chaplin, *Report of the Deccan*, 1824; H. T. Colebrooke, *Digest of Hindu Law*, II; Hamilton, *Hindustan*, II. Sir W. Jones, *Institutes of Manu*; W. H. Macnaghten, *Principles and Precedents of Mahomedan Law*; James Peggs, *India's Cries to British Humanity*; R. Steele, *Law and Custom of Hindu Castes*; Appendix II and VIII to the Indian Law Commission's Report, 1841; Asiatic Journals, 1828, 1831, 1835, Vols. XXVI, V, XVI; Appendix to Report from Select Committee, IV, Public, 1832; Calcutta Christian Advocate of August 24, 1839; Fortnightly Review March, 1883, Indian Law Commission's Report, 1841; Journal of the Asiatic Society of Bengal, 1837; London Times, January 23, 1840; Monthly Review, 1840; Parliamentary Papers, Judicial, 1828; Report of the Sudder Dewanny and Nizamut Adawlut, 1830.

1. Case 21 of the Printed Reports of the Sudder Dewanny and Nizamut Adawlut for 1830; *Cf.*, Appendix III to Indian Law Commission's Report, pp. 249-51.
2. Macnaghten, *Principles and Precedents of Mahomedan Law*, Preliminary Remarks, p. XXX.
3. Answers of the Mahomedan Muftis in 1808 to the question of the Court of Nizamut Adawlut, O. C. No. 14 of December 29, 1826, Judicial Department, (Criminal) Bengal Record Department.

UNPUBLISHED: O. C. No. 13 of December 29, 1826, Judicial Department; Judicial Criminal Proceedings; Law proceedings, December 1839; Political Proceedings, 21st January to 11th February 1831; Judicial Department, 1826, Vol. 25/126; Political Department, 1837, No. 289; Political and Secret Department, 1842/43 Vol. 1407; Political Department, 1844, Vol. 98; Political and Secret Department Diary, 1792, Vol. 43; Letters from the Hon'ble the Court of Directors, Political Department, 1794/1807; Political Proceedings, September, 1832; Judicial Department Compil., 1843, Vol. 944; Letters to the Hon'ble the Court of Directors, Secret Department 1842; Political Department, 1838, No. 767; Political Department, 1843, No. 660, Vol. 1407.

After having spoken of the general sources of slavery both Hindu and Mohomedan, special mention will now be made of a great evil prevalent in India which was largely instrumental in perpetuating slavery in this country. This evil was twofold in its nefarious activities, it was the sale of children into slavery and their kidnapping for the same purpose.

Speaking of Calcutta, Colebrooke, a judge of the Sudder Dewanny and Nizamut Adawlut, testifies that one of the most common sources of slavery was the sale of free children by their parents in times of famine. For as the number of slaves continually diminished, there was always a fresh demand for them, which was mainly supplied by the sale of children by their parents in seasons of scarcity and famine, or in circumstances of individual or peculiar distress.[1] To quote his own words: "During a famine or dearth, parents are known to dispose of their children for prices so very inconsiderable and so little more than nominal, that in frequent instances of such transactions they could have credit for little better motive than of momentarily relieving their own necessities, namely the saving of their children's lives, by interesting in their preservations persons able to provide nourishment for them. There is no reason to believe that they (the children) are ever sold from sheer avarice and want of natural affection in the parents. The known character of the people and the proved disposition in all the domestic relations must exempt them (the parents) from the suspicion of such conduct. The pressure of want alone compels their parents to sell their children, whether the immediate impulse be consideration for the child or desire of personal want. So long, therefore, as no established fund or regulated system for

1. Colebrooke, Paper on Slavery (supposed to have been missing when J. H. Harington prepared his minute in 1816,) O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.

the relief of the indigent exists, it does not seem practicable to pervent or restrain the disposal of children by their parents, which is lawful by their own laws."[1]

Colebrooke's assertion that " as long as no established fund or regulated system for the relief of the indigent exists, it does not seem practicable to prevent or restrain the disposal of children by their parents, which is considered lawful by their own laws,"[2] can surely not be extended to the Mahomedan population. For, in the answers given by the Mahomedan Muftis (perhaps the most reliable interpreters of the Mahomedan law), it was stated that according to their law the sale of the offspring by freemen or women was declared to be extremely improper and injustifiable, being in direct opposition to the fundamental and only principle upon which a Mussalman's right to a slave exists, namely, " that no man can be a subject of property except an infidel taken in the act of hostilities against the faith." Hence all sales and purchases of the above described offspring, like those of any other articles of illegal property, were invalid.[3]

As regards the purchasers of children, Colebrooke divides them into two classes. The first class comprised various religious orders, the members of which purchased children to bring them up and instruct them in the religious order to which they belonged. The selection of their subjects being restricted to the higher castes of the Hindus, they could not easily obtain persons of the requisite caste, willing to part with their children; but being in general opulent from the union of the commercial with the religious profession, they were able to tempt the rapacity of parents.[4]

The other class of purchasers consisted of the owners of sets of dancing women, who bought female children and instructed them for public displays. As these children generally became courtesans when they grew up, Colebrooke was of opinion that it seemed to be incumbent on a Government, attentive to the morals of the people over whom it ruled, to see to it that these children should be given every opportunity to secure their freedom. He thought that it would be an easy expedient to shorten the term of years of engagement, but that it would amount to

1. Colebrooke, Paper on Slavery. 1812, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.
2. *Ibid.*
3. From J. Richardson, Judge and Magistrate of Zillah Bundelcund to the Judges *of the Sudder Dewanny and Nizamut Adawlut, dated June 24, 1809, Extract* from Consultation No. 52 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.
4. Colebrooke on Slavery, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.

going too far to presume the intention of prostitution and to prohibit all instruction for the purpose of exhibition of dances, which the people were very partial to, and which formed a regular part of their religious festivals and celebrations.[1]

Here again it must be remarked that Colebrooke's plea for tolerating slave-dancing girls could not be brought forward in favour of Mahomedans. The Mahomedan Muftis had already remarked that the custom existing among the Zenana Towaif, that is "women who keep sets of Dancing Girls," of purchasing female, free born children from their parents or others, or making engagements with the children themselves, to be taught the practice of dancing and singing for others, and also for the immoral purpose of being made prostitutes, was considered extremely improper and expressly forbidden by their law. They pointed out that the extent of the evil would be ascertained by a few appropriate queries put to the several magistrates; and the result would at once open the eyes of Government to an evil, which loudly called for the interference of the legislature on every principle of humanity, morals and polity.[2] If such were the opinions pronounced full five years before Colebrooke's paper was written, we fail to understand how Colebrooke could simply state that the disposal of children by their parents was considered lawful by their own laws, when it was specially forbidden by Mahomedan law.

However bad the conditions may have been at Calcutta, they were still worse at Dacca. Dacca suffered periodically from a general scarcity of grains for a very long time. In 1785, the failure of crops reduced its inhabitants to the lowest depth of misery and distress; and in order to secure for themselves the means of subsistence, parents were forced to sell their children, and many hundreds of them were so disposed of. From the interior of the country they were immediately dispatched to Calcutta and its environs. These children were for the most part sent to non-British territories, and were thence embarked on vessels sailing to different parts of the country. Boats between Calcutta and Dacca were found loaded with children of all ages; and it was reported by the Hon'ble Mr. Lindsay that he met about a hundred of those children. Forty-two of these, none above the age of six years,

1. Colebrooke on Slavery, O. C. No. 13 of December 29, 1826, J. D. Bengal Record Department.

2. From J. Richardson, Judge and Magistrate of Zillah Bundelcund to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated June 24, 1809, Extract from Consulation No. 52 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

and with them the persons who wanted to sell them, were afterwards brought to Mr. Day, the Collector of Dacca.[1]

In the rest of Bengal, comprising Behar, Benares and the Ceded and the Conquered Provinces, the sale of children by their parents or relations, from poverty and inability to maintain them in times of famine or of other general calamity, was the most prolific source of slavery and the origin of almost the whole slave-population. In the year 1833, owing to the disastrous inundation experienced in the southern parts of Bengal, hundreds of half-starved, helpless wretches thronged the suburbs and streets of Calcutta and the adjoining districts, offering themselves and their children for sale for a few measures of rice only.[2]

This practice seems to have prevailed as far back as the year 1807, as may be gathered from the few observations made by Dr. Francis Buchanan in his description of the district of Dinajepur. He writes: "Poor parents in time of scarcity, may give their children to persons of rank as slaves, and are sometimes induced to sell them to prostitutes. This however, is quite contrary to Hindu Law, although such parents are not liable to slavery."[3]

T. Brooke, the Agent at Bareilly in 1811, writes that, in a country where the production of the earth is at the best of times scanty, instances are necessarily numerous of parents groaning under an oppressive Government, and compelled to sell their offspring. He further adds: "These instances by which the existence of the parents and the children are preserved, induce the hesitation against a total abolition, and whether it might not be consonant to sound principles of humanity to establish rules by which abuses may be prevented; but I am not prepared to suggest rules which would embrace the object."[4]

Another Bengal official, W. H. Macnaghten, ventures to express the opinion that, in the ordinary acceptation of the word, all persons are counted slaves who are sold by their parents in times of

1. From M. Day, Collector of Dacca to William Cowper, Acting President and Committee of Revenue, dated March 2, 1785, Parliamentary Papers, 1828, (Judicial) p. 111.
2. Extract of Notes and Observations on Slavery, as existing in Bengal, Behar and Benares and the Ceded and Conquered Provinces, by M. G. Myers, Principal, Sudder Ammin, Appendix II to the Indian Law Commission's Report, para 3, p. 101.
3. Observations of Dr. Francis Buchanan quoted by J. Wyatt, Civil and Sessions Judge of Dinagepoor in his answer to the letter of the Registrar to the Court's of Sudder Dewanny and Nizamut Adawlut, dated June 25, 1836, Appendix II to the Indian Law Commission's Report, para 3, p. 147.
4. From T. Brooke, the Agent at Bareilly, to N. B. Edmonstone, Chief Secretary in the Political Department, dated May 3, 1811, Paliamentary Papers, 1828, (Judicial), p. 115.

scarcity; and he admits that this class is very numerous.[1] He emphasises the fact that the sales of children, which took place in spite of their illegality, were devoid of all the disgusting features which characterise the slave-trade. "They are not occasioned by the Auri sacra fames, but the absolute physical hunger and starvation; and the morality must be rigid indeed, which would condemn as criminal the act of a parent parting with a child under circumstances which render the sacrifice indispensable to the preservation of both."[2] No doubt this justifies the opinion expressed by Colebrooke.[3]

Finally, the *Cawnpore Examiner*, of July 5, 1835, affirmed that in Upper India the sale of children was very extensive. Two hundred were taken to Oudh, and fifty to Lucknow. At Jalaun and in other parts of Bundelkhand, thousands of such children were sold within the last few months, and hundreds were eaten by their starving parents. Several complaints were made against one or two native gentlemen resident at this station of having numbers of stolen children within their zenanahs. Of course, they were not stolen by them, but by the slave-dealers, who carried on a regular trade in human flesh, and who represented to would-be purchasers that they were lost or abandoned by their parents. "The attempts made to recover these children have hitherto proved ineffectual."[4] It is indeed sad to think that in times of famine and distress slavery accompanied by its manifold evils was the only means by which indigent parents could rescue themselves and their children from starvation.

From Calcutta let us pass to Madras. In answer to the second question put by the Commissioners for the Affairs of India, A. D. Campbell, speaking of this source of slavery in Madras, remarks that individuals generally became slaves by being sold as children by their parents in years of scarcity and famine. This kind of slavery may be found all over the Madras territory; though there is every hope of the sale of children coming rapidly to an end, because "famine itself in the British territories is happily now nearly unknown".[5] However, this hoped-for cessation of famine in the British territories did not materialise; and we cannot help

1-2. W. H. Macnaghten, *Principles and Precedents of Mahomedan Law*, Preliminary Remarks, p. XXXV.

3. See p. 45 of this chapter.

4. *Asiatic Journal*, Part II, Vol. XVI, 1835.

5. Answers of A. D. Campbell to the questions on Slavery circulated by the Commissioners for the Affairs of India, Appendix to Report from Select Committee, Vol. IV (Public), para 2, p. 451.

saying that A. D. Campbell was led away by optimistic day-dreams when he trusted that the sale of children into slavery would be put an end to by the cessation of famines.

Furthermore that the sale of children was extensively practised may be gathered from the fact that in the Madras Presidency a number of judicial officers referred from time to time to the Foujdarry Adawlut for instructions in regard to the disposal of cases wherein persons were charged with the sale and purchase of children for different purposes.

On May 24, 1817, the Magistrate of Vizigapatam reported that a Hindu woman made a verbal complaint before him that a police peon of the same caste had failed in his engagement with her in the purchase of her infant son aged seven months. The child was sold for eight rupees; but the peon refusing the mother access to her infant, and not having procured her eldest son an employment, as stipulated, the mother entreated permission to return the purchase money and to receive her infant again.

In this case the Magistrate referred the matter for consideration to the Foujdarry Adawlut, and observed that it was high time that the defect in law was rectified, and that slave-dealing was declared to be abolished in India.

In reply to this reference, the Court of Foujdarry Adawlut, in their proceedings under date June 20, 1817, observed that " the matter is connected with the religious usages and institutions of this Government," and that " the Magistrate is not authorised to take cognisance of the matter in question".[1] Hence it appears that up to 1817 the sale of children was recognised by the British courts in Madras.

Later on, in 1825, we learn from the Collector of Tinnevelly, in a letter, dated December 5, 1825, to the Foujdarry Adawlut that throughout the Madras territories there prevailed more or less the custom of the sale and purchase of female children by dancing women for the avowed purpose of bringing them up to a life of immorality. " The custom is so notorious and its abominable tendency so evident," the Collector writes, " that no comment can be necessary; but I am apprehensive that, unless it be specifically excepted from those purchases of children which are now (under some circumstances) legal, an opinion may be entertained that

1. From T. H. Davidson, Acting Register to the Chief Secretary to Government of Fort St. George, dated, December 19, 1839, paras 3-5, Law Proceedings, December 1839, Imperial Record Department.

such dealings are countenanced by law. A prohibition of such transactions could not be complained of as an infringement of any acknowledged rights; it would serve as a check upon child-stealing, which is occasionally practised under the pretence of purchase; and the public expression of the will of the Government could not but have a beneficial tendency to promote morality."[1] In conclusion the Collector strongly recommended that the practice in question should be prohibited by law.

But unfortunately the Judges of the provincial Court neither saw any occasion for interference on the part of the Government, nor were they of opinion that any special authority should be vested in the Magistracy in order to prevent the sale of children; and the Court of Foujdarry Adawlut concurred in the opinion of the Provincial Court. In their turn Government in their letter to the Court of Foujdarry Adawlut, dated January 13, 1824, fully agreed with the Judges in deeming any enactment unnecessary, and remarked, in connection with the religious and civil usages of the great bulk of the people, that caution should be employed in interfering at all with the view of preventing parents or guardians from assigning children in the customary modes to be brought up to the profession of dancing women.[2]

Again, in 1832, F. Lascelles, Third Judge in Tinnevelly, feelingly observed that the very worst and the most objectionable form of slavery was the sale of young dancing-girls. Initiated in early youth into the mysteries of their profession, and immured within the walls of the pagoda, their first and chief lesson was implicit obedience to the will of the Brahman; and this was their highest duty. This servile compliance with the morally doubtful requests of their masters robbed them of all self-respect. It was moreover believed to be a well-known fact that in the Madras Presidency a large class of men obtained their livelihood by traffic in female children for the use of the pagodas. The judge was of opinion that there never existed any system more truly injurious to the morals of the people, or one which so loudly called for correction.[3]

But it was not till 1839, when on a reference from the Magistrate of Trichinopoly in which that officer requested to be in-

1. *Ibid*, paras 6–7, Imperial Record Department.

2. From T. H. Davidson, Acting Register to the Court of Madras Foujdarry Adawlut, to H. Chamier, Chief Secretary to the Government of Fort St. George, dated December 19, 1839, paras 8–10, Law Proceedings, December 1839, Imperial Record Department.

3. *Monthly Review*, 1840, p. 421; *Cf.* James Pegg, *India's Cries to British Humanity*, pp. 347–48.

formed whether the sale of a child by its mother was an offence cognisable in that district or not, that the Judges of the same Provincial Court submitted as their opinion that some specific penalty should be promulgated for the purpose of checking an offence so revolting to humanity, and that it should not be left at the discretion of the Magistrate merely to use his influence to annul a sale of this description. Thereupon the Foujdarry Adawlut called upon their Mahomedan Law Officers to state whether under their law that the mother was liable to punishment; and in their answer, which was based upon the decisions recorded in the Books of Huneefah, these officers declared that she was liable to Fuzeer or discretionary punishment.[1] However the sale of slaves from various motives was permitted to be continued in the Madras Presidency till the year 1840 and perhaps even later.

By way of conclusion it may be said that the sale of children proceeded from a variety of motives. Some parents were impelled by natural affection and their desire to save their offspring from starvation; others were actuated by selfish and despicable greed; whilst others still were under the influence of sectarian zeal. Nor can we help adding that one of the most deplorable features of this cruel sale of children was its legal recognition. The Law Commissioners in their report of 1841 stated that " the sale of free female children by their parents, and of slave-girls by their owners for purposes of prostitution, though considered immoral and disreputable, is very prevalent."

II. KIDNAPPING OF CHILDREN. The next prolific source of slavery in India was the kidnapping of children, an evil which existed to such a great extent that it is impossible to trace all its ramifications. For from the published and unpublished sources at our disposal we learn that kidnapping prevailed in Bengal, the Kotah State, Nepal, Delhi, Agra, Bombay and Madras, as a matter of fact all over India. It may of course happen that there are instances in which there seems to be no connection between kidnapping and slavery, but in the majority of cases it may be said that, if slavery had not existed in the land, the temptation to carry off children by force or stealth could scarcely have offered, whilst it was practically a necessary concomitant of the shameful traffic in human beings.

1. From T. H. Davidson, Acting Register to the Court of Foujdarry Adawlut to H. Chamier, Chief Secretary to the Government of Fort St. George, dated December 19, 1839, paras 11-12, Law Proceedings, December 1839, Imperial Record Department,

In dealing with the kidnapping evil we will first call attention to the information, supplied chiefly by the unpublished documents, about the three Presidencies, Bengal, Bombay and Madras. Next, for the sake of completeness a few words will be added, by way of a general survey, on the wide-spread kidnapping activities of the Thuggs who operated in many parts of India. The many testimonies which we shall quote are more than a wearisome repetition that children were kidnapped; for in many cases the testimonies give us at the same time an insight into the causes of this great evil.

To begin with Bengal, from a minute forwarded to the Hon'ble the Court of Directors by the Governor in Council of Bengal, in 1774, we learn that the practice of kidnapping children from their parents and selling them as slaves widely prevailed in Bengal, and that, instead of having gradually died out, the practice had increased since the establishment of the British Government. It is true that the ancient law of the country required that no slave could be sold except by a "cawbowla" (a Kabulyat or deed) attested by the Kazi, signifying the place of the child's abode, its parents' names, the names of the seller and purchaser and a minute description of the persons. But these judicious presentations soon fell into abeyance, and their neglect greatly facilitated this heartless traffic by which numberless children were exported from the country on Dutch, and specially on French vessels. What is worse, the kidnapper's attempts to secrete the stolen children from the prying eyes of energetic Magistrates often resulted into the death of many little ones by suffocation. The only way of remedying the evil was to strike at the very root of it, and that was to abolish the right of slavery altogether.[1] Naturally the evil did not prevail everywhere to the same extent; but we are told on good authority that in the district of Midnapore children were in so great demand that they were stolen from the great Bazar in broad day-light.[2]

The wide-spread practice of stealing children, as it was carried out in the Bengal Presidency, may be gathered from the remarks, made upon observation, by the Magistrate of Sylhet. It was noticed that in the 2nd Session of 1812, in the course of 12 months, 150 prosecutions were instituted on that account in the Foujdarry Adawlut, a number greatly exceeding that of the pre-

1. Minute forwarded by the Governor-in-Council of Bengal to the Hon'ble the Court of Directors, dated October 18, 1774, Parliamentary Papers, 1828, (Judicial) p. 3,
2. Parliamentary Papers, 1828, (Judicial) p. 56,

vious years. It was further observed that the odious practice of trafficking in children had long existed in the Zillah of Sylhet, and that doubtless many and various abuses were committed under the cloak of an authorised commerce. It was universally acknowledged that this trade in children was carried on to a considerable extent, so that the number of slaves in the district of Sylhet was computed at nearly one-sixth of the entire population.[1]

As regards Sylhet the following reliable information will help us to realise the deplorable state of affairs. In February 1816, the Magistrate of Backergunge stated that during his residence for ten months in the district of Sylhet he often heard of persons who gained a livelihood by enticing away girls and boys of free parents from the adjoining territories of Kaekar and Jaintia, by disposing of some to wealthy natives in the district and carrying some for sale to other places.[2] In March of the same year 1816, J. Ewing, Magistrate of Sylhet, mentioned that instances frequently occurred of young girls and female children having been kidnapped in order to be sold to prostitutes in Dacca and other places, and that the persons who were generally involved in this crime were fakirs, or wandering Bazaqurs.[3] Full twenty years later, that is in 1836, we have the evidence of Charles Smith, officiating Civil and Sessions Judge of the Zillah of Sylhet, who pointed out that the kidnapping of persons, particularly of children, for selling them as slaves was still prevalent to some extent, and that the profits derived from this source in the traffic of human beings was indeed considerable. Many a child was inveigled away or stolen, leaving the parents in a state of deep distress at the loss of their offspring.[4]

In Sylhet and elsewhere in Bengal the vigilant efforts of the British authorities to check this traffic were rarely successful, and as late as 1839 kidnapping appears to have been practised in the very heart of Calcutta; for a correspondent wrote in the *Calcutta Christian Advocate* of August 24, 1839, "that the practice of enticing away young native widows, and of kidnapping and

1. From R. K. Dick, 2nd Judge at Dacca, to M. H. Turnbull, Register to the Nizamut Adawlut at Fort William, dated March 12, 1813, Parliamentary Papers, 1828, (Judicial) pp. 243–44.

2. From J. W. Sage, Magistrate of Backergunge to the Judges of the Court of Circuit, dated February 12, 1816, *Ibid.*, pp. 246–47.

3. From J. Ewing, Magistrate of Sylhet to T. H. Walters, Register to the Court of Circuit, dated March 16, 1816, *Ibid.*, p. 248.

4. Answer of Mr. Charles Smith, Officiating Civil and Sessions Judge, to the Register to the Sudder Dewanny and Nizamut Adawlut, dated June 3, 1836. Appendix III to the Indian Law Commission's Report, para 6, p. 135.

purchasing young destitute native children, for vilest bazar purposes, is daily carried on to a considerable extent in Calcutta."[1]

In other parts, notably in the State of Kotah, administratively connected with the Bengal Government, the cruel and pernicious custom of exporting kidnapped children for sale to Delhi had likewise long existed. Such was the demand for this human merchandise, and so great was the profit made by the persons engaged in it, that the suppression of this evil was considered extremely difficult, in spite of the vigilance of the British authorities and the co-operation of the Raja of Kotah.

Furthermore the hilly tracts of the Nepal territory were infested with a large number of slave-traders. T. Brooke, the Agent at Bareilly, rescued, in the year 1911, forty-three children who had been brought from the hills by merchants, who did not possess any title by which they could claim to sell these children as slaves. But on that occasion more than forty-three children had been carried off; for already twenty-three had been disposed of to individuals by the slave-dealers prior to the Agent's interference. The towns of Nudgeebabad and Augunah were the established markets where this inhuman traffic was carried on. T. Brooke, always speaking of Nepal, was of opinion that there were frequent instances of children being carried off by force. There also prevailed a practice amongst the more powerful inhabitants to seize the children of their debtors and to sell them in satisfaction of their demands. These instances suffice to establish the dreadful system of oppression and cruelty which arose from this traffic.[3] But the Government of Bengal was not prepared to put it down, because the traffic under discussion, not having been prohibited by a formal Regulation of the Government, could not at that time be deemed absolutely illegal, and therefore Brooke's way of acting was strictly speaking considered irregular.[4]

As regards Delhi, a writer in the Delhi Gazette of 1835 adverted to a variety of instances in which children and even women had been stolen from the countryside adjoining Delhi and sold as slaves. They were purchased by the Brinjaries for a mere trifle in Marwar, Jeypore and other places. "These cases," the writer adds, "which have all occurred within the last ten days," are sufficient to show the extent of the traffic in

1. *Calcutta Christian Advocate*, August 24, 1839.
2. Extract Letter from the Resident at Delhi, Mr. Seaton, dated May 12, 1808, Parliamentary Papers, 1828, (Judicial), pp. 98-99.
3-4. From T. Brooke, the Agent at Bareilly to N. B. Edmonstone, Chief Secretary to the Government of Bengal in the Judicial Department, dated May 3, 1811, Parliamentary Papers, 1828, (Judicial) pp. 115-16.

human beings which is carried on between our and the neighbouring States." The purchasers of these children were mostly inhabitants of the palace, who were altogether exempted from any control. "They were the most abandoned and unprincipled class of the Delhi community," a writer states in one of the Delhi papers. "Scarcely has a single instance of child-stealing been brought to notice," he adds, "for a length of time, in which these people were not concerned. The parties in particular cases have proved to be, what is generally termed respectable people, that is of family or substance, a class to whom our courts are rather over-indulgent in investigating criminal charges."[1]

Much the same conditions prevailed at Agra, where the kidnapping of children was to a large extent the continuation of the practice that had been carried on during the Moghul period. The slaves, then required for the Moghul's Seraglio and the houses of officials and nobles, were supplied by having recourse to kidnapping. In course of time, with the destruction of Moghul Empire and with the ascendancy of the Company's Government, this evil practice was partly checked, yet it never entirely died out; and professional kidnappers continued to flourish. They were not a little encouraged in their nefarious trade, because in neighbouring independent states the same custom continued to exist which had at one time obtained in Agra during the reign of the Moghuls. The result was that the judicial authorities were practically powerless; and kidnapping was not only winked at, it was also authorised. The sole cause of the existence of the crime of child-stealing was the countenance given to the trade by the Dholpur and Gwalior States.[2]

The purchase-money of a young girl or woman did not exceed the trifling sum equivalent to the hire of a labourer for a year; yet even this paltry sum of money proved a temptation which the kidnappers of children could not resist. Thus it came about that professional kidnappers profited by every opportunity to follow their illicit trade, and bad characters of every description were induced to follow their example, whenever a wretched child or a discontented wife fell in their way.[3] Such was the state of affairs in Bengal.

Coming now to the Bombay Presidency it would seem that the traffic in children was there equally wide-spread. It is true

1. *Asiatic Journal*, Part II, 1835, pp. 227-28.

2. From C. Harding, Magistrate of Furrah to the Commissioner of Circuit at Agra, dated December 9, 1830, Political Proceedings, 21st January to 11th February 1831, Imperial Record Department.

3. *Ibid.*

that attempts were made by the Government officials to show that the evil of kidnapping had nearly ceased. Thus for example, in a letter dated June 30, 1825, addressed to the various Judicial authorities in the Presidency, David Greenhill, Officiating Secretary to the Government of Bombay, asked them to direct special attention to the best means of putting a stop to the crime of kidnapping children by Brinjaries and others. In answer to this letter the Magistrate[1] and the Acting Judge[2] of the Broach Court of Adawlut wrote that the crime of kidnapping children was of extremely rare occurrence. Similarly the Acting Collector and the Magistrate of Kaira[3] remarked that kidnapping children was a most uncommon offence in that quarter. Again Judge Williams of the Zillah North of the Muhee, Eastern Adawlut, pointed out that he did not believe that kidnapping of children was carried on to any great extent in Gujerat, and that the police and the patels were in general very active. Finally, H. D. Robertson,[5] Collector of Poona, stated that the crime was confined within the narrowest bounds,and that instances of kidnapping were of very rare occurrence. Similar answers were given in 1825 by a number of other Government Officials from almost every district in the Bombay Presidency. These answers, all of them to the effect that kidnapping of children was either an exceptional event or did not exist at all, fill no less than 72 type-written pages which form by themselves an interesting set of unpublished documents, found in the Judicial Department of the Bombay Government Records, volume 25/126.

But in spite of their imposing array, these official pronouncements do not make out a convincing case in favour of the so-called rarity of the offence of kidnapping. Thus for example, that kidnapping did exist to a large extent may be gathered from the statement of Archibald Robertson, Collector of Dhulia.[7] He

1. From the Magistrate of Broach, to David Greenhill, Officiating Secretary to the Government of Bombay, dated July 14, 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.
2. From the Acting Chief Judge of the Broach Court of Adawlut to David Greenhill, Officiating Secretary to the Government of Bombay, dated July 18, 1825, *Ibid.*, Bombay Record Department.
3. From the Acting Collector and Magistrate of Kair to David Greenhill, Officiating Secretary to the Government of Bombay, dated July 29, 1825, *Ibid.*, Bombay Record Department.
4. From Judge Williams, Zillah North of the Muhee, to David Greenhill, Officiating Secretary to the Government of Bombay, dated September 5, 1825, *Ibid.*, Bombay Record Department.
5. From H. D. Robertson, Collector of Poona to William Chaplin, Commissioner of Deccan, dated July 4, 1825, *Ibid.*, Bombay Record Department.
6. Judicial Department, 1826, Vol. 25-126.
7. From Archibald Robertson, Collector of Dhoolia to William Chaplin, Commissioner of Deccan, dated July 30, 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.

was of opinion that, unless the free transportation of slaves was prohibited, and the sale of them discontinued, kidnapping would pursue its course of its own accord, whatever penalties might be attached to it. For though it was asserted that the Government Officials were actively engaged in checking this inhuman traffic, the following extract, quoted from a letter of the Police Superintendent of the Palanpur Agency, dated April 23, 1837, gives us an idea of the true nature of their alertness. "I am led to apprehend, that in parts of Gujerat, it (the traffic) is carried on with impunity, the local authorities not interfering, excepting when the parents or relations have discovered the kidnapped children and apply for their restoration."[1] Furthermore it was not only in the Palanpur Agency that kidnapping constituted a flourishing trade. For the Bombay Government referring to a letter of April 11, 1843, from the Hon'ble the Court of Directors, wrote to W. H. Harison, Register to the Court of Sudder Foujdarry Adawlut, to the effect that it has been ascertained that the trade in kidnapped children is carried on in India to a considerable extent. It was accordingly the Court of Directors wishes to ascertain whether the penalties attached to the commission of this serious offence were in the opinion of the Judges sufficiently severe to act as a general prevention to parties from engaging in this traffic.[2] From a statement accompanying the reply from the Sudder Foujdarry Adawlut it may be gathered that from the year 1843, 157 cases of kidnapping of children within the limits of the Bombay Presidency were tried by the local Magistrates and Judicial authorities. Of this number sufficient evidence could not be obtained in 29 cases, whilst conviction followed in 128 cases in which 248 individuals were concerned.[3] It is in the light of this evidence that we feel inclined to doubt the allegations made in 1825 by Government Officials to the effect that the kidnapping evil was in its last stages of inanition.

Nor should it be lost sight of that it is difficult to ascertain from the Return of the Criminal Judges, from the records of the

1. From the Police Superintendent of the Pahlunpore Agency to J. P. Willoughby, Secretary to the Government of Bombay, dated April 23, 1837, No. 289, Political Department, 1837, Pahlunpore, Vol. 880, Bombay Record Department.

2. From the Secretary to Government, to W. H. Harison, Register to the Sudder Foujdarry Adawlut, dated July 20, 1843, Political and Secret Department, 1842-43, Vol. 1407, Bombay Record Department.

3. From G. Arthur, T. McMohan, G. W. Anderson, J. H. Crawford, to the Hon'ble the Court of Directors, dated January 31, 1844, Political Department, Vol. 98, 1844, Bombay Record Department.

Zillah Magistrates and from the reports of Judges on Circuit whether the crime of stealing children was of common or of rare occurrence in the Bombay Presidency. There is every likelihood that it was more often committed than mentioned; for in the very year in which the Government Officials stated that there was no such thing as kidnapping, a judge of the Sudder Adawlut at Surat writes: "And as it (the offence of kidnapping) is not particularly noticed in these papers, it may be concluded that, if the offence of kidnapping be more frequently committed than the Records of our Court show, the want of attention to it lies either in the negligence of the Police, or in the incapability or unwillingness of the suffering party to complain publicly."[1]

Nor was kidnapping unknown in Madras. First of all Captain Farmer, in a letter dated May 17, 1792, and dealing with the slave-trade on the Malabar Coast, informs us that there was an evil which prevailed throughout the Provinces of Malabar, and which really called for remedy, as it was equally shocking to humanity and destructive of the welfare of the country. This evil was the very extensive slave-trade carried on by the French at Mahe for the supply of Islands of Bourbon and Mauritius.

It was a custom with the Moplas to steal the children of the Nairs, and of other Gentoo (Hindu) castes and to carry them to the sea-coast for sale. Bands of armed Moplas infested the country, forced themselves into the houses of the Hindus and carried off men, women and children. "Two ships which had anchored this year at Calicut," Captain Farmer writes, "had each a cargo of slaves about three hundred"; and he continues: "If the leaders of the European nations have been so far engaged by their humane feelings as even to think of sacrificing to those feelings a capital branch of the European commerce, and that in favour of a free people who comparatively with the Hindoos may be deemed savage and barbarous, I am very well persuaded they would hear with the abhorrence it deserves the commerce I now complain of, and give effectual orders for the preventing of it; but as this would require time and the evil still presses, I have stated this to you from a feeling both of duty and of humanity—the subjects so carried off are now the subjects thro' whose means they are to draw tribute and revenue, and have therefore now as much claim to protection and defence from this evil as the subjects of Bengal."[1]

1. Captain Farmer's Letter of the 17th May 1792 on Slave Trade on the Malabar Coast, Political and Secret Department Diary, 1792, Vol. 43, Bombay Record Department.

A year later, on June 15, 1793, Commissioners Duncan, Page and Bodam, wrote to the Chief and factors at Tellicherry as follows: "We find that the practice of shipping kidnapped and other natives as slaves from the several ports on this coast is still more or less continued, notwithstanding the various prohibitions which have been issued against a practice so nefarious, so destructive and so inhuman in whatever light considered; we do think it our duty to require our most unremitted attention to prevent any such transaction in time to come."[1]

Furthermore in a despatch dated August 5, 1796, the Hon'ble the Court of Directors advise the Government of Bombay, "We are glad to find that from the measures pursued by the Malabar Commissioners, so much to their honor, and the orders issued in consequence thereof, an entire stop has been put to this inhuman traffic in the Province of Malabar."[2] (Malabar was in those days under the Government of Bombay).

However this self-congratulatory indorsement because of the efficient repression of kidnapping, was rather premature. For 16 years later, in 1812, as Baber informs us, the practice of kidnapping was exceedingly common in Travancore. It was not only confined to bondsmen, but was also extended in many instances to free-born children. Even children of higher castes were stolen and sent to Malabar, there to work as slaves in the Anjaracandy Company's plantations, which were under the supervision of Mr. Brown.

The circumstances and situation of this gentleman need a few words of explanation. In the year 1798, the Bombay Government started a plantation at Anjaracandy, with a view of raising pepper, coffee, cinnamon or cassia and other articles for the benefit of the Company; and they appointed Mr. Brown overseer of the plantation. This Mr. Brown in an application, dated May 5, 1798, to the President and Commissioners of Malabar (then under the Bombay Government), states that in consequence of the backwardness of the Tehsildar in furnishing labourers for the plantation, he was reduced to great difficulties.

1. From T. H. Baber, Judge and Magistrate of Zillah Canara to the Secretary to Government, Parliamentary Papers, 1828, (Judicial) p. 581.
2. Extract from a Letter of the Hon'ble the Court of Directors, dated August 5, 1796, Letters from the Hon'ble the Court of Directors, Political Department, 1794-1807, Bombay Record Department.

Accordingly he " had purchased 45 Pooliar men, women and children whom he had found very useful." According to the Proclamation of 1793, this transaction was open to serious objections. But Mr. Brown subsequently explained that Pooliars were born slaves,—an explanation which was readily accepted by Government who went so far as formally to sanction in 1798 the policy of purchasing Pooliar and other slaves for the Government plantation; and this policy was openly followed afterwards for a number of years.[1] The principal agent was Assin Ally, a person secretly employed by Mr. Brown to supply the constant demand for slaves and specially children to work on the plantations. From the evidence of the children themselves, which was taken by Baber in 1812, it appeared, that they were stolen from their relations in the night time; cloths were thrust into their mouths, and in this state they were carried to Allepi, where Assin Ally resided; thence they were sent off by water to Mahe. In order to prevent their being detected, they were all disguised as Mopla children, the boys were deprived even of their Koodeema, or lock of hair (the distinguishing mark of their caste), and Mopla names were given to them. It is useless to enter into further details relating to the malicious part played by Mr. Brown in this affair, which is described at full length in the Parliamentary Papers published by the House of Commons.[2] However it may be mentioned that on a full investigation of the case, 76 men, women and children (including ten infants) were found on Mr. Brown's plantation, all of whom declared that they had been stolen or forcibly carried away by Moplas and others from the districts of South Malabar, Cochin and Travancore, and transported to Mr. Brown's plantation at Anjarakandy.[3]

Twenty years later, in 1832, Baber was still protesting against the same evil being tolerated. In his answer to one of the seventeen questions on slavery in the East Indies, he wrote to the following effect to the Commissioners for the Affairs of India: His duties had led to constant official intercourse upon a variety of subjects with the Political Residents at the Durbars of the neighbouring States of Mysore, Coorg, Cochin and Travancore. On more than one occasion he had had to decide cases relating either to slaves kidnapped in Travancore and sold to British subjects, or even to free-born Hindu children of various castes in the

1. *Asiatic Journal*, Vol. XXVI, 1828, pp. 671-72.
2. Parliamentary Papers, Judicial, 1828, p. 565-717.
3. From T. H. Baber, Judge and Magistrate, North Malabar, to the Secretary, to Government, dated 29th February, 1812, para 19, Parliamentary Papers, 1828, para 19, p. 567-68.

Cochin or Travancore States "who had all of them been reduced to slavery in the Honorable Company's dominions, after being procured by the most fraudulent and violent means, and deprived of their caste by cutting off the lock of hair."[1]

Similarly A. D. Campbell had little doubt that children were kidnapped and sold as slaves without the knowledge of their parents. As a Superintendent of Police at Madras, in 1818, he succeeded in restoring several such children to their parents, who were amongst the lowest and poorest of the Hindus, but whose anxiety to recover their infants, whom they had in all probability found it very difficult to support, would have done honour to the highest class of European society. "I may add," he says, "that from Malabar, a province on the Western Coast of the Peninsula, where the ancient institutions of the Hindu Government have descended to our own times nearly unimpaired, I recollect one trial having come before the Sudder Foujdarry Court, in 1830, in which the members of a high caste Hindu family, to conceal the disgrace to which they would have been exposed from retaining one of the daughters whose chastity was more than suspected, forcibly carried her off to a distant province, where they were taken up on account of endeavouring to dispose of her as a domestic slave."[2]

Lastly, the *London Times* of January 23, 1840, gives the following flagrant case, based on a letter dated Madras, November 15, 1839, written by the Beach Magistrate and Superintendent of the Marine Police. On November 1, 1839 a party was detected enticing away eight young children to a native brig. Means were adopted to rescue them. A constable was sent to search the brig, and five more were rescued. The vigilance of the police found ten children secreted in a house in the Black Town. Further investigation and search led to the discovery of four more children. While the search was proceeding, two very young urchins were discovered on board the brig. In all twenty-eight children, all between the ages of three and ten years were rescued. From the evidence adduced, it appeared that these poor children had been stolen, decoyed and purchased.[3] Again in an article in the *Monthly Review* of July, 1840, we find the author stating that slavery existed even then upon a great scale, while the practice of

1. Answers of T. H. Baber to the questions of the Commissioners of Circuit for the Affairs of India, Appendix to Report from the Select Committee, IV, 1832, (Public) para 4, p. 422.

2. Answers of A. D. Campbell to the Commissioners for the Affairs of India, Appendix to Report from Select Committee, 1832 (Public), para 2, p. 452.

3. *London Times*, January 23, 1840; *Cf.* Adam, Letter VI to Thomas Fowell Buxton, 1840.

stealing children, for example in Madras, appeared to be widely prevalent. Many of these children of the female sex were surely intended for dancing girls, of whom it was alleged that their subsequent bondage was only in name. But such was not always the case, as is made plain by the statement of two of the Trichinopoly Judges in 1832. "The turpitude is in the abduction of children from their country, family and home, for the purpose of devoting them to sensual as well as idolatrous purposes."[1]

Finally for the sake of completeness we will here mention the widespread kidnapping activities of the Thugs who operated in many parts of India. William Sleeman, otherwise known as Thuggee Sleeman, brought to light a practice which seemed to have gained a footing since the siege of Bhurtpore in the year 1826. It was known as Megpunnaism. Parents and other persons to whose care children were entrusted were murdered with a view to kidnap the children and to prevent their being reclaimed. The worst offenders were the Thugs. They selected as their victims parents with grown-up children, who were driven by famine or domestic misfortunes to go in search of a new home in some other part of the country. The children were generally sold to Brinjarries, who traded in children all over India. Their best customers were prostitutes who were always eager to purchase good-looking children, and were ready to pay a higher price for those whose parents were certified to be dead than for others; because they had less apprehension of such children either absconding in search of their parents or being reclaimed by them.[2]

Lieutenant Mills in his letter of October 15, 1838, states: "This system of murdering indigent parents for their children has been flourishing since the siege of Bhurtpore in 1826, and the cause of their confining their depredations to this class of people seems to have been the great demand they found for these children in all parts of the country and the facility with which they inveigled their parents into their society." It was not difficult for them to sell for very large sums to respectable natives or to the prostitutes female children thus obtained. This system they found all the more lucrative and safe, because there was little likelihood of its being brought to the notice of the local authorities; for inquiries by the surviving relations of the victims were very seldom made.[3]

1. *Monthly Review*, July 1840, p. 424.
2. Indian Law Commission's Report 1841, pp. 347-48.
3. *Ibid.*, pp. 348-49.

Their ordinary way of proceeding was the following. On their expeditions these gangs invariably took their whole family with them. The female members set to work to win the confidence of the emigrant families which they met on the road. By some inducement or other the latter were prevailed upon to accompany them to some place which best suited the purpose of these murderers. There, the parents were murdered by the men, whilst the women took care of the children. After doing away with the bodies of their victims, the men returned to the women in the camp; and when the children enquired after their parents, they were made to believe that their parents after selling them had departed. But if perchance they doubted the truth of these assertions, they were forcibly restrained from making further inquiries by threat of instant death. The female children were either adopted by the members of the gang, or sent in charge of the women to be disposed of. A ready market was found for them amongst the Brinjarries, many of whom were connected with these gangs in their murderous trade. These Brinjarries in turn, resold the children in different cities to prostitutes, who on learning the fate of the parents were much pleased, as it relieved them of all apprehension of the children being ever reclaimed.[1]

As a further illustration of the heartless cruelty of the Thugs, we shall quote from Major Sleeman's Report some of the answers given by those members of Thug gangs who turned approvers. Their words will bring home to us more clearly than anything else into what depths of incredible depravity man can fall.

" The confession of Jewan Dass, alias Prem Dass, relative to the Husseagunge affair, taken in my presence (C. Mills) on the 19th August 1838."

Q: " Are you a Jemadar of Thugs?

A: " Yes.

Q: " How many men and women compose your gang?

A: " My gang formerly consisted of 50 or 60 men and women, but of not more than 10 or 12 latterly.

Q: " Relate some of the technical terms used by your gang.

A: " We call our trade, namely, murdering travellers for their children, Megpunna. A male traveller, "Kur" a female traveller " Kurree ".

1. Indian Law Commission's Report, 1841, pp. 348-49.

Q: "Do you observe any omens on opening a Megpunna expedition?

A: "Yes, the call of the partridge, which if heard on the left, is considered propitious, and on the right the contrary.

Q: "From whom did you learn this system of Thuggee?

A: "From Umree Jamandaruee, a woman confined for life in the Delhi Jail.

Q: "Relate the particulars of the Husseeagunge affair?

A: "I left my home with a gang of forty Thugs and proceeded to Husseeagunge, where Heera Dass and Rookmunee went to the city of Muttra for the purpose of buying some clothes, and succeeded in winning the confidence of four travellers, two men and women with their three children, whom they brought with them to our encampment. After passing two days with us, some members of our gang prevailed on this family to accompany them to the banks of the Jumna, and murdered the four elderly travellers in a garden near the village of Gokool. After throwing their bodies into the Jumna, they took their three children to the 'Tanda' or encampment of Deva Brinjarra near the village of Kheir, and sold the two female children for forty rupees; and the male for five rupees."[1]

Lieutenant Mills had the following conversation with a certain Dheera, one of the two men, who described the above-mentioned murder.

Q: "You have stated in your various depositions that you invariably preserve the children and sell them. Are you not afraid that these children will disclose the manner in which you got them and thereby get you into trouble?

A: "We invariably murder our victims at night, first taking the precaution to put the children to sleep; and in the morning we tell them that we have purchased them from their parents who have gone off and left them.

Q: "You seem to have been in the habit of selling children in all parts of the country. How have you avoided being apprehended?

A: "The children are seldom aware of the fate of their parents, and in general we sell them to people very well acquainted with the nature of our proceedings."[2]

By way of conclusion we can do no better than quote the

1. The Indian Law Commission's Report, 1841, pp. 349-50.
2. *Ibid.*, p. 352.

Law Commissioners who boldly asserted as late as 1841 that "the kidnapping of free children with the object of sale is but too common." Again a Calcutta Magistrate testified to having, during his thirty years tenure of office, released and restored to their friends between six hundred and seven hundred children who had been so stolen and sold for the vilest purposes in Calcutta alone; and from his evidence it is clear that the law had reached only a small portion of such offences in that city, the seat, too, of the British Government of India. It is impossible to epitomize the shameful details of this traffic, or to convey an adequate idea of the moral degradation consequent on the fact that in every province, from the Himalayas to Cape Comorin, temples were to be found where an establishment, recruited wholly or in part from stolen children, was an integral part of the temple corporation, supported from the revenues of temple—those revenues consisting not only of the offerings of devotees, but generally of lands granted for the support of the temple by former governments. These Hindu shrines were often the most frequented in the province. Some of them were considered as the most sacred in India. Amongst them were the temples of Jagganath at Puri and Ruggonath at Cuttack; where among the salaried officials were the Devadasis (servants of God), who, to the number of fifty or sixty families in Jagganath Shrine, were at the service of Hindu devotees, and formed a regular self-governing corporation, all with strict rules of admission and government.[1] In this connection we may quote H. T. Colebrooke's own words: "Such was the greatness of the reward offered to certain religious orders in India that it has been supposed to lead to kidnapping in several instances of this nature, though not frequently, since the purchaser requires to be ascertained of the parentage of the child."[2]

The obvious inference to be drawn from these facts is that kidnapping was one of the main sources of slavery, and that so long as slavery prevailed, kidnapping was bound to continue. Kidnapping was not only one of the sources but also one of the fruits of it; for it existed only in slave-ridden countries, and therefore there could be no effectual suppression of kidnapping so long as its cause *i.e.*, slavery itself was countenanced or even so much as tolerated.

III. VARIOUS KINDS OF SALES. A third source of slavery was the acquisition of a slave by sale. This has already been

1. Fortnightly Review, 1883, p. 359.
2. Colebrooke, Paper on Slavery, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.

mentioned as a concomitant evil of the kidnapping curse; but there were numberless other cases in which the acquisition of slaves by sale had nothing to do with kidnapping. Moreover selling persons into slavery was such a widespread practice that it rightly deserves to be treated under a separate heading; for children were sold into slavery, married women and criminals. Nay, what is more, people sold themselves into slavery.

As regards the selling of free-born children into slavery, this evil was mostly connected with certain rather discreditable activities carried on in Hindu temples. In most of the Hindu places of worship there were establishments of dancing girls. These were generally purchased by the old prostitutes of the pagodas. When these children grew up, they were disposed of without their consent, so that it is plain that the bazars and the seraglios were supplied from this source.

This practice was so common that it was thought unwise to interfere with it. Thus, for example, William Chaplin, Commissioner of the Deccan, observed that many girls were purchased by dancing women and brought up in that profession after an education in music and dancing. They were often resold. But he did not think it advisable to prohibit such purchases; for he believed that "it would be a serious hindrance to a useful profession which had always been tolerated in India."[1]

Again H. T. Colebrooke writes that "such was the greatness of the reward offered by certain religious orders in India that it has been supposed to lead to the kidnapping in several instances of this nature, though not frequently, since the purchaser requires to be ascertained of the parentage of the child".[2]

A practice still more reprehensible than the sale of children was the sale of married women by their husbands, a traffic which obtained in several districts of the Bengal Presidency.

In the Law Commissioners' Report we learn that husbands used to sell their wives in the district of Rajshahi. However in spite of this sale the marriage remained undissolved, and if the husband continued to have access to his wife, the offspring belonged to the purchaser.[3]

1. From William Chaplin, the Commissioner in Deccan to David Granhill, Secretary to the Government of Bombay, dated, October 6, 1825 Judicial Department, 1826, Vol. 25-126, Bengal Record Department.
2. Colebrooke on Slavery, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.
3. Indian Law Commission's Report, p. 10,

In the adjoining district of Rangpur instances were likewise common of Mahomedans and Hindus selling their wives from motives either of enmity or greed.[1] Again when there was famine in the district of Agra in 1813-14, men were eager to sell both their wives and their children for a few rupees, and even for a single meal.[2] Full 19 years later the practice had not ceased; for a letter, dated January 27, 1832, from G. G. Manuel, Magistrate of Agra to the Resident at Gwalior, reports a case in which a Cheruma, called Bhowanny, inveigled his own wife, Mussumut Nudah, into the Gwalior territory and sold her to a "Dullal" in Pukapoorah from whom she was subsequently purchased by Ramfull a "burda furush" (an agent) of Gwalior. There she was offered for sale in the Bazar of Balaboy. The Magistrate considered that the sale of a wife was under any circumstances a heinous criminal offence, and brought the husband who was the perpetrator of the crime to trial.[3] This is but a solitary instance of a widespread practice; for we are informed that in Bengal, Behar, Benares and the Ceded and the Conquered Provinces husbands pledged their wives as security for money borrowed, the person so pledged being maintained by the pawnee and rendering him the ordinary services of a domestic slave.[4]

In the next place we may mention as a source of slavery the sale of criminals. During his term of office Warren Hastings passed a Regulation which was primarily meant for punishing dacoits, but which incidentally became a source of slavery. The Regulation ran as follows: "That whereas the peace of this country hath for some years past been greatly disturbed by bands of dacoits, who not only infest the high roads, but often plunder whole villages, burning the houses and murdering the inhabitants; and whereas these abandoned outlaws have hitherto found means to elude every attempt which the vigilance of Government hath put in force for detecting and bringing such atrocious criminals to justice, by the secrecy of their haunts, and the wild stage of the districts which are most subject to their incursions; it becomes the indispensable duty of Government to try the most rigorous means, since experience has proved every lenient

1-2. Indian Law Commission's Report, p. 10.

3. From G. G. Manuel, Magistrate at Agra, to the Resident at Gwalior, dated January 27, 1832, Political Proceedings, 17 and 24 September 1832, Imperial Record Department.

4. Extracts of Notes and Observations on Slavery as existing in Bengal, Behar and Benares and the Ceded and Conquered Provinces. By G. G. Myers, Principal, Sudder Ammin, Appendix II to the Indian Law Commission's Report 1841, p. 102.

and ordinary remedy to be ineffectual: that it be therefore resolved, that every such criminal, on conviction, shall be carried to the village to which he belongs, and be there executed for a terror and example to others; and for the further prevention of such abominable practices, that the village of which he is an inhabitant, shall be fined accordingy to the enormity of the crime, and each inhabitant according to his substance; and that the family of the criminal shall become the slaves of the State, and be disposed of for general benefit and convenience of the people according to the discretion of Government."[1]

But people were not satisfied to sell others into slavery, they actually sold themselves. Hamilton asserts that the self-sale of adults prevailed extensively in the countries and provinces of Bengal. He describes the custom of debtor-slavery or mortgaged-labour as of universal occurrence in the Province of Tennasserim and in Sylhet where the poorer inhabitants habitually sold themselves when in extreme distress.[2] What is more, this seems to have been a long-standing custom in those parts. For already during the Moghul Government the inhabitants of Sylhet used to sell themselves as slaves in settlement of arrears of rent which they could not otherwise pay.[3]

Furthermore commenting on slavery as existing in Bengal, Behar, Benares and the Ceded and the Conquered Provinces, G. Myers mentions that one of the sources by which slavery was perpetuated was the sale or pledge by a grown-up person to serve his creditor as a slave in liquidation of a debt, or till the redemption of a debt, or in consideration of money borrowed to discharge the debt due to another creditor. Though this source of slavery was limited in its operation, nevertheless even in the Upper Provinces instances were known of men who, when they were unable to pay their debts, did not shrink from signing a written engagement by which they rendered themselves slaves to their creditors.[4]

What these written engagements were like, we learn from Mr. Liston's description of a servitude bond. In the Journal of the Asiatic Society of Bengal for the year 1837, he states

1. Parliamentary Papers, Judicial, 1828, p. 2; *Peggs, India's Cries to British Humanity* p. 281.
2. Hamilton, Hindustan, II,
3. Indian Law Commission's Report, 1841, p. 10.
4. Extract of Notes and Observations on Slavery as existing in Bengal, Behar and Benares and the Ceded and Conquered Provinces, By G. G. Myers, Appendix II to the Indian Law Commission's Report, 1841, pp. 101-02.

that these bonds were daily executed and strictly enforced in the district of Gorakhpur. He mentions the case of a native who, in return for a loan of 51 rupees plus the interest at the rate of 12 per cent., is obliged to give his labour and that of his family to his creditor for an indefinite length of time, with the result that, if he died prior to the repayment of principal and interest, his children would be dragged into servitude for the fulfilment of their father's contract.[1] These service-bonds therefore served the purpose of enslaving whole families, and in this respect they may be compared to the Mahomedan practice according to which a man could enter into a contract to serve another for a period of 70 years. Already in 1808, the Mahomedan Muftis had pointed out, in their answers to the questions of the Court of Sudder Dewanny and Nizamut Adawlut, that a seventy years' contract was tantamount to slavery pure and simple. Therefore the Mahomedan lawyers deemed it expedient to restrict the period of service-time to one month, one year or at most to three years, as in the case of Ijari Wakf.[2] Thus we see that the Mahomedan Jurists themselves denounced this practice as nefarious and deceptive. It is rather sad to have to remark that their denunciations were acted really on, since this kind of slavery, under a different guise, was still prevalent 29 years later, in 1837.

Again in Kishenpoore there was a class of slaves known as "Shewuk" commonly called "Sawuks" or "Kummeas". These were bondsmen who sold themselves for life. They received from a person a sum of money and executed a deed "Shewuk Puttra," binding themselves to become that person's slaves for life. They were not entitled to be released from bondage, even though the money was paid back. However for the sale of a person by himself to be valid, it was necessary according to the custom of the country that he should have attained his majority.[3]

This system of slavery prevailed very extensively in Ramghar, Kurruckdeea and Palamau, where men generally became slaves by falling into arrears to their landlords, or by borrowing money for the performance of marriage ceremonies. When they were

1. Journal of the Asiatic Society of Bengal, July-December 1837, p. 950.

2. A Regulation for the guidance of the Courts of Judicature in cases of Slavery submitted by J. H. Harington with his minute of November 21, 1818, O. C. No. 14 of December 29, 1826, Judicial Department (Criminal), The Governor-General of Bengal in Council, Bengal Record Department.

3. Answer of Captain T. Wilkinson, Governor-General's Agent, Kishenpore, dated August 5, 1836, to the Register to the Sudder Dewanny and Nizamut Adawlut, Appendix II to the Indian Law Commission's Report, pp. 152–53.

unable to pay, they were compelled to write "Sawuknamahs," (contracts) for the amount of their debts, and thus they became slaves, and frequently for life. Very often the same miserable condition extended to their children. Occasionally these bonds were executed for incredibly small debts. J. Davidson, Principal Assistant to the Governor General's Agent in Chota Nagpur, writes in a letter dated January 24, 1836, to the Secretary to the Law Commissioner, "I once had a case before me, where the amount stipulated in the bond was only one Rupee; and the amount of the debt for which the men sold themselves is generally less than 20 Rupees".[1]

Moreover farmers and landholders had frequently recourse to trickery, and claimed fictitious debts from poor, ignorant ryots. As a result a great portion of the agricultural labourers were nothing else but slaves. Furthermore when the service-contract did not extend to the ryot's children, the farmers and the landholders made use of further deception in order to secure for themselves also the services of the children. By underhand dealings the children were persuaded to marry as soon as they were of age; and the well-to-do masters of the children's parents willingly advanced money for the performance of the necessary ceremonies. The money advanced did not as a rule exceed ten rupees; but on receiving this loan the children bound themselves, as their parents had done before.[2] Thus the whole family was reduced to slavery.

Nor was the self-sale of free persons unknown in the Bombay Presidency. In 1825, Government made inquiries as to the best means of putting a check to this practice. The details relating to this subject fill 73 typed pages of unpublished documents,[3] and are too long to be mentioned here. Moreover William Chaplin's Report of the Deccan likewise states that debtors sometimes became slaves to their creditors;[3] and Williamson, the Collector of Surat, observes that "The Dessaees Battela Brahmuns, in Soopa and some other Pergunnahs, possessed as large a proportion of slaves as may be found perhaps in any other part of India. Those who are frequently attached to the soil, as well as bond-servants who voluntarily engaged to labour in payment of loans made to them for their marriage or the like occasions, at times run away

1-3. From J. Davidson, Principal Assistant to the Governor Generals' Agent in Chota Nagpur, Camp Tomar, dated January 24, 1836, addressed direct to the Secretary to the Law Commissoners in reply to their Circular, Appendix II to the Indian Law Commission's Report, p. 156.

4. William Chaplin's Report of the Dekhan, para 283, p. 150.

from their masters; and such cases are brought before the Magistrate."[1]

Moreover we learn that as late as 1842 the practice was prevalent in the Collectorate of Thana that people used to put themselves in bondage for a certain number of years, in order to raise a sum sufficient for a marriage or any other ceremony ;[2] and in the opinion of the Collector of the district the only way to put a stop to this practice was a penal enactment.[3] A number of copies of bonds entered into by the debtors in this Collectorate are to be found among the unpublished documents, on which most of the data here mentioned are based.[4]

Finally, speaking of the western districts of the Madras Presidency T. H. Baber states that among the slaves there are persons who, in consideration of a sum of money or in discharge of security for the payment of a debt, bound themselves by a voluntary contract to servitude either for life or for a limited period.[5]

It is true that A. D. Campbell was of opinion that this description of servitude could hardly be styled slavery.[6] But his interpretation is rejected even by Hindu Law, which considered that the sale of a free person by himself created not only slavery but also the most degraded form of slavery.[7] Jagannath's Digest of Hindu Law translated from the original Sanscrit by H. T. Colebrooke, whilst discussing this point, states that even according to an ancient Hindu Legislator, Nareda, " a low man, who being independent sells himself, is the vilest of slaves and cannot be released from slavery."[8] Furthermore the testimony of the Mahomedan lawyers already quoted, and lastly, the instance of Gorakhpur amply prove that the person who sold himself contracted not only for his own services but also for those of his children whom he reduced to the same doom of slavery. In the light of these authorities,

1. From Williamson, the Collector of Surat to David Greenhill, Acting Secretary to Government, dated August 8, 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.
2. Extract para 30 of a letter from Mr. Jones, the Assistant Collector to the Collector of Thana, dated August 24, 1842, Judicial Department Compil. Vol. 944, 1843, Bombay Record Department.
3. Extract para 52 of a letter from the Collector of Thana to the Revenue Commissioner, dated November 25, 1842, *Ibid.*
4. Translation of Copies of Bonds, *Ibid.*
5. Answers of T. H. Baber to the Commissioners for the Affairs of India, Appendix to Report from the Select Committee, Vol. IV, 1832 (Public) p. 422.
6. Answers of A.D. Campbell, *Ibid.* p. 452.
7. *Colebrooke*, Paper on Slavery, 1812, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.
8. Colebrooke, *Digest of Hindu Law*, Vol. II, p. 347.

who were fully acquainted with the customs of the country, and whose statements are corroborated by the concurring evidence of Liston's servitude-bond of 1837, it cannot be gain-said that this form of servitude was one of the sources of slavery in India.

IV. IMPORTATION BY SEA AND BY LAND. Finally the last source of slavery was the importation of slaves by sea and by land, in which Bengal and Bombay played an important part.

As regards the importation of slaves by sea: H. T. Colebrooke, speaking of Bengal, remarks that this trade was restricted to comparatively few African slaves brought by Arab ships to the port of Calcutta. "Having been led to make some inquiries into this traffic previous to its abolition, I had reason to be satisfied that the whole number of slaves imported was very inconsiderable, not exceeding annually a hundred of both the sexes." At the same time he felt convinced that the means by which slaves were procured on the eastern coast of Africa were no less abominable and nefarious than those practised on the Western Coast. Besides this, there is evidence to show that, even after the enforcement of Statute 51 Geo. III Cap XXIII and of the Bengal Regulation X of 1811 in that Presidency, several African slaves were imported into the Port of Calcutta. In 1823, the Editor of the Calcutta Journal writes: "We are informed, that 150 eunuchs have been landed from the Arab ships this season, to be sold as slaves in the capital of British India. It is known, too, that these ships are in the habit of carrying away the natives of this country, principally females, and disposing of them in Arabia in barter for African slaves for the Calcutta market."[1]

The *Indian Gazette* of December 4, 1830 remarked that the attention of the Government and the public had been repeatedly called to the various circumstances by which it was tended to establish that a trade in slaves was carried on throughout the Company's territories, and that, if they did not establish the fact, circumstances were sufficient to excite strong suspicion for an enquiry. The *Bengal Harkaru* of December 3, 1830, gave the following scathing account of the existence of this traffic: "A Moghul merchant had supplied his Majesty (the King of Oudh) with three Abyssinian women, seven Abyssinian men and two native girls, for which supply he was paid Rs. 20,000.[2] What

1. Colebrooke, Paper on Slavery, 1812, Original Consultation No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.
2. Asiatic Journal, June 1831, Vol. V, p. 63.

is necessary to observe here is, not that the British Government should have interfered in the internal administration of Oudh for the prevention of this practice, but that, so far as can be assumed, these male and female Abyssinian slaves, in order to reach Lucknow, must have been so necessarily imported from Africa into the Company's territories, and that it was the duty of the Government to institute a strict enquiry into the means by which this was effected and by which it might be prevented." In spite of this warning given in 1830, a similar transaction took place three years later, in 1833, when, according to the Resident at Luknow, two batches of African slaves numbering in all twenty-two females and twelve males had been imported via Bombay by Moghul merchants. One of these batches had been sold to the King of Oudh and the Padshah Begum (the Queen Mother). But says the Resident, "The rank of the purchasers illustrates the difficulty of checking this traffic.[1]

Furthermore W. Adam observes that during his residence at Calcutta he was a tenant of a house belonging to an Armenian landlord, and formerly occupied by an Armenian family. It was situated in Amratala Street, in which, as well as in neighbouring streets, there were several Armenian families. One of the appurtenances of the house was a Gholamkhana, or slave-keep with wooden bars and a padlock on the door like the cages of wild beasts. W. Adam also proves that African slaves were not uncommon in Mahomedan families; for whilst taking a census of the population of Moorshedabad in 1836, it was shown that 63 eunuchs, belonging to the household of the Nawab of Moorshedabad, were all of Abyssinians.[2] Though it is difficult to ascertain that they had been imported after the prohibition of 1811, yet it is obvious that all of them were either imported at that time, or were the children of those who had been imported prior to the prohibition of 1811.

With regard to Bombay Presidency it may be said that the whole Western Coast of India, owing to its proximity to Africa, Arabia and the Red Sea littoral, afforded ample facility for the importation of slaves; whilst the Portuguese settlements of Goa, Diu and Daman were also calculated to further this trade. In a despatch, dated March 10, 1842, No. 38, Lieutenant Colonel Robertson, the Officiating Resident in the Persian Gulf, reported the importation of 66 slaves into Karachi from Muscat and

1. Fortnightly Review, March 1883, p. 361.
2. Adam, Letter VI to Thomas Fowell Buxton.

Kishan.[1] In a letter dated July 26, 1838, Henry Pottinger, Resident in Cutch, informed the Political Secretary to the Government of Bombay, that, notwithstanding the Proclamation issued and other measures taken to prohibit the importation of slaves by sea and by land, 26 slaves were brought by boats from Zanzibar and Mombassa to Mandvie.[2] In a letter from the Agent to the Hon'ble Governor at Surat we learn that from 1837 to 1839 the number of slaves imported into Daman was as follows: In 1837, from 10 to 15; in 1838, from 8 to 10; in 1839, from 5 to 7. The number of slaves imported into Goa and Diu during these years was from 15 to 20.[3] Since so late as 1840 there were some African slaves imported into these ports, it may safely be taken for granted that a greater number was imported in the years either prior to or immediately following upon the year 1813, when the Bombay Regulation I of 1813, prohibiting the importation by sea and by land was first introduced.

It will be shown later on that, when the importation of slaves by sea from the dominions of the Imam of Muscat could not possibly be checked under the Articles of the Treaty, of August 29, 1822, entered into between Captain Moresby on the one hand and the Imam of Muscat on the other; additional articles were agreed to on December 17, 1839, by which the British Government Cruizers were empowered by the Imam of Muscat to confiscate vessels belonging to his subjects, found engaged in the slave trade, beyond a line, drawn from Cape Delgado, passing two degrees Southwards of the Island of Socotra and ending at Bassein. But these further articles did little to check the importation of slaves by sea from the dominions of the Imam of Muscat. For in 1842, there is a case reported by Aberdeen that a boat, belonging to the people of Karachi, with "a Kuranee named Nadeer Allee Lootejan," imported from Muscat to Karachi 18 slaves, seven of whom belonged to Nadeer Allee Lootejan, four to the Muscat Banian Merchant Kookell, Agent of Assr, and seven to Kamkoo, a Banian residing at Karachi." It is true that in

1. From Lieutenant Colonel Robertson, the Officiating Resident in the Persian Gulf, to the Government of Bombay, dated March 10, 1842, quoted in a letter from G. W. Anderson, to the Hon'ble the Secret Committee of the Hon'ble the Court of Directors, dated, May 23, 1842, Letters to the Hon'ble the Court of Directors, Secret Department, 1842, Bombay Record Department.

2. From Henry Pottinger, Resident in Cutch, to the Political Secretary to Government of Bombay, dated July 26, 1838, No. 767, Political Department, 1838, Cutch Government, Vol. 990, Bombay Reeord Department.

3. From the Agent to the Hon'ble the Governor at Surat, to J. P. Willoughby Secretary to the Government of Bombay, dated December 4, 1840 No. 985 Political Department 1840-41, Vol. 1212, Bombay Record Department.

this case the transportation was effected by a Karachi boat, yet the subjects of the Imam were implicated in this transaction.[1]

Again on January 16 of the same year 1842 there was another case reported to the effect that a (a small boat) Bugla, belonging to Mahomed Been Sooleman of Kishen, proceeded to Karachi with an inhabitant of Hyderabad and thirteen slaves. Nine of these slaves were Abyssinians, and four of them negroes, who had been purchased by Mahomed Been Sooleman.[2]

Four days later in the same month and year, a bugla, belonging to Ally Cauvine of Kisheen, arrived at Karachi with three Sindhians and thirty-five slaves. These slaves were partly Abyssinians and partly negroes, and had been purchased by the Sindhians for whose account they were put on board the bugla.[3]

These statements are an evident proof that the importation of slaves by sea into the British territories in India had not ceased even full 30 years after its prohibition. Moreover as the information here brought forward is gathered from official Government Records, it logically follows that Government must have been aware of this traffic. But in spite of this, no measures seem to have been taken, and no investigation into the matter seems to have been made.

As regards the importation of slaves by land, it was chiefly carried on from the territories of Nepal, whence a regular supply of slaves was constantly provided. Occasionally slaves were also imported into Bengal from the Western and middle part of India, whenever a local scarcity gave a temporary impulse to a trade which was otherwise in general languid.

Strange to say, the attention of the British Government was in the first instance called to this importation of slaves from Nepal, by the Nepal authorities. However it was above all, these same Nepal authorities who were to blame for this practice; for it was owing to their oppressive administration that the wretched inhabitants were driven to have recourse to the expedient of selling their children or themselves into slavery, when they had no other means of meeting the outrageous extortions of their Nepalese rulers. "At all events," Colebrooke writes "it was highly expedient to prohibit importation altogether, whether it gave occasion to the commis-

1. A document entitled, "*Slave Trade*" by Aberdeen, dated Foreign Office, August 6, 1842, No. 660, Political Department, 1843, Vol. 1407, Bombay Record Department.
2. *Ibid.*
3. *Ibid.*

sion of this offence or only served to crown the last act of extortion of Nepalese Governors from their unhappy subjects."[1]

Slaves were not only imported into the districts bordering on Nepal. For in 1816, people of the Tipperah district used to repair to the districts of Sylhet, Chittagong and Backergunge to purchase slaves.[2]

Again we learn from Dr. Buchanan that about 100 slaves of pure caste were annually imported from Assam into Bengal and sold there. They were mostly boys and girls, of whom the latter were chiefly purchased by professional prostitutes. In 1809 the value of the slaves thus imported amounted to two thousand rupees. "The people of Cooch Behar, are willing to carry on the same trade."[3]

Moreover, in 1811, the attention of T. Brooke, the Governor-General's Agent in the Ceded and the Conquered Provinces, having been directed to this traffic by an application from the Goorkha local Governors to co-operate with them for the suppression of it, that officer issued instructions to the Magistrate of Bareilly, Moradabad, Sahranpur and Meerut to take measures to put a stop to it. The immediate release of 66 children, in consequence of those orders, by the police of the Bareilly and Moradabad jurisdictions, are a convincing proof of the extent to which the importation of slaves was carried on. All the above children had been purchased at Nudjeebabad and Agunnah, which were the established marts where these victims of oppression were collected in hundreds.[4]

These instances of repeated importation of slaves by land, thus brought to light, led to the enactment of Regulation X of 1811; and the Government in a despatch to the Hon'ble the Court of Directors, dated July 30, 1813, observed that the statement of the local Officers afforded every reason to believe that the new law had been fully effectual in the Bareilly division in preventing the importation of slaves by land from foreign countries. "It is however to be feared that such was not the case; for the same traffic is alluded to in the report of the Judge of the Bareilly Court of Circuit, dated September 9, 1815, in which Casseepore and Rodapore are mentioned as "the markets for slaves imported

1. Colebrooke, Paper on Slavery, contributed in 1812, O. C. No. 13 of December 29, 1826, Judicial Department, Bengal Record Department.
2. Parliamentary Papers, 1828, p. 246.
3. Buchanan, *Journey through Mysore, Canara and Malabar* III, p. 693.
4. Parliamentary Papers, 1828, p. 111-19; *Cf.* Indian Law Commission's Report, 1841, p. 20.

from the hills." About twenty-four years later one of the witnesses examined before the Members of the Law Commission, who was a native of the Rampore Jaghir, (though for the last 30 years a resident of Calcutta) stated that the trade was still carried on by the Bardah faroshes.[1] Again in April, 1837, 17 female children, mostly from 8 to 10 years, and two or three of a still more tender age, were discovered by the Joint Magistrate of Casseepore, in the district of Moradabad, secreted in the houses of two prostitutes; and it appeared from the evidence of these children, that their parents were inhabitants of the hills of Kumaon, who had sold them to the parties in whose houses they were found. This is a positive proof that importation for the purpose of a supply of prostitution had not ceased.

Conditions were much the same in the Bombay Presidency. William Chaplin writes in 1824, that the importation of slaves from foreign states now stands prohibited by the orders of the Supreme Government. The result is that the price of the slaves has increased, without putting a stop to the practice of importation.[2] It may be remarked here that Chaplin's report refers to the whole of the Deccan; but it is not clear from which foreign states these slaves were imported. Nor did the Prohibition Act of 1811, forbidding the importation of slaves, prove as effectual as the authorities would have us believe. In 1825, a Judge of Surat Court of Adawlut wrote: "This is, the only way, I believe, by which slaves are now introduced in our territories. It is not however that slaves are even in this manner brought for sale, but that merchants chiefly Borahs and travellers, on their return from foreign territories, bring with them occasionally one or two slaves for their own use. To put a stop to this, a law might be passed that no person should be allowed to bring in any slave that he had not previously taken away with him."[3]

No. 4. CONCLUSION

By way of conclusion and summary it may here be briefly mentioned that in spite of the contention of the ancient Greek writers slavery existed in India from time inmemorial. Generally speaking the chief sources of slavery among the Hindus were

1. Witness No. 13, Indian Law Commission's Report, 1841, p. 21.
2. Chaplin, a Report exhibiting a view of the Fiscal and Judicial System of Administration under the authority of the Commissioner in the Deccan, 1824, pp. 150-51.
3. From the Judge of the Surat Court of Adawlut, to David Greenhill, Secretary to the Government of Bombay, dated August 18, 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department,

capture in war, caste tyranny and Hindu Law; whilst among the Mahomedans capture in war was the only strictly legalised source of slavery. Entering into a more detailed study of the sources of slavery it may be added that people were reduced to slavery by a variety of means, most of them as wicked as they were dishonest. Children were sold into slavery in times of famine, and they were likewise kidnapped afterwards to be sold as slaves. Besides this, parents sold their children, husbands sold their wives, the Sirkar sold criminals and unfortunate individuals sold themselves the sale ending in every instance in slavery. Finally among Indian slaves those also have to be mentioned who were imported by sea and by land. Such were the sources of slavery in India according to the unimpeachable evidence of documents both published and unpublished.

CHAPTER III

Slavery in Malabar

PLAN: 1. The Cherumars. 2. Deplorable plight. 3. The struggle for emanicipation.

From the foregoing study on the sources of slavery it may readily be inferred that slavery, as it prevailed in the days of the Company, was for many of its victims an unmitigated evil. This conclusion will come more forcibly home to us, if we take the trouble to consider the pernicious conditions to which slavery gave rise in Malabar, Coorg and Canara which may rightly be described as the "hot-bed" of slavery in the Madras Presidency, teeming with slaves, among whom the most unfortunate were the Cherumars.

No. 1. THE CHERUMARS

SUMMARY: I. Origin of the Cherumars. II. Agrestic slaves.

SOURCES: PUBLISHED: Dr. Francis Buchanan, *Journey through Mysore, Canara and Malabar*, II; William Logan, *Malabar*, I; Wingram, *Malabar Law and Custom*; Appendix to Report from Select Committee of the House of Commons, Public, 1832; Parliamentary Papers, Judicial, 1828.

I. ORIGIN OF THE CHERUMARS. This is what W. Logan has to say about the Cherumars. The Cherumars were in all probability the aborigines of the country when it passed under the rule of the Nayars. The name is now written as Cherumar, and as such is supposed to be derived from *cheru* meaning small. This adjective correctly describes the appearance of this caste; but it ought to be remembered that size and stature depend more upon conditions of food than anything else; and a race which had for centuries been fed by its masters on a minimum of what would keep body and soul together was pretty sure in the long run to degenerate in size. But the Hindu analytical mind seems to be peculiarly liable to adopt superficial views on historical matters, and the fact that the race of Cherumars is of small stature, is just one of those superficial facts which would be accepted by the Hindu (with the clearest of conscience) as proof positive that the name was given, because the people were of small size and stature. On the other hand there is ample evidence to show that the

Malabar Coast constituted at one time the kingdom or empire of Chera; and the Nad or the country of Cheranad, lying on the coast and inland south-east of Calicut, remains to give a local habitation to the ancient name. Moreover the name of the great Emperor of Malabar, who is known to every child on the coast as Cheraman Perumal, was undoubtedly his title and meant "the chief (literally: a big man) of the Chera people."[1] Cherumars therefore means the people of the Chera kingdom.

This view is confirmed by a census taken in 1857. For the Cherumars of Malabar are slaves, and the 1857 census locates the bulk of the Malabar slaves in ancient Cheranad of the Ernad Taluk and in its neighbourhood, Valuvanad and Ponnani. But Ernad, Valuvanad and Ponnani seem to have been about the heart of the ancient Chera kingdom. "There is therefore a good deal to be said in favour of the view, that the Cherumars were the aborigines of Malabar."[2]

II. AGRESTIC SLAVES. As happened elsewhere the aborigines who were originally the sons of the soil and the owners of the land were not destined to remain in possession of what they could rightly call their own. The Cherumars were dispossessed of their lands and reduced to slavery.

Some of them became domestic slaves, whose condition differed but little from that of the domestic slaves found everywhere in the Madras Presidency; but their number was comparatively small. Individuals generally became domestic slaves by being sold when children by their parents in years of scarcity approaching to famine. Besides the purchase of children in years of scarcity, natives of Madras, sold themselves as domestic slaves for a certain number of years in cancellation of a debt. All the same, this was unusual.[3]

But the overwhelming majority of the Cherumars were agrestic slaves, entirely praedial or rustic, being solely engaged in the cultivation of rice fields and plantations.[4] The agrestic slaves consisted exclusively of Hindus, and were slaves by birth in the peculiar caste whose usage doomed them to hereditary bondage. This species of slavery was common in the southern provinces of

1. *Logan, Malabar*, Vol. I, pp. 146-37.
2. Campbell, Appendix to Report of Select Committee of the House of Commons, 1832, (Public), Vol. IV, para 2, p. 451.
3. Campbell, Appendix to Report from Select Committee, IV, (Public), 1832, pp. 451-52.
4. Extract from Mr. Graeme's Report on Malabar, dated January 14, 1822, Parliamentary Papers, (Judicial), 1828, para 31, p. 914.

the Peninsula, wherever the Tamil language was spoken, and it assumed its worst form on the Western Coast of the Peninsula, or in the provinces of Malabar, Canara and Coorg,[1] as the Cherumars[2] could easily have testified.

It may be added here that the origin of agrestic or praedial slavery is of very remote antiquity. This form of slavery was generally described as *Adami*, which literally means serf, aboriginal, indigenous, a man held previously under the same tenures and terms as the land itself. It was in this sense, though slightly modified, that the word *Adami* was used on the Malabar Coast, in the Balghat (Palghat) district and in the western parts of the tableland of Mysore.[3] This name *Adami* was given to agrestic slaves independently of their caste; for among the slaves who laboured in the fields there were Parriars, Vullams, Canacums, Erilays and a host of others.[4]

Wingram makes use of the word *Adima* instead of *Adami*. The word *Adima* is defined as feudal dependency of a Nayar upon his patron *i.e.*, slavery; and the terms *Adima* and *Kudima* are said to mean: a slave or one subject to the landlord, the grant (of land) being generally made to such persons. A nominal fee of about two fanams (panams) a year is payable to the landlord, to show that he still retains the proprietary title."[5]

No. 2. DEPLORABLE PLIGHT

SUMMARY: I. Important testimonies. II. Caste tyranny. III. Ill-treatment. IV. Allegations disproved. V. Remuneration of slaves. VI. Occupational pursuits. VII. Religion and morals. VIII. Sale of slaves. IX. Legal rights.

SOURCES: PUBLISHED: Buchanan, *Journey through Mysore, Canara and Malabar*; Colonel Welsh, *Reminiscenses*; Appendix to Report, from Select Committee, Public, IV 1832; Appendix XIII to the Indian Law Commission's Report, 1841; Asiatic Journals, XXIII, May 1827; XVI, 1835; Evidence before the Select Committee of the House of Lords, 1830; Indian Law Commission's Report, 1841; Parliamentary Papers, Judicial 1828.

1. Campbell, Appendix to Report from Select Committee, IV, (Public) 1832, p. 451.
2. The term Cherumar is used in the singular, 'Chermur' or 'Chermurkel' is the plural; and 'cherme' stands for a woman of this caste.
3. Baber, Appendix to Report from Select Committee of House of Commons, 1832, (Public), Vol. IV, para 3, p. 122.
4. Buchanan, *Journey through Mysore, Canara and Malabar*, Vol. II, Chap. XI, p. 370.
5. Wingram, *Malbar Law and Custom*, 2nd Edition by L. Moore, 1900, cited in Thurston's Ethnographic Notes in Southern India, p. 448.

UNPUBLISHED: Home Department, Legislative Proceedings, August 5 to November 24, 1842.

I. IMPORTANT TESTIMONIES. T. H. Baber remarked that nothing could be more truly miserable and pitiable. It is true that those who resided in the vicinity of the sea-coast were better off than their helpless brethren in the inland districts. Such was at least the case when their masters permitted them to work on their own account. But this permission was not always granted; for an inquiry among the principal inhabitants of Betutnad (Vetutnad) and Shernad revealed that in most cases agrestic slaves were not allowed by their masters to work for themselves.[1]

Again in his evidence before the Select Committee of the House of Lords, Baber, speaking of the character of slavery in Malabar, declared that in Malabar alone there were 100,000 slaves, and that they were in such an abject, degraded state that it is a matter of astonishment that no legislative measures were enacted to improve their condition. Their very appearance particularly in the eastern and south-eastern part of Malabar was a correct index of their wretchedness. They were small in stature, with spare arms and legs and with large stomachs; in fact they looked more like baboons than men. "Perhaps there is no person who has had the opportunity," said Baber, "as I have had, of seeing and knowing these unhappy creatures."[2]

A natural result of their wretched condition was the depth of degradation into which they were sunk. By way of evidence we may mention a case reported by Baber to have occurred in Canara in 1821. Some slaves belonging to a wild tribe, called Mallakoodeers, were charged with the murder of three travellers. The facts of the case were that the deceased, a man, his wife and child, when they were on their way from Mysore to the celebrated pagoda at Durmastalla, put up at the house of some Mallakoodeers, who, on the pretext of showing them the road, took them to an unfrequented part of the jungles and brutally murdered the three of them. Such was the deplorable state of ignorance and barbarity of the murderers that they were destitute of any moral feeling, and hardly possessed sufficient perception to be aware of the consequences attendant on such a crime.[3]

1. Parliamentary Papers, (Judicial), 1828, pp. 856 & 859.
2. Baber, Evidence before the Select Committee of the House of Lords, 1830, Ques. 3167, p. 384.
3. Baber, Appendix to Report from Select Committee of the House of Commons, 1832, (Public), (E), para 29, p. 431.

Another witness, Colonel James Welsh, is perhaps better qualified than any other man to speak authoritatively on the condition of agrestic slaves in Malabar. For, from 1817 to 1819, he resided as an independent staff-officer on the Malabar Coast, and lived occasionally entirely with the natives. Subsequently, from 1819 to 1826, he was actually in command of the British troops in Malabar. He frankly stated that the general condition of the agrestic slaves was everywhere bad. They enjoyed little comfort, had coarse, precarious and scanty food, insufficient clothing and frequently none at all; and there was no provision made to protect them in their old age and sickness.[1]

This account is borne out by l'Abbé Dubois, who gave the following description of the sad condition of the agrestic slaves. " Tous les malheureux sont entièrement nus, les femmes n'ayant d'autre vêtement que quelques feuilles d'arbre, cousues ensemble, et attachées autour de la ceinture. Les racines et autres productions spontanées de la terre, les reptiles et les animaux qu'ils prennent au piège on qu'ils attrapent à la course, le miel qu'ils trouvent en abondance sur les rochers escarpés ou sur les arbres au sommet desquels on les voit grimper avec l'agilité des singes, leur fournissent ce qui est nécessaire pour apaiser leur faim ".[2]

Nor is l'Abbé Raynal less outspoken in his account of the Niadees of Malabar, who were all of them agrestic slaves. He wrote : " Lorsqu'ils ont faim, ils hurlent comme des bêtes, pour exciter la commisération des passants. Mais le plus charitable des Indiens vient déposer du riz on quelque autre aliment, et se retire au plus vite, pour que les malheureux affamés viennent le prendre sans rencontrer leur bienfaiteur, qui se croirait souillé par son approche."[3]

To this we may add the observations made by a writer in the Asiatic Journal of 1835: " The West Indian slaves being emancipated, I do not see how with any semblance of justice, those in the East can continue in their present deplorable condition. I have been in two English slave-colonies and one French, and in none of them have I seen anything to be compared with the utterly abject and wretched state and inhuman appearance of the Cherumars on the Malabar Coast. Their entire freedom should

1. Welsh, Appendix to Report from Select Committee of the House of Commons, (Public), 1832, paras 3 and 5, p. 449.
2. Abbé Dubois quoted by T. H. Baber in his Answers to the questions circulated by the Commissioners for the Affairs of India, *Ibid*, para 26, p. 431.
3. Abbé Raynal's Work, Vol. I, p. 54.

at once be declared, without preparation and without indemnification to their owners, and without the humbug of apprenticing. And a Commissioner should be appointed to be apprenticed this, and to make them understand that they are free, and to leave the spot to which they have so long been bound. This can with no safety be left to the Collectors to do. For they are biased towards the system of slavery and opposed to any improvement."[1]

II. CASTE TYRANNY. There is little doubt that the deplorable plight of the agrestic slaves was to a great extent due to the caste tyranny of which they were made the helpless victims. This is made evident beyond question by the testimony of men who were on the spot, notably Mr. Graeme, T. H. Baber and Dr. Buchanan. Graeme's Report shows that the caste tyranny, of which the Niadis mentioned by l'Abbé Raynal were the victims, extended to slaves of all castes, as is made clear in Graeme's Report. Slaves of all castes were held as entirely impure, and therefore they were compelled to erect their chalas or huts at a great distance from all other habitations. They were not allowed to approach, except within certain prescribed limits, the houses or persons of any of the free castes. "The rules of Malabar prescribed that a slave of the Poleyan, Waloorean and Brayen castes should remain at a distance of 72 spaces from a Brahmin and a Nair, and 40 paces from a Tean; and the other castes generally 48 paces from a Brahman and a Nair, and 24 from a Tean."[2]

Baber adduces evidence to the same effect. The caste tyranny was in many respects simply shocking. An agrestic slave was held in contempt by all Hindu free-born persons. At Calicut, which was the seat of a Zillah Court and the head-quarters of the Principal Collector, these absurd distinctions were perhaps even more prevalent during the British period than during the period of the native Government.[3] In one respect this caste distinction was actually a source of income. Baber relates how a Tyer, whose house was situated in a narrow part of the high road at Calicut, used to place himself in such a position in front of it that there was no possibility for slaves to pass without polluting him, which they dared not do. The Tyer made a profit out of this situation, and actually exacted money or a portion of whatever the poor slave had at the time, before he would stir from the spot.[4]

1. *Asiatic Journal*, Vol. XVI, 1835, p. 44.
2. Extract from Graeme's Report on Malabar, dated January 14, 1822, Parliamentary Papers, 1828, p. 920.
3. Answers of T. H. Baber, (H), para 1, Appendix to Report from Select Committee, IV (public), p. 436.
4. Colonel Welch, *Reminiscenses*, Vol. II, p. 110.

Another instance of the same kind occurred in Calicut, where a Tyer servant of a gentleman named Sir James Home having been taken ill, his master, being entirely ignorant of these absurd caste distinctions, sent him to his village in his palanquin. It was against custom immemorial for Tyers to be so carried, and the result was that the Tyer was severely beaten, and the palanquin badly damaged.[1] A third and final instance will bring home to us to what length the absurd caste prejudices could go in the land of Malabar. It happened one day that a young man returned from his work. He was accompanied by several other labourers of whom one was a slave. As they crossed a narrow lane, they found themselves face to face with the young man's uncle, who was on his way home from bathing. The uncle, on perceiving the slave, hallooed to make room for him ; but as his request was not sufficiently quickly complied with, he struck out blindly and stabbed his own nephew, who died of the inflicted wounds.[2]

Dr. Buchanan gives the following corroborating details. So impure were the agrestic slaves in the eyes of their fellow-men that they were kept with the labouring cattle in a pen, built at some distance from the house of their master; for these poor creatures were considered as too impure to be permitted to come near to the house of their Dewaree or lord.[3]

It is, therefore, not at all surprising that the pride of caste tyranny attained to Himalayan heights. A mere touch from a slave made it necessary for a Brahman to purify himself by prayer and ablution and by change of poonool, *i.e.*, the Brahmanical thread. So it became the duty of every slave to call aloud, as soon as he saw a Brahman coming, and to leave the road clear for him at once. Other castes, as the Nairs, were likewise polluted by a slave's touch and by way of purification they had to practise *koolicha oobasvicha*, *i.e.*, fasting and bathing.

III. ILL-TREATMENT. Caste tyranny prepared the road for the most inhuman ill-treatment of the slaves by their heartless masters. Speaking of Malabar, Baber observes that with respect to the treatment of slaves too much should not be made of the allegations of those who said that it was customary only to reprimand or admonish slaves. The lash or at least coercive strokes

1. Answers of T. H. Baber, Appendix to Report from Select Committee, 1832, (Public), p. 436.

2. Circuit Report, 2nd Sessions, 1821.

3. Buchanan, *Journey through Mysore, Canara and Malabar*, Vol. II, Chap. XI, p. 380.

were things too commonly used and indiscriminately upon male and female slaves.[1] To form an exact estimate of their ill-treatment, the declarations of some of the witnesses, forwarded by J. Vaughen to the Board of Revenue, show that even such harsh punishment as flogging, imprisonment and putting in the stocks did not by any means convey a full idea of the severities and the cruelties that existed in those days.[2] For, as Graeme justly observes, the practice of flogging was admitted by the masters of the slaves, men who were surely not disposed to admit that their authority was exercised with any extraordinary severity.[3]

Alluding to the chastisements inflicted on slaves, the Mookestans of Mooloorhaad in Wynaad replied in answer to the queries of J. Vaughen, the Collector of Calicut, "that the slaves were seized, and flogged and put in the stocks, and their noses cut off, according to the magnitude of the fault they committed, though the practice of cutting off noses had been entirely abandoned." The depositions of these witnesses were taken in the year 1819.[4] Four years later, in an extract report from T. H. Baber, dated December 22, 1823, nearly 30 years after the inauguration of the Company's rule in Malabar, mention is made of a case, in which a prisoner was charged with causing the death of a Cherumar slave by beating him, throwing him upon his back, and in this state amputating his nose. Adverting to the facts elucidated during the trial, the judge remarked: "It will no longer be denied that cruelties are practised upon the slaves in Malabar, and that our Courts and Cutcherries are no restraints upon their owners or employers, for whatever doubts may exist with regard to the exact period of the death of the slave, there can be none as to the fact of his nose having been amputated, as well as those (the noses) of three other slaves belonging to the same owner, and that, although the case had come before the Magistrate, no steps have been taken to bring the perpetrators of these horrid barbarities to justice.[5]

It may of course, be argued in connection with the case just quoted above that in most cases punishment was callously inflicted, because the victimised slaves did not prefer any complaint

1. Welsh, Appendix to Report from the Select Committee of the House of Commons, 1832, (Public), para 6, p. 449.
2. Answers of T. H. Baber, para 15, p. 428.
3. Extract from Graeme's Report on Malabar, Parliamentary Papers, (Judicial), 1828, para 55, pp. 922-23.
4. Answer to the Queries relative to the slaves of the soil, given by the Mookestans of Mooloorhaad in Wynaad, Par. Paps., (Judicial), 1828, Deposition No. 9, Query 13, p. 854.
5. Baber's Circuit Report on 2nd Sessions of 1823, Par. Paps. 1828, (Judicial), Vol, IV, p. 927.

against their masters. But if the slaves themselves had to seek the protection of the law, their situation was practically hopeless. For they were entirely dependent upon their owners or employers for subsistence; and it was made morally impossible for them to betake themselves to a public Cutcherry there to file their complaint. Hence the slaves could not take advantage of the privilege by which the regulations, which required all complaints to be preferred in writing, were set aside in their favour. Accordingly Baber could in all truth say, "I never myself entertained any other opinion than that the treatment of the slaves in Malabar, particularly in the interior, was the very reverse of a mild description; and I have no doubt the late Commissioner Graeme in his Report on Malabar confirmed all I have written upon this most interesting subject; and I suggest such measures as will, if carried into effect, be the best means of greatly improving their condition and of extending to them protection against at least similar cruelties to those brought to light in the trial that has given rise to these observations."[1]

Among other cruelties, it has been shown by the reports of Collector Vaughen that slaves were subjected to the lash, imprisonment and putting in the stocks and chains. Baber himself had more than once the occasion to observe on their persons marks and scars inflicted by the rattan and even wounds. The worst sufferers were Mr. Brown's slaves. When they were cited by Baber to give evidence in a case of murder, it was found that several of them bore marks of severe flogging. One of them in particular was so severely hurt that his back and shoulders were covered with sores, and that the flesh of his leg was very much lacerated.[2] On a subsequent occasion when a search was made on Mr. Brown's plantations for the recovery of kidnapped children, two of the Pooliar slaves stated in their examinations that they had been flogged, the one had received 25 and the other 24 stripes.[3] Moreover there was hardly a sessions of gaol delivery, the calendars of which (leaving aside the number of crimes that were not reported) did not contain cases of wounding and even murdering slaves, though as a rule these slaves were the most enduring, unresisting and unoffending class of the people.[4]

1. *Ibid*, para 64, p, 928,
2. Baber, Appendix to Report from Select Committee, IV, (Public), (F), para 2, p. 432.
3. Parliamentary Papers, 1828, (Judicial), Vol. IV, p. 602.
4. Baber, Appendix to Report from Select Committee, 1832, (Public), para 17, p. 429.

Nor did the misery of slaves end here; their persons and their labour were assessed in the market as though these unfortunates were no better than cattle; and Graeme in his report provides us with a chart which acquaints us with the low price at which the slaves were offered for sale in the open market in different taluks of the Madras Presidency.

A careful examination of this chart brings to light the following scale of market prices. The highest sum that the best class of slaves ever fetched was 250 gold fanams, which was in English money 6£. 5sh. and the highest rent that a slave fetched per annum was 7½ fanams or 3sh. 9d. in English money. But if we take into consideration the average selling price of all the different classes of slaves, which amounted to nearly 20 in number, the statement left on record by Vaughen reveals that 132 gold fanams or 3£. 6sh. was the ordinary price of a slave. The average annual rent was no more than five fanams, *i.e.*, 2sh. 6d. But the prices of the lowest class of slaves were much less. A man was worth in English money 3£. 6sh., a woman still less, i.e., 15sh. and a boy and a girl from 10sh. to 7sh. 6d. respectively.[1]

The wretched conditions which obtained in Malabar prevailed also in Canara. In Canara the right of sale was the master's exclusive privilege, either with or without the land. The price varied and was settled between the purchasers and sellers. The consent of the slave was never thought of. Accordingly the master could sell the husband to one person and the wife to another and the children to a third party. The price of a strong young man was from 12 Rs. to 26 Rs., that of a woman from 10 Rs. to 24 Rs. and that of a child was never under 4 Rs.[2]

IV. ALLEGATIONS DISPROVED. There can, therefore, be no doubt that the agrestic slaves of Malabar were among the most neglected of mankind. Their servitude was of unmitigated severity. And in order to show the fallacy of those who advocated the continuance of slavery on some pretext or other, we shall bring forward evidence gathered from official documents to expose the misery that prevailed among the praedial slaves of Malabar.

The general opinion of the Indian Law Commission "that slaves were kept rather for state and show than profit, and that slavery itself was everywhere under a gradual but decided course of amelioration," does not hold good for Malabar. There praedial

1. Extract from Graeme's Report on Malabar, dated 14th January, 1822, Parliamentary Papers, (Judicial), 1828, para 35, pp. 918-19.
2. From T. Harris, Collector of Canara to the Board of Revenue, dated 10th July, 1819, *Ibid.*, 1828, pp. 843-44.

slaves were kept for profit not for show. And since profit was the only aim, it was the master's interest to get as much work out of them as he could. The master did not care to ameliorate the condition of his slaves. This statement is corroborated by Mr. Cotton, a former Collector on the Western Coast, who affirmed that " they (the Cherumars) were in much the same state as they were fifty years back."[1] Even in 1842 it appeared questionable to E. B. Thomas, Judge of Malabar, whether they were at all better fed and clothed or at all raised in the scale of civilisation. On the contrary, though their numbers in a few years increased from 144,000 to 159,000, their condition had remained the same; the only amelioration that took place was a slight check upon their master's wanton ill-treatment of them; apart from this the position of the Cherumars was stationary, and unless something more than negative efforts were made on their behalf, they were likely to remain so.[2] Accordingly E. B. Thomas did not hesitate to say that the report of the Law Commission was to some extent defective. A careful perusal of it and its descriptions of slavery in various and different places proved that it needed a full enquiry to show that the Cherumar of Malabar was in every respect worse off, lower in the scale of civilisation, and needing amelioration more than any of the classes who had come under the notice and consideration of the Law Commission.[3]

It is true that many advocates of slavery asserted that the slaves of Malabar were not as a rule desirous of emancipation. If such was the case, it was solely due to the Cherumar's utterly degraded condition of long and helpless servility, which prevented him from appreciating freedom any more than a child does education and its advantages. But emancipation was not therefore less due to the one than education to the other.

The Cherumar's so-called apathy and contentment with his lot can easily be accounted for. He had neither the power nor the will to raise himself. He was sunk too low in the scale of humanity, both morally as well as physically. Nothing can give a correct idea of his utter degradation but to see the Cherumar himself and to converse with him. As E. B. Thomas puts it: " The natural and desirable love of liberty inherent in others, needs to be encouraged to (in) him, (but this is) a proof not of his

1. Indian Law Commission's Report, 1841, p. 242.
2. From E. B. Thomas, Judge of Malabar, to the Register to the Court of Sudder and Foujdary Adawlut, dated 26th August 1842, para 2, Home Department, Legislative Proceedings, 5 Aug.-25 Nov. 1842. Imperial Record Department.
3. *Ibid.* para 5.

contentment, but of his utter degradation. To raise him will be a work of time, slow in progress and result, but not the less incumbent to commence."[1]

It was also argued in the Law Commission's Report "that mutual benefits were derived from the state of slavery to the master and the slave, that in times of scarcity the master would support the slaves, and that merely parental correction was generally exercised." This statement might perhaps be made applicable to domestic slavery in Bengal; but certainly it could not be applied to Malabar; for there the benefit was entirely on the master's side, the correction was by no means parental, and the maintenance scanty and uncertain even in ordinary times and extremely doubtful in times of scarcity. The lot of the Cherumars cannot fairly be judged by the standard of slavery of a milder form in other portions of the Madras territories. Nor can their condition be described as one of perpetual labour given in exchange for perpetual maintenance. Labour was theirs in abundance, but maintenance was niggardly meted out to them. Of course a scanty allowance was doled out to them, but it was generally regulated by the self-interest of the master, to whose advantage it was not to starve his working Cherumars any more than his working oxen. Moreover, the allowance was restricted to the able-bodied and working slave; it was not extended to the aged and infirm.[2]

What then must we think of the allegations of the Bengal Law Commission's Report to the effect that "a slave is better off, on the whole, than a free man, and his interests (are) bound up with his master's prosperity, that he enjoys benefits and fixed rights." The answer to this misrepresentation is given by E. B. Thomas, Judge of Malabar. He admits that the certainty of maintenance at all times, both in days of abundance and in days of starvation, would have given the slave considerable advantages over the freeman; but he adds that this state of things did not obtain in Malabar.[3] There is moreover every likelihood that he correctly estimated the condition of the slaves in Malabar, when he wrote that "the Cherumar had in reality but few rights and fewer benefits, and that in this respect he differed very little from

1. From E. B. Thomas, Judge of Malabar, to the Register to the Court of Sudder and Foujdarry Adawlut, dated 26th August, 1842, para 5, Home Department, Legislative Proceedings, 5 Aug.-25 Nov. 1842, Imperial Record Department.

2. From E. B. Thomas, Judge of Malabar, to the Register to the Court of Sudder and Foujdary Adawlut, dated 24th August, 1842, para 6, Home Department, Legislative Proceedings, 5 Aug. 25 Nov. 1842, Imperial Record Department.

3. *Asiatic Journal*, May 1827, Vol. XXIII, p. 595.

the farm stock of his master or ox. He was fed and clothed only to the value of the work; and if the female was somewhat more cared for, it was solely for the increase that she was expected to bring, and not from the motives of benevolence."[1]

Nor need much attention be paid to the allegations made in the Asiatic Journal of 1825 by a writer who is of opinion that Buchanan exaggerated the sufferings of the Cherumars, and that none of the objectionable features characteristic of West Indian slavery could be found in Southern India. It is true that this gentleman writes: "The Eastern slave, is not an alien to the soil; his physical aspect does not expose him to his master's contempt; there is no slave-mart, no slave-dealer, no overseer or gang-master, no cart-whip in the slave-system of Southern India; above all, the slave and the master are subject to the same laws, for the Company's Courts would make no distinction whatsoever between the Polian and the Brahamin, the Parian and the Nair. The evidence of one would be taken with as much readiness as that of another; and the murder of a slave, instead of being punished, as in some parts of the West, when Dr. Buchanan wrote, by a paltry fine, would be expiated in India only by death, whether the victim was bond or free."[2] We should like to point out that Dr. Buchanan did not exaggerate; for his views are borne out and corroborated by the statements of Baber, Campbell, Graeme, Thomas and Conolly, men who like Buchanan himself were on the spot, and wrote as eye-witnesses, whilst the writer in the Asiatic Journal lived in England and relied mainly on the very incomplete, one-sided information of the published materials.

V. REMUNERATION OF SLAVES. Finally whatever doubts may still be entertained in favour of the alleged mild form of slavery prevailing in Malabar will be dispelled by a study of the remuneration to which the slave was entitled. The remuneration is commonly known as the Walee, which will show in its true colours the deplorable plight of the agrestic slaves. By Walee is meant the daily allowance of paddy given to the slaves. According to Commissioner Graeme's Report, dated the 14th January, 1822, it was not the same for men and women; it likewise differed in each district; and, generally speaking, it varied in the case of men from one and a half to one and three-quarters seers of paddy and in the case of women from one to one-

1. Baber, Appendix to Report from Select Committee, 1832, (Public), IV, pp. 432-33.
2. Extract from Graeme's Report on Malabar, dated January 14, 1822, Parliamentary Papers, 1828, (Judicial), para 55, p. 922.

quarter seers. Graeme also stated that no distinction was made between children and grown-ups, able-bodied and infirm. But this statement is afterwards contradicted in para 158[1] of his report. From the tables there given it may be inferred that the young and the infirm, provided they did some work, got as a rule half the allowance of paddy which the grown-ups and the able-bodied received.

Dr. Buchanan states that a man or woman, as long as they were capable of labouring, received a weekly allowance of two Edungallies of rice in the husk, or two-sevenths of the allowance that was reasonable for persons of all ages. Children and old persons who were incapable of doing any work, got one half of this pittance, and no allowance whatever was given to infants. Had it not been that the slaves on each estate got the 1/21 part of the gross produce of the rice, the allowance given them would have been totally inadequate to support them.[2]

In the northern parts of Canara, the men got daily one and a half Hanny of rice; and the women received only one Hanny. Every year each slave was given 2½ Rupees worth of cloth. They received no other allowance; and with this scanty pittance they had to support their infants and aged people. To realise the meaning of this it should be borne in mind that, converting the native into English measures, a woman did not receive more than 15 bushels of paddy a year, of which the market price was rather less than 14½ Rupees. If her allowance for clothes is added, her total allowance came to 16¾ Rs. a year.[3] In other parts of Canara the average allowance of food per man did not exceed 1½ seers of Canara coarse rice, two rupees worth of salt, a little betel-nut and leaf; a woman received a seer of rice; and a child three-fourths of a seer only.[4]

In Coorg the rights of slaves consisted in receiving subsistence and protection for themselves and their families, and their masters were bound to observe the customs of the country with respect to the quantity of food and clothing given to them. Independently of salt and curry stuff, which were supplied to them, sometimes monthly and at times daily, three seers of rice to a male slave, two seers to a female, and one and a half to a boy or girl, was the

1. *Ibid*, para 158.
2. Buchanan, *Journey through Mysore, Canara and Malabar*, Vol. II, p. 370.
3. Buchanan, *Journey through Mysore, Canara and Malabar*, Vol. III, Chap. XVI, p. 140.
4. From T. Harris, Collector of Canara to the Board of Revenue, dated July 10, 1819, Parliamentary Papers, (Judicial), 1828, pp. 833-34.

quantity daily assigned to them. Once a year when the crops were reaped, the slaves were likewise entitled to a load of grain. The quantity which was called *Horay* varied in different Naads (Nads). Besides the above subsistence given to the slaves of Coorg and the allowance at the time of the harvest, they were supplied by their masters with clothing twice a year, first when the seed was sown, and secondly when the crops were reaped.[1]

By way of additional information it may here be added that the freeman was much better off than the slave. His allowance exceeded that of the slave by one-third. Moreover his hours of work were considerably less, for he laboured from morning till noon, whilst the toil of an agrestic slave lasted from morning till evening with no other food to sustain him in the burning heat of the sun but his morning cunjee and evening meal. Night brought with it neither rest nor peace of mind; for the slaves were by turns forced to keep watch at night either in sheds or on open platforms erected in the centre of the paddy field several feet under water. There they were exposed to the inclemency of the weather, and had to scare away trespassing cattle or the wild animals with which every part of Malabar, except populous centres, was infested.[2] Only half the Walee was as a rule, supplied when the slaves had no regular employment. It even happened that it was even entirely withheld, in which case the slave was left to eke out a miserable existence upon wild yams and, in the words of Graeme's report, "even on such refuse as could only be sought after by that extreme wretchedness that envied the husks that swine did eat".[3]

In this connection the question naturally presents itself: What happened to the slaves when for lack of work to be done, their masters had no need of their services? From the information gathered by Colonel Fraser on this subject, it appears that in some parts of Coorg the slaves were provided with subsistence as long as they worked for their masters; but when there was no work for them, they were obliged to go and seek a livelihood elsewhere. However they were bound to return to their master at the commencement of the season of cultivation.[4] But as a rule when

1. Memorandum respecting the condition of slaves in Coorg, transmitted with Colonel Fraser's letter to Mr. Secretary Macnaghten, dated July 14, 1834, Appendix XIII to the Indian Law Commission's Report, 1841, pp. 545-46.
2. Parliamentary Papers, (Judicial), 1828, p. 921.
3. *Ibid.*
4. Memorandum respecting the condition of slaves in Coorg transmitted with Colonel Fraser's letter to Mr. Secretary Macnaghten, dated July 14, 1834, Appendix XIII to Bengal Law Commission's Report, p. 546.

a master had no longer any work with which to occupy his slaves, the usufruct, *i.e.*, the right of using and enjoying the fruits or profits of their labour, was transferred to another. It was transferred in three different ways.

The first was by Jeunum or sale, where the full value of the slave was given, so that the slave became the property of a new master who was moved by motives of personal interest to attend to his welfare.

The second manner of transferring the labour of slaves was by Canum or mortgage. The original proprietor received a loan of money generally amounting to two-thirds of the value of the slave. He also received annually a small quantity of rice to show that his ownership in the slave still existed and that he was entitled to redeem the mortgage whenever it pleased him to repay the money borrowed, on which in the meanwhile he paid no interest. In case of any of the slaves dying, the mortgagee was bound to supply another of equal value. The mortgagee maintained the slaves, and used their labour in lieu of the interest on his money and in compensation for the slave's support.

The third manner of transferring slaves was by hiring them out for Patom or rent. In this case the master lent his slaves to another man for a certain annual sum of money. The borrower commanded their labour and provided for their maintenance.

The practice of mortgaging and hiring out slaves was utterly abominable; for the person who profited by the labour and furnished them with the means of sustenance, was directly interested to extort the maximum of the one and to dole out the minimum of the other. In fact, these slaves were very hardly treated, and their diminutive stature and squalid appearance showed evidently a want of nourishment. Dr. Buchanan was of opinion that no comparison could be made between their condition and that of the slaves in the West Indian Islands.[1]

VI. OCCUPATIONAL PURSUITS. Further to emphasise the deplorable plight of the agrestic slaves let us consider their employment in Malabar, Canara and Coorg. These agrestic slaves were solely employed in agricultural districts, for which work they were well fitted, because they had been from time immemorial tillers of the soil. Such being the case, they were more expert in agricultural labour than any other class of people. Their toil was almost ceaseless. Their work did not only consist in manuring,

1. Buchanan, *Journey through Mysore, Canara and Malabar*, Vol. II, p. 371.

ploughing, sowing, harrowing, hoeing, reaping and threshing; but they had also to fence the fields, to tend and watch the cattle and even to transport the agricultural produce. At the close of the harvest they were employed in felling trees and preparing materials for house building. Thus they laboured without enjoying a day's respite. In short they had to work as long as their master could find employment for them.[1] Their time was wholly their master's; and they had no particular hours which they could call their own. Not a day in a week was granted them either for rest or for prayer.[2]

Their life was therefore a life of ceaseless drudgery, as is also borne out by the testimony of T. Harris in his letter addressed to the Board of Revenue in 1819.[3]

That this description of the drudgery life of Cherumars in Malabar is true to fact may be gathered from the work in which agrestic slaves were occupied in the Tamil-speaking districts of Canara. There the agrestic slaves were likewise chiefly employed by their masters in every department of husbandry. The men had to plough the land, sow the seed and perform every other laborious task necessary for the irrigation of land on which rice was grown. The women had to transplant the rice plants. Both men and women shared in the work of reaping the crop. Their labour was practically confined to the irrigated rice-lands. They worked in bodies together; and the village accountant inspected and registered the work executed by them. But they were not placed under the personal superintendence of an overseer or driver. They usually worked from sunrise till sunset with a relief of a couple of hours for their meal about the middle of the day. They were not exempted from work on any particular day of the week, but obtained holidays on all the great native festivals, the days fixed for consecrating implements, the first day of the year and other great days. No particular task was daily assigned to them, it was sufficient that the slaves of each master executed the work necessary for the cultivation and irrigation of his land. The lash was never employed by the master against his slave in the Tamil country as it was in Malabar.[4] From this we may gather that in the Tamil-speaking districts of Canara the employment of slaves entailed less cruelty than in Malabar.

1. Baber, Appendix to Report from Select Committee, (Public), 1832. Vol. IV, (E), para 4, p.426.
2. Colonel James Welsh, Appendix to Report from Select Committee, para 6, p. 449.
3. Parliamentary Papers, 1828, (Judicial), p. 844.
4. Campbell, Appendix to Report from Select Committee, 1832, (Public), Vol. IV, para 6, p. 455.

As regards the province of Coorg slaves were called Jummed Alloo, a compound term which signifies labourers attached to the Jummah lands. Among them some were tenants, others were serfs; but one half of the agricultural labourers were living in slavery of a form and nature that did not in any way differ from the slavery which existed in other parts of the Madras Presidency.

These slaves were of two descriptions. The first class consisted of slaves called Boomee Jummed Alloo, who were attached to the soil and were liable to be transferred from one proprietor to another, though not liable to be separated from the land to which they belonged. The other class consisted of slaves called Cuccaloo Jummed Alloo, who were the personal slaves of the land-holder and could at will be sold or mortgaged by him.

It was generally believed that the bondage of this class of slaves originated either from a voluntary submission on their part to become the slaves of land-holders in order to obtain a livelihood, or from the purchase effected by the land-holders in order to secure cheap labour for cultivating their fields. They were not only employed in the cultivation of land, but also in the performance of other mean labour. The Rajah of Coorg sometimes employed them to convey his camp accessories when he went on hunting excursions.[1]

It has here to be remarked that it was not only the members of the Hindu community who got every ounce of work out of the slaves; the English rulers followed the same policy. Time after time, either Collector or Magistrate requisitioned from the land-holders their slave-workers to aid in stopping any sudden breach in the great works of irrigation conducted entirely at the expense of the Government. Besides this, the slaves were pressed in gangs to make or repair the high roads, to carry treasure remittances from the several subordinate stations to the Collector's treasury at Calicut, to carry stolen property which had been recovered from robbers and which was sent to the head-station by the different police-officers, and to carry the Company's tobacco, of which the Government had a monopoly, from the several depots to the subordinate stations; on which occasions the slaves were always guarded by armed men to prevent their running away.[2]

The following incident, which occurred in 1820, illustrates both the ruthlessness with which slaves were forced to work for

1. Memorandum respecting the condition of the slaves in Coorg, transmitted with Colonel Fraser's letter to Mr. Secretary Macnaghten, dated July 14, 1834, Appendix XIII to Bengal Law Commission's Report, 1841, p. 545.

2. Baber, Appendix to Report from Select Committee, 1832, (Public), Vol. IV, (F), para 2, p. 432.

Government and the helplessness of the victims to obtain redress when they brought their grievances to the notice of the authorities. In the course of that year 1820 T. H. Baber, whilst on his return from delivering the gaol at Seringapatam, met in the Peria Pass several hundred Coorchers, all armed with bows and arrows, who reminded him of the promises made to them in 1812 regarding their seizure by the revenue servants who had forced them to work as coolies. They also complained of the daily violations that were committed on their persons; and they were so exasperated with their condition that four of them followed him even so far as Tellicherry to complain of these and other grievances. Their petitions were forwarded by Baber to the Magistrate with instructions to afford them prompt and effectual redress. But instead of obeying these instructions, the Collector justified the practice; and it is a matter of regret to have to mention that Government countenanced the Collector's way of acting by replying to Baber in the following terms. "The Governor-in-Council fears that the hardships and sufferrings to which the inhabitants are subject by being pressed to serve as coolies cannot be entirely prevented."[1] Therefore it would seem that the Government considered this as a necessary evil, with the result that the Coorchers and the slaves of Wynaad had no hopes left of seeing their grievances redressed. There is good reason to believe that the evil practice still prevailed in 1832; for Baber informs us that about that time the cutwal at Kuddalore in Wynaad threw up his appointment rather than be instrumental in such oppression and cruelty.[2]

VII. RELIGION AND MORALS. After all that has been said about the deplorable plight of Cherumars the question naturally arises: What were the religious beliefs and what was the standard of morality among the unfortunate people? To begin with, it would be a grievous mistake to suppose that the agrestic slaves of Malabar were devoid of all religious feeling. Like their free fellow-men they worshipped a variety of deities under many different forms. The lower class of slaves addressed their worship to rude stones, logs of wood or pottery placed on a pedestal, called Peetum, in the open fields, or under the shade of the Ali-poola or Kanyera trees. The higher class of slaves prayed to images of granite stone, upon which oil was poured. But all the slaves believed that every mountain, hill, forest, river,

1. Note made in Mr. Baber's Answers, Appendix to Report from Select Committee, 1832, (Public), Vol. IV. p. 433.

2. Baber, Appendix to Report from Select Committee, (Public), 1832, IV. pp. 432-33.

had its appropriate deity. Those generally worshipped were Mariana (Mariamma), Mariappan, Badrakalli, Chamooney, Kariatteu, Kooty chatthen (Kutty chathen), Karrivilly, Palakooty (Parakutty), and Bhagwady. As regards their external religious rites, lights were burnt near the images, and fowls, meat, rice, cocoanuts, honey and spirituous liquors were usually offered to Boothangul (evil spirits) Mudiamur (mediators) or to Prathamgul (souls or spirits of departed relatives). Their idea of a future state of reward and punishment was that bad men became Pishasha (evil spirits), whilst good men hovered about their earthly dwellings. The officiating priests or the Poojocheyoonawara (Poojakkaran) were as a rule men belonging to their own caste.

The following account of the Pooliars serves to illustrate this religious belief. The Pooliars firmly believed that after death the spirits of men existed and that they had full influence over human affairs. The spirits of good men were called Ericaping, and those of bad men were called Cuti. The former were supposed to be most powerful; but sacrifices and offerings were made to both; to the one for protection and to the other for mercy. These sacrifices and offerings were directed by a person named Maratan or Caladi, who by placing small shells (cowries) in certain positions pretended to know the spirit to whom the votary ought to address his petition. Although these Maratans were slaves and worked for their masters as usual, the office was hereditary. Their sister's son succeeded to the dignity.[1]

In Canara the images of gods and goddesses were the same as in Malabar. Their general names were Kilu, Durm, Gooti, Mastihaigooli, Sani Kadiya, Moodalc, Maroo or Mari. But the most worshipped was the *Boot* (devil). He was represented by a stone on a peetum in an open square enclosed by a wall; and fowls, fruit, grain and liquor were offered to him to appease his wrath.

It was supposed that both in Malabar and Canara the agrestic slaves had intercourse with evil spirits and were in possession of mantras which by prayogum (spell) or by odi (incantation) were supposed to be the cause of every disease from which man or beast could suffer, and were also capable of foretelling the future. The slaves forgot all caste distinctions to have recourse to those slaves that with their mantras they might let loose destruction among the cattle and families of their enemies. The mantra-slaves were fully convinced that they

1. Buchanan, *Journey through Mysore, Canara and Malabar*, Vol. II, p. 493.

were endowed with supernatural powers; and this belief was shared by their fellow-men.[1]

On the occasion of certain festivals they worked themselves up to the highest pitch of frenzy. The officiating persons when inspired began to shiver, then swelled, foamed at the mouth, gnashed their teeth, tore their hair, cut their flesh in order to show that "the Daive came upon them." They wielded such a great influence over others that in time of public commotion they were actually able to unnerve the soldiers of the most loyal native regiments, which sometimes exposed British officers to most imminent perils. On one occasion in the rebellion of 1803 in Wynaad native sepoys actually threw down their muskets which they believed were incapable of going off. Captain Waston who was in command of the party tried his utmost to bring them to their senses, but they replied that it was of no avail to contend against the enemy whilst the gods were on his side. Had it not been for the speed of their horses and the approach of the night, it would have certainly led to the destruction of the British Officers.[2]

As regards their moral behaviour, the agrestic slaves of Malabar and Canara, compared favourably with their more civilised countrymen. Their besetting sin was drunkenness. It is true that they were not given to circumvention, chicanery, fraud and perjury, so common among the other natives, but they were entirely ignorant of the rules of self-restraint. The degraded state to which they had been reduced made them absolutely brutal in their conduct and destitute of the knowledge of distinguishing right and wrong. Malice and vindictiveness were inherent in their character, and the slightest provocation was sufficient to drive them to the most shocking extremeties, apparently regardless of, or perhaps incapable of regarding the consequences that might follow.[3]

On the other hand it is pleasing to remark that their marriage customs, without being in any way of a high standard of morality, compare favourably with the loose principles advocated either in the past or in the present by men of enlightened races. The Cherumars purchased their wives, and the bridegroom's sister was the chief performer in the wedding ceremony. It was she who paid the girl's price and carried off the bride.

1. Circuit Report, 2nd, Sessions, 1821, para 66, Appendix to Report from Select Committee, (Public), Vol IV. 1832, (J), paras 1-5, pp. 437-38.

2-3. Baber, Appendix to Report from Select Committee, 1832, (Public), Vol. IV, (J), para 6, p. 438.

The parental consent to a marriage was on both sides signified by an interchange of visits at which sips of rice-water were partaken. The visitors in each case signified their assent by dropping a fanam coin into the rice-water before partaking of it. A great number of relatives and friends accompanied the marriage procession. At intervals the men set to at stick-play and the women sang in chorus to encourage them. "Let us see—let us see—the stick-play (Paditallu or Vaditallu) oh! Cherumar." It was also a custom that at their weddings men and women mingled indiscriminately in dancing. On the return to the bridegroom's hut the bride was expected to weep loudly and deplore her fate. On entering the bridegroom's hut the bride must tread on a pestle placed across the threshold.[1]

When a Pooliar wished to marry, he applied to his master, who was bound to defray the expenses. The common practice was to give 7 fanams to the girl's master, 5 fanams to her parents, one fanam worth of cloth to the bride, 1½ fanams worth of cloth to the bridegroom and about 10 fanams for the marriage feast; in all 24½ fanams or 16sh. 1½d. The marriage ceremony consisted in putting a ring on the bride's finger.[2]

The marriage contract was not indissoluble. A husband could separate from his wife and also part with her for another, provided he had her consent and paid back to his master the marriage expenses incurred by him. But these separations were by no means common; and when they did happen, it was rather due to the master than to the slaves; for it has been remarked that no people were more attached to their families than these slaves.[3]

The wife worked for her husband's master, who was bound to maintain her and her children until they were able to work. The eldest son then belonged to his father's master, but all the other children belonged to their mother's master and returned to the huts of their parents.[4]

In Tulava the Corar or Corawars, who had once been the masters of Tulava, under their chief Hubashica, married several wives at a time. According to the account given by Dr. Buchanan, the women were marriageable before and after puberty and also during widowhood. These Corars would never marry a woman of any other caste; and their origin was considered so very base that a man of any other caste, who cohabited with a

1. Logan, *Malabar*, I, pp. 151-52.
2. Buchanan, *Journey through Maysore, Canara and Malabar*, Vol. II, p. 492.
3. Appendix to Report from Select Committee, (Public), 1832, Vol. IV, (3), para 8, p. 439.
4. Buchanan, *Journey through Mysore, Canara and Malabar*, Vol. II, p. 492.

Corar woman was inevitably excommunicated. What is more strange, the Corars themselves would not care to have any dealings with him. With the Corars marriage was indissoluble. When a woman committed adultery, she was flogged, and her paramour, if a Corar, was fined. When the husband died, his wife with all his children returned to the huts of their respective mothers.[1]

Mr. Vaughen observed that whilst the contract lasted, a wonderful degree of jealousy and tenaciousness of family labour was found in them, when contrasted with the general appearance, habits and apparently brutish stupidity of their castes.[2]

In addition to what has been said, it is for the sake of completeness necessary to speak of the manner in which slaves were disposed of by their masters, if we wish to form a correct estimate of the wretched state of slavery in Malabar.

VII. SALE OF SLAVES. Prior to the inauguration of British rule in Malabar, in 1792, agrestic slavery was recognised by the law called Desh-Ajary.[3] In accordance with this law, as the Hon'ble Jonathan Duncan remarked, slaves were treated as bondsmen attached to the soil, and could at most be disposed of together with the land on which they lived.[4] This practice was later on likewise followed by the British Government, and in 1818 Sir Thomas Munro stated that in the course of that year, in one single taluk out of the total 63 taluks of Malabar, 1,330 plantations were sold to satisfy the public balances.[5]

But when the British came to Malabar, instead of improving the condition of the agrestic slaves, they made it worse; for according to T. H. Baber they started "disposing of them, off or separate from the soil, the land of their birth, which I consider decidedly at variance with, and in innovation of that law as observed in ancient times; and in this opinion I consider myself borne out, as well by the traditionary legends of their origin as by the fact, I have before mentioned, of the tenures and forms of sale of slaves being precisely the same as of lands."[6]

The question naturally presents itself: What circumstances brought about the cruel custom of selling slaves by forcibly

1. Buchanan, *Journey through Mysore, Canara and Malabar*, Vol. III, pp. 100-101.
2. Baber, Appendix to Report from Select Committee, Vol. IV, (Public), foot note, p. 439.
3. *Ibid*, p. 424.
4. Letter to Marquis Cornwallis, Governor-General in Council, dated October 11, 1793, para 14, cited in Baber's Answers, para 2, p. 424.
5. Appendix to Report from Select Committee, Vol. IV, 1832, (Public), p. 445,
6. *Ibid*, (D), para 1, p. 424.

taking them from the estates on which they worked? It was a cruel custom indeed, for it resulted in separating husbands and wives, parents and children.

It would seem that the chief offender was Murdock Brown, an overseer in the Company's plantation in Malabar. In 1798, he applied for permission from the Government to purchase indiscriminately as many slaves as he might require to enable him to carry on the work of that plantation, on the plea that he was unable to procure workmen and that the price of free labour was higher than he was authorised to pay. The permission being granted, Brown actually issued orders to the European as well as the native local authorities to assist him, and at the same time to restore the run-away slaves without inquiring into the reason of their absconding. He continued this practice till 1811 for a period of 12 years, when this nefarious traffic finally came to the knowledge of Baber, who succeeded in putting a stop to it after a considerable opposition on the part of the Provincial Court of Circuit.[1]

Unhappily Murdock Brown was not the only offender. Gradually it became a custom for the Revenue Officers to realise the public dues by the seizure and sale of slaves off the land in satisfaction of revenue arrears, or by compelling their owners, when they were revenue defaulters, to do so. Strange to say, this practice was approved by J. Vaughen, Collector of Canara, who was strongly opposed to its suppression. In his own words: "The partial measure of declaring them not liable to be sold for arrears of revenue will be a drop of water in the ocean; though why Government should give up a right which every proprietor enjoys, is a question worthy of consideration".[2] The result was that the owners began to consider their slaves as no better than ordinary goods and chattles. Accordingly "the sale of slaves for the arrears of revenue was as common as the sale of land."[3]

This disgraceful practice of selling the slaves off the land was disastrous to the land-owners. In many cases (at least ten petitions are mentioned in the Parliamentary Papers) the land-owners complained that, if the Collector was allowed to sell their slaves to recover arrears of revenue, their fields would remain uncultivated, which meant their own ruin and that of their family.

1. Baber, Appendix to Report from Select Committee, Vol. IV, (Public), 1832, p. 425.
2. *Ibid.*
3. Appendix to Report from Select Committee, Vol. IV, (Public), p. 445.

But for all that, the practice was carried on by the Revenue Officers. In the words of Baber: "There can be no wonder then that the Government and the authorities of the Madras Presidency were deluded into the belief that there was no necessity for their direct interference in ameliorating the condition of their slave-subjects"[1] by forbidding the sale of slaves off the land.

However the land-owners were not the chief sufferers. The slaves themselves, when they were sold in satisfaction of revenue decrees, were actually hawked about for sale by the Revenue Officers. Baber, whilst walking along the high road, came across two such slaves. One of them addressed him and complained that he had two orphan children who would inevitably perish. The other, a fine young man, said that he had a father, a mother and a sister who depended upon him for protection. These two men were sent by Baber to Mr. Vaughen to explain their case. But the latter, instead of expressing his acknowledgments to Baber for bringing such flagrant abuses to his notice, addressed a letter to the Board of Revenue, strongly protesting against having such extraneous and forced obstacles thrown in his way to contend against in the collection of the revenues. In other words J. Vaughen made bold to uphold the indiscriminate sale of slaves away from their families and their birth-place rather than allow the collection of the revenue to fall short of the expected amount. Nor would he have ventured to complain against Baber with the Board of Revenue, if he had not felt that his views were shared by the higher authorities. This seems as a matter of fact to have been the case.[2]

As a rule the magistrates thought that it was no concern of theirs to check the practice of selling slaves off the land. Baber alone in the Madras Presidency was invariably opposed to all such sales. He forwarded to Government repeated remonstrances against this practice, and never ceased pleading for the discontinuance of the same. He finally gained his point. At last on May 13, 1819, orders were issued prohibiting the future sale of slaves on account of arrears of revenue. On that occasion the Board observed: "We are decidedly of opinion that slaves should not be sold for arrears of revenue; and prohibitory orders to this effect will be issued to Malabar where alone it

1. Parliamentary Papers, 1828, (Judicial), p. 911.

2. Mr. Vaughen's letter to the Board of Revenue, dated December 25, 1819, Parliamentary Papers, (Judicial), 1828, p. 877.

has occurred.[1] It is strange however that these orders were not known to Baber, though he was living in Malabar to the end of 1828.[2] In fact, the Revenue Officers, ignoring the orders issued by the Board of Revenue, continued to sell slaves as before in execution of decrees; for it appeared from the evidence, given by the principal inhabitants in every taluk of Malabar and forwarded by Vaughen himself to the Board of Revenue under date July 20, 1819, that proprietors had not discontinued at that period selling their slaves indiscriminately to one another and even in discharge of revenue arrears.[3]

Up to 1832 and even up to 1838 when the Law Commission was appointed to inquire into the general state of slavery in India, no material changes took place in the condition of slaves in the territories subject to the Madras Presidency.[4] "I have known of no change" writes H. Beevan, "that had taken place, since the introduction of the British Rule in the East, affecting the slaves."[5] And Rev. Joseph Fenn declared that none took place during his residence in India.[6] Baber observed that, whilst there was improvement all round, the condition of the slaves alone remained unaltered and stationary.[7]

It was forsooth contended by Murdock Brown, who was held as a sort of oracle on all questions of native customs, that the slaves of Malabar were condemned without alternative to cultivate the earth for the benefit of others and that "it is not in the power of man to alter their relative station in society."[8] But since this is the opinion of a man who was himself a slave-owner and therefore an interested party, it is harldly worthy of consideration. But when Collector Vaughen favoured the sale of slaves in satisfaction of revenue arrears on the principle that it was impossible to ameliorate their condition, because 'once a slave always a slave' might be considered the motto to be prefixed to Malabar slavery, we cannot help remarking that the policy he thus advocated deserves the condemnation of every honest man. The results of such a policy were bound to be disastrous. As E. B. Thomas wrote in

1. Board of Revenue Proceedings, para 45, Parliamentary Papers, 1828, (Judicial), p. 900.
2. Appendix to Report from Select Committee, 1832, Vol. IV, (Public), Baber (K), para 1, p. 440.
3. Vaughen's letter to the Board of Revenue, dated July 20, 1819, cited in Appendix to Report from Select Committee, 1832, (Public), (K), para 1, p. 440.
4. Campbell to the Commissioners for the Affairs of India, *Ibid.* para 13, p. 456.
5. Answers of Captain H. Beevan, *Ibid.* para 13, p. 461.
6. Answers of Reverend Joseph Fenn, *Ibid.* para 13, p. 421.
7. Baber, *Ibid.* (M) para 2, p. 442.
8. Mr. Murdock Brown's Letter, dated May 24, 1798, Parliamentary Papers, (Judicial), 1828, p. 597.

1842: "The expression of Mr. Vaughen, 'once a slave always a slave,' would appear but too painfully true. The self-interest of the master is I fear almost the only safe-guard of the slave in the more retired parts of the country where the obstacles moral and physical to an injured slave's complaining are still such as to render complaint impossible and difficult and therefore redress very doubtful."[1]

VIII. LEGAL RIGHTS. The slave's helplessness is further evidenced by the fact that he was practically deprived of all legal rights. By the ancient law of Malabar a master was accountable to no person for the life of his own slave, but was the legal judge of his offence and had even the right to punish him with death. This severity was subsequently so far moderated as to make a master liable to punishment, if he put his slave to death without a cause. The Calendars of the Criminal Courts of Malabar and Canara brought to light numerous instances of conviction for the murder of slaves.

At the same time the laws did not extend to slaves the adequate protection to which they had a right.[2] For it has been pointed out by Baber in his answers to the Commissioners for the Affairs of India that in those parts of Malabar which bordered upon Coorg and Mysore, slaves took refuge in those countries. This was the only way in which they could show their sense of ill-treatment; and it was the only means at their disposal to enjoy security of life and limb. "It would be cruel in us," Baber writes, "and only an aggravation of their hard lot, so long as our tribunals are so hermetically closed against them, were we to throw any obstacles in the slaves' way, or to look to the rulers of those countries for any indemnification to their tyrannical masters."[3] In this connection it has to be borne in mind that the General Regulations made no provisions for the protection of slaves, contained no specific measures for their better treatment, and left them exposed to the merciless kidnappers. Again when in 1812 Baber proposed that rules should be passed to remedy some of the most crying evils of the slave-

1. From E. B. Thomas, Judge of Malabar, to the Register to the Court of Sudder and Foujdarry Adawlut, dated August 24, 1842, Home Department, Legislative Proceedings, August 5 to November 24, 1842, Imperial Record Department.

2. Answers of T. H. Baber, Appendix to Report from Select Committee, (G), para 9, pp. 435-36.

3. *Ibid*, (O), para 15, pp. 446-47.

population, Government ignored his proposal.[1] Furthermore the Civil Law of the land, as regards the protection extended to slaves, was to all intents and purposes a dead letter. No slave ventured to appeal to the civil laws of the country, because " the commission of violence or any other offence upon the person of the slave neither affected the state of bondage, nor had the ruling power any right of granting him manumission."[2]

In spite of this, Mr. Warden gave evidence before the Select Committee of the House of Lords to the effect " that the slaves are protected,[3] that cruel treatment by their masters is punished,[4] that slaves can and do apply to the Courts of Justice, and that the Courts of Justice require a master to support his slave.[5] J. Vaughen went further still; he asserted "that slaves are as well protected by the laws as any other race of beings, that they may be viewed in any light but that of an abject and horrid state of bondage, that British justice considers the life of the lowest individual as valuable as the highest character in the country, and that as severe a measure of retribution would fall on the head of a murderer of a slave as of a Rajah."[6] But these statements deserve little credit, as has already been pointed out by Baber's Circuit Report to the Board of Revenue,[7] which has already been dealt with.

The following instance shows what sort of justice was meted out in British courts of Justice, when slaves were the object of the law. Baber forwarded to the Collector and Magistrate a petition for the restoration of slaves; but no redress whatsoever was afforded to the petitioner, though he regularly attended the Collector's Cutcherry for a period of nearly eight months. Then a second petition was presented; but the result was that the petitioner, an old man of 82, was thrown into gaol, as it was proved afterwards, on a false charge,[8] got up against him by the revenue servants, who had seized his slaves and seed-grain in retaliation for having complained against them to the Collector. From this it may readily be inferred how unavailing were individual attempts

1. Extract of a letter to the Register to the Court of Foujdarry Adawlut, dated July 31, 1821, Parliamentary Papers, (Judicial), 1828, para 108, p. 909.
2. Answers of T. H. Baber, Appendix to Report from Select Committee, Vol. IV, (Public), 1832, para 3, pp. 433-34.
3-5. Evidence of Mr. Warden before the Select Committee of the House of Lords (1830), Ques. 1874, 1880 and 1887.
6. Vaughen's letter to the Board of Revenue, dated July 20, 1814, paras 14 & 20, Parliamentary Papers, (Judicial), 1828, p. 846.
7. Circuit Report for 2nd Sessions of 1823, Parliamentary Papers, para 64, p. 928.
8. Baber, Appendix to Report from Select Committee IV, (Public), p. 444.

to secure protection for seized slaves, since these attempts proved unsuccessful when they were backed up by Baber, whose interference was quietly ignored by the Collector, who was his inferior.[1]

No. 3. THE STRUGGLE FOR EMANCIPATION.

SUMMARY: I. Clementson's attempts II. Circular Order 111. III. Circular Order 132. IV. Sale of slaves off the land discountenanced. V. Act V of 1843.

SOURCES: PUBLISHED: W. Logan, *Malabar*, I; Friend of India, January 19, 1843.

UNPUBLISHED: Law Proceedings, 3 July–16 October, 1837; Government of India, Legislative Proceedings, April 1 to May 27, 1839; Home Department Legislative Proceedings, August 5 to November 25, 1842; Law Proceedings, 1839; Law Proceedings, August 2 to September 20, 1841; Law Proceedings, April–May, 1842; Legislative Proceedings, 6th April–22 June, 1844.

I. CLEMENTSON'S ATTEMPTS. After years of helpless oppression the day dawned at last when the misery of the Cherumar slave-population was made the object of sympathetic endeavours on the part of Government, who finally set themselves to the task of devising measures for their relief. The first partly successful attempt regarding the emancipation of slaves on the Government lands in the district of Malabar was made by F. Clementson, the Principal Collector. On July 11, 1836, he requested: "that the sanction of Government may be obtained for my excluding from the accounts the sum of Rs. 168-9-2, which was the pattorn received from the occupants of the Government lands on account of the slaves attached thereto, and of proclaiming to these poor people the order of Government that they are free men." He also wrote: "It will be necessary to grant remissions to the extent of Rs. 759–3–10 on account of the rent paid for slaves, which is at present blended with the rent of lands leased out to several ryots,"[2] as the lessees should be entitled to remissions to that extent in the event of the slaves, for whose services they now pay, being emancipated as recommended.

The Governor-in-Council of Madras acceded to the request of emancipating the slaves on the Government lands, but at the

1. Baber, Appendix to Report from Select Committee, IV, (Public), p. 445.

2. From F. Clementson, the Principal Collector, to the President and Members of the Board of Revenue, dated July 11, 1836, Law Proceedings, 3 July-16 October 1837, Imperial Record Department.

3. *Ibid*, dated September 20, 1836.

same time he recommended to carry out the measure without creating any unnecessary alarm or aversion to it on the part of other proprietors.[1]

Two years later on March 24, 1838, Clementson was officially asked to suggest what measures should be adopted to ameliorate the condition and improve the morals of the unfortunate Cherumars.[2]

This request on the part of Government was the result of the great number of charges of murder in which the Cherumars were concerned, "thirteen out of thirty-one cases of murder having been stated to have been committed by the degraded race," who were represented to be devoid of all feelings and to possess little of humanity, but its outward form.[3]

A striking instance of this degradation is given by E. B. Thomas, Judge of Malabar. Four years after Clementson had been approached by the Board of Revenue, in 1842, two slaves were charged with the deliberate murder of another slave whom they fully believed to be a sorcerer, thinking themselves thereby justified in killing him. The accused gave a detailed account of their evil deed without apparent remorse or any hesitation. Palliation they seemed to think not necessary at all, and all the endeavours on the part of the Magistrate to explain to them the folly of their idea of sorcery or the heinousness of their crime were perfectly useless. "Two more degraded, ignorant and pitiable beings, I never saw," Thomas writes. "Their crime was clearly the result of sheer degradation and brutal ignorance, not of malice or ferocity. I fear their execution produced little good effect. The crime of course could not go unpunished, but its cause can only be fairly traced to their degraded state."[4]

In spite of Clementson's eagerness to see the slaves raised from their state of degradation, he was at a loss to suggest

---

1. From H. Chamier, Chief Secretary to the Government of Fort St. George, to the President and Members of the Board of Revenue, Law Proceedings, July 3–October 16, 1837, Imperial Record Department.
2. From F. Clementson, Principal, Collector of Malabar, to the Secretary to the Board of Revenue, Fort St. George, dated April 24, 1838, Government of India, Legislative Proceedings, April 1 to May 27, 1839, Imperial Record Department.
3. From P. B. Smollett, Acting Secretary to the Board of Revenue to the Chief Secretary to the Government, dated October 15, 1838, Government of India, Legislative Proceedings from April 1 to May 27, 1839, Imperial Record Department.
4. From E. B. Thomas, Judge of Malabar, to the Register to the Court of Sudder and Foujdarry Adawlut, dated August 24, 1842, Home Department, Legislative Proceedings, August 5 to November 24, 1842, Imperial Record Department.

any plan which would not involve a violation of the rights of private property and consequently give rise to much discontent. He, therefore, proposed to ameliorate the condition of the praedial slaves by establishing schools; for this measure had proved successful in the case of the slaves attached to Mr. Brown's estate at Anjeracandy. However, a permanent improvement in their condition and morals could only be hoped for, if it emanated from the masters of the slaves. But this could only be done by treating the landowners more liberally, and thus enabling them to increase the comfort of their slaves, to treat them with greater indulgence and to dispense partially with their services. This meant a partial relinquishment of the Government revenue and the establishment of schools throughout the district.[1]

How did the Board of Revenue receive Clementson's suggestion? They were of opinion that, with the information at their disposal, they were not in a position to suggest any well-digested scheme which would lead to the permanent improvement of this servile class. The immediate introduction of schools, as suggested by Clementson, was not calculated in their opinions to ameliorate their condition; for the members of the Revenue Board believed that physical improvement should precede their mental culture. It was also pointed out that it was difficult to explain how far the Cherumars themselves were discontent with their state of servitude, which was assigned to them by birth, and inculcated by local usage. Hence it was obvious that no premature measures should be adopted to afford them any relief, until they were in a fit state to benefit by the change. Therefore, however much their state of bondage was to be lamented, the measures taken for their amelioration ought to be gradual and carried out with discretion and in concurrence with land-holders on whose estates they were located; for any hasty step towards their improvement would otherwise occasion much discontent, and would be considered as an encroachment on the private rights of their masters.[2] In other words the Board of Revenue recognised the principle of emancipation, but shirked passing any measures to ameliorate the condition of the Cherumars.

1. From F. Clementson, Principal Collector of Malabar, to the President and Members of the Board of Revenue, dated April 24, 1838, Home Department, Legislative Proceedings, August 5 to November 24, 1842, Imperial Record Department.

2. From P. B. Smollett, Acting Secretary to the Board of Revenue, to the Chief Secretary to Government, Fort St. George, dated October 15, 1838, Government of India, Legislative Proceedings, from April 1 to May 27, 1839, Imperial Record Department.

Moreover in this matter the Governor-in-Council at Madras took much the same view as the Board of Revenue. He did not consider it expedient to pass a legislative enactment at that moment, but presumed that endeavours should be made to have them better fed and clothed by encouraging those land-holders who would show that the condition of the slaves had been bettered. He therefore desired that the Principal Collector might be called upon to report as to the food, the clothing and the lodging of the slaves, and to suggest whether he would recommend any sort of compensation to be given to land-holders for the improved condition of their slaves. He also desired to know whether the proprietors of slaves still possessed the power of mortgaging them and of letting them out for hire and of selling them ; whether the slaves could be sold separately from the land, and whether children could be sold separately from their parents.[1] As regards the remission of land-revenue the Governor-in-Council observed that no such remission could be granted without the authority of the Government of India, but he was prepared to give consideration to the measure when submitted in its proper form.[2]

From this it may be readily inferred that the Governor-in-Council took no decisive steps to emancipate the Cherumars of Malabar. However his sympathetic attitude was perhaps partly instrumental in preparing the way for future attempts in this direction. For in April 1839 the Government of India submitted the report, made in 1822 by Commissioner Graeme on slavery in Malabar, together with the official papers on the Cherumars, to the consideration of the Law Commission in connection with the general subject of slavery in India.[3]

II. CIRCULAR ORDER NO. 111. Another important step towards the amelioration of the condition of the Cherumars was the passing of the Circular Order No. 111 in 1839. Prior to the year 1839 references were made from time to time to the Foujdarry Adawlut by the judicial officers in the Provinces of Malabar for instructions in regard to the disposal of cases wherein persons

1. Extract from the Minutes of Consultation, under date November 30, 1838, Government of India, Legislative Proceedings, from April 1 to May 27, 1839, Imperial Record Department.

2. Extract from the Madras Board of Revenue, dated March 12, 1839, Government of India, Legislative Proceedings, from April 1 to May 27, 1839, Imperial Record Department.

3. From J. P. Grant, Officiating Secretary to the Government of India to J. C. C. Sutherland, Secretary to the Indian Law Commission, dated April 8, 1839, Government of India, Legislative Proceedings, April 1 to May 27, 1839, Imperial Record Department.

were charged with the sale and the purchase of children for different purposes.

Thus for example, first of all, on May 24, 1817, the Magistrate of Vizagapatam reported that "a Hindu woman made a verbal complaint before him that a Police peon of the same caste had failed in his engagement with her in the purchase as a slave of her infant son aged seven months. The child was sold for eight rupees; but the peon refusing the mother access to her infant; and not having procured her eldest son an employment as stipulated, the mother entreated permission to return the purchase money and to receive her infant again."[1]

"This most extraordinary purchase and sale" the Magistrate observed, "was cancelled at his particular desire." But on being informed by the Judge of the Zillah that the case was cognisable by the Civil Court, the Magistrate referred the matter to the Court of Foujdarry Adawlut, with an observation to the effect that, if in the opinion of the Zillah the parties were not liable to criminal prosecution under the existing Regulations, it was high time that the defect in law was rectified, and that slave-dealing was declared to be abolished in India."[2]

On June 20, 1817, the Court of Foujdarry Adawlut replied that, as the matter was connected with the religious usages and institutions of the native subjects of the Government of India, and as it was cognisable as a civil action under the provisions of Section XVI, Regulation III of 1802, the Magistrate was not authorised to take cognisance of the matter in question.[3]

Again on December 5, 1825, the Collector of Tinnevelly brought to the notice of the Court of Foujdarry Adawlut for the southern division a custom which, the Collector observed, was more or less prevalent throughout the Madras territories and more frequent in the district of Tinnevelly. This was the sale and purchase of female children by dancing women for the avowed purpose of bringing them up for a life of immorality. The custom was so notorious and its abominable tendency so evident that no comment seemed necessary. It was his apprehension that, unless it was specifically excepted from those purchases of children which were considered under some circum-

1-2. From T. H. Davidson, Acting Register to the Foujdarry Adawlut to the Chief Secretary to Government of Madras, dated November 19, 1839, Law Proceedings, 1839, Imperial Record Department.

3. *Ibid.*

stances as legal, it was feared that an opinion might be entertained that such dealings were countenanced by law. A prohibition of such transactions could not be complained of as an infringement of any acknowledged rights, for it would serve as a check upon child-stealing which was occasionally practised under the pretence of purchase; and the public expression of the will of the Government would have a beneficial tendency to promote morality. In conclusion the Collector recommended that the practice in question should be prohibited by law.[1]

To this, the Judges of the Provincial Court submitted that in their opinion there was no occasion for the interference of Government for any special authority to be given to the Magistracy to prevent the sale of children to dancing women. For the sale of children, except under certain circumstances, was prohibited by the Mahomedan law, and if the Magistrate was of opinion that the people were not aware of this fact, he had full authority in virtue of his office to issue a notification declaring that the crime of child-selling was punishable by law. When the papers were laid before the Government of Madras, the Court of Foujdarry Adawlut approved of, and concurred with, the decision given by the Provincial Court.[2]

This decision of the Court of Foujdarry Adawlut in the year 1825, was probably the result of a letter written on January 13, 1824, by the Secretary to Government to the same Court. In this letter he informed the Court that the Governor-in-Council of Madras entirely concurred with the Judges in deeming any enactment unnecessary. Above all, with reference "to its connection with the ceremonies and observances both civil and religious of the great bulk of the people," great caution should be exercised in interfering with a view to prevent parents or guardians from assigning children in the customary modes to be brought up for the profession of dancing women.[3]

Finally, fifteen years later in 1839 the Court of Foujdarry Adawlut abandoned its policy of non-interference in the sale of children to dancing women by passing the famous Circular Order No. 111. The following circumstances brought about this change. The Provincial Court of Circuit was asked by the Magistrate of Trichinopoly whether the sale of a child by its mother was considered under the existing Regulations as an offence cognisable

1-3. *Ibid.*

by the Magistrate, and whether he was to remain contented, according to the usual practice in that district, with using his influence to annul the sale, or to send the case for the final adjudication to the Criminal Court. Thereupon the Provincial Court submitted as their opinion that some specific penalty should be promulgated for the purpose of checking an offence so revolting to humanity, and that it should not be left to the discretion of the Magistrate merely to use his influence to annul a sale of that description.[1]

On receiving this opinion of the Provincial Court the Foujdarry Adawlut called upon their Mahomedan Law Officers to state whether under Mahomedan law the mother, in the case above referred to, would be liable to punishment. In their answer these officers declared that she was liable to be condemned to Fuzeer or discretionary punishment.[2]

But afterwards on a further reference being made to the Court cases it was found that in the case tried in 1819 the Mahomedan Law Officers had mentioned a Futwa declaratory of the non-liability to punishment of a party selling his or her child. Thereupon the Court called once more upon their Law Officers to explain their reasons for dissenting from the Futwa of their predecessors in the case now under consideration. They pointed out that their opinion was based on the decisions recorded in the books of Hunifah, according to which the people of that country were forbidden to sell their children at a time when scarcity did not prevail, and those who ventured to do so rendered themselves liable to incur Fuzeer.[3]

There could be no doubt of the correctness of this last opinion. Adverting to the different references made to them on the subject, to the discordant opinions which had been given and to the doubts generally entertained by the Officers in the Provinces as to the course they were authorised to pursue in such cases, the Court of Foujdarry Adawlut deemed it proper, as stated in the Circular Order No. 111, to promulgate that opinion, with reference to the provisions of Section VII Regulation X of 1816, for the information and future guidance of the Judicial Officers under their control.[4] In other words they passed Circular Order No. 111, according to which "some specific penalty should be promulgated for the purpose of checking an offence so revolting to humanity,

1–4. *Ibid.*

and it should not be left to the discretion of the Magistrate merely to use his influence to annul a sale of that description."[1]

III. CIRCULAR ORDER No. 132. The wheels of Government were moving, and shortly after the sale of children had been officially declared as deserving of penalty, protection was likewise extended to runaway slaves.

In November 1840, a female Dher slave was charged with having run away. The Court thereupon asked their Law Officers to declare whether the prisoner had committed any offence under the Mahomedan law, and if so, how the offence was punishable. The answer of the Law Officers was that the woman was not liable to be punished under the Mahomedan law, "because the legislation has not propounded any punishment to the slaves of this country in the same manner as it denounced Tazeer and Tadeeb to a true slave."[2] The Court was not satisfied with the answer given, and asked them to explain clearly the distinction between a true slave and a Dher slave. Thereupon they stated that a true slave was one who was acquired by way of booty in a Mussalman war, and who could be sold and purchased as a slave. If such a slave ran away from her master's house without his permission, she was liable to punishment in proportion to her guilt. But the slaves of Malabar, whether Dhers or Pariars, were purchased from their parents in times of famine or at some other time, and "are not, under the Mahomedan law, fit to be sold and purchased. Hence, if they left their masters without permission, they were at full liberty to live wherever they pleased, and they were not liable to any trial under the law in question."[3] The Court agreed with the Mahomedan Law Officials, and passed Circular Order No. 132 to that effect on February 10, 1841.[4]

In March, 1841, the Court of Foujdarry Adawlut was called upon by the Government of Madras to explain how this Circular Order No. 132 affected the Cherumars of Malabar and other praedial slaves in Tanjore and other parts of the country. They replied that it applied to male as well as to female slaves, and to the praedial slaves in Malabar, Tanjore and elsewhere.[5]

---

1. *Ibid.*
2. Opinions of the Law Officers, Futwa, dated February 10, 1841, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.
3. Opinions of the Law Officers, Futwa, dated February 10, 1841, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.
4. Extract from the Proceedings of the Foujdarry Adawlut, under date February 10, 1841, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.
5. From W. Douglas, Register to the Court of Foujdarry Adawlut, to the Chief Secretary to Government, dated March 22, 1841. *Ibid.*

But A. D. Campbell, Puisne Judge of the Court of Foujdarry Adawlut did not quite agree with this view. He admitted that only such slaves as were captured in war could be punished by the Mahomedan Criminal Code. But at the same time he was of opinion that "there can be no doubt, that the Civil Code, or Hindu Law formally acknowledges praedial slavery and other forms of bondage; and though sanctioned by immemorial custom, the Civil Law stands contrasted in this respect with the Criminal Code, which lends most slender and confused support.[1]

It is difficult to ascertain to what extent this note of dissent affected the runaway slaves; for the documents do not give any information on the point.

IV. SALE OF SLAVES OFF THE LAND DISCOUNTENANCED. The growing sympathy of the Madras authorities with the suffering Cherumar stimulated those officers who had their interest truly at heart to leave no stone unturned in furthering their progress. Accordingly they addressed themselves to the task of suppressing the cruel practice of selling the slaves off the land. A first attempt in this direction made by E. B. Thomas was rather unsuccessful.

In April 1841, the Acting Judge of Canara, E. B. Thomas, was appealed to by the Pynaad (Wynaad) District Munsiff to pass orders that the Cherumar slaves already under attachment might be allowed to be sold to meet the balance after deducting the amount realised. For it was doubtful whether slaves could be sold in execution of decrees. E. B. Thomas profited by this occasion to bring the matter to the notice of the authorities. Addressing himself to the Court of Foujdarry Adawlut, he first of all asked whether it was not high time to stop the policy of passing decrees involving the sale of slaves.[2] Next he proposed the enactment of the following rule "that from and after one year from the date of its promulgation the sale and purchase of a slave be not practically and legally recognised in the Court of Malabar. He also suggested that all children under ten years of age and born of slave parents be immediately emancipated and that all children hereafter born be declared free.[3]

He had good reasons for making this inquiry and these suggestions. In many instances that came before the Courts slaves

1. Minute of A. D. Campbell, 1st Puisne Judge, *Ibid.*
2. From E. B. Thomas, Judge of Canara to the Register to the Court of Sudder and Foujdarry Adawlut, dated April 5, 1841, para 1, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.
3. Extract from the Proceedings of the Sudder Adawlut, under date May 17, 1841, para 5, Law Proceedings, August 2 to September 20, Imperial Record Department.

were the sole object of litigation. In other cases they were mixed up with other property. Moreover in the execution of Court decrees slaves were constantly put up to public auction in spite of the fact that such a practice had been expressly prohibited by the Board of Revenue some twenty years ago.[1] Accordingly E. B. Thomas suggested that where other property, besides slaves, was involved in the litigation, it would be advisable to omit the slaves and adjudge the rest. He also pointed out that the measures proposed by him would operate as a negative check rather than be a positive opposition to the established pratice of slavery. At the same time they would act beneficially, though tacitly, in favour of the slave, inasmuch as it would bring home to the slave-owners that his hold on the slaves was not valid or legally recognised, but depended entirely on his own mild and liberal treatment of them. What is more, they would be a preliminary and safe step towards the gradual and eventual abolition of slavery in Malabar.[2]

In answer to the question raised by E. B. Thomas, whether the Courts should admit and enforce any claim to property, possession or service of a slave, and, if so, on what specific law or principle the Courts should ground their proceedings, the Court of the Madras Sudder Foujdarry Adawlut referred to the Indian Law Commission's letter, dated October 10, 1835. According to this letter the law recognised by the Civil Courts in Malabar was that of the country. It was called *Kana* (mortgage), *Teuma* (proprietary right), *Chariada* (custom or rule), and although founded upon Hindu Law, it was appealed to both by Hindus and Mahomedans, and regulated all questions of property whether real, personal, or in slaves. Hence it was not possible to desire for Civil Law Courts of Malabar rulings with which the Mahomedan and Hindu Law might be brought into conflict. Hindus in the district of Malabar possessed no other description of slaves but such as had been born from parents and were slaves by caste, and these the Mahomedan law recognised to be in a state of slavery. The three conditions under which persons became slaves among Mahomedans, *viz.* descent, capture in war and voluntary sale in times of famine, were also common to the Hindu castes. Therefore the Courts of Malabar were bound to admit and enforce claims to property in slaves on behalf of others than Mussalman

1-2. From E. B. Thomas, Acting Judge of Canara, to the Register to the Court of Sudder and Foujdarry Adawlut, dated April 5, 1841, paras 1-2, Law Proceedings, August 2 to September, 1841, Imperial Record Department.

3. Extract from the Proceedings of the Sudder Adawlut, under date, May 17, 1841, a letter from the Acting Judge in Zillah Malabar, April 5th 1841, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.

or Hindu defendants upon the ground that such property had been acquired, not only with the tacit consent, but also through the direct means and assistance of the British Government in India.[1]

Hence the Court of Sudder Adawlut were of opinion that, until the Supreme Government were prepared to legislate on the subject of slavery, the Local Courts should continue to enforce claims to property in slaves. Furthermore the Court having taken into consideration the enactment of the rule proposed by E. B. Thomas declared that a law of the nature suggested by him could not be passed by the Legislature without compensating the slave-owners, since such a law would greatly affect the value of slaves. Therefore it was for the Government of India to determine whether the finances of the State would be able to meet such an expenditure.[2]

This decision, upholding in Malabar the public sale of slaves in execution of decrees of the Courts, is all the more remarkable, because by order of the Governor-General the sale of slaves for arrears of revenue had been expressly forbidden and discontinued in the southern Maratha country as far back as 1819. It was likewise prohibited by the Madras Board of Revenue in the same year, whilst the Advocate General of Madras and Bombay interpreted 51 Geo, III Cap. XXIII as affecting slavery in India. Again in December 1821 the Court of Directors expressed their astonishment "that part of the people employed in the cultivation in Malabar are held as slaves," that they are attached to the soil and marketable property.[3]

But E. B. Thomas was the last man to admit defeat. He did not give up the fight for the good cause; and in November 1841, he wrote to the Register to the Court of Sudder and Foujdarry Adawlut: "I think some gradual and incipient amelioration is practicable without any great difficulty or sacrifice, and if so, that the attempt at least should no longer be delayed." The great obstacle to the emancipation of all the slaves of Malabar was that the Government were not prepared to meet the necessary expense by way of making compensation to the owners.

1. Extract from the Proceedings of the Sudder Adawlut, under date May 17, 1841, a letter from the Acting Judge in Zillah Malabar, April 5th, 1841, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.
2. *Ibid.*
3. From E. B. Thomas, Acting Judge of Malabar to W. Douglas, Register to the Court of Sudder and Foujdarry Adawlut, dated November 24, 1841, para 8, Law Proceedings, April-May 1842, Imperial Record Department.

E. B. Thomas therefore suggested the following solution. He proposed that in the beginning a fair average valuation should be adopted on the usual cost of all the children of 10 years of age and under, and that these children should be purchased by Government. They should be left with their parents till able to support themselves, and should then be set at liberty to seek employment wherever they pleased.[1]

In order to render such a measure more effective and to prevent its being nugatory, he insisted on official registration of all the children in every village by the Police authorities as essential. It was true that the rising generation and their parents would not at first be able to take advantage of the new position in which they were placed. For instances had actually occurred where slaves, attached to Government Sirkar lands, had been emancipated years ago, and yet were kept in entire ignorance of the fact by tenants who rented such lands and who appropriated to themselves the deduction that was made by Government in the lands, without granting the slaves their entitled emancipation.[2]

But this was no reason for shelving the question of the Cherumars' improvement. There were of course difficulties in the way; but these had been needlessly anticipated and magnified. "If we are to sit still," E. B. Thomas writes, "till the slave-holders and slave-breeders of Malabar come forward and offer emancipation, or cease all opposition to it, we wait for something which will be looked for in vain." Therefore if it was not possible to emancipate the whole existing slave-population, it was at least desirable to take some steps to free their children and their descendants in the next generation from bonds, the continued existence of which was degrading to the Government as well as to the slave.[3] Finally the yearly redeeming of the slave-children or even of a portion of them would not lay too heavy a burden on Government; because the average cost of a boy under ten years of age was about 3½ Rs. and that of a girl still less. Nor was there likely to be any opposition from the slave-owners; for these slave-children were practically useless to them.[4]

E. B. Thomas fully realised that any change in the law of slavery must be effected quietly and gradually, not by any sudden

1-2. From E. B. Thomas, Acting Judge of Zillah Malabar, to the Register to the Court of Sudder and Foujdarry Adawlut, dated 24th November 1841, paras 1-2, Law Proceedings, April-May, 1842, Imperial Record Department.

3-4. From E. B. Thomas, Acting Judge of Zillah Malabar, to the Register to the Court of Sudder and Foujdarry Adawlut, dated 24th November, 1841, para 3, Law Proceedings, April-May, 1842, Imperial Record Department.

emancipation, but by degrees. The question how this could be best brought about was answered by the above proposal, which he considered a safe and practicable beginning to so desirable an end. Such a measure was surely to meet with approval in England. For coffee, cotton, sugar, pepper, spices, arrow-root and cocoanuts were largely imported into England from Malabar; but it was not known in England that these imported goods were the produce of slave-labour, which, if it became known, would surely operate unfavourably against their finding a favourable market.[1] That there was a real opposition in England to slave-work in India may be gathered from a despatch of the Hon'ble the Court of Directors, dated December 12, 1821, *i. e.*, 20 years previous to E. B. Thomas' letter of 1841. The despatch runs as follows: "We are told that part of the people, employed in the cultivation of Malabar, (an article of very unwelcome intelligence, they add) are held as slaves, that they are attached to the soil and marketable property." It is not easy to give an explanation of the astonishment here displayed by the Hon'ble Court. For Dr. Buchanan had called the attention of the Court to this evil in 1807 in a book published in London under the authority and patronage of the Directors of the Company. Not only was the book published under the authority and patronage of the Court of Directors, but the investigation into the resources of these provinces were also carried out directly under the orders of the Governor-General of India; and the book was published at the expense of the East India Company. Is it not then strange that, in spite of the official, reliable information collected at a cost of great expense and much trouble on the part of Dr. Buchanan, the matter was allowed to remain neglected and uncared for full 14 years—nay practically for 35 years. During all those years the province continued to be governed or rather misgoverned just as if no such information had been possessed.[2]

To come back to Mr. E. B. Thomas' views on the abolition of slavery. In his opinion nothing was gained by following a policy of procrastination; for sooner or later Government would have to settle the question; on the contrary the longer they waited, the greater would be the difficulties; for as Graeme

1. From E. B. Thomas, Acting Judge of Zillah Malabar, to the Register to the Court of Sudder and Foujdarry Adawlut, dated 24th November, 1841, para 5, Law Proceedings, April-May, 1842, Imperial Record Department.

2. From E. B. Thomas, Acting Judge of Zillah Malabar, to the Register to the Court of Sudder and Foujdarry Adawlut, dated 24th November, 1841, para 9, Law Proceedings, April-May, 1842, Imperial Record Department.

had pointed out as far back as 1822, by affording protection to the slave-owners they only succeeded in raising the sale-price of slaves and thereby in increasing the demand for them. Hence it was a matter of financial expediency to anticipate the emancipation of slavery, instead of delaying it. At the same time there was in Malabar such a wide demand for agricultural labour that Government need entertain no fears that the liberated slaves would find no employment.[1]

Thus E. B. Thomas' efforts to better the condition of the Cherumars were unsuccessful. For all that, he did not give up the fight for the good cause. Towards the end of the year 1841, a case was brought before him in which the rights of 27 slaves formed the sole subject of litigation. He appealed at once to the judicial authorities in Madras, inquiring what policy to follow.[2]

This time his appeal met with a more sympathetic response, for six months later, about the second week of May 1842, allusion to this matter occurred in several minutes made by members of the Governor-in-Council.

Mr. Amos proposed to reply that, as the sentiments of the Home authorities had not been expressed on the subject, he thought it advisable not to legislate for the time being with a view to put a stop to the sale of slaves in execution of the decrees of Court by the Judicial authorities. As regards the last inquiry of Mr. Thomas whether slaves could be postponed till all other property had been made available in execution of a decree, it was found to be quite in consistence with law. He conceived that discretion should always be left to the officer executing a decree as to the property which he seized first or last, and that discretion could not be more justly or humanely exercised than in resorting to every species of property in preference to slaves.

Mr. Bird, another member of the Council, felt that more ought to be done than was suggested by Mr. Amos to check immediately the continuance of this odious practice, because the question involved an extreme difficulty, though many years were likely to elapse before any decisive steps could be taken on the subject.[3]

1. *Ibid.* para 6.

2. From E. B. Thomas, Acting Judge of Canara, to the Register to the Court of Sudder and Foujdarry Adawlut, dated 24th November, 1841, para 10, Law Proceedings, April-May, 1842, Imperial Record Department.

3. Minute by A. Amos, dated 10th May, 1842, Law Proceedings April-May, 1842, Imperial Record Department.

The extent to which the public sale of slaves was recognised, had been stated by Mr. Thomas in connection with a case of an infant 12 months old, sold at an auction for Rs. 1-10-6, independently of the price of the mother. This unheard of occurrence led Mr. Bird earnestly to suggest to the Government of Fort St. George to call upon the Sudder Adawlut to take once more into consideration whether there was anything in the Laws and Regulations of the Presidency which made it obligatory on a judge to sell human beings like goods and chattels in execution of a Court's decree; and if nothing could be found, to recommend the discontinuance of the practice until further orders. He even made bold to say that, as the practice was of doubtful legality and open to great abuse, it should at all events be suspended for the time being, as the Government were willing to run the risk of indemnifying the parties who might be capable of establishing their right and enforcing such sale in a Court of Justice.

Mr. Bird also emphasised that the researches of the Indian Law Commission had left no room to doubt the fact that many of the individuals who were dealt with as slaves were not so in reality, according either to Hindu or to Mahomedan Law; and therefore it was essential to prove that they were slaves by unquestionable evidence, before they could be sold publicly by auction in satisfaction of pecuniary claims by a British Magistrate. "The common feelings of humanity," Mr. Bird remarks, "and still more the principles which regulate all judicial proceedings in civilised society, are sufficient, I apprehend, to justify the interference which I have suggested."[1] This view met with the approval of his colleagues; for the President-in-Council had no hesitation in recommending to the Right Hon'ble the Governor-in-Council at Madras to give the most peremptory order consistently with law for the immediate suspension of all judicial enforcement of sales by auction in satisfaction of pecuniary claims, and to leave the parties who felt aggrieved to establish in a Court of Justice their right to enforce such sales. "It would be the clear duty of every British tribunal," the President-in-Council wrote in his letter, dated May 27, 1842, at Madras, "to permit no person to be brought to sale without unquestionable evidence being adduced that he was a bona fide slave according to Hindu

1. Minute by W. W. Bird, dated 27th May 1842, Law Proceedings, April-May, 1842, Imperial Record Department.

and Mahomedan Law."

Meanwhile E. B. Thomas quietly persevered in urging his point. In August, 1842, he stated in a letter to the Court of Sudder Foujdarry Adawlut that the perpetual maintenance of the slaves in Malabar was more degraded and harsher in condition than that noticed in the Report of the Law Commission, and that therefore it needed a more decided, though not an hasty amelioration. He was in favour of putting at once in force Rules 16 and 17 of the Law Commission, and believed that the Courts of Malabar and Canara should not be merely left to the guidance of conflicting analogies of former customs, but should have fixed rules as to the adjudication and sale of slaves in decrees. He pointed out that Mr. Thackeray, in his report on Malabar of 1807, had expressed the hope that the slaves should by degrees be converted into labourers; and yet as much as 35 years later, *viz.* in 1842, nothing seemed to have been commenced. He was fully confident that the gradual steps proposed by him in his former letters were not open to any serious objection; and therefore the fear of cultivation and consequently of Government revenues falling off for want of forced labour was groundless. His measures might at first sight appear too radical, but he frankly declared: "I am not conscious of any overstatement. I think a full enquiry would generally bear out the statements I have made, and my sole object in approaching the subject is to add my effort, however humble, in calling the attention of Government to the wretchedness and still continued degradation of the Cherumars of Malabar."[2]

Evidence is not lacking to show that E. B. Thomas' persistent pleadings were little by little paving the way towards some further improvement in the condition of slaves. On September 12, 1842 the Court of Sudder Foujdarry Adawlut delivered the following opinion. Consistently with a long established usage slave-owners did alienate their slaves by gift, or mortgage, or sale apart from the estate; and the judicial decisions of the Courts in Malabar and Canara showed that the Local Courts were not entitled to deny their jurisdiction to adjudicate claims of that nature. However in their opinion the law did not make it obligatory on a judge to sell slaves in execution of a judicial decree except with the

1. From F. J. Halliday, Officiating Secretary to the Government of India, to the Chief Secretary to the Government of Fort St. George, dated 27th May, 1842, Law Proceedings, April-May, 1842, Imperial Record Department.

2. From E. B. Thomas, Judge of Calicut to the Register to the Court of Sudder and Foujdarry Adawlut, dated 24th August, 1842, Home Department, Legislative Proceedings 5th August-25th November, 1842.

estate or land to which they belonged. Therefore they, finally advised, that whatever may have been the practice of the Courts in that particular respect, the Judicial Officers in the Provinces were in future required to refuse compliance with any application for the sale of a slave as moveable property independently of the estate.[1] Accordingly orders were issued by the Government of Madras to all the Judicial Officers in the Province to refuse compliance with any application for the sale of a slave as moveable property apart from the estate to which he belonged.[2]

It will afterwards be shown that Act V of 1843 dealt the death-blow to slavery in India. For the sake of completeness we will here indicate how the Act affected Malabar and to what extent the Cherumars profited by it. In the course of the year 1843, as a preliminary step towards ameliorating the condition of the Cherumars, the Governor-in-Council of Madras proposed to make known to master and slave the provisions of Act V of 1843 with a full explanation of the principle involved in and of the consequences resulting from sections III and IV of that Act.[3] For though this Act was supposed to have been passed for the whole of India, the Cherumars had not benefited by it. Accordingly the Governor-in-Council wished the following clauses of Act V of 1843 to be made widely known in Malabar :

(1) The sale of slaves or the right of exacting their labour cannot be legally enforced by any Court.

(2) The proprietary right of the owners of slaves cannot be legally enforced by any Court.

(3) Slaves cannot be deprived of property acquired by their own industry or by inheritance.

(4) Any act considered to be a penal offence against a freeman, is likewise a penal offence when committed against a slave.[4]

In order that the proposal made by the Governor-in-Council of Madras might be carried out, H. W. Conolly, Collector and Magistrate of Malabar, was informed that certain measures had been decided upon whilst others were submitted to him for comment.

---

1. Extract from the Proceedings of the Sudder Adawlut, dated 12th September, 1842, para 3, Legislative Proceedings, 5th August-25th November, 1842, Imperial Record Department.

2. Extract from the Minutes of Consultation under date 11th October 1842, Home Department, Legislative Proceedings, 5th August-25th November, 1842.

3. From J. F. Thomas, Secretary to the Government of Fort St. George, to H. V. Conolly, Collector and Magistrate of Malabar, dated 5th September, 1843, Legislative Proceedings, 6th April-22nd June, 1844.

4. Act V of 1843, dated 7th April 1843, Law Proceedings, April-June, 1843.

Among the measures decided upon the most important was that a proclamation should be issued to make thoroughly known the provisions of Act V of 1843. This proclamation was to be put into the hands of the Heads of villages, who were in turn required to assemble periodically the head-slaves and to make its contents known to them. For the due performance of this duty the Tahsildar and the Heads of villages were made responsible; and it was suggested that the Collector or his Assistant, when on circuit, could easily call together the Heads of Cherumar villages, to ascertain whether this order had been carried out. Furthermore the more wealthy masters and the owners of numerous slaves had to be furnished individually with a copy of the Act and the Proclamation, and such copies had to be affixed in Taluk-Cutcheries and Village-Chaudries.[1]

This measure met with H. V. Conolly's full approval. In fact, he had, already of his own accord, anticipated to a considerable extent the wishes of the Government in this respect. With the sanction of the Board of Revenue he had already prepared a translation or rather a paraphrase of Act V of 1843, which he had caused to be widely circulated throughout the district. He had also supplied some of the chief people in the country with copies and an explanatory letter. He had also sent the same to every Tahsildar and village-officer, in order to give the measure the greatest possible publicity. Moreover he himself had personally interviewed many of the principal slave-holders in the District together with a large body of Cherumars within six miles of Calicut, and had done all in his power to explain to both the parties the new relations in which they stood to each other. He had made it quite plain to the slave-holders that the Act emanated from the highest legislative authority, and that there was not the slightest hope of its being in any degree modified.[2]

In the second place H. V. Conolly was asked his opinion regarding the advisability of several measures Government proposed to pass.

First of all Government suggested the registry of all the slaves.[3] H. V. Conolly did not see what advantages were likely to result from such a registry. It was an act of an inquisitorial nature and

1. From J. F. Thomas, Secretary to the Government of Fort St. George, to H. V. Conolly, Collector and Magistrate of Malabar, dated 5th September, 1843, Legislative Proceedings, 6th April-22nd June 1844, Imperial Record Department.

2. From H. V. Conolly to J. F. Thomas, dated November, 1843, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

3. From J. F. Thomas to H. V. Conolly, dated 5th September, 1843, para 4, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

afforded considerable scope for extortion and annoyance on the part of the native officers concerned in its execution.[1]

In the next place Government proposed to create a new post, that of Agent whose duty it would be to act as Protector of slaves.[2] The Agent had to visit the plantations, to report on the condition of the slaves in different taluks and villages, to bring to notice complaints of an infraction of the provisions of Act V, and to point out the estates in which the slave was treated with the greatest consideration.[3] H. V. Conolly disapproved of this proposal and by way of justifying himself was satisfied with quoting the opinion of J. L. Strange, a Sub-Judge of the Calicut District with whom he entirely agreed. J. L. Strange expressed himself as follows: "Considerable difficulties stood in the way of filling up these offices, which if faithfully performed would doubtless prove of the highest advantage. But the danger lay in the abuse of the opportunities which the agents would have of extorting money from slave-owners, who were men of highest position in the country. It was human nature that they would resent anything like a scrutiny into what they looked upon as their personal concern. The disgrace, or rather the fear of being reported ill of, would make them ready to buy off the agent. The agent would become a powerful tool in their hands, because ill-will too often existed between individuals of this class. Therefore to select men of judgment and zeal, competent to the duty required and above all such temptations, was a difficult task."[4]

Besides this, Government advocated the establishment of schools for the slave-population.[5] In answer to this, H. V. Conolly informed Government that he had written to Mr. Brown of Anjeracandy, asking him by what means he had succeeded in making the Cherumar schools so efficient. But the answer was not encouraging; for his success mainly depended on an agency which could not be directly sanctioned by the Government, namely that of the Christian Missionaries. Any one would readily agree with Mr. Brown that no hired superintendence could ever equal that which was given from a religious principle alone, and there-

1. From H. V. Conolly to J. F. Thomas, dated November, 1843, para 3, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.
2. From J. F. Thomas to H. V. Conolly, dated 5th September, 1843, para 5, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.
3. *Ibid.*
4. From H. V. Conolly to J. F. Thomas, dated November, 1843, para 5-6, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.
5. From J. F. Thomas to H. V. Conolly, dated 5th September, 1843, para 5, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department,

fore the Magistrate proposed to Government not to abandon the whole scheme without a trial.[1] H. V. Conolly also mentioned that Mr. Strange suggested that schools should be formed in one or more parts of each taluk, where from 20 to 25 Cherumar children might be instructed, not only in reading and writing, but also in various trades which might lead to their profit when they reached manhood.[2] He argued that, in order to make these schools sufficiently popular and attractive, it was necessary that the Government should bear the expenses. That this was generally necessary in the beginning could not be questioned, because the Cherumars as a body were too ignorant to appreciate the benefit of education and too poor to afford to let their children go to school like the children of the lower orders in all countries. If therefore Government was prepared to put the scheme to the test, the maintenance of a child would amount to Rs. 1-8 per mensem, a teacher's salary would vary from 7 to 10 Rupees, and the cost of books, school-house etc. would be nothing but trifling.[3]

Furthermore Government asked what measures could be suggested to ensure the slave in the permanent and absolute possession of his own property.[4]

H. V. Conolly commented on this as follows. This was already provided for by the laws of the country, for as Clementson had pointed out, any complaint of the master taking forcible possession of the slave's property was sure to receive the same attention and meet with the same redress as the complaint of a free man. But with a view to give particular security to a class, whose ignorance was likely for a long time to make them peculiarly obnoxious to the attempts of those who might wish to defraud them, it would not be amiss to have, as recommended by Mr. Strange, a special registry of the Cherumars' property, which could be periodically examined by some European officer. This would provide Government with a favourable opportunity to put to the test a proposal made by Mr. Strange, namely that of granting to the Cherumars Government waste-lands with certain advances to enable them to cultivate them and earn their own livelihood[5]. But great care and caution

1. From H. V. Conolly to J. F. Thomas, dated November, 1843 para 7, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

2-3. From H. V. Conolly to J. F. Thomas, dated November, 1843, para 7, Legislative Proceedings, 6th April-22nd June 1844, Imperial Record Department.

4. From J. F. Thomas to H. V. Conolly, dated 5th September, 1843, para 6, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

5. From H. V. Conolly to J. F. Thomas, dated November, 1843, para 8, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

were necessary in introducing the measure; for such a tempting offer might easily induce them to leave their masters. Nevertheless it was an experiment, which would be worth trying in places where there was rather a superabundance than a want of labour. All the same its success greatly depended on the watchful superintendence that was kept over the first beginners.

It was true that escheated lands were not found in every taluk, but there was generally an abundance of waste-land, which could be made available at a certain expense. That expense was of course to be borne by the Government. But in the course of time, if the experiment proved successful, there was every likelihood that Government would derive a return from the capital invested.

Another point which was recommended by H. V. Conolly struck the Magistrate of Malabar as one which would prove very beneficial to the slave-population. It was the employment of Cherumar slaves on Government works at the same rate of wages as free men.

Finally Government was anxious to know whether some practical plan could not be suggested to enable the slaves to redeem themselves and their children from servitude.[2]

H. V. Conolly did not see the necessity of any measures being taken to this effect. As slavery under the provisions of Act V of 1843 existed only in name, he did not think it necessary that any plan should be proposed for enabling the slaves to redeem themselves and their children from servitude. On this subject a writer in the *Friend of India* of January 19, 1843, observed that "where every slave is permitted to appeal to the Courts for establishment or enjoyment of his liberty and property, slavery becomes virtually extinct. It cannot exist except through the support of the Courts. A slave who chooses to forego his appeal for freedom to the Courts is legally a free man, though voluntarily a slave."[3]

The correctness of this view is corroborated by a reference made by the Governor-in-Council to the report made by a certain

---

1. From H. V. Conolly, Magistrate of Malabar, to J. F. Thomas, Chief Secretary to Government, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

2. From J. F. Thomas, Chief Secretary to Government, to H. V. Conolly, Acting Magistrate of Malabar, dated 5th September, 1843, para 7, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

3. Friend of India, dated 19th January 1843, page 35.

Mr. Gomes who proposed that a scale should be fixed at which the slaves might redeem themselves. There was no occasion for drawing up such a scale. Government did not intend to continue to recognise the master's proprietary right. Nor did Government entertain the idea of compensating the owners whose slaves were emancipated, whilst the slaves themselves were not legally bound to pay to their masters the price of their emancipation. It was of course a matter of considerable doubt whether or not due justice had been dealt out to the depossessed proprietors; but the decision was taken by the supreme legislative authority in the land without consulting the owners, who were made the losers thereby.[1]

After proposing the various measures that have been dealt with above, the Government of Madras likewise asked H. V. Conolly under what circumstances and by what steps the Cherumar population of the northern taluks, of his district were emancipated, and whether there existed any peculiarity in the tenures or in the state of society in the southern taluks which opposed obstacles to the elevation of the southern to the same grade as the northern Cherumars.

In answer to this query H. V. Conolly informed the Government of Madras that they were misinformed on the subject. No emancipation of the nature supposed had ever taken place. There were not so many slaves in the northern as in the southern division, and this was perhaps due to the fact that the land was less cultivable. The northern were on the same footing as the southern slaves. Local peculiarities alone caused local difficulties. For instance, the slave who lived in the immediate vicinity of large towns was naturally better off than the slave who lived in the interior or in a taluk where there was no demand for labour during more than eight or nine months in the year. Again the Mahomedan master, who had no prejudices of caste, treated his slave with more liberality than his Hindu neighbour. But notwithstanding all these and other exceptions which made a very considerable difference in the physical and moral condition of the slaves, it might safely be asserted that the Cherumar slaves were generally viewed in the same light and considered

1. From H. V. Conolly, Acting Magistrate of Malabar, to J. F. Thomas, Chief Secretary to Government, dated November, 1843, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

2. From J. F. Thomas, Chief Secretary to Government to H. V. Conolly, dated 5th September 1843, para 8, Legislative Proceedings, 6th April-22nd June, 1844, *Ibid.*

the same class of beings in all parts of Malabar.[1]

H. V. Conolly's reply to the various questions put by Government was for about six months under the consideration of the authorities. Many of the measures originally proposed for the improvement of the condition of the Cherumar population in Malabar were abandoned. The measures so abandoned were apparently altogether unsuited to a state of things in which the law no longer protected the master; and besides this, they were open to objections on the ground of policy.[2] The measures, adopted by Mr. Conolly in anticipation of the instructions of the Government for making known to both master and slave the provisions of Act V of 1843, were approved of by the Governor-in-Council, provided that he was furnished with a copy of the paraphrase of the Act and of the explanatory letter attached thereto. Moreover the Governor-in-Council was disposed to put off for the time being the general registry of slave-children. But he entirely approved of the proposal for the establishment of schools. He was not of opinion that any very high salary should be given to teachers, imbued with caste prejudices, in order to induce them to undertake the offices of instructing the Cherumars. He was also of opinion that the instruction of the Cherumar slaves could not be entrusted to a missionary body without the special sanction of the Hon'ble the Court of Directors. Apart from missionary bodies, Mr. Conolly was authorised to employ the best agency in his power, at a moderate rate of salary. He was also at liberty to appoint an individual as General Superintendent of schools, and to make use of his services in carrying out other approved measures which might promote the great end in view and the gradual improvement of the Cherumar population.

It was the desire of the Governor-in-Council that H. V. Conolly should make immediate arrangements for establishing in the first instance a limited number of the schools, not exceeding four, in the chief taluks of his district, on the principle advocated both by himself and Mr. Strange, namely that of maintaining the children at the Government's expense and combining with elementary education instruction in common and useful occupations.

1. From H. V. Conolly, Acting Magistrate of Zillah Malabar, to J. F. Thomas, Chief Secretary to Government, dated November, 1843, para 11, Legislative Proceedings, 6th April-22nd June 1844, Imperial Record Department.

2. From T. R. Davidson, Officiating Secretary to the Government of India, to J. F. Thomas, Secretary to the Government of Fort St. George, dated 25th May, 1844, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department.

The allotment of waste-lands to Cherumars which had been proposed by Mr. Strange was a measure which could only be introduced with much caution; and in the opinion of the Governor-in-Council it was likely to withdraw the people from their natural supporters, which would prove injurious both to master and slave.[1]

According to William Logan: "The appointment of a Protector of the Cherumar was sanctioned but never carried out, and various industrial and educational schemes organised for their benefit, but they failed, because of their lack of industry in one case and their lack of application and adaptability in the other."[2] No mention of such an appointment or even of the mere sanction of it by Government is found in the unpublished documents.

By way of conclusion : at first sight it would appear that Mr. H. V. Conolly was successful all along the line. For from the resolutions passed by Government it would seem that most of his proposals were not only approved of, but also accepted and acted upon. However this does not seem to have been the case, as we may gather from the following extract taken from W. Logan, whose testimony regarding Malabar and its people is everywhere acknowledged as absolutely reliable. In 1852, and again in 1855, the traffic in slaves still continued. Though this was brought to the notice of Government, it was deemed unnecessary to pass any further measures for the emancipation of the Cherumars. "The Cherumars even yet have not realised what public opinion in England would have forced down their throats fifty years ago; and there is reason to think that they are still, even now, with their full consent, bought and sold and hired out, although of course the transaction must be kept secret for fear of the penalties of sections 370 and 371 of the Indian Penal Code, which came into force on 1st January 1862, and which was the real final blow at slavery in India. The slaves, however, as a caste will never understand what real freedom means till measures are adopted to give them indefeasible rights in the small orchards occupied by them as house sites."[3] Anyhow one great point was gradually made clear, the emancipation of the Cherumar slaves was, if not practically carried out, at least theoretically sanctioned in 1843, and thus the inhuman principle 'Once a slave, always a slave' could no longer be upheld.

1. Extract from the Minutes of Consultation, under date the 20th April, 1844, Legislative Proceedings, 6th April-22nd June, 1844, Imperial Record Department,
2. Logan, *Malabar*, M.C.S., I, p. 151.
3. Logan, *Malabar*, I, p. 151.

CHAPTER IV.

Slavery in Assam.

PLAN: State of slavery in 1835. 2. Amelioration of slavery.

No. 1. STATE OF SLAVERY IN 1835.

SUMMARY: *N.B.*—Introduction I. Slaves and bondsmen. II. Market price and treatment.

SOURCES: PUBLISHED: Appendix VI to the Indian Law Commission's Report; Indian Law Commission's Report, 1842.
UNPUBLISHED: Government of India, Legislative Proceedings, 28th September to 28th December, 1835, Vols. I and II.

N.B. INTRODUCTORY. From Malabar in South Western India, it is a long way to Assam in North-Eastern India, 1,500 miles as the crow flies; yet Assam like Malabar holds a special place in the history of slavery in British India, but for different reasons. Malabar was a hotbed of slavery, and without a special reference to it a study of slavery in the Madras Presidency would be hopelessly inadequate. Assam was as regards the practice of slavery neither worse nor better than Calcutta, Bombay or Madras. It is here specially dealt with, because Assam was only ceded to the British in 1826. Consequently slavery was never sanctioned there nor legalised by two centuries of British occupation. Hence slavery as it prevailed in Assam was the genuine unadulterated article, the home-product of Assam.

I. SLAVES AND BONDSMEN. The following details are mostly gathered from a report on the state of slavery in Assam by Lieutenant Matthie and from a letter on the same subject by F. Jenkins, Commissioner of Circuit in the Province of Assam.

First of all, the ancient laws of slavery recognised three distinct classes of slaves: (*a*) persons born of parents who were slaves, (*b*) persons born of female slaves, (*c*) women who had either been purchased, or who had freely married male slaves, and together with the women their offspring. Of course this classification does not help us to trace slavery to its source; it supposes the existence of both male and female slaves; it implies that a woman can be made a slave by purchase, but it does not explain how slavery was first introduced into the country. Hence it may be surmised that the above mentioned

classification was rather meant to be a practical rule to decide whether a man or a woman fell under the laws of slavery.

As regards the sources of slavery, the demand for slaves was pretty regularly supplied by the custom which made it possible for the ruler of the land to reduce people to slavery by simply making a gift of them to his nobles and his priests, his temporal and spiritual advisers. That prisoners and criminals condemned to death were thus disposed of at will, was of course not an ideal practice, but neither does it fill us with wonder and surprise. Specially the commutation of a death sentence into slavery may nowadays even meet with approval, though it should be borne in mind that these criminal slaves were practically doomed to remain slaves for the rest of their lives; and without their master's consent there was no emancipation possible for them. But what was worse, at times the ruler of the land did not hesitate to bestow upon his favourites, not only prisoners of war and criminals condemned to death, but also a portion of the free population—an unheard act of merciless oppression. The men and women who had thus been reduced to slavery were called 'Bohutteeahs.'[1]

There existed also in the land of Assam what may perhaps be best described as quasi-slavery. The free population, also called Pykes, could mortgage their persons and their labour. They did so either in payment of a former debt which they were unable to liquidate, or in exchange for a loan of money which they were about to contract to meet some unexpected emergency. In either case they remained bondsmen till by their labour they had paid their creditors. As soon as the debt or loan had been repaid, they ceased to be bondsmen, and became once more free men.[2]

Meanwhile the bondsmen were entitled to food and clothing, and their family was likewise granted a daily allowance of grain. If it happened that a person died whilst he was a bondsman, the bond became null and void; his sons could not be forced to take their father's place unless they were his heirs. As Mr. Jenkins put it: "If a bondsman died before his bond was redeemed, his heir was bound to serve the master in his stead, unless the debt was discharged in which case the said heir was entitled to

1-2. An extract from a Statistical Report by Lieutenant Matthie on the state of Slavery in Assam, appended to the letter from F. Jenkins to R. D. Mangles, Secretary to the Government of Bengal in the Judicial Department, dated August 22, 1835, entitled Appendix No. 1, Government of India, Legislative Proceedings from 28th September to 28th December 1835, Imperial Record Department.

his release.[1]

There is no documentary evidence to give us an idea of the rate at which manual labour was taken in payment of a debtor's loan. That the rate must have been rather low may be gathered from the following statement made by Mr. Jenkins, the Commissioner of Circuit in the Province of Assam: "A man who bound himself down for 20 Rs. was entitled to the produce of 'Doon' or ¼ of a Poorah of Dhan per month and yearly three pieces of cloth."[2] From this it may be inferred that a twenty-rupees self-mortgage stood at least for one year of manual labour; it may even have extended over a longer period. On the whole the lot of these bondsmen seems to have been, if not comfortable, at least bearable; for one document describes the Pykes as a superior class of cultivators whose condition was not at all inferior to that of free men, except that they did not possess their personal liberty.[3]

However the practice of bondage had many drawbacks. Thus for example, free persons became bondsmen for the trivial sum of three rupees and less. There were cases in which the poverty of these bondsmen was so great that the state of bondage descended from father to son, *i. e.*, heir for several generations.[4]

As the British Report on the state of slavery in Assam was made less than 10 years after the British began to occupy the country, it is but natural that there should be as great an absence of details about slavery in Assam, as there is an abundance of information about slavery in other parts of India, which the British had occupied for centuries. Hence the following details, quoted by Mr. Jenkins, and purporting to be the translation of a report made by a well-informed inhabitant of the country, are all the more interesting. It would seem that, if a woman and a man, both of them slaves, but belonging to different masters wished to

1. From F. Jenkins to R. D. Mangles, Secretary to the Government of Bengal in the Judicial Department, dated July 31, 1835, Legislative Proceedings, 28th September to 28th December, 1835, Vol. II, Imperial Record Department.

2. Translation of a report made by a well-known native gentleman to F. Jenkins. The translation of the document is appended to the letter of F. Jenkins to R. D. Mangles, Secretary to the Government of Bengal in the Judicial Department, dated July 31, 1835, Legislative Proceedings, 28th September to 28th December, 1835, Vol. II, Imperial Record Department.

3. From Captain A. White, Officiating Magistrate, Lower Assam, to Mr. D. Scott, Agent to the Governor-General, North-Eastern Frontier, dated August 9, 1830, Appendix VI to the Indian Law Commission's Report, 1842, pp. 316-17.

4. From A. Bogles, principal Assistant Agent to the Governor-General in district Kamroop, to F. Jenkins, Commissioner of Circuit in the province of Assam, dated July 11, 1835, Government of India, Legislative Proceedings from 28th September to 28th December 1835, Imperial Record Department.

marry it was the custom that the owner of the male slave paid the price of the female slave to her owner.

All the profits which accrued from a slave's work went to his master; the slave received nothing else but food and clothing.

Masters had the absolute right either to sell or to give away their slaves to another party.

Intermarriages between slaves were freely allowed. Thus for example, slaves, living on farms and occupied in cultivating the lands, could give their daughters in marriage to ryots, and they could marry their sons to the daughters of ryots. But what about their children? Unless there was an agreement to the contrary, the offspring of such unions were to be divided into four lots. By putting a value upon half the share two and a half belonged to the owner, and the remainder to the husband of the girl.

No bondsman was permitted to quit his master's service, nor was he engaged except in the months of Magand and Bhalgaon, *i.e.* January and February.

In case any loss accrued to the master from a bondsman, other than owing to ill-health, the latter had to pay an additional interest at the rate of one anna in the rupee.

If the bondsman died before the bond was redeemed, his heir was bound to serve in his stead, unless the debt was discharged in which case he was entitled to his release.[1]

II. MARKET PRICE AND TREATMENT. As regards the marketable value of slaves, this depended to a large extent on their caste and their individual usefulness for doing work. There was however no fixed standard for the whole land; the prices varied in different localities. In the district of Durrung, where Lieutenant James Matthie used to reside, the average cost of a good caste slave, such as one belonging to the "Koleetah", "Koyut" and "Koch" caste, was as follows. An adult male slave, between 28 and 30 years old, was worth from 20 to 28 Rupees. A woman between 16 and 25 years old brought her master about 15 or 16 Rupees, and girls ranging in age from 8 to 16 years were sold for from 8 to 12 Rupees. So much for good caste slaves; as regards the lower caste slaves, they were disposed of at about one-third less than the higher caste members of the slave community.[2]

1. Translation of a Report made by a well-known native gentleman to F. Jenkins. The translation of the document is appended to the letter of F. Jenkins to R. D. Mangles, Secretary to the Government of Bengal in the Judicial Department, dated July 31, 1835, Legislative Proceedings, 28th September to 28th December, 1835, Imperial Record Department.

2. *Ibid.*

The following table, taken from Lieutenant Matthie's report may help us to realise to what extent the prices of slaves varied in different districts.

		Men	Boys	Women	Girls
DISTRICT OF KAMROOP:		Rs. 40.	Rs. 15-20.	Rs. 20.	Rs. 12-20.
"	Nowgong	Rs. 20.	Rs. 10-15.	Rs. 15.	Rs. 8-12.[1]

Finally it would seem that slavery in Assam was of a mild form, masters treating their slaves not so much as servants, but rather as members of the family.

Thus for example, we gather the following details about the conditions of slavery in Assam from a letter written in 1830 by A. White, Political Agent in Assam. The condition of slaves in Assam was nearly on a par with that of agricultural labourers. As a matter of fact they were mostly if not exclusively employed in cultivating the lands of their master, and received in return a fair allowance of food and clothing. Theirs was not a hard lot, for each slave-owner possessed as a rule such a large number of slaves that he could afford to make them work in rotation. Meanwhile such slaves as were not occupied in the cultivation of their master's own lands, were at work on lands for the rent of which their master was responsible. Again though any profit accruing from a slave's labour went to his master, yet the latter had to supply him with adequate means of maintenance. The slave-owner was also held responsible for any debt contracted by his slaves.[2]

In this connection Mr. Jenkins states that during his long stay in Assam he did not come across more than two or three cases of complaints made by slaves on the score of ill-treatment. In trying to account for this extraordinary phenomenon, some have pointed out that the kindness of the masters was to a large extent an instance in point of making a virtue of necessity. The hilly nature of the country offered everywhere to the discontented ill-used slaves a sure place of refuge inaccessible to the owners. A few hours' travel placed the ill-treated slave beyond the reach of a cruel master, while from the nature of the country the fugitive slaves could easily provide themselves with the means of

1. From James Matthie, Officiating Magistrate of District Durrung to F. Jenkins, dated July 31, 1835, *Ibid.*

2. From Captain A. White, Officiating Magistrate, Lower Assam, to D. Scott, Agent to the Governor-General, North-East Frontier, dated August 9, 1830, Appendix VI to the Indian Law Commission's Report, 1842, p. 316-17.

sustenance.[1]

But as a matter of fact most of the slaves did not run away, and they were very numerous. In a census taken about the year 1830 the population of Lower Assam was estimated at 350,000. The adult slave-population numbered from 11,000 to 12,000, of whom one-fourth were married. Assigning therefore to each married couple an average of four children, the whole slave-population would amount to about 27,000.[2] This number is however not altogether reliable, for D. Scott, the Governor-General's Agent for the North-East Frontier, was of opinion that the calculation was all wrong; and he wrote: "When the further explanation I have called for is received, it (the number of slaves) will be reduced to about one-half."[3]

However the mild form of slavery that prevailed in Assam should not be exaggerated. Wherever slavery flourished, a number of concomitant evils were sure to follow in its wake. Thus for example, T. Brodie, Junior Assistant in the Division of Nowgong, wrote in 1835: "I think the extinction of slavery may take place with justice and safety; and though the slavery of India is mild compared to what it is elsewhere, I have seen myself innumerable cases of intolerable hardship, and I conceive that it ought to be put an end to, as speedily as circumstances will admit.[4] Moreover all the slaves were not satisfied with their lot; and we have it on the authority of the Commissioner that "hundreds have, and are yearly escaping into other provinces, or by taking refuge and becoming cultivators in the retired wastes of these provinces."[5]

Finally even if slaves were mildly treated, the existence of slavery was in many respects a great evil. In this connection Captain White, the Officiating Magistrate in Lower Assam, wrote in 1830: "Although the condition of the slaves as compared with the mass of the community is scarcely inferior, yet with reference to its effects on society I am convinced the existence of slavery in Assam has had a most demoralising tendency; and the course

1. From Captain A. White, Officiating Magistrate, Lower Assam, to D. Scott, Agent to the Governor-General, dated August 9, 1830, Appendix VI to the Indian Law Commission's Report, p. 316.
2. *Ibid.*
3. From D. Scott, Governor-General's Agent, North-East Frontier, to George Swinton, Chief Secretary to Government, dated October 10, 1830, Appendix VI to the Indian Law Commission's Report.
4. From T. Brodie, Junior Assistant in the Division of Nowgong, to F. Jenkins, dated July 2, 1835, Government of India, Legislative Proceedings, 28th September to 28th December 1835, Imperial Record Department.
5. Indian Law Commission's Report, 1841, p. 202.

of my duty as a Magistrate has afforded me an ample evidence that, wherever atrocious crimes were instigated by the higher ranks, the perpetrators have invariably been their slaves; and indeed it is very common with the masters to employ their slaves in acts of dacoity, reserving to themselves a share of the plunder."[1] Such was the state of slavery in Assam shortly after the British had taken possession of the country in 1826.

No. 2. AMELIORATION OF SLAVERY IN ASSAM.

SUMMARY: I. Government's attitude. II. The inquiry of 1835. III. Proposed measures.

SOURCES: PUBLISHED: Appendix VI to the Indian Law Commission's Report, 1841.

UNPUBLISHED: Government of India, Legislative Proceedings, 28th September to 28th December, 1835, Vols. I and II.

I. GOVERNMENT'S ATTITUDE: As soon as Assam had come into British hands, its new masters set to work to concert measures to ameliorate the condition of the slave population. Nor is this official interest to be wondered at; for slavery was in those days a much discussed question in British India, and it is but natural that Assam, though so recently acquired, should share in the general movement which had for its ultimate object the suppression of slavery.

Moreover the attention of the British rulers had been in a special manner unexpectedly fixed upon slavery in Assam on account of the measures taken by one of the Government Officers in 1825. In that year, during a period of partial famine and great distress, D. Scott, the British Commissioner in the Province of Assam, issued a Proclamation permitting free men to sell themselves as slaves from June to October of that year. In the Commissioner's opinion this was the only means of preserving their lives. Subsequently Scott's measure was approved of by the Supreme Government; but it was found fault with by the Court of Directors when they came to hear of it. D. Scott tried his best to justify himself. In refuting the charge laid against him by the Honourable the Court of Directors, D. Scott wrote:

"I violated no law or custom that is in force in any other part of the British territories in India; but that I merely suspended the operation of a local fiscal regulation. My Proclamation had no other effect than that of waiving the claim of Government to

1. From Captain A. White, Officiating Magistrate, Lower Assam, to D. Scott, Agent to the Governor-General, North-Eastern Frontier, dated August 9, 1830, Appendix VI to the Indian Law Commission's Report, p. 317.

the capitation tax upon persons, who might be compelled by famine to sell themselves as slaves; and it did not, as supposed by the Honourable Court, confer any validity or legality upon the contracts entered into, that they might not otherwise possess, agreeably to the provisions of the Hindoo and Mahomedan laws.

"That the lives of many of the destitute persons, who in 1825 sold themselves in Assam, might have been preserved, without their being reduced to slavery, by supplying them with food on the public account, is very certain. But I doubt much, whether on application to Government for leave to expend twenty to thirty thousand Rupees, or even a much larger sum, in that way, would have been complied with at that time. I am aware of no means that could be more certainly and extensively conducive, than making it the interest of those who had grain, to divide it with those who had none."[1]

But apart from the question whether his measures deserved blame or praise, they merely served the purpose of drawing the attention of the ruling authorities to slavery in Assam.

II. THE INQUIRY OF 1835. Accordingly in a letter, dated June 4, 1835, R. D. Mangles, Secretary to the Government of Bengal, informed F. Jenkins, Commissioner of Circuit in Assam, of Government's intentions. In his turn F. Jenkins called upon his Assistants to forward to him an expression of the views entertained by them regarding the gradual mitigation of slavery and bondage in the Province of Assam.

In answer to this request Captain White, Political Agent at Bishnath, advised that the permanent system of slavery should be commuted into a mitigated form of bondage for seven years, and that the purchase of slaves for life should be made illegal. This recommendation differed in one respect considerably from the proposals made by the same gentleman in a letter of August 1830. In 1830, he suggested that the children of slaves might be declared free from the day of their birth.[2] But on considering the matter over again in the year 1835, it appeared to him that this suggestion would be inexpedient, as there would be no provision for their maintenance. Therefore in order to avoid this danger, which would naturally follow their emancipation, he now proposed that the birth of such children should be registered, and

1. From D. Scott, to George Swinton, dated October 10, 1830, paras 18-19, Appendix VI to the Indian Law Commission's Report, 1841, pp. 322-23.

2. From Captain A. White, Officiating Magistrate, Lower Assam, to D. Scott, Agent to the Governor-General, North-East Frontier, dated August 9, 1830, Appendix VI, to the Indian Law Commission's Report, 1842, p. 317.

that after they had reached the age of maturity, they should be declared free after making a due compensation in money to the proprietors for the loss of their services.[1]

But for this detail, A. White's views had practically remained the same. In 1830 he wrote : " I should therefore hail with joy any measures leading to its abolition, as being likely to have beneficial effect in elevating the character of the population. But with reference to the very backward state of society in Assam, I should think it would be inexpedient to abolish slavery entirely."[2]

In 1835 he observed much to the same effect that since the labourers could not be procured at the principal stations in Assam, the mitigated state of bondage was bound to prevail, whether it was prohibited by law or not. There was no chance of improving this anamolous state of affairs, unless and until the population increased, or some other extraordinary stimulus was given to increase the productive labour of the country. Slavery in Assam was not like slavery in Bengal or Hindustan ; for in those parts it was possible to abolish a system of slavery or mitigated bondage altogether, because the slave-owners could out of the due compensation go to an open market and get, in exchange, out of the redemption money, an equivalent in labour. But in Assam, where productive labour was not easily procurable, it would be greatly detrimental to the interests of the higher classes, and would be attended with ruinous consequences.[3] Therefore an immediate abolition of the system of slavery and bondage, prevailing in Assam, was apt to fail from its inadaptability to the wants of the community and the shock it would give to established habits and usage.

Mr. Matthie, the Magistrate of the District of Durrung, forwarded to his superiors the following scheme for the gradual mitigation of slavery in Assam.

Firstly, as a preliminary step towards the desired end, an order should be passed that within a certain period, say about six months from its promulgation, every person possessing slaves and bondsmen should forward a list of them to be registered by

1. From A. White, Political Agent at Bishnath to F. Jenkins, Commissioner of Circuit in Assam, dated June 30, 1835, Legislative Proceedings, 28th September to 28th December, 1835, Vol. II, Imperial Record Department.

2. From Captain A. White, Officiating Magistrate, Lower Assam, to D. Scott, Agent to the Governor-General, dated August 9, 1830, Appendix VI to the Indian Law Commission's Report, 1841 p. 317.

3. From A. White, Political Agent at Bishnath, to F. Jenkins, Commissioner of Circuit in Assam, dated June 30, 1835, Legislative Proceedings, 28th September to 28th December, 1835, Vol. II, Imperial Record Department,

the Assistants in charge of each division. At the same time slave-owners should state the circumstances under which the persons they claimed as their own became slaves or bondsmen, and on what occasions these persons had become their property. Such claimants, as failed to register the names of their slaves and bondsmen within the prescribed period, would thereby forfeit all right of ownership, and their dependents were to be considered as emancipated.

Secondly, after the period specified above, the sale of slaves, whether private or public, should be prohibited; and the offspring of slaves should from that period onwards be declared free.

Thirdly, slaves should no longer be sold in satisfaction of revenue arrears. In such cases a respectable Assamese Committee should be appointed to appraise the value of the slaves involved, and the slaves should be emancipated; the cost of their emancipation being charged against Government and deducted from the claimed arrears of revenue.

Fourthly, as regards the emancipation of slaves, it was proposed that their freedom should automatically follow in course of time by their marketable value decreasing monthly at a certain rate. Thus for example, the value of a man or a boy should decrease by 4 annas per mensem, that of a woman and a girl by 3 annas per mensem. Thus after a number of months every slave would become a free man.

Fifthly, in all cases of arrears of revenue in which slaves were involved, and in which they were to be emancipated as suggested above, it was deemed advisable that the Assamese Committee in estimating their value should make a due deduction at the rate specified above for the period during which they had served since the date of the promulgation of the proposed enactment.

Sixthly, it was provided that the balance of their value could be at any time paid by the slaves, or might be deposited in a Magistrate's Court, and from the date of deposit they were entitled to their freedom.

These rules, as Mr. Matthie pointed out, were not an innovation. In 1834 they had been suggested to him by Commissioner Robertson, and they had been put into practice in Mr. Matthie's district with regard to the bondsmen. Moreover they had been framed in consultation with the inhabitants of the districts, and had proved highly beneficial. Therefore in accordance with these

rules the following instructions had been given to the Civil Courts in the district.

Firstly, "That all persons who have mortgaged or bonded themselves or another to a creditor for any specific sum shall be entitled to their release at any time the mortgagers may pay down the amount they originally borrowed with legal interest of 12 per cent per annum."

Secondly, "That the mortgagers shall be entitled to a remission on the original debt of one Rupee per mensem for the services they, or the persons they have mortgaged have rendered, to the mortgagee from the date of entering his service, provided the bondsman has been fed and clothed either by the mortgagor or himself; should the mortgagee have fed and clothed the bondsman, they instead of getting a remission of one Rupee for their services, will only be entitled to four annas per mensem."

But with a view that the enactment might operate with equal benefit to all, it was deemed imperative that the Magistrates of districts should note with great care the registered number of slaves and bondsmen and determine the estimated price put upon the slaves.[1]

A. Bogle, Principal Assistant and Agent to the Governor-General in the district of Kamroop, considered that the emancipation of slaves could be most safely and easily attained by means of a proclamation which declared that all children born after a certain date should be free. As to the computation of the period, it was his opinion that it might be determined from the date of the proclamation or from the Treaty of Yandaboo when Assam became permanently annexed to the British territories.

He did not consider that the subject of bondsmen required any interference on the part of the Government, because free persons when they entered into a bondage were quite competent to judge for themselves the amount of risk they were undertaking. The only case where a law might be passed to declare bondage illegal was the one where a parent gave away a child in bondage; if a person was so disposed of, he should be declared free from the date of enactment.

Finally he recommended that the circumstances which had led free men to become bondsmen should be inquired into. For

1, From James Matthie, Principal Assistant and Officiating Magistrate of the District of Durrung, to F. Jenkins, Commissioner of Circuit in the Province of Assam, dated July 31, 1835, Government of India, Legislative Proceedings, 28th September to 28th December 1835, Imperial Record Department.

as bondage was at times entered upon for paltry sums of three rupees and less, and passed from father to son, even a cursory inquiry would in his opinion set a number of such unfortunate bondsmen free.[1]

Another Government Officer, T. Brodie, Junior Assistant in Southern Central Assam, looked upon the mere tolerance of slavery as unjust from the very beginning; and he had no hesitation in giving his assent to its abolition. However, looking to the grievance of slavery which had been allowed to exist for a very great length of time in India, he was not in favour of its immediate extinction, as the sudden suppression of slavery would likely disturb the domestic relations of the native community.

What was therefore needed to effect the important object in view was not so much the sudden suppression, but rather the gradual extinction of slavery; and this could be easily carried out by passing an enactment to the effect that after a certain period, say of about 10 or 12 years, slavery would cease. Such a measure would remove the difficulty of compensating the slave-owners; for the usufruct of the slave for the period prescribed would be fully equivalent in value to the original purchase money including interest.

T. Brodie further suggested that similar measures should be gradually adopted to do away with the practice of bondage. In cases in which the period of bondage was not fixed, the debt to be paid should decrease at the rate of 8 annas per month. But in no case should the period be allowed to exceed that set apart for the entire extinction of slavery.

Finally T. Brodie also gave his opinion on the much-debated question whether it was expedient to prohibit the sale of children by their parents in times of scarcity in order to save them from starvation. He pointed out that if such practices were allowed, avaricious men would take advantage of the necessities of the poor. He therefore deemed it necessary to limit the traffic to a certain extent. This could be best done by declaring that the parties thus sold were entitled to have their labour at their own disposal on attaining the age of maturity.[2]

1. From A. Bogle, Principal Assistant Agent to the Governor-General in District Kamroop, to F. Jenkins, Commissioner of Circuit in the Province of Assam, dated July 2, 1835, Government of India, Legislative Proceedings, 28th September to 28th December, 1835, Imperial Record Department.

2. From T. Brodie, Junior Assistant in the Division of Nowgong, to F. Jenkins, dated July 2, 1835, Government of India, Legislative Proceedings, 28th September to 28th December, 1835, Imperial Record Department.

From the various reports quoted above it clearly results that all the assistants of F. Jenkins were unanimous in their opinion as to the expediency of gradually abolishing slavery, though all of them did not agree as to the means which might be adopted for that purpose.

III. PROPOSED MEASURES. Having before him the opinions of different authorities on the subject, F. Jenkins after mature consideration drew up the following rules with a view to their future legal enforcement in the Province of Assam for the gradual mitigation of slavery and bondage.

(1) All children born after the date of the Proclamation should be declared exempt from servitude for life; they should serve their parents or owners until they attained the age of 18 years, on the condition that they were to be fed, clothed and well-treated.

(2) The children born during term of bondage could be emancipated by the Magistrate on paying the owner the sum of 10 Rupees for the support of the child during its infancy.

(3) Registration should be made within six months of all slaves and children, born after the date of the Proclamation before the Putwarries of villages and Chowdries of Purgunnahs—failure to enter which would be a sufficient proof of their freedom.

(4) If any slave was imported from a country which was not under British rule, such slave should be released by the Magistrate and returned to his country. If these slaves were not in a position to maintain themselves, the Magistrate could lend them out for a term of years not exceeding seven. As to the extent to which the application of this prohibition should be made applicable, it was suggested that it should include the States of Kassiah, Cacher and Bengal, including North-East Rungpore. Moreover if the slaves were imported with the object of selling them to another party, the person so importing them should be made liable to pay a fine not exceeding 200 Rupees or to suffer six months' imprisonment.

(5) The exportation of slaves should likewise be prohibited. But this regulation should not be made applicable to slaves who were already born in slavery or domesticated for the period of five years; nor did it apply to females who were pregnant or bore children to their owners—from going out or coming into the Province, together, with their children. However by way of exception it was provided that, if slaves of their own free will declared before a Magistrate, that they were willing to accompany their owners, they would be entitled to a passport on which this particular circumstance had to be explicitly mentioned.

(6) The sale of children was to become invalid after the proclamation of these rules; an exception was however made by which the sale of children was legalized in times of famine on the clear understanding that after a definite period they should be declared free. To prove the validity of such a sale it was necessary that it should take place in the presence of 3 or more witnesses and before a village officer who should authenticate the deed and should forward it through the Chowdry of the Purgunnah to the Magistrate for Registry. Failure to execute such a deed would render the sale invalid.

(7) All owners should register children born of their slaves in the manner prescribed above within six months from the date of their birth. In the absence of such registration, they were liable to lose all right and title to every such child.

(8) The transfer of all slaves and bondsmen within the Province, either by sale or gift, should be registered as aforesaid; but it was illegal to transfer the services of children under the age of six years so as to separate them from their parents.

(9) The rule that applied to parents and children should also apply in the case of husband and wife. Any breach in this regulation would be punishable not only with the forfeiture of every right to the service of the husband, wife or child, but also with a fine not exceeding 50 Rupees or with three months imprisonment.

(10) Further, it was made unlawful for any person above 18 years of age to bind himself or herself down for a term of 7 years or more for any sum of money. But a minor above the age of 12 years could bind himself or herself down for so many years in addition to 7 years as he or she might be under the age of 18 years; *viz.* if seventeen years of age for eight years, sixteen years of age for nine years, and so forth.

(11) All bondsmen should be entitled to the allowance of food and clothing according as it was settled by the usages and customs of province.

(12) All bondsmen whose engagements were not made for any definite period could obtain their release after the issue of the proclamation by proving that they had served for seven years in payment of their debt.

(13) In valuing the slave's work in payment of his debt the services rendered by the slave should be calculated at the rate of 4 annas per month. If it happened that the amount calculated exceeded the amount of his debt, the bondsman was not

entitled to recover this excess from his master, but he was entitled to his liberty.

(14) Bondsmen could obtain their liberty at any time on paying off the sum for which they were bound.

(15) In the event of the death of the bondsman all the engagements between him and the master would be considered as cancelled.

(16) The provincial customs regarding the marriage of slaves should be allowed to continue without interference or infringement.

(17) Any slave or bondsman could emancipate himself, his wife or children at a sum fixed by a Panchayat appointed by the Magistrate.

(18) If slaves or bondsmen were ill-treated, the case was cognisable by a Magistrate. They were, however, liable to moderate correction by their masters; and any gross misconduct on their part would be punishable by the Magistrate by flogging, not exceeding 35 stripes.

(19) In the case of runaway slaves it was proposed that, if any person harboured such slaves, he would be liable to a fine not exceeding 200 Rupees or to imprisonment for six months; and the slave was to be restored to the owner by the Magistrate who would moreover inflict the necessary punishment as he deemed just.

(20) Any complaints from slaves in breach of the above-mentioned regulations should be decided summarily by the Magistrate. If either party thought himself aggrieved by the decision of the Magistrate, he was free to institute further proceedings in a Civil Court.[1]

1. Rules proposed to be enacted in the Province of Assam for the gradual mitigation of slavery and bondage, submitted by F. Jenkins with his letter of August 22, 1835, to R. D. Mangles, Secretary to the Government of Bengal in the Judicial Department Legislative Proceedings, 28th September to 28th December, 1835, Imperial Record Department.

CHAPTER V

Slavery in Native States

PLAN: 1. The beginnings of anti-slavery legislation in Kathiawar.
2. Revising the Regulation of 1820.

No. 1. THE BEGINNINGS OF ANTI-SLAVERY LEGISLATION IN KATHIAWAR

SUMMARY: I. Slavery in Native States. II. Attempted suppression of slave trade. III. The seventy-four liberated slaves. IV. Fresh proposals made and discussed. V. Bombay Proclamation of 1837.

SOURCES: UNPUBLISHED: Political Department, 1835/36, Porebunder Vol. 685; Political Department 1837, Sind, Vol. 880.

I. SLAVERY IN NATIVE STATES. Thus far the object of our study has been slavery as it existed in the British territories. But slavery prevailed throughout the length and breadth of India, and was therefore also an acknowledged institution in non-British territories, either entirely independent or under British control. As is but natural, so far as slavery is concerned, the English Documents only mention the Native States under British control and coming into contact with the British authorities. Among these Native States are the States of Cutch, Kathiawar, Mandvi and Porbandar.

To begin with Porbandar, slavery had existed there from time immemorial. But prior to the year 1835, the Rajkot Residency Records make no allusion to the subject. And J. P. Willoughby was the first Political Agent whose attention was drawn to it.

Slavery came first under his notice when he frequently observed African boys in attendance upon the Chiefs of Kathiawar visiting Rajkot. His suspicion that these attendants were imported slaves was afterwards confirmed from various sources. Thus for example, a study of the Custom House Books at the Port of Porbandar revealed long lists of slaves, upon whose entrance into the country regular duties had been levied. This was surely an unquestionable proof that importation of slaves was regularly taking place. In Mr. Willoughby's judicious opinion the trade in slaves was carried on at almost all the ports in Kathiawar, but most of all at the ports of Cutch.

The chief centres from which slaves were imported were the dominions of the Imam of Muskat and other provinces of Arabia; but slaves were also occasionally imported from Cutch into Kathiawar and Sind. Persons indulging in this traffic belonged generally to the "Budalla and Karwa" caste, who resided in large numbers at all the ports of Kathiawar. This class of people were generally in the service of owners of vessels, who carried on a lucrative trade between Kathiawar and the ports of Arabia, the Persian Gulf and the African Coast. For each voyage they made they received as wages, besides a stipulated sum of money, the permission to trade to a limited extent on their own account; and for this purpose a portion of tonnage was assigned to them.[1] They profited by this to trade not only in merchandise but also in slaves; and they were not a little encouraged in this nefarious traffic, when they realised that they could find a ready market amongst "the Rajputs, the Mahomedans and the Katty Chiefs of Kathiawar." They sailed regularly to Bucca, Judda (Djidda), Maculla (Makalla), Sohal (Sohar) and other ports, where they were in a position to buy slaves for the Kathiawar market.[2]

Another account of the importation of slaves into Kathiawar is supplied by Captain B. Bucks, and runs as follows: On an average five trading vessels proceeded annually from Porbandar to the African Coast and the Island of Zanzibar. On their return voyage these vessels brought back from six to eight slaves, who did not form part of the regular cargo, but "were merely private ventures of the Naquodahs and Lascars." If any inquiry was made as to their identification, they were passed off as servants. In a similar manner slaves were openly imported from ports on the Persian Gulf. Twice a year they were thus brought to Kathiawar, immediately before and after the monsoon. In order to escape the notice of the authorities at Porbandar, they were landed at the Ports of Newa Bunder and other parts of the Rana's territory, and thence many of them found their way into Bombay.[3] Though slaves of both sexes were imported, male slaves were in greater demand than female slaves. At Porbandar, the chief seaport of Kathiawar, a stout healthy boy of eight or

1. Memorandum by J. P. Willoughby, dated Com. 23 December No. 3578 and 79, *No. 19, Political Department, 1835-36, Porebunder*, Vol. 685, Bombay Record Department.

2. Memorandum by J. P. Willoughby, dated Com. 23 December No. 3578 and 79, No. 19, Political Department, 1835-36, Porebunder, Vol. 685, Bombay Record Department.

3. From Captain B. Bucks, Senior Naval Officer at Surat, to Sir Charles Malcolm, Kt., Superintendent of the Indian Navy, dated 20th January, 1836, *Ibid.* Bombay Record Department.

nine years was sold for about 40 Rs.; and the price varied according to the increase or decrease in age. A great deal depended also upon the fact whether the person sold into slavery was able to bear the yoke of slavery or not; and therefore a youth of 20 was generally not easily saleable. At Rajkot, well-formed and tractable boys were sometimes sold for about 80 or even 100 Rs.; but on an average the price of a male slave was about 60 Rs. However there was also a considerable demand for female slaves. The poorer classes of Hindus and Mahomedans, when they were about to marry, found it too expensive to purchase women of their own caste. They therefore preferred to buy female slaves at greatly inferior prices. Hence female slaves sold often dearer than male slaves.[1]

Moreover J. P. Willoughby states that, to the best of his knowledge, slaves in Kathiawar were always employed in domestic, but never in agricultural labour. They were highly prized and, generally speaking, well-treated. It would even seem that some slaves succeeded in improving their condition beyond all expectation. In this connection an extract from a Memorandum, written by J. P. Willoughby and dated December 23, may prove interesting reading. "I have heard it surmised that the late Rana of Porbandar was of African origin, and certainly, if physiognomy can be trusted, I should say that the present Chief of Limree, a boy of about 14 years of age, is of the same extraction. In all probability he was a purchased slave; but he was allowed to succeed to that principality several years before I became connected with Kattywar."[2]

II. ATTEMPTED SUPPRESSION OF SLAVE TRADE. By that time (1835) a number of enactments had already been passed in the British territories in India to bring about the suppression of slavery. Though these enactments had failed to achieve their object, it is but natural that J. P. Willoughby was anxious to follow the anti-slave policy of the British authorities in India; and after their example he proposed measures for suppressing slavery in Porbandar. He suggested two ways of proceeding. One proposal was that the British Government, in virtue of the sovereignty it exercised over the State of Kathiawar, should at once issue a proclamation denouncing the trade and making liable to severe

1. *Ibid.*

2. Memorandum by J. P. Willoughby, dated Com. 23 December No. 3578 and 79, No. 19, Political Department, 1835-36, Porebunder, Vol. 685, Bombay Record Department.

penalties all those who were either principals or accessories in this nefarious traffic. As an alternative he advised to enlist the Chiefs of Kathiawar in the cause of humanity by inducing them to prohibit the traffic, to release all imported slaves, and in future to detain crews and vessels that were found employed in importing them.[1]

Of these two ways J. P. Willoughby thought it expedient to select the second, not because he doubted the right of Government to resort to the former, but because he thought that, if the Chiefs themselves could be induced to assist in promoting so good a cause, the object in view would be far more effectually and more speedily attained than if British authorities directly interfered in the matter. But in case the Chiefs should either refuse to co-operate with the British Government, or in case their co-operation should prove a failure, he would not shrink from having recourse to the first proposal he had suggested.[2]

Accordingly in September 1835, J. P. Willoughby addressed letters to the Chiefs of Kathiawar, asking them to denounce the trade in human flesh, since it was opposed to the laws of God and man. He therefore called upon them to release all slaves brought to their ports, and he also asked them to detain until further instructions all vessels with their crews, on which slaves were imported.[3]

The answers received from the Princes were all satisfactory. Their letters showed that they were quite disposed to help Government in suppressing this detestable traffic. The Jam of Navanagar acquiesced in the proposal, but represented his inability to furnish a statement of the number of slaves imported at his port, because the practice of levying duties there had ceased for the last twenty years, on the plea that it was considered a sin to collect duties on the sale of human beings. Hence he assured the Political Agent that: "In future care will be taken to meet the wishes of Mr. J. P. Willoughby, and we will co-operate in putting an end to the importation of slaves into the territory of Kathiawar altogether."[4] The Rana of Porbandar wrote to the same effect, and concluded his letter by pointing out "that the

1. Memorandum by J. P. Willoughby, dated Com. 23 December No. 3578 and 79, No. 19, Political Department, 1835-36, Porebunder, Vol. 685, Bombay Record Department.
2. *Ibid.*
3. *Ibid.*
4. Extract of a letter from the Jam of Noanuggur to the Agent at Rajkot, dated 9th October, 1835, *Ibid.*, Bombay Record Department.

slave-trade carried on at Mandvi in Cutch ought to be abolished".[1] Similarly the Chief of Mangrol and the Thackur of Bhaunagar expressed their readiness to enforce any measures that might be adopted for the suppression of the traffic.[2]

Though these answers were no doubt gratifying, J. P. Willoughby was not the man to attach too much importance to them. He realised that they were little more than promises; and promises are more readily made than kept. Accordingly he thought it wise to come to the assistance of the good intentions of the Princes by instructing Captain Reid, who was then Commanding Officer at Porbandar to inspect all vessels arriving at this Port and to adopt proper measures for ascertaining whether any slaves were on board. In the event of any slaves being discovered on board a vessel, he was to communicate with the local authorities and to adopt measures for the release of the slaves and for the detention of the vessel, until he received final instructions from Government how to dispose of it.[3] These measures soon produced the desired result. For, in November of the same year 1835, seventy-four slaves were rescued from bondage, of whom forty-four were male slaves and thirty female slaves.[4]

The story of their release is of interest, because it led to surprising discoveries, and fully justified J. P. Willoughby in his surmise that the Kathiawar Princes were not to be blindly trusted as regards their promises to co-operate with the British authorities in suppressing the slave-trade. According to Captain Reid's account there arrived at the Port of Porbandar three vessels having seventy-nine slaves on board, whose ages varied from six to fifteen. These vessels were reported to have come from the Coast of "Maculla" (Makalla). They were laden with goods consigned to Bombay, and they touched at the Port of Porbandar under the pretext of taking in wood and water. But no doubt their main design was to land the slaves.[5]

According to a letter from the Rana of Porbandar to Captain W. Lang, there were 79 slaves on board, of whom ten were said to be children of the seamen. However the Rana expressed his

1. Translation of a letter from the Rana of Porebunder to J. P. Willoughby, dated 2nd October, 1835, *Ibid.*, Bombay Record Department.
2. From the Chief of Mangrole and the Thackar of Bhownuggur to J. P. Willoughby, dated 12th October, 1835, *Ibid.*, Bombay Record Department.
3. From J. P. Willoughby, Political Agent in Kathiawar, to Captain Reid, Commanding Officer at Porebunder, dated 22nd September 1835, *Ibid.*, Bombay Record Department.
4. From the Commanding Officer of Detachment at Porebunder to the Political Agent at Rajkot, dated 5th November, 1835, *Ibid.*, Bombay Record Department.
5. Memorandum, by J. P. Willoughby, *Ibid.*, Bombay Record Department.

willingness to liberate them, and was ready to pay for their release, if the British authorities did not want to incur these expenses.[1]

The British authorities were rather puzzled by the discrepancy as regards the number of slaves supposed to have been on board; according to some there were 74, and according to others there were 79 slaves. Therefore Captain W. Lang, the Acting Political Agent in Kathiawar, sent instructions to Captain Reid, the Commanding Officer at the Port of Porbandar, to institute inquiries about the exact number of slaves that had been on board.[2] It then leaked out that the Kathiawar Officials had acted in total disregard of all, the promises made by the Rana of Porbandar. First of all, the arrival of the three vessels had not been reported at all for several days, and among the slaves he rescued he found some concealed in boxes, and others in the holds of the vessels. Moreover he was of opinion that eight slaves had not been delivered to him, but had been secretly landed, before he inspected the ships. From this it would appear that the cargo consisted of 82 slaves and not of 79 slaves as mentioned in his first account.[3]

It would even appear that there had been more than 82 slaves on board; for Captain Reid informed the Political Agent at Rajkot that on October 30, 1835, twenty-four slaves were landed at Porbandar, and marched in procession towards the interior of Kathiawar in charge of two Arabs.[4] This would bring the total number of slaves to 106. There may even have been a greater number on board these vessels; for Captain Reid complained that the three vessels suddenly left Porbandar for some other Port of Kathiawar without his knowledge. This sudden departure was surely suspicious. The Rana, it is true, excused himself on the plea that the Naquodahs of the boats won over the Arabs in whose custody they had been placed. But this was a lame excuse, for the Rana had failed to put the Naquodahs under a proper guard, nor had the boats been unrigged and brought into the harbour. On the contrary, they were allowed to anchor at a considerable distance from the shore, and there was not a single sepoy, belonging to the Rana, on board to watch the proceedings

1. Translation of a letter from the Rana of Porebunder, to Captain Lang, Assistant Political Agent in Charge, dated 6th November, 1835, *Ibid.*, Bombay Record Department.
2. From W. Lang, Acting Political Agent in Charge, to Captain Reid, Commanding Detachment at Porebunder, dated 10th November, 1835, *Ibid.*, Bombay Record Department.
3-4. Memorandum, by J. P. Willoughby. *Ibid.*

of the Naquodahs and their so-called Arab guards, who had been in the Rana's service for no more than a month.[1]

From all this we may conclude that the Rana, in spite of his protestations to the Political Agent, was secretly conniving at the cruel practice of trafficking in slaves.

Though J. P. Willoughby was then no longer the Political Agent in Kathiawar, he continued to take an interest in the welfare of the Kathiawar slaves. Therefore, he offered a few remarks on the preceding correspondence, and also suggested measures likely to bring about the suppression of the slave-trade in that part of India.

After expressing his highest appreciation of Captain Reid's zeal, he left it entirely to the discretion of the Bombay Government whether any measures should be taken against the owners and the Naquodahs of the vessels, or not. As this was the first time that the British authorities had interfered in the slave-trade of Cutch and Kathiawar, Mr. Willoughby considered it expedient to deal with it as if it had occurred in the British territories; and he did not think it advisable to inflict any additional punishment. Moreover he was of opinion that the British authorities should be satisfied with searching the vessels arriving at Porbandar, without forcing the Rana to take any active steps to stop the traffic in slaves. If this were done, the Rana would have no further occasion to fear that the Arabs would have recourse to retaliatory measures, when his vessels were in the Ports of Mecca and the Persian Gulf. Then the Arabs could not have the least doubt that everything that happened at Porbandar was due to the orders of the Government. Mr. Willoughby felt inclined to view with indulgence the conduct of the Porbandar authorities; and as these were the first endeavours of the British Government to put down the slave-trade, it was advisable not to act with too great a severity, lest otherwise their measures should defeat the humane object they had in view.

Moreover if the British Government wished to have the credit of abolishing slavery in India, they ought to take upon their shoulders the burden of all the expenses incurred by the emancipation of the slave-population. Therefore Captain W. Lang's proposal that the Rana of Porbandar should defray the expense of feeding and clothing the liberated slaves did not

1. From Captain H. Reid, Commander of Detachment at Porebundar, to the Political Agent at Rajkot, dated 18th November, 1835, *Ibid.*, Bombay Record Department.

meet with Mr. Willoughby's approval. He suggested that the contingent bill for the amount should be paid by the British Government. It was not likely that the Kathiawar Chiefs, having to defray the expenses, would actively exert themselves to put down the slave-trade. On the contrary, in order to avoid the expense, they would rather be disposed to conceal the importation of slaves. With regard to the disposal of liberated slaves, it was Mr. Willoughby's suggestion that they should be sent to Bombay; for then it would become manifest that they were released through the intervention of the British Government; and this would operate as a check to the trade.

Furthermore J. P. Willoughby also proposed the following measures:

1st. "That the Resident at Bhuj should be directed to furnish Government with a full report upon the mode and extent into which the slave-trade is now carried on with the Ports of Cutch, and to lose no time in concerting measures with the Rao of Cutch for its complete extinction within his dominions.

2nd. "That a proclamation be lithographed and circulated, one by the British Government in Kathiawar, and one by the Cutch Government in that Province, denouncing under heavy penalties the inhuman traffic, requiring the Chiefs and others to assist in suppressing it and to afford information against all persons who may hereafter import, sell or purchase slaves. The penalties to be briefly set forth in this document.

3rd. "That Courts of Cutch and Kathiawar be immediately placed under the Surveillance of the Commodore of Surat, and that Officer be instructed to search all vessels of every denomination, and to detain any with slaves on board, or supposed to be engaged in the slave-trade. In the performance of the duty he should communicate freely with the Political authorities in Cutch and Kathiawar and the several Collectors, reporting his proceedings in each case in detail for the ultimate orders of Government.

4th. "That the Political Commissioner for Guzerat be instructed to induce H. H. the Governor to suppress the slave-trade in his Ports in Kathiawar, *viz.* at the island of Bate. Dwarka, &ca. It must be obvious, that to render our measures effective no part of the coast must be open to slave-dealers.

5th. "That, if practicable, measures be adopted to suppress the trade at the Portuguese Port of Dieu (Diu).

6th. "That the Sidi Chief of Miguessa be required to suppress the trade at Jafferabad in Kathiawar which belongs to him. Mr. Wathen might be requested to communicate with the vakeel here on the subject.

7th. "That the whole of these proceedings be communicated to the British authorities in the Persian Gulf and the Imam of Muskat to apprise those concerned in the trade that all who will not abandon it will be subjected to severe punishment including the confiscation of ships with their cargoes, in which slaves are imported.

8th. "That Arabic versions of the Proclamation against the slave-trade be prepared, and circulated in the Persian Gulf, and at the Ports of Arabia, as opportunities may offer."[1]

A letter from the Secretary to the Government, dated December 19, 1835, to the Acting Political Agent in Kathiawar, shows that nearly all the suggestions of Mr. Willoughby met with the approval of the Governor-in-Council at Bombay.[2] Thereupon steps were taken to put into execution Willoughby's suggestions, now raised to the dignity of orders of the Governor-in-Council. Another letter to the Superintendent of the Indian Navy, likewise dated December 19, 1835, informs us that instructions were issued to place the Ports of Cutch and Kathiawar immediately under the surveillance of the Commodore of Surat, and to search vessels of every denomination, pending further instructions of Government.[3] Accordingly a number of cutters were forthwith despatched to Surat, to reinforce the naval forces of the Commodore at Surat, in order that he might thus be able efficiently to carry out the orders of the Bombay Government.[4]

However, these orders were not destined to be enforced for a long time. Shortly afterwards, the legality of some of these measures was seriously called in question. Accordingly the Advocate General was asked to inform Government whether the British Government were justified in detaining the

1. Memorandum by J. P. Willoughby, dated Com. 23rd December No. 3578-79, *Ibid.*

2. Minute by Robert Grant; From J. P. Willoughby, Secretary to Government to the Acting Political Agent in Charge, dated 19th December, 1835, No. 1673 of 1835, *Ibid.*

3. From J. P. Willoughby, Secretary to the Government of Bombay, to the Superintendent of the Indian Navy, dated 19th December, 1835, *Ibid.*, Bombay Record Department.

4. From the Superintendent of the Indian Navy to Robert Grant, President and Governor-in-Council, dated 21st December, 1835, *Ibid.*, Bombay Record Department.

vessels in which the slaves were imported and in proceeding against the slave-trade.[1]

The Advocate-General pointed out that Porbandar belonged to a Kajpool Chief who, though a tributary to the British Government, was not subject to the ordinary rules and regulations in force in the Bombay Presidency. He was therefore of opinion that Government could not seize and detain any vessel having slaves on board.[2] "Our slave-trade abolition laws apply only to subjects of His Majesty," advised the Advocate-General of Bombay, "or to persons residing or being within the United Kingdom or any of the Dominions, &ca., belonging to His Majesty, or in his possession, or under the Government of the Hon'ble East India Company, and can have no force over Foreigners."[3] In conformity with this view the orders previously issued on December 19, 1835, to the Superintendent of the Indian Navy to place the Ports of Cutch and Kathiawar under the Surveillance of the Commodore of Surat were cancelled.[4] This revocation took place on January 13, 1836. The result was that Government gave up all thought of prosecuting the commanders of the three vessels by instituting legal proceedings against them.

III. THE SEVENTY-FOUR LIBERATED SLAVES. Thus far it has been shown what difficulties the British authorities had to face in dealing with such a simple case as the arrival of three slave-carrying vessels. They would willingly have confiscated the vessels, punished their commanders, and brought home to the Rana that it was not a wise policy to make promises to suppress the slave-trade and at the same time to connive at the traffic in slaves. However circumstances were such that they did not venture to take any legal action against the evil-doers. The vessels were not confiscated, their commanders were not punished, the Rana was not interfered with. Furthermore there arose fresh difficulties of which the British authorities had never thought. There remained the seventy-four liberated slaves to be disposed of.

By that time the Rana was bitterly complaining, because he was burdened with the 74 liberated slaves. "These slaves are

1. From J. P. Willoughby, Secretary to the Government of Bombay, to the Advocate-General, dated 19th December, 1835, *Ibid.*, Bombay Record Department.

2-3. From the Advocate-General of Bombay, to Willoughby, Secretary to the Government of Bombay, dated 4th January, 1836, *Ibid.*, Bombay Record Department.

4. Minute by Robert Grant, dated 13th January, 1836, *Ibid.*, Bombay Record Department.

scarcely human beings, they eat, sleep, do everything on one spot; and they wear no covering or clothes; they are eaters of fish, which they consume half-cooked; the offensive smell which is consequently occasioned extends to a distance of half a coss around. In Porbandar the inhabitants are chiefly composed of Brahmans and Banians. These Arabs live solely on fish and little on grain. Our religion forbids all intercourse with such people." Moreover the Rana feared, and not without reason, that the Arabs would hold him responsible for the loss they had suffered, and would by way of retaliation seize his vessels and ruin his trade. "The Arabs will be at enmity with me, and my vessels will assuredly be detained at their Ports by the Arabs. Three of the vessels have goods on board for Bombay, so that it is desirable to let them depart. These Dow-Arabs are getting quarrelsome, and I beg you will grant permission for their departure, and inform me regarding the slaves, as soon as a reply is received from Government."[1]

The Rana's complaints seem not to have fallen altogether on deaf ears. The objectionable fish-eating slaves were taken off his hands. Shortly afterwards the Company's brig, Thetis, with sixty-nine (seventy-nine), slaves on board, sailed from Porbandar, on December 29, 1835, and arrived at Bombay, on January 1, 1836.[2] On their arrival the slaves were delivered over to the charge of the Sessions Magistrate of Police to be treated with care and humanity as their circumstances demanded.

As soon as the slaves had arrived in Bombay, the Governor-in-Council had to settle what to do with them. Various points had to be decided. Was there any objection to the male slaves entering the British Navy, if they should be inclined to do so? Could the girls be made over to the Charitable Institutions which would be willing to take charge of them, on the understanding that Government would contribute a monthly allowance for their support? Finally, if a family wished to take care of one or more of them, would there be any objection to such an arrangement, the parties receiving them entering into an engagement to feed, clothe and protect them and paying them for their services?[3] Accordingly the above three points were referred to the Acting Advocate-General, Mr. Roper, who replied as follows :—

1. Translation of a letter from Rana Vikmathjee of Porebunder to Captain Lang, dated 18th November, 1835, *Ibid*, Bombay Record Department.
2. From the Superintendent of the Indian Navy, to the Right Hon'ble Robert Grant, dated 1st January, 1836, *Ibid*, Bombay Record Department.
3. From J. P. Willoughby, Secretary to the Government of Bombay, to the Acting Advocate-General, dated 22nd January, 1836, *Ibid*, Bombay Record Department.

There was no objection to the male slaves entering the Indian Navy, provided that the restraint under which they were placed might be removed after their arrival in Bombay; for, before any proposal could be made to them, it was essential that they were set free. It appeared equally unobjectionable to make over the girls to some Charitable Institutions, who were willing to take charge of them; but under no circumstances had the Government any strict legal right to place itself in loco parentis and exercise a controlling power. As regards their becoming servants, it was first to be carefully examined whether their new masters would consider them as apprentices or as servants. Even if the Apprentice Statute Laws extended to India, the Acting Advocate-General thought it inadvisable that they should become apprentices. This was true of the grown-up slaves; and the difficulties were greater still in case of infants, because there was no person to act in loco parentis.

No doubt, according to Common Law, any person could bind himself as an apprentice. Even an infant might voluntarily bind himself, without his parents' consent, because an indenture of apprenticeship is considered for his benefit. But such infants could neither be sued in Common Law, nor at Equity; and consequently most persons would be reluctant to take them as apprentices. Therefore no good would come of it, if contracts were arranged on their behalf. Furthermore as Justices of the Peace in India were not allowed to interfere between masters and apprentices, as they were allowed to in England, the parties would be left to their respective remedies by action upon the indentures.

Therefore the only choice left open to Government was to see to it that contracts should be drawn up by which these liberated slaves became servants. These contracts should be made in writing, but should not be under seal. The servant should on his part promise to serve faithfully and agree to perform the duty which was appropriate to the capacity in which he or she undertook to serve; and the master on his part should bind himself to be good to the servant, to feed, clothe and instruct him, and also to pay him the wages previously agreed on by both parties. The contract of service should be signed both by the master and the servant, and should be duly attested by competent witnesses, due care being taken that no force was brought upon the servant to sign the agreement. The result would be that the master would unquestionably be bound by such a contract, even if the servant was an infant, as it had been decided in the cases of Hall vs,

Ward, and Warwick vs. Bruce. Moreover such an agreement, being for the benefit of the infant servant, was also binding on him.[1]

After having considered the Advocate-General's advice, the Governor-in-Council was of opinion that, on account of the tender age of the liberated slave-children, the British Government stood in loco parentis; since they were too young to be treated as free men. Hence Government could not force them to enter the Indian Navy. No parent of proper feeling would thus treat his child. Therefore Government suggested that they should be disposed of in the manner pointed out by Mr. Roper, the Acting Advocate-General (*i. e.*, as servants), with the obligation however that they should be brought up as Christians and be produced at the Police Office or at the Magistrate's Office twice a year till they attained the age of eighteen.

So great was the demand for African children in Bombay that the arrival of these slave-children was no sooner made known, than twenty-four different Christian families applied for their services.[2] Accordingly thirty-five children were placed with respectable families. As regards the remaining 44, Mr. Townsend, the Acting-Secretary to Government, expressed his willingness to take charge of these children, and thus gave expression to his views and intentions towards them. " Of the name (of religion) I would say nothing to them; with their manner of food and clothing I would not interfere. I would have them put in schools where they would be well-taught, or kindly treated and instructed in a manner which would eventually lead to their embracing Christianity. Its object would be to enlighten their minds, to make them acquainted with our Sacred Books, and to give them such a course of education as would enable them hereafter to earn their bread."[3]

Mr. Townsend's benevolent proposal was at once accepted by the Governor-in-Council. The Government not only accepted his offer, but contributed towards the expense of maintaining the children by allowing 50 Rs. per mensem.[4] Government made

1. From the Acting Advocate-General to J. P. Willoughby, Secretary to the Government of Bombay, dated 25th January, 1836, *Ibid*, Bombay Record Department.
2. Statement of Applications from Christian Families for the African children, No. 19, Political Department, 1835-36, Porebunder, Vol. 685, Bombay Record Department.
3. From John Warden, Senior Magistrate of Police to the Secretary to Government, dated 23rd February 1836, No. 86 of 1836, No, 19, Political Department, 1835-36, Porebunder, Vol. 685, Bombay Record Department.
4. From J. P. Willoughby, Secretary to the Government of Bombay to the Secretary to the Government of India, dated 22nd August 1836, No. 1537 of 1836, Political Department, Vol. 685, Bombay Record Department.

only one condition. It was settled that the children were at liberty to leave him and to return to the Senior-Magistrate of Police whenever they pleased.[1]

Such was the fate of the seventy-four (or the seventy-nine) children rescued at the port of Porbandar.

IV. FRESH PROPOSALS MADE AND DISCUSSED: The measure which the Bombay Government had concerted to suppress the slave-trade in Kathiawar had not proved successful; for the inhuman traffic continued to be carried on under their very eyes. Accordingly, the Governor-in-Council considered it his duty to consult the Government of India and to await their decision on the best means to be adopted in order to accomplish this important object. However he suggested to the Government of India that they should approach the Imam of Muskat and endeavour to prevail upon him, through the Resident in the Persian Gulf, to extend the treaty concluded by Captain Moresby of H. M's Ship, Menai, with His Highness the Imam of Muskat, on August 29, 1822, so as to include in its provisions the provinces of Cutch and Kathiawar. As it was, the vessels engaged in the slave trade were liable to seizure only, if caught to the east of a line running in a northern direction from Cape Delgado to the eastern coast of Socotra, whence it turned towards the east, to end at Diu, in the Gulf of Cambay.[2]

Moreover the Governor-in-Council called the attention of the Government of India to the difficulties which had arisen in connection with the release of the 74 slaves imported at the port of Porbandar. Their release by the British authorities had given umbrage to the Arab Chief of Wadi in the Red Sea, who by way of retaliation had seized a Porbandar vessel which was engaged in peaceful commerce. If such proceedings were allowed to pass with impunity, there was every likelihood that the said Arab Chief would have not only admirers, but also imitators.[3]

Therefore, in order to forestall the occurrence of similar acts of piracy, the Bombay Government recommended that, with the opening of the season, one or more of the Company's cruisers should be dispatched to the Red Sea with the express purpose of forcing the Chief of Wadi either to release the captured vessel and the cargo, or to make equivalent compensation. In case, this

1. *Ibid.*

2-3. Minute by Robert Grant, dated 5th July, 1836, Consul., 24th August, 1836, No. *3574; From J. P. Willoughby*, Secretary to the Government of Bombay, to the Secretary to the Government of India, dated 22nd August, 1836, No.1537 of 1836, Political Department, Vol. 685, Bombay Record Department.

request was not complied with, the cruiser should, in order to enforce the demand, blockade the port or the ports belonging to the Chief of Wadi or to his subjects, until redress was offered.[1]

To strengthen his case the Governor-in-Council made the following pertinent observation: "In putting down the slave-trade and branding it as a crime the British Legislature proceeded with much more caution than the spirit of the proposition demanded. Many circumstances rendered that caution necessary, but in strict justice there can be no more question of our natural right to put down an atrocious crime which we see committed on the high seas, than of the right of an individual to protect and deliver a traveller whom he sees falling into the hands of robbers in the desert; and compensation (punishment) is as much due to the brigand in the one case as in the other.[2] At the same time the Governor-in-Council pointed out that, since the Chief of Wadi was probably not aware that he had committed a criminal offence, some consideration and forbearance should be shown to him by allowing him some salvage for the value of the slaves. But lest this act of kindness be abused and treated as a precedent by the other Chiefs, it was necessary to give explicit warning throughout the Eastern Seas that in future no sort of indulgence would be shown towards the Slave-dealers,[3] as declared in the letter of the Advocate-General, dated January 4, 1836.

These were the Bombay Government's proposals, to some of which the Supreme Government took exception. As regards the particular question of the slaves liberated at the port of Porbandar, the Governor-General-in-Council did not approve of the measures taken by J. P. Willoughby, and wished that more temperate measures had been adopted. "The consequences of this step were such as might have been expected," wrote the Governor-General-in-Council, "and reprisals were immediately taken by the Arab Chiefs to whose territories the vessels belonged."[4] But even if it be admitted that the way of proceeding of the Political Agent in the Province of Kathiawar in taking possession of the Wadi slave-ships and liberating their slaves was somewhat precipitate, yet no permanently bad results had followed from that humane and spirited proceeding; for the Porbandar trading ships, seized by way of reprisal by the Chief of Wadi, were in course of

1-3. *Ibid.*

4. From the Secretary to the Government of India to J. P. Willoughby, Secretary to the Government of Bombay, dated 19th September, 1836, Consul., 15th January, 1837, No. 161, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

time released.[1] Apart from disagreeing with Mr. J. P. Willoughby's measures, the Governor-General-in-Council concurred in nearly all the suggestions proposed by the Bombay Government, as may be gathered from the Secretary to the Government of India's letter of September 19, 1836.[2] Moreover the Government of India directed the Governor-in-Council of Bombay to refer to the measures adopted by the Bengal Government for preventing the importation of slaves in Calcutta.

The Calcutta measures to which the Government of India referred had been passed in 1823-24 and resolved themselves into three different parts :

(1) The Commanders of the Ships, on entering into the port, should give in, upon oath, a complete list of their crews and passengers to the Custom-House Officers. (2) A printed notice appprising the Captains of the penalties attached to the importation of slaves should be delivered to them on their arrival. This suggestion was adopted by the Government of India with the recommendation that an extract of 51 Geo. III, C. 23 was to be circulated among all the Arab merchants and other persons connected with the Resident in Calcutta. (3) The Governor-General-in-Council ordered a rigid search of Arab ships, on their arrival and departure from Calcutta.[3]

In addition to this, the Governor-General-in-Council had also decided that 51 Geo. III, C. 23 should be once more communicated to all Commanders of Arab vessels coming to Calcutta and to the several Political Agents and other Public Officers at or near the ports whence Arab vessels usually sailed. At the same time he issued a Proclamation to the effect that all persons resident in Calcutta would incur the penalties prescribed by 51 Geo. III, C. 23, if they were in any way, either directly or indirectly, implicated in the importation or exportation of slaves by sea.[4] This additional measure was passed because the supreme Government had in their Resolution of November 27, 1823, interpreted 51 Geo. III, C. 23, to apply to British subjects only, so that foreigners resident in

1. Minute by the Governor of Bombay, dated 21st October, 1836, Consul., 28th January, 1837, No. 162. No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

2. From the Secretary to the Government of India to the Secretary to the Government of Bombay, dated 19th September, 1836, Consul., 25th January, 1837, No. 161, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

3. From the Magistrates of Calcutta to W. H. Bayley, Secretary to the Government of India in the Judicial Department, dated November, 1823, *Ibid*, Bombay Record Department.

4. *Resolutions of the* Governor-General-in-Council, dated November, 27, 1823, No. 646, Political Department, 1837, Sind Vol. 880, Bombay Record Department.

Calcutta were not liable to incur the penalties of the above Act. But this Proclamation remedied the defect.

V. THE BOMBAY PROCLAMATION OF 1837. When the Supreme Government's reply was received in Bombay, the Governor-in-Council immediately set to work studying and discussing the famous Calcutta Measures of 1820. First of all, we shall mention the views of Mr. Grant, the Governor of the Bombay Presidency. As regards the first Calcutta measure anent the non-presence of slaves to be declared on oath, the Governor of Bombay thought that such a course could not be followed in Bombay, as there was no official authority who had any power to exact such an oath. Hence in the event of the list of the crew and of the passengers being false, the payment of penalties could not be legally incurred by the guilty parties, unless such power was vested in some official by a regulation made by the Government of India for that express purpose. Even if such an authority was officially given to Bombay Officials, the Governor of Bombay, Mr. Robert Grant, was not confident that the mere taking of oaths would prove in any way an effectual remedy; for "it would only multiply the great evil of port oaths." Besides this, such oaths proved useless, unless, side by side with them, vigorous measures of search and punishment were adopted.[1] As to the second measure, the Governor of Bombay admitted that the printed notice of the penalties which slave-traders were liable to incur was a step in the right direction; and if this measure was not already adopted at Bombay, it could not be adopted too soon. But this measure was not an adequate preventive. Accordingly he pointed out that Acts had been passed in the reign of Geo. IV, which made slave-trading on the high-seas, if committed by British subjects, a piracy and punishable with death. He had no doubts that these Acts of Geo. IV would prove a valuable addition to the extract of 51 Geo. III, C. 23.[2] Finally, the Governor of Bombay fully approved of this third measure,[3] recommending the search of ships.

After receiving the Government of India's reply to the proposals made by the Governor of Bombay, and after considering the Calcutta measures and the Calcutta Proclamation, Mr. Robert Grant, the Governor of Bombay, proposed the following measures. The Governor-in-Council of Bombay, thought of publishing at every port

1-3. Minute by the Governor of Bombay, dated 21st October 1836, Consul., 25th January 1837, No. 162, No. 646, Political Department, 1837, Sind Vol. 888, Bombay Record Department.

from which Arab ships sailed a Proclamation of a denunciatory kind. But the difficulty was about the wording of such a Proclamation. In the first place it was his opinion that, instead of inundating the Coasts of Arabia with the verbosity and prolixity of the Statutory Extract; it would be best to remind the Arab slave-traders, in as clear terms as possible, of the legal consequences attendant on their trafficking in slaves. Accordingly he proposed to broadcast the following triple penalty. (1) Any British subject found concerned in importing slaves into a British possession and likewise his aiders and abetters were by Act of Parliament guilty of felony. (2) Any person importing slaves into any zillah of the Presidency would be liable, according to the Bombay Regulations, to heavy penalties. (3) The Bombay Government was determined in future to enforce these penalties with the greatest vigour and also to set the slaves free without any promise of compensation being made to the owners. (Express reference was made to the Bombay Regulations because the zillah judges had no jurisdiction to carry into effect the provisions of 51 Geo. III, C. 23.)[1]

Though it was the intention of the Governor-in-Council of Bombay to state in as precise terms as possible the provisions of 51 Geo. III, C. 23, he was the first to admit that the measures proposed by him were vague. He admitted that the proposed measures did not mention whether the foreign abetters of the slave-trade were liable to suffer the same penalties as the British slave-importers themselves. The reason given by the Governor-in-Council for this silence was that, since "the Act itself does so, I do not see that we should be wrong in leaving it somewhat doubtful."[2] He also pointed out that an addendum should be drafted threatening with the severest penalties those who attempted to import slaves into the territories of Cutch, Kathiawar and other States under the British protection.[3]

Forestalling possible objections, the Governor was perfectly aware of it, that, since 51 Geo. III, C. 23 was limited to British subjects only, it might perhaps be questioned whether the Bombay Government was justified in extending its provisions to foreigners, too. To this it might be answered that the limitation, imposed by the British Legislature, was perhaps dictated "by the delicacy to foreign Europe, in which countries slavery was anxiously cherished". But from this it did not follow at all that the same delicacy should be shown towards the slave-merchants of Arabia. It would not be unjust to visit them with the punish-

1-3. *Ibid.*

ments to which they were liable, after clear and timely warning; because, if they attempted to introduce into British dominions articles of import which were prohibited by British laws, there was no reason why they should not be made liable to the same penal consequences as British subjects.[1]

The Governor also made allusion to one of his former observations on the second Calcutta measure. He had then proposed that the anti-slave Acts passed during the reign of George IV might perhaps prove a useful addition to 51 Geo. III, C. 23. He now remarked that, as these Acts were not with him for reference, he was not certain whether they would serve a useful purpose in the present case. He therefore requested his Civil colleagues to go through them at the Presidency.[2] Besides the Governor himself, the members of his Council also gave expression to their views. Mr. Ironside was of opinion that 51 Geo. III, C. 23 of 1811, as well as all other Acts relating to the slave-trade, were repealed by 5 Geo. IV, C. 113. The penalties which this latter Act prescribed were indeed very severe. Section IX of it provided "that if any subject of His Majesty, or any person residing or being within the British Dominions, or under the Government of the United Merchants trading to the East Indies, dealt in slaves on the high-seas, or in any haven, river, creek, etc., and was found within the jurisdiction of the Admiralty, such person would be deemed guilty of piracy, and on conviction would suffer death." Section X of the same Act declared "that, if any person dealt in slaves, or was found aiding or abetting in the same either by exporting or importing them, such person who had so offended would be considered guilty of felony and liable to transportation or imprisonment with hard labour." Shorn of their legal phraseology, Sections IX and X declared that any person, engaged in unlawful slave-traffic, would become liable to suffer punishment of death or transportation in all places, where Acts of Parliament were in force. Therefore, if this interpretation was correct, it followed that the proposed Proclamation would not apply to British subjects alone, but also generally to all persons either residing, or staying within British possessions whilst so transgressing. So convinced was Mr. Ironside of the correctness of his interpretation of these sections that he did not deem it necessary to submit to the supreme Government's

1-2. Minute by the Governor of Bombay, dated 21st October, 1836, Consul., 25th January, 1837, No. 162, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

approval the granting of judicial anti-slavery powers to the Zillah Courts.[1]

Another member of the Bombay Council Mr. Vaush was of the same opinion as Mr. Ironside. He remarked that the penalties of the above-mentioned Sections IX and X appeared to apply to all persons who were found engaged in the slave-trade within the ordinary jurisdiction of the proper Courts. Therefore the harbour of Bombay was clearly within the provisions of the Act. However he did not concur with Mr. Ironside in not requesting the Government of India's approval. In his opinion both usage and prescription required that an Act of the Government of India should give to the Zillah Courts of the Bombay Presidency cognizance of breaches of an Act of Parliament.[2]

On reconsidering the measures proposed by him, in conjunction with the interpretation given by Messrs. Ironside and Vaush to Sections IX and X of 5 Geo. IV, C. 113, the Governor of Bombay felt inclined to doubt whether Section IX had been correctly interpreted by his colleagues. He accordingly suggested that the terms of the proposed measures should be submitted for approval and settlement to the Advocate-General. He also agreed with Mr. Vaush that no judicial anti-slavery powers should be conferred on the Zillah Courts without the sanction of the Supreme Government.[3] Consequently a letter was addressed to the Advocate-General, dated January 21, 1837, requesting him to submit to Government at his earliest convenience a Draft Act containing the above-mentioned measures with the necessary alterations.

The answer from the Advocate-General arrived on January 31, 1837. Instead of preparing a single Draft Act he submitted two drafts for the approval of the Right Hon'ble the Governor-in-Council of Bombay. The one was intended for the British territories, and the other for the States and countries under the political protection of the British Government but not subject to the municipal laws.

The draft of the proclamation referring to the States under the political protection of the British Government runs as follows:

1. Minute by Mr. Ironside, Consul, dated 25th January, 1837, No. 163, dated 29th October, 1836, Nos. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.
2. Minute by Mr. Vaush, dated 31st October, 1836, Consul, No. 164, 25th January, 1837, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.
3. From J. P. Willoughby, Secretary to the Government of Bombay, to the Advocate-General of Bombay, dated 21st January, 1837, *Ibid.*, Bombay Record Department.

"Whereas there is reason to believe that slaves, or persons intended to be dealt with as slaves, have been imported into and exported from the ports and territories belonging to the Rao of Cutch and other States and Countries, under the political protection of the British Government, but possessing and exercising absolute independent sovereign power and authority within their own dominions; and that slavery and dealing in slaves has been carried on of late at, and within the places aforesaid, and which practices are contrary to humanity and good policy; and whereas the said Rao of Cutch and the Sovereigns or other Supreme Authorities of the aforesaid States and Countries have consented to the suppression and abolition of all slavery and slave-dealing as aforesaid; and for effectuating such purpose have authorised the British Government to take such measures as it may deem necessary and advisable; it is, therefore, hereby notified for general information that all persons who shall upon the high-seas carry or convey any persons as slaves, or intended to be dealt with as slaves, or shall import or export any such persons to or from any of the ports, territories or places belonging to the said Rao of Cutch or other of the independent States or Countries aforesaid, or shall in any way engage in or assist in the carrying on of any traffic or dealing whatsoever in slaves, shall be deemed guilty of piracy, felony, and robbery, and shall be handed over to the proper authorites to be dealt with accordingly."[1]

The draft of the Proclamation relating to the British territories was worded thus:—

"Whereas there is reason to believe that slaves, or persons intended to be dealt with as slaves, have been imported into and exported from Bombay and the territories subordinate to the Government of Bombay by persons resorting to Bombay and the aforesaid territories from Mocha (Mecca), Judda (Djidda) and other Ports in the Red Sea and from the Ports of Kattywar (Kathiawar) and the Gulf of Cutch and the Persian Gulf; and whereas all such importation and exportation of, or dealing in slaves or persons intended to be treated as slaves is prohibited under severe penalties by the laws in force against slavery and the slave-traffic, and which laws the Government of Bombay has determined strictly to enforce against all offenders, and has been pleased to publish and make known for general information; it is

1. Draft of a Proclamation submitted by the Advocate-General with his letter of the 31st January, 1837, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

therefore hereby notified that all persons who shall upon the high-seas or in any place where the Admiral has jurisdiction carry away any person as a slave or for the purpose of his being imported as a slave into any place whatever, or of being sold, transferred, used or dealt with as a slave, or shall ship, receive or detain on board any vessel or boat any person for the purpose and objects of slavery aforesaid, shall be deemed guilty of piracy, felony and robbery, and shall suffer death accordingly and loss of all his lands, goods and chattels as pirates, felons and robbers on the high-seas ought to suffer.

And it is hereby also notified that all persons who shall deal or trade in or export or import any slaves, or shall ship any slaves for the purpose of exportation or importation, or shall fit out any slave-vessel or boat, or embark any capital in the slave-trade, or shall guarantee slave-adventurers or ship goods to be employed in the slave-trade, or shall serve on board any slave-vessel or boat as Captain, Master Mate, Surgeon or Supercargo, or insure slave-adventures or forge instruments relating to the slave-laws, all such offenders are declared guilty of felony, and shall be transported beyond seas for a term not exceeding 14 years, or shall be imprisoned with hard labour for a term not exceeding 5 years, nor less than 3 years.

And it is hereby also notified that all persons who shall export into any Zillah subordinate to Bombay a slave for sale, or shall export a slave therefrom, and all persons concerned in the illegal sale of slaves within the Zillahs subordinate to Bombay, shall be liable to the penalties prescribed by the laws and regulations in force in such Zillahs, and all which penalties the Right Hon'ble the Governor-in-Council of Bombay has resolved to inforce against all offenders with the greatest rigour, and to emancipate and set free all such slaves so illegally imported, exported or sold as aforesaid, without any compensation whatever to the importers, exporters or owners or possessors of such slaves."[1]

V. BOMBAY PROCLAMATION OF 1837. This double Proclamation was eventually promulgated in 1837. Moreover, on April 13, 1837, orders were issued "that the Proclamation should be transferred to the Persian Department, there to be translated into the Persian, Arabic, Guzerattee and Marattee languages."[2]

1. Draft of a Proclamation submitted by the Advocate-General of Bombay with his letter of the 31st January, 1837, *Ibid.*

2. Political Consul, 26th April, 1837, No. 1669, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

No. 2. REVISING THE REGULATION OF 1820.

I. A COMMITTEE APPOINTED. The Bombay Government were not satisfied with passing new anti-slavery laws. Their attention was also drawn to the existing anti-slavery legislation and this they were anxious to revise, to amend and to extend. Thus for example, there existed a number of Regulations that were supposed to be observed by all the Arab boats and vessels arriving at or departing from Bombay. They had been originally framed by Mr. Henry Meriton, the Superintendent of the Indian Navy, and they were supposed to be in force since August 9, 1820. In the first place these Regulations prescribed that the Noquedah of the vessels should proceed to the Office of the Inspector of the Port, and submit a true account of the full particulars required by him. This account should be noted in the Inspector's Books, and duly signed by the Noquedah and the Inspector. Secondly it was also provided that a transcript of this account should be forwarded to the Senior Magistrate of Police, who should oblige the Noquedah to attest the same upon oath with strict instructions that none except himself and his servants could be on shore after sunset, an infringement of which rule would make transgressors liable to imprisonment and other punishments. Thirdly two days before the departure of the vessel the Noquedah should proceed to the Police Office and state upon oath every casualty that had occurred during the vessel's stay in the Port.[1] Fourthly the Senior Magistrate of Police was to check the correctness of the statements made by the Noquedah, and could, if he deemed it necessary, make a search of the vessel. Finally any neglect on the part of the Noquedah to observe these Regulations should be reported to the authorities, in order that means might be adopted to enforce them.

By the year 1837, seventeen years after they had first been introduced, these Regulations had become obsolete. All that the Noquedahs did was to supply the list of the crew on board; nor was this statement made by them confirmed by an oath. It was therefore high time to abrogate these Regulations and to replace them by measures calculated more effectively to check the slave-trade.

Accordingly it was first of all suggested that a thorough search of all vessels should be carried out. Furthermore the Senior

1. Regulations to be observed by all Arab Boats and Vessels arriving at or departing from Bombay, framed by Mr. Henry Meriton, dated 9th August, 1820, *Ibid.*, Bombay Record Department.

Magistrate of Police who was to make this search, instead of daily applying to the Master Attendant for a boat and assistant, should have a bunder boat for himself, which should be under the command of an English sailor to be sworn in as a constable. Moreover a particular place should be selected by the Superintendent of the Indian Navy for the anchoring of all the Arab vessels; and it was only after a careful search of the vessel that the constable should hand over to the Commander the pass signed by the Senior Magistrate of Police. After these formalities had been gone through, and not before, vessels should be allowed to enter the place of anchorage.[1]

As soon as these new Regulations had been suggested, the question of the expenditure entailed by them came to the fore. This led to a protracted discussion.

As it was Government's object to suppress the slave-trade and to prevent the introduction into India of slaves and of Arab mercenaries, Government were surely justified in defraying the expense incurred by providing the Senior Magistrate of Police with a boat and a crew. But if Government were not prepared to undergo this expenditure, there was yet another way of supplying the necessary funds. The expenses could be met with by authorising the Senior Magistrate of Police to levy a certain tax from the Commanders of Arab vessels, coming from the Red Sea and the Persian Gulf, in return for the pass by which they were allowed to claim anchorage. The proceeds from this tax were calculated likely to amount to nearly 1,200 Rs. a year, which would prove quite sufficient to meet the expenses of the whole establishment. Such were the suggestions made by the Senior Magistrate of Police in November 1836.[2]

Thereupon the Government took up the subject in March 1837, and appointed a Committee of four persons: the Collector of Customs, the Senior Magistrate of Police, and the Master Attendant to act as members, with the Superintendent of the Indian Navy, Captain Sir Charles Malcolm, to act as President, for the purpose of revising the Regulations of 1820 and to enact such further rules as might in their opinion tend to a more effi-

1. From the Senior Magistrate of Police to the Secretary to the Government of Bombay, dated 30th November, 1836, Consul, 12th April, 1837, No. 1325, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

2. From the Senior Magistrate of Police to the Secretary to the Government of Bombay, dated 30th November, 1836, Consul, 12th April, 1837, No. 1325, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

cient suppression of the slave-trade without incurring any additional expenses, if possible.[1]

II. THE ADVOCATE-GENERAL'S VIEW. Before the Committee expressed any opinion on the subject, they wished to ascertain from the Advocate-General the legal position of those foreign powers who had concluded no treaties for the suppression of the slave-trade with the British Government.[2] The Advocate-General replied that the status of the foreign vessels, bringing slaves into a British port in India, was the same as that of British vessels importing them. It made no difference whatsoever, whether the foreign vessels belonged to nations with whom the British Government had entered into anti-slave treaties, or not; or whether they were under Arab colours, or under the flag of any independent Native Chief. The penalties of 5 Geo. IV, C. 113 were applicable to one and all without any exception. This Statute was so universal in its language as to comprise all persons whatsoever, foreigners as well as British subjects. The jurisdiction over foreigners was exercised because of the locality of the offence, the crime being committed within the local limits of the British territories and within the local jurisdiction of the British Laws.

In support of his contention the Advocate-General referred to a case settling the question of jurisdiction twenty-two years before the African slave-trade had been abolished by the British Parliament in 1811. As far back as 1789, one Captain Horrebow, a Dane, was tried and convicted before the Supreme Court of Calcutta for kidnapping a number of slaves, both males and females, and transporting them from Chandernagore, a French Settlement, to the Island of Ceylon, which was then under the protection of the Dutch, and there selling them as slaves. The slaves, it seems, were originally intended for Mauritius. The jurisdiction of the Court was objected to on behalf of Captain Horrebow on several grounds. It was not only on account of his being a foreigner that the question of jurisdiction was raised; but it was also objected "that the slaves had been purchased at Chandernagore; that they were taken from thence, without stopping at all in Calcutta, but went down on the opposite side of the river, until they came near the new Fort, when on account of a sand-

1. From the Secretary to the Government of Bombay to Capt. Sir Charles Malcolm, Superintendent of the Indian Navy, Consul, 12th April, 1837, No. 1327, dated 30th March, 1837, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

2. From the Superintendent of the Indian Navy, to J. P. Willoughby, Secretary to the Government of Bombay, Consul, 21st June, 1837, No. 2677, *Ibid.*, Bombay Record Department.

bank they were obliged to cross over to the Calcutta side." It was the contention of the Counsel for the defence that the place where the said offence was committed was Chandernagore, which was subject to the French King, and which owed no allegiance to the King of Great Britain, so that the Supreme Court at Calcutta had no jurisdiction in the case. The facts of the case show clearly that there was no original intention of importing slaves into Calcutta and that the budgeron (boat) in its transit down the river was obliged to enter the Calcutta limits out of sheer necessity on account of the sand-banks. Yet Sir Robert Chambers, the presiding Judge, held that Captain Horrebow was subject to the jurisdiction of the Court, the offence being actually committed in Calcutta, and that the budgeron in which the natives were confined did come with the jurisdiction of the Court. Captain Horrebow was accordingly sentenced to three months' rigorous imprisonment, with a fine of 500 Rs.; and he was in addition to give a security for his future good behaviour for three years, he himself in a bond of 10,000 Rs. and two other securities in 5,000 Rs. each.[1]

Besides quoting Captain Horrebow's case, the Advocate-General further corroborated his contention by referring to another judicial precedent. In 1812, Sir John Newbolt, the Recorder of Bombay, in an address to the Grand Jury, alluding to 51, Geo. III, C. 23, commonly called the Felony Slave-Trade Act of 1811, (though repealed, at the same time re-enacted by V Geo. IV, C. 113 in stronger and more comprehensive terms) declared that the Act was applicable to British subjects and to foreigners as well.[2] In the same year Sir Alexander Ansthuther, the Recorder of Bombay, who had held the office of Advocate-General in Madras, in an official communication with the Madras Government, of November 17, 1812, observed that he did not in the least doubt the correctness of the statement made by Sir John Newbolt that under the Slave-Trade Felony Act of 1811, the Commander of an Arab or any other vessel carrying slaves for sale, or merely navigating partly by the slaves of the owner, would be liable to the penalties of the Felony Act, if they were found entering into any British Port in India.[3]

So comprehensive were the terms of the Felony Act of 1811 that they were made applicable not only to the territories under British authority at the time of the passing of the Act, but also

1. From the Advocate-General of Bombay to the Superintendent of the Indian Navy, dated April 29, 1837, No. 20 of 1837, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

2-3. *Ibid.*

to those territories which were acquired afterwards. For when His Majesty's Attorney, the Solicitor General in England, was asked to express his opinion whether the Slave-Trade Felony Act was applicable to Java and its dependencies, (at the time of the passing of the Felony Act, Java was not actually under the control of the British) this Crown Officer was satisfied with referring to the text of the Act. The text runs as follows: "that the carrying on the slave-trade was prohibited under severe penalties, by any person residing within any of the Islands, Colonies, Dominions, etc., now or hereafter belonging to the United Kingdom, or being in His Majesty's occupation or possession, or under the Government of the East India Company; the Act to be in force in the East Indian Seas, etc." Accordingly they remarked that, considering the words of the text as such, the part of the Island of Java which was in possession of His Majesty was comprehended within the terms of the Slave-Trade Felony Act of 1811. But other parts of the Java belonging to independent princes would not be affected by this nor any other Act of British Parliament, unless the slave-trade was carried on in British vessels or by British subjects, or by persons residing in a British settlement.[1]

Finally, the Advocate-General mentioned a decision pronounced by the Supreme Court at Bombay at the Sessions of July, 1835, when a Native of Sind, (the facts of the case shall be narrated later in their proper place,) who had merely come to Bombay for a few days, was tried and convicted for the offence of having exported some children as slaves from Bombay, and was sentenced to three years imprisonment in the House of Correction.[2]

Hence the Advocate-General considered himself amply justified in stating that the provisions of 51 Geo. III, C. 23 were applicable both to British subjects and to foreigners.[3]

In the next place, the Advocate-General replied to the question whether the carrying on of the slave-trade without the limits of the British ports and territories was an offence, or not. He was of opinion that 5 Geo. IV, C. 113 made the slave-trade an offence, if it was committed on the high-seas, as it was against the law of nations and contrary to humanity and universal justice. But though such traffic was to be treated as piracy, it remained to be determined whether the British Courts had jurisdiction over this offence. For slave-pirates could not be ranked in the same class as ordinary

---

1-3. *Ibid.*

pirates. The latter were far more wicked, since they recognised no law either human or divine. Hence it would not be right to overlook the distinction between slave-pirates and ordinary pirates. Accordingly, he was of opinion that for British Courts to claim jurisdiction over slave-pirates, "it was essential to establish that the persons either resided or were within any of the dominions, forts or settlements, territories or factories, now or hereafter, belonging to His Majesty, or being in His Majesty's occupation or possession, or under the Government of the East India Company."[1]

By way of illustrating this doctrine the Advocate-General mentioned several noteworthy instances. The most important instance was that of an American vessel, Amedie, whose Captain was condemned by the Vice-Admiralty Court of Fortola for carrying slaves from the Coast of Africa to a Spanish colony, at a time when America had prohibited its own subjects from engaging in the slave-traffic. The case of the Amedie was of crucial importance, inasmuch as it came to be considered a leading authority for subsequent decisions. For, when the Captain appealed against this decision, the judgment was confirmed. Sir William Grant, the judge, who heard the appeal, based his decision on the principle that the British Legislature had pronounced the slave-trade to be in direct opposition to the laws of humanity. From this he argued that since the laws of humanity held good in every continent and every country, the British law was in reality the expression of a universal law. Of course, no recourse could be had to this interpretation in the case of persons who were subjects of countries that countenanced the practice of the slave-trade; but it could surely be applied to individuals who were subjects of countries that had prohibited all traffic in slaves. This was precisely the case with the Captain of the Amedie. Hence Sir W. Grant did not hesitate to uphold the sentence pronounced against the Captain. The principles laid down in the Amedie case received a special sanction from the highest judicial body in Great Britain, the King's Bench. In 1820, a Spanish merchant, Madrazo, sued Captain Willes of the Indian Navy to recover damages for having seized a Spanish brig, property belonging to the plaintiff, bound from the Coast of Africa for Havannah in the Island of Cuba, with a cargo of 300 slaves on board the brig. The jury granted him £18,180 by way of damages for the loss sustained by being deprived of the slaves. Against this decision it was then contended that the value of the slaves could not be

1. *Ibid*,

recovered in an English Court; but it was decided otherwise by Sir William D. Best and three other judges of the King's Bench. They admitted that the British Legislature had condemned slavery as contrary to humanity, and that this law was therefore of universal application. At the same time they held that it could not be applied to the Spanish merchant, Madrazo, because the slave-trade found legal recognition in the laws of Spain.

Hence the Advocate-General concluded: first of all that any form of slave-traffic within the local limits of the British territories was to be considered a penal offence, and secondly that slave-traffic on the high-seas, except when carried on by subjects of countries that recognised the legal existence of the slave-trade, was likewise a penal offence punishable by law. Limiting himself to the traffic within the limits of British territories, he stated that the law in regard to foreigners was the same as for British subjects. In his opinion the only means calculated to put a stop to this traffic was the imposition of severe penalties together with high rewards to informers. Unless this course was adopted, the traffic was bound to continue. However there was no necessity for any new enactment; for, both penalties and rewards were already provided for by 5. Geo. IV, C. 113. In this Act it was enacted that "all persons importing, &ca. slaves shall be guilty of felony, punishable with transportation for a term not exceeding 14 years, or imprisonment, with hard labour for a term not exceeding 5 nor less than 3 years; (they) shall forfeit £100 for every slave imported, a moiety thereof shall go to the informer, and all property in the slaves (is) forfeited and the vessel and her tackling, etc., and all goods on board belonging to the owner (are) also forfeited."[1]

III. THE COMMITTEE'S RECOMMENDATIONS. Therefore, the only thing urgently needed was to make the highly penal statute adequately known throughout the British territories in India and in Arabia. Accordingly, the Superintendent of the Indian Navy on behalf of the Committee recommended that the draft of the Proclamation drawn up by them should be translated into various vernacular languages of the Presidency, and published from time to time in the *Government Gazette*. This Proclamation submitted by the Committee was in its main object the same as the Proclamation proposed and promulgated by the Government of Bombay, but in one respect it was a real improvement on it. It distinctly prescribed that a penalty of £100 should be imposed on

1. From the Superintendent of the Indian Navy to J. P. Willoughby, Secretary to Government, Consul. 21 June, 1837. No. 2677, Compilation No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.

the guilty party for every slave imported, and that a moiety of it should go to the informer. Accordingly, the Committee were confident that the policy of holding out rewards to informers whose communications would lead to the detection of violations of the Statute, would prove more effective than the translations of the Act into various languages.[1]

However, the Committee could not agree with the Senior Magistrate of Police, who in his letter to Government, dated November 30, 1837, proposed to abrogate entirely the Regulation passed in 1820. They were of opinion that the first three rules of the Regulation of 1820 would at least serve as useful auxiliaries. If these three rules did not produce any good effect, they would at least make the law known to those who were ignorant of it; and this knowledge might contribute towards deterring Arab vessels from carrying slaves, or at least from disposing of them in the territories of the East India Company. In addition they framed two new rules instead of the original 4th and 5th rules of 1820. There is no need of repeating here the first three rules. The two new rules ran as follows :—

4th. "Every such Arab boat and vessel shall, on entering or quitting the harbour of Bombay or any port subordinate thereto, be liable to be boarded by the boat or boats belonging to the Customs Department and the Department of the Inspector of the Port; and if any slaves be found therein, they are to be taken out, and the vessels seized, in order that the necessary measures may be taken for the offenders being prosecuted according to law."

5th. "Copies of the annexed Proclamation, translated into the Persian, Arabic and other native languages, shall be kept at the Offices of the Senior Magistrate of Police and of the Inspector of the Port, and, if at a subordinate port, at the Custom House; and every Noquedah or the commander of the aforesaid vessels, on coming there for the purpose specified in the 2nd rule of the existing Regulations, shall be furnished with one."[2]

IV. DESTRUCTIVE CRITICISM. As soon as the Committee had forwarded their recommendations to the Bombay Government, Robert Grant, the Bombay Governor, raised the question whether the absolute prohibition to the Noquedah and his men to come and be ashore after sunset without subjecting themselves to punishment was not too severe, and whether

1. *Ibid.*
2. Regulations to be observed by all Arab Boats and Vessels arriving at or departing from Bombay, who do not take pilots, No. 646, Political Department, 1837, Sind. Vol. 880, Bombay Record Department.

it could be legally enforced.[1] Therefore legal advice was sought in the matter. The Advocate-General thought that the prohibition contained in the latter clause of the 2nd Rule could not be legally enforced; because the prohibition was not an amendment made by the Committee, but it formed a part of the original Regulation of 1820, and this Regulation was in fact never acted upon.[2]

Soon afterwards the Committee themselves realised their error; for in their letter of June 13, 1837, they remarked "that the prohibition in question, having been suffered to remain as a part of the rules handed up with our letter of the 5th ultimo, was an oversight; we are unanimously of opinion that it is uselessly severe, and has always, we believe, been a dead letter."[3]

Even as regards the 4th Rule of the Regulations proposed by the Committee, the Advocate-General declared that it could not be legally substituted. All that could be done to enforce the rule in another shape was to provide that, under Section 3, Act 5, Geo. IV, C. 113, any Officer bearing His Majesty's Commission should be authorised to seize such vessels. And in the present case, Admiral Sir Charles Malcolm, in his capacity of an Officer bearing His Majesty's Commission in the Indian Navy, but not as Superintendent of the Indian Navy, would be justified in making such seizures. But the Advocate-General could not help remarking that the words of 5 Geo. IV, C. 113 seemed to apply to His Majesty's colonies and not to the territories under the East India Company, which would render it impossible even for an officer bearing His Majesty's Commission in the Indian Navy to effect any legal seizure of vessels. On this point the Advocate-General had not formed any final decision; and as the Statute was in itself highly penal, it was absolutely essential to construct it as strictly as possible. Therefore if the Governor-in-Council viewed it in the same light as he did, then it was certainly advisable to refer the matter to the Supreme Government.[4]

Another difficulty cropped up as regards the reward of a moiety of £100 of which mention was made in the Act. In order to realise his share, the informer had to sue and prosecute the guilty party. Even if he were to succeed in obtaining a judgment against the offenders, it might turn out that the party condemned to pay

1. Minute by Robert Grant, dated 25th May, 1837, Compilation No. 646, Political Department, 1837. Sind, Vol. 880, Bombay Record Department.
2. From the Advocate-General to the Secretary to Government, dated 27th June, 1837, No. 28 of 1837, *Ibid.*
3. From the Superintendent of the Indian Navy to W. H. Wathen, Chief Secretary to Government, dated 13th June, 1837, Consul, 21 June, 1837, No. 2836, *Ibid.*
4. From the Advocate-General to the Secretary to Government, dated 27th June, 1837, Consul, No. 28 of 1837, *Ibid.*

was in an insolvent state. The result would be that the informer would lose both the reward as well as the expenses incurred in litigation. This was surely not the way to encourage informers to make known to the authorities violations of the Statute. The Advocate-General therefore proposed that, besides the reward held out by the Act, Government should offer an additional reward of 50 Rupees for every slave discovered ; and this reward could be paid out of the funds that came to Government by way of fines and forfeitures.[1]

The Advocate-General also pointed out that it should be explicitly stated that all persons importing slaves into ports out of the jurisdiction of the Supreme Court must be dealt with in the same manner as those importing them within such jurisdiction. This was already included in the enactments of 5 Geo. III, C. 113; but the Bombay Code did not provide for the seizure of slave-vessels at subordinate ports, and it seemed to refer to the importation and exportation of slaves by land only, and not by sea. Therefore in order to further the design of suppressing the slave-trade entirely within the Company's territories, it was advisable to define explicitly the powers of seizing slaves and vessels for a breach of the slave abolition laws.[2]

Finally, the Bombay Government agreed with the Advocate-General. They concurred with him in thinking that it was necessary to appeal to the Supreme Government in order that an Officer bearing His Majesty's Commission might be vested with the power to seize slave-vessels in territories subjected to the East India Company.[3]

Meanwhile the Bombay Government were anxious to bring matters to a close. Accordingly they asked the Advocate-General to draw up a concise Draft of the proposed Regulations and Proclamation, in order that they might be forwarded for approval and sanction to the Governor-General of India in Council.[4]

In the draft of the Regulations, as drawn up by the Advocate-General it was proposed to give the power of seizing slave-vessels to all commanders of vessels of the Indian Navy. Such a measure would contribute more towards putting an end to the slave-traffic than any other measure which had hitherto been adopted. For, under the proposed regulations all vessels sailing under the British Flag and with a British pass would come within the reach and power of the Company's vessels. And this, combined with

1-2. From the Advocate-General to the Secretary to Government, dated 27th June, 1837, Consul, No. 28 of 1837, *Ibid.*

3-4. From the Secretary to Government to the Advocate-General, dated 7th August, 1837, Consul, No. 1452 of 1837, *Ibid*, Bombay Record Department.

the co-operative efforts of the Imam of Muskat and of the other Chiefs in the Red Sea and Persian Gulf, would prove most effectual in putting an end to the slave-trade in the ports and on the shores of those countries. Up to that time a King's vessel alone could seize and prosecute an Arab vessel found in the Bombay harbour with a cargo of slaves. But this object would be remedied by the proposed regulations which would enable commanders of the Company's vessels, customs officers and every person deputed by the Government to effect such seizures.[1]

In the draft of the new Proclamation the Advocate-General added a clause to the effect that any vessel, caught engaged in the slave-trade, would be seized and condemned. If this clause met with the approval of the Supreme Government, the prospect of an immediate loss would alarm the slave-merchants more than the terrors of a distant prosecution and punishment, which in practice was very scarce.[2]

As a matter of fact the only effectual method of suppressing the traffic lay in vesting the local authorities at subordinate ports with the power to seize slave-vessels; all other attempts to achieve the cherished object would be fruitless. "Regulations and proclamations can only notify and make public the penalties incidental to it," the Advocate-General remarked, "and prosecutions reach only a few; but seizing the property itself, embarked in it, will be cutting the trade entirely."[3]

But there was a great disappointment in store for the Bombay Government. They had worked hard at amending the existing slave-law, but all their attempts were doomed to end in smoke. The Government forwarded the documents relating to the subject to the Government of India with a request that the proposed Draft Act of the Advocate-General be passed into law.[4] But the Government of India simply shelved the whole question. They pointed out that slavery in India was already being discussed by the Law Commission, who had been specially appointed for that purpose. They therefore resolved specially to direct the attention of the Commissioners to the slave-trade by Arab vessels from ports in the Red Sea, in order that the humane suggestions made by the Bombay Government might be carried out. In other words, the Bombay Government had worked in vain, at least for the time being.

1-3. From the Advocate-General to the Chief Secretary to Government, dated 16th August, 1837, Consul, No. 36 of 1837, *Ibid*, Bombay Record Department.

4. From the Secretary to the Government of Bombay to the Secretary to the Government of India, dated 30th September, 1837, Consul, No. 2046 of 1837, *Ibid*, Bombay Record Department.

CHAPTER VI.

Attempted Suppression of the Slave Traffic in the Portuguese Ports of Goa, Diu and Daman.

PLAN: 1. Vain attempts at suppressing slavery. 2. In the strong arm of the law.

No. 1. VAIN ATTEMPTS AT SUPPRESSING SLAVERY.

SUMMARY: Introductory. II. Uselessness of Treaties. III. Conflicting evidence. IV. Conclusion.

SOURCES: PUBLISHED: *Asiatic Journal*, Vol. XXVI, Part II, 1838.
London Times, dated July 30, 1838.
UNPUBLISHED: No. 668, Political Department, 1838, Goa, Diu and Daman, Vol. 990; No. 985, Political Department, 1840-41, Vol. 1212; Judicial Department, Vol. 95, 1853.

I. INTRODUCTORY. The anti-slave campaign entered upon by the Bombay Government did not limit itself to the Native States under British control; it also extended itself to Goa, Diu and Daman, the last remnants of the Portuguese Empire in India. This interference on the part of the Bombay Government in the affairs of a foreign power is easily accounted for. As long as the Bombay Government were determined to set their own house in order, they could not but direct their attention to the territories in the immediate neighbourhood of the Presidency; for as long as slavery flourished on the outskirts, it could not be stamped out in the Presidency itself. The environs infected with slavery might be compared to the proverbial rotten apple in the basket. Hence the Bombay Government made several attempts at suppressing slavery in Goa, Diu and Daman.

II. USELESSNESS OF TREATIES. In spite of 51 Geo. III C. 23, Bombay Regulation I of 1813 and Regulation IV of 1832 prohibiting the importation of slaves into India, a letter from the Political Agent in Kathiawar, dated December 1837, complained that a considerable number of African slaves were imported via Diu, Goa and Daman.[1] It seemed to be extremely desirable to put an effectual stop to this practice. But the first point to be ascertained was to what extent the treaties between England and Portugal authorised the British Government to resort to active

1. Extract para 10 from a letter from the Political Agent in Kathiawar, without date in December 1837, No. 668, Political Department, 1838, Goa, Daman and Diu, Vol. 990, *Bombay Record Department.*

measures in that direction.[1]

By the treaties of 1815 and 1817, concluded between England and Portugal, in consideration of a very large sum of money paid to her Portugal promised " to give up the slave-trade on the Coast of Africa, north of the Equator." These treaties did not affect the Portuguese slave-trade south of the Equator; and it had been agreed upon that it rested with Portugal to fix the time when it would abolish the traffic altogether. On the occasion of these treaties mixed Commission Courts had been established for the condemnation of vessels engaged in the trade in contravention of the treaties, " and captures of slave-carrying vessels were authorised by certain vessels only, specially instructed for that purpose."[2]

Under these circumstances the Advocate-General of Bombay was of opinion that the Government were not justified in resorting to any anti-slave measures against Goa, Diu and Daman. The reasons in support of this statement were in his opinion obvious: " Horrible as the practice is, yet with respect to the interference of Great Britain with the trade as carried on by foreign powers," he held the same sentiments as expressed by the British Parliament.[3]

The question therefore naturally arises: What were Parliament's sentiments regarding the slave-trade as practised by foreign powers ? First of all, the Advocate-General made bold to affirm that in the past British interference in the slave-trading activities of foreign nations had been productive of disastrous results. In this connection he mentioned a discussion in the House of Lords, which was reported in the *London Times* of July 30, 1838. On that occasion a petition was presented to Lord Brougham for the abolition of the apprenticeship system in the West Indies, and this request gave rise to a discussion on the slave-trade. Tories as well as Whigs concurred in affirming the appalling extent to which the horrid system was carried on. But Lord Ashburton remarked that, though the traffic was carried on to as great an extent as, and with tenfold more cruelty than ever, yet he had no hesitation in declaring " that, if this country had left Spain and Portugal to carry about these poor creatures as they pleased,

1. Extract para 6 from a minute of the Right Hon'ble the Governor, dated April 20, *1838*, subscribed to by the Civil Members of the Board, No. *668*, Political Department, *1838*, *Goa, Diu and Daman, Vol. 990, Bombay Record Department Cf. From J. P. Willoughby* to the Advocate-General, dated 3rd May, 1838, *Ibid*, Bombay Record Department.

2-3. From the Advocate-General of Bombay to J. P. Willoughby, Secretary to Government of Bombay, dated 8th June, 1838, No. 668, Political Department, Goa, Diu and Daman, Vol. 990, Bombay Record Department.

humanity would have been less outraged, and fewer atrocities committed." Lord Glenby was of the same opinion and pointed out "that the horrors of the trade would not have been aggravated to their present height, if we had never meddled with it as carried on by other nations."[1]

In the light of such a weighty declaration made in the House of Lords, the Advocate-General deprecated any British interference in the slave-trade at Goa, Diu and Daman. It was also his firm belief that no permanent benefit would result from any future treaties between the British and the Portuguese. The experience of the past only too plainly proved the uselessness of such treaties. Thus for example, the Spanish slave-trade was supposed to have ceased according to the terms of the Treaty of 1820. From that time onwards Spain had repeatedly made declarations professing to abolish the slave-traffic. Thus for example, the first article of the Treaty of 1835 provided that "The slave-trade is hereby again declared, on the part of Spain, to be henceforward totally and finally abolished in all parts of the world." But for all that, Spain had not yet given up trading in slaves. Finally, the Advocate-General remarked that, if the Bombay Government were bent upon suppressing the slave-trade in Goa, Diu and Daman, the only measure likely to prove effective was to make it an act of piracy.[2] The Advocate-General's views did not prove helpful; for the Bombay Government could not take upon themselves to declare that the captains of vessels flying the Portuguese flag and carrying slaves to Portuguese dominions were guilty of piracy.

III. CONFLICTING EVIDENCE. Meanwhile fresh light was thrown upon the state of the slave-trade in Daman, Goa and Diu. James Erskine, the Political Agent in Kathiawar, made of his own accord private investigations in the Island of Diu with a view to gain some reliable data about the traffic in slaves, which was said to be carried on to a considerable extent at that place. However he did it in a manner so as not to offend in any way the Portuguese authorities. The private information gathered by him led him to believe that, since the appointment of the new Governor Don Francisco De Mello, the traffic had greatly diminished. No doubt, Arab and Mozambique ships occasionally

1. *London Times*, dated 30th July 1838.

2. From the Advocate-General to J. P. Willoughby, Secretary to the Government of Bombay, dated 8th June, 1838, No. 668. Political Department, Goa, Diu, Daman, Vol. 990, Bombay Record Department.

brought a few young boys and girls with them. But there were no Portuguese ships specially set apart for that purpose.[1] The apparent reliability of Mr. Erskine's findings received additional weight from the corroborating evidence of no less a person than the Portuguese Governor of Diu. Don Francisco De Mello was as opposed to the slave trade as the Bombay authorities; and in order to show that he entertained the same sentiments as the British Government, he liberated two slave-boys, brought up in his house, in honour of the visit of James Erskine, the Political Agent in Kathiawar.[2]

Accordingly the Bombay Government approved of the steps taken by Mr. Erskine.[3] What is more, they wrote to Senhor Francisco de Mello, expressing their best thanks for the friendly reception given and the ready information supplied to Mr. Erskine on points connected with the slave-traffic as carried on at the Port of Diu.[4]

However, it would seem that the information gained by Mr. Erskine was perhaps not altogether trustworthy. Thus for example, in the *Bombay Gazette* of December 15, 1838, a correspondent called the attention of the public to the fact that five Portuguese brigs, belonging to the Port of Diu and trading with the Coast of Africa, brought annually to the coast of Gujerat a large number of slaves. Among other things he said: "Surprise is expressed that a trade in slaves should be permitted by the Bombay Government to be carried on in the neighbourhood of a naval station under the command of an officer of the Indian Navy, without some efforts being used towards the suppression, after all the parade that had been made by the British Government for its suppression."[5]

This newspaper indictment had an unexpected result. It had appeared in the *Asiatic Journal* for 1838, and had no doubt been read by the Honourable the Court of Directors. Accordingly the

1. From James Erskine, the Political Agent in Kathiawar, to J. P. Willoughby, Secretary to the Government of Bombay, dated September 28, 1838, No. 668, Political Department, 1838, Goa, Diu and Daman, Vol. 990, Bombay Record Department.

2. From James Erskine, the Political Agent in Kathiawar, to J. P. Willoughby, Secretary to the Government of Bombay, dated 28th September, 1838, No. 668, Political Department, 1838, Goa, Diu and Daman, Vol. 990, Bombay Record Department.

3. From J. P. Willoughby, Secretary to the Government of Bombay to James Erskine, the Political Agent in Kathiawar, dated 20th November 1838, *Ibid.*, Bombay Record Department.

4. From J. P. Willoughby, Secretary to the Government of Bombay, to Senhor Francisco deMello, Governor of the Province and town of Diu, dated 20th November, 1838, *Ibid.*, Bombay Record Department.

5. *Asiatic Journal*, Vol. XXVI, Part II, 1838, p. 84.

Directors sent a kindly worded reminder to the Bombay Government: "We have no doubt of your exerting yourselves to prevent the importation of slaves into the Portuguese ports of Goa, Diu and Daman by all means consistent with existing treaties and enactments."[1]

Thereupon the Bombay Government thought it advisable to call upon the Agent for the Governor at Surat and the Political Agent in Kathiawar to obtain a statement of the number of slaves imported into Daman and Diu during the last three years, with a view to determine the average progressive increase or decrease in numbers during each year. Government addressed a similar communication to the Superintendent at Sawant Warriee (Sawantwadi) in regard to Goa.[2]

The Agent to the Governor at Surat sent by way of reply the assurance that very few slaves had been imported into Daman and Diu for the last three years. He gave as his source of information the testimony of an individual who was supposed to be well acquainted with the whole matter. He estimated that the number of slaves imported into Daman during the years 1837 to 1839 was as follows: in 1837 they numbered from 10 to 15; in 1838, from 8 to 10; and in 1839 from 5 to 7; whilst in Goa and Daman the total importation during the last three years did not amount to more than 20.[3]

But the Agent's figures were open to grave doubts. First of all, his declaration is in direct contradiction to the already mentioned statement made by a correspondent in the *Bombay Gazette*, on December 15, 1838, according to which no less than five Portuguese brigs were annually engaged in the slave-trade. In the second place, J. P. Willoughby, the Secretary to the Government of Bombay, frankly admitted that the slave-trade flourished in Diu and Daman in the year 1836. Hence its sudden disappearance in the three years immediately following is, to say the least, most unlikely. Accordingly the Bombay Government did not set great store by the Agent's information; and J. P. Willoughby wrote to T. H. Maddock, Secretary to the Government of India:

1. Extract para 69 from a letter from the Hon'ble the Court of Directors, dated March 12, 1840, No. 5 No. 985, Political Department 1840-41, Vol. 1212, Bombay Record Department.

2. Answer to Political Letter, dated July 14, No. 64 of 1838 and 1st January, No. 7 of 1839, regarding the slave-trade carried on in the Portuguese States of Goa, Daman and Diu, *Ibid.*, Bombay Record Department.

3 From the Agent for the Governor at Surat to J. P. Willoughby, Secretary to the Government of Bombay, dated December 4, 1840, No. 985, Political Department, 1840-41, Vol. 1212, Bombay Record Department.

"I am desired to observe that the Hon'ble the Governor-in-Council is not of opinion that the information therein (in the Agent's letter) contained can be entirely relied upon."[1]

It is true that the information sent by the Agent for the Governor at Surat was apparently confirmed by a letter forwarded by D. A. Blane, the Political Agent in Kathiawar, who wrote: "A respectable individual of the Town of Cona, whose connection with the merchants of the said port afforded him facilities of making inquiries on this head, proceeded to Diu, and, pretending a desire to purchase some negroes for his own use, was informed that none had been imported since the commencement of the last year; that for some years previously a few only had been brought over by the owners of trading-vessels, for the service of their own families and not for sale; and that the total number now on the Island, in such employ, was from 200 to 225."[2] But Government were not of opinion that D. A. Blane's source of information was worth more than that of the Agent in Surat. Therefore they requested him to avail himself of every opportunity that presented itself to obtain fuller and more correct information on this subject. They had good reasons for doubting the accuracy of D. A. Blane's data, since he himself confessed in his letter to the Secretary to the Government of Bombay that "it is difficult to satisfy one's mind as to the correctness of such information."[3]

The Political Superintendent at Sawant Waree (Sawantwadi) did not send any reply to Government's inquiries. On June 3, 1841, fully eight months after the first letter of Government had been dispatched to him, he received the following reminder: "I am directed by the H. G. C. to request that you will be pleased to expedite your reply to Mr. Chief Secretary Reid's letter calling for a report of the number of slaves imported into Goa during the three preceding years."[4] But, in spite of the reminder, there

1. From J. P. Willoughby, Secretary to the Government of Bombay, to T. H. Maddock, Secretary to the Government of India, dated 31st December, 1840, No. 985, Political Department, 1840-41, Vol. 1212.

2. From J P. Willoughby, Secretary to the Government of Bombay, to T. H. Maddock, Secretary to the Government of India, dated 31st December, 1840, No. 985, Political Department, 1840-41, Vol. 1212, Bombay Record Department.

3. From D. A. Blane, Political Agent in Kathiawar, to J. P. Willoughby, Secretary to the Government of Bombay, dated 18th March, 1841, No. 985, Political Department, 1840-41, Vol 1212, Bombay Record Department.

4. From J. P. Willoughby, Secretary to the Government of Bombay to W. Courtney, Political Superintendent, Sawant Warree, dated 3rd June, 1841, No. 985. Political Department, 1840-41, Vol. 1212, Bombay Record Department.

is no trace of any reply having been sent by him to the Bombay Government.

IV. CONCLUSION. The attèmpts at suppressing slavery in Goa, Diu and Daman seem to have led to no immediate practical results. There is no official document to relate what the Bombay Government did with the information which they had gathered. But the Appendix to the Report of the Indian Law Commission gives in its entirety the document from which the information here set down as regards the number of slaves in those parts has been derived. Hence we may safely conclude that the Bombay Government as a last resort submitted the findings about the slave-trade in Goa, Diu and Daman to the Government of India, who then forwarded the same to the members of the Indian Law Commission.

No. 2. IN THE STRONG ARM OF THE LAW.

SUMMARY: I. Alleged importation of slaves. II. The trial. III. Portuguese remonstrance. IV. Bombay reply.

I. ALLEGED IMPORTATION OF SLAVES. From what has been said it must not be inferred that captains of Portuguese ships could carry on their nefarious trade in defiance of the law. On the contrary, as soon as a Portuguese captain made himself amenable to British law by offending against the slave-regulations the British authorities did not spare him. In this manner their severity contributed indirectly to the checking of the slave-trade by inspiring the Portuguese would-be traders with a salutary fear, if not of the Lord, at least of the law. An instance in point was the arrest, trial and conviction of Joao Antonio de Siqueira, captain of the Brig "Quarto de Abril." On August 16, 1853, he landed five African boys in Bombay; and as these boys were suspected to be slaves, the brig was seized by the British authorities, and the Captain himself was arrested, and was afterwards made to stand the trial before Sir W. Yardley of the Supreme Court at Bombay, the prosecution being conducted by the Government Law Officers.[1]

II. THE TRIAL. At the trial the following circumstances were proved: The accused was the charterer of a brig called the 'Quatro de Abril', which arrived in the port of Bombay on August 16, 1853; there were five African boys on board the ship, of the ages of 12 years and upwards, and two passengers,

1. To the Queen's Most Gracious Majesty, the Humble Petition of Joao Antonio de Siqueira, dated October, 1853, Judicial Department, Vol. 95, Bombay Record Department.

natives of Goa and Portuguese subjects, named Manuel Antonio Pinto and Joao Soares; the boys were employed during the voyage in waiting on the accused, the chief-officer and the passengers; shortly after the vessel came to anchor, at the desire of the accused, a Bania, called Lakhmichand Naryanji, came on board the ship to receive letters addressed to a firm of which he was the clerk; finally at the request of the accused, the boys were taken on shore in the Bania's boat and landed at the Custom House Bunder, where they were immediately seized by the police. Of the five boys, the evidence of Joao, the eldest, alone was taken into consideration, as the others were incapable of understanding the nature of an oath. In short the evidence amounted to this, that he (Joao) had been taken away from his mother by a Mussalman, who, he believed, had sold him to the accused, and that he had been with the accused for upwards of a year.

The defence set up by the accused was that these boys were not slaves, and that two of the said boys were his domestic servants. In this connection the accused pointed out that under the terms of the Treaty entered into between England and Portugal on July 3, 1842, Article 5 recognised the right of every Portuguese in one of the African possessions to claim the service of not more than two slaves, who are to be *bona fide* domestic servants. Hence he had done nothing contrary to the English laws in bringing with him the two boys Joao and Sublime, for whom he had a regular passport, as required by the Treaty, signed by the Governor-General of Mozambique, whose signature was proved at the trial by Mr. Braz Fernandes, the Portuguese Consul in Bombay. Besides these proofs, certain documents were offered in evidence, which were attested by Notaries Public of Mozambique, showing that these boys were free slaves; but from want of technically legal proof, the accused was unable to place these proofs in evidence before the Jury. Finally, the fact that he had openly sent the boys on shore, in the presence and hearing of a number of persons, in the middle of the day, to one of the most public landing places in the harbour, where there are always European Custom House Officers on duty, was sufficient proof of his want of concealment. Nevertheless the Jury delivered a verdict of guilty.[1]

Thereupon the judge addressed the prisoner to the following effect: " Joao Antonio de Siqueira, you have, after much delibera-

1. To the Queen's most Gracious Majesty, the Humble Petition of Joao Antonio de Siqueira, dated October 1853, Judicial Department, Vol. 95, 1853, Bombay Record Department.

tion on the part of the Jury, been found guilty of an offence which is justly regarded with horror and abhorrence by the English nation." This was a topic on which the judge grew eloquent. He pointed out that the British nation had in fact entered into several treaties with Portugal for the entire suppression of the slave-trade. With a view to secure this object, so fondly cherished by every Christian mind, the British had made large pecuniary sacrifices. They employed at a large outlay a considerable force on the Eastern and Western Coast of Africa for the purpose of putting a stop to that inhuman traffic. Since 1815 England had paid to Portugal three millions sterling in consideration of her having entered into these treaties: whilst in order to put an end to slavery in her own colonies, England had disbursed no less than twenty millions sterling for the purchase of individuals whom her Parliament afterwards declared to be free.

His Lordship then went on to say: "By the provisions of the Act under which you have been convicted, my discretion is very much curbed and constrained, and however desirous I might be to attend to the recommendation of the Jury, moved as they were no doubt by your treatment of the boys being, so far as a state of slavery would permit, kind and humane, yet I repeat that I have very little discretion allowed me; and the very smallest punishment which I have the power to inflict is one of great severity. I regret this the more, because I have no hesitation in saying, notwithstanding the abhorrence with which I, in common with every Englishman, regard slavery, that I consider that the very least punishment which I have the power to inflict is somewhat disproportioned to the offence of which you have been guilty. But I have no prerogative of mercy in your case. I have no alternative but to pass on you the mildest sentence which this Act allows, and which is that you be imprisoned in the jails of Bombay, and be kept to hard labour for the space of three years."[1]

Naturally, Joao Antonio de Siqueira was not anxious to spend three years in jail. Accordingly he threw himself upon the mercy of Government. On October 4, 1853, the accused forwarded to Government a petition addressed to the Queen of England to the following effect. "That your petitioner humbly prays that under the above circumstances your Majesty will be pleased to take his case into your gracious consideration, and will order the

1. Telegraph and Courier of the 5th October 1853.

remission of the whole or such portion of the above sentence, as to your Majesty shall seem fit."[1] The Government first presented the petition to Sir W. Yardley, the Judge, before whom the case was tried,[2] and later on to the Hon'ble the Court of Directors on October 27, 1853.[3]

III. THE PORTUGUESE REMONSTRANCE: In the meanwhile the Portuguese Governor-General at Goa gallantly came to the rescue of Joao Antonio de Siqueira. In his letter to the Right Hon'ble Lord Viscount Falkland, dated October 19, 1853, he wrote: "As Governor-General of the Portuguese possessions in India, it behoves me to hold out protection to the subjects of Her Most Faithful Majesty, my August Sovereign, to save them from any injustice. I, therefore, regret that it is my duty to break silence on this point, as regards the proceeding herein treated of, and to make some observations which it appears to me are worthy of your Excellency's consideration."[4]

Among other objections he first of all pointed out that the Chief-Justice, whilst summing up the evidence, had observed that the offence of de Siqueira was a violation of Section X of the Act of George IV. However, in his opinion, the said law applied to British subjects only and could not affect the subjects of other nations. Therefore, his contention was that the purchase of negroes, though a criminal offence for British subjects, was not punishable in the case of the commander of the 'Quatro d'Abril,' since he was a Portuguese subject. Moreover, the purchase of the five boys in question had taken place at Mozambique, which was not British territory, and therefore Siqueira was not liable to be tried in a Bombay Court, unless and until it was proved that he sold or had the intention to sell them at Bombay.

The Portuguese Governor also remarked that the ordinary laws of the country affected foreigners only, when there existed no treaty between the respective nations to modify them. But as a matter of fact, regarding the slave-trade there existed a treaty between England and Portugal, the 4th Article of which

1. To the Queen's Most Gracious Majesty, the Humble Petition of Joao Antonio de Siqueira, dated October 1853, Judicial Department, Vol. 95, 1853, Bombay Record Department.

2 From D. A. Blane and J. Warden to the Hon'ble Sir W. Yardley, Kt., Chief Justice H.M 's Supreme Court of Judicature, dated 27th October, 1853, Judicial Department Vol. 95, 1853, Bombay Record Department.

3 From same to the Hon'ble the Court of Directors, dated 27th October, 1853, *Ibid.* Bombay Record Department.

4. From the G. G of Goa to the Rt. Hon'ble Lord Viscount Falkland, dated 19th October, 1853, para 3, Judicial Department, 95, 1853, Bombay Record Department.

ran as follows: "The two high parties in mutual contract declare that the infamous and piratical practice of conveying by sea the natives of Africa for the purpose of reducing them to slavery, is, and will for ever be considered a crime strictly prohibited, and severely punishable in any part of their respective dominions, as regards subjects of their respective Crowns." Consequently, there was a clear stipulation that according to the terms of the Treaty, Her Britannic Majesty did not consider it a crime for the Portuguese subjects to make purchases of the natives of Africa and carry them away, provided they did not reduce them to slavery. Hence, if the Act of George IV and all the other enactments passed by the British Parliament in regard to the slave trade did not invalidate the solemn resolutions of a treaty, they could not be made applicable to the case of the Commander of the 'Quatro d'Abril', against whom it was neither proved, nor could be proved that there was any intention to sell the boys into slavery. Furthermore the very fact that Siqueira knew that, both in the British and in the Portuguese dominions in India, any attempt at selling an African slave, *ipso facto* ensured that slaves' emancipation naturally did away with the idea that he had landed the said five boys for the market with the intention of selling them as slaves. Again, from Siqueira's way of acting it was almost impossible to prove that it was his intention to sell the boys. The Advocate-General himself had confessed his ignorance as to this point. But in spite of this, the Advocate-General had insisted that the law had been transgressed by not having the names of these boys inserted with those of the crew. But this allegation ignored the fact that the law under which Siqueira was tried did not apply to him.

What is more, there was, indeed, convincing evidence of the genuineness of Siqueira's intention, since he presented all the documents required to prove the legality of embarkation of the five African boys at Mozambique; but this evidence was objected to by the Advocate-General, and his objections were upheld by the Chief Judge.

Furthermore during the course of the trial the Judge himself had stated that the prisoner, Siquiera, was not placed in circumstances which could have enabled him to produce the necessary evidence for his defence. Therefore in the interests of justice the accused should have been allowed sufficient time to procure it. Instead of this, he was at once placed on trial, and sentenced to a heavy punishment. This was surely a strange way of

proceeding on the part of the Court of a nation, which was reputed for its humanity, its fairness and impartiality. Besides this, the Judge himself had admitted that the evidence against the accused was deficient; but according to the practice followed by the Courts of all nations a person could never be convicted on mere probabilities. Before condemning Siqueira, it was necessary for the Court to prove at the trial that during the 12 or 14 years that Siqueira visited Bombay, he was in the habit of importing slaves and of trading in them. But nothing of the sort was done. On the contrary, the Advocate-General was satisfied with asserting that Siqueira could not have been ignorant of the law with respect to the slave-trade, and had accordingly asked that sentence of imprisonment should be passed against him.

Evidently the Judge was not aware that in the Portguese possessions in Africa it was not customary to ship negroes to India without first setting them free, if they happened to be slaves. For this purpose, necessary indentures were drawn out by a Notary Public, a copy of which was given to the person who was granted such liberty. From the moment an African slave set his foot on Portuguese territory in Asia or in Europe, he was considered to be as free as any free man. Moreover the indentures of emancipation could not be annulled afterwards. An authenticated copy of the letter of enfranchisement passed in favour of the five African boys was produced in the Bombay Court; and though it was not admitted in evidence, it was a clear proof that the boys were free. Therefore both the trial and the sentence could not otherwise be described than as a gross miscarriage of justice.

It was unfair on the part of the Chief Justice to place the case for decision in the hands of the Jury and to state distinctly on what evidence they had to base their final verdict. This was legally incorrect; for it was tantamount to suggesting to them what verdict they were expected to pronounce. Hence neither the verdict of the Jury nor the sentence of the Judge could be called impartial.

It was, therefore, the desire of His Excellency the Governor-General of Goa to ascertain whether the five boys brought by the said Portuguese subject had or had not the requisite passports, and whether it was in the power of Government to pronounce whether the case tried before the Supreme Court of Bombay was properly decided or not.

Finally, the Portuguese Governor concluded by saying that, if his request was not complied with, "I would beg of your Excellency to accept of the protest which I solemnly offer against that which appears to me to have been a prosecution practised in Bombay, in contempt of the treaties existing between the English and the Portguese Nations, directly against the person of the above-named Portuguese subject, Joao Antonio de Siqueira, but which affects the interests of all the Portuguese subjects, who employ themselves in lawful trade between the ports of Asia and Eastern Africa. I also consider it my duty to communicate to Your Excellency that I shall have to bring the whole of the matter before Her most Faithful Majesty, my August Sovereign.[1]

IV. BOMBAY GOVERNMENT'S REPLY. But the Bombay Government made light of the lengthy pleading forwarded from Goa. They had made up their minds, and Lord Viscount Falkland, in his letter to the Portguese Governor-General, dated November 27, 1853, was satisfied with pointing out that the matter was of an entirely judicial nature, for which the Executive Government were in no way responsible. Alluding to the Treaty of 1842 between England and Portugal, Lord Falkland averred that the case of Joao Antonio de Siqueira did not fall within the provisions of that treaty. This was the opinion of the Government Law Officials, who held that the Treaty referred to was a prohibition against the subjects of the two countries conveying by sea the natives of Africa for the purpose of reducing them to slavery. The prosecution of Siqueira was for an offence against 5 Geo. IV, C. 113, in contravention of which five African boys had been imported into the British port of Bombay as slaves, or in order that they might be dealt with as slaves. It was the contention of His Lordship in Council that if a British subject had committed a like offence in a Portuguese port against the laws of Portugal, he would have been equally liable in like manner to punishment in the local tribunals of Portugal for his offence. As regards the treaty to which the Portuguese Governor-General referred as recognising the rights of Portuguese subjects to be accompanied on voyages from one Portuguese possession to another by a limited number of slaves as domestic servants, it was an agreement entered upon as a protection against seizure of Portuguese vessels by British cruizers, and was in no way applicable to the above case.[2]

1. From the Governor-General of Goa to Lord Viscount Falkland, dated 19th October, 1853, Judicial Department, 95, 1853, Bombay Record Department.

2. From Lord Viscount Falkland, Governor of Bombay, to His Excellency the Governor-General of Portuguese Possessions in India, dated 26th November, 1853, Judicial Department, 95, 1853, pp. 299-303, Bombay Record Department.

The matter was finally referred to the Hon'ble the Court of Directors for their opinion and advice. But the documents do not provide us with any information as to whether the sentence passed by the Supreme Court of Bombay was confirmed, or set aside, or reduced.

By way of conclusion it may be pointed out that too much importance should not be attached to the remonstrance made by the Portuguese Governor-General on behalf of Joao Antonio de Siqueira. For evidence is not wanting to show that the Portuguese Governor-General considered it his duty to protest whenever a Portuguese subject got into trouble with the Bombay authorities. Thus for example, in the letter which he wrote to the Governor of Bombay pointing out the evident injustice of the sentence and condemnation of Joao Antonio de Siqueira, he also intercedes on behalf of Antonio Moria de Costa, the Captain of the brig Nossa Senhoera de Concicao. This captain had been arrested and his vessel had been seized on a charge of importing slaves at Bombay. The Portuguese Governor-General had been " informed that the said servants of Captain Costa are not slaves, for they were set free in due form at Mozambique by certificate of discharge".[1]

But the Portuguese Governor-General's contention is not borne out by the testimony given by other witnesses in Court. Thus, for example, Patrick O'Hallaon made the following deposition on oath. " I am a Sergeant of Police.....I received a warrant from the Senior Magistrate of Police authorising me to search the ship.....During the search I found a boy concealed between two boxes ; in front of the boxes there were some baskets of onions and other vegetables. The boy found there was the largest of the two now present. The other little boy I found in a box concealed, the place was quite dark".[2]

The bigger boy had a sad story to tell. When the ship left Mozambique there were four boys on board, of whom none had to do any work. Two of the boys had been taken off the ship by a gentleman who was on his way to Goa. " I was punished every day with a rattan.....I received rice and curry to eat once a day, at noon,.....I was brought from the ship by a constable .....I do not expect any wages because I am a slave."[3]

1. From General Viscount de Villa Nova D'Oureni, Governor-General of the Portuguese Settlement in India, to H. E. Viscount Falkland, Governor of Bombay, dated 18th November, 1853, Judicial Department, Vol. 95, 1853, Bombay Record Department.

2-3. Deposition of Patric O. Halloan, inhabitant of Bombay, taken before A. R. Corfielo, Judicial Department, Vol. 95, 1853, Bombay Record Department.

Yet the Portuguese Governor-General boldly asserted that these boys were not slaves. Hence, apart from the question of Joaq Antonio de Siqueira's guilt or innocence, evidence is not wanting that slaves in considerable numbers were clandestinely imported from Mozambique into Bombay. Some accompanied their masters as domestic servants on their way to Goa and Daman; whilst others were brought to Bombay to be disposed of as servants of the upper class Indo-Portuguese families, who seemed to have a predilection for this class of servants.[1]

1. From the Senior Magistrate of Police to C. T. Erskine, Esq., Acting Secretary to Government of Bombay, dated 5th December, 1853, Judicial Department, Vol. 95, 1853. Bombay Record Department.

CHAPTER VII

Number of Slaves in British India

PLAN: 1. Introductory. 2. In Bengal. 3. In Bombay. 4. In Madras. 5. Conclusion.

SOURCES: PUBLISHED: W. Chaplin, *Report of the Dekhan*, 1822; Hamilton, *East India Gazetteer*, Vol. II; Mc Cosh, *Topography of Assam*, 1837; Montgomery Martin, *India—Its Recent Progress and Present State*; V. A. Smith, *The Oxford History of India*, 2nd Edition; Appendix to Report from Select Committee, IV, 1832; Appendix to the Indian Law Commission's Report, 1841; Evidence before the Select Committee of the House of Lords, 1830; The Fortnightly Review, 1883.

UNPUBLISHED: Judicial Department, 1826, Vol. 25-126, Home Department; Legislative Proceedings, 5th August to 25th November, 1842.

No. 1. INTRODUCTORY

There is probably no subject connected with India regarding which it is less easy to make statements than that of the number of slaves that lived in British India a little more than a hundred years ago. First of all, prior to 1840 no census was ever made of the whole population of British India, so that there is likewise a total absence of accurate statistics anent the slave-population. It is true mention is made in the documents of orders being issued to register the slave-population; but such orders were only of a local character and were in most cases of a temporary duration, and they are practically of very little value. The result is that neither the published nor the unpublished documents supply reliable and detailed information. To give an example of the statements usually met with, we may quote V. A. Smith's pronouncement: "Before 1843 there were many millions of slaves in India."[1] Hence H. B. E. Frere was right in saying (1883), "Owing to the absence of complete and accurate statistics it is difficult to estimate with any approach to exactness the total slave-population of India fifty years ago"[2] He adds: "But there can be no doubt that the number of human beings liable to be bought and sold like cattle, and forced to labour without any control over the fruits of their labour, was far greater in India than was at that

1. V, A. Smith, *The Oxford History of India*, 2nd edition, p. 587.
2. The Fortnightly Review, Vol. XXXIII, January-June, 1883.

time found in all the colonies and dominions of Great Britain and the United States put together."[1]

That this is no exaggeration may be inferred from the evidence gathered by the Indian Law Commissioners. Thus for example, the Law Commissioners recorded the following statements: The proportion of slaves to free men is of six to ten, or one-sixth, or one-third, or two-fifths, or five per cent, or one sixteenth, one-eighth, one-fourth of the population, even one-half of the population. It is also mentioned that slaves are very numerous, that slavery prevails to a great extent, that all families of respectability have slaves, that some Zemindars have two hundred or several hundred slaves, that all landholders have from one to twenty slaves each, that there is no respectable family which has not at least one family of slaves, that two hundred or two hundred and fifty landholders have as many as two hundred slaves each, that in most districts of Bengal a large proportion of the agricultural population is in a state of slavery, that in Calcutta most Mahomedan, Portuguese, Parsee and Jewish inhabitants possess slaves, that in former days Sir William Jones, the Chief Justice, in his charge to the Grand Jury in 1785, referred to his own slaves, and so on and so on.[2]

All these statements are no doubt vague, they are limited to special places; nevertheless, in spite of their vagueness, they bring home to us what a widespread institution slavery was in those days in the land of Hind. To come to more particulars, the evidence taken before the Indian Law Commission gives us an insight into the state of slavery in Bengal, Bombay and Madras.

No. 2. IN BENGAL

As regards Bengal the following statements are worth recording.

Raj Govind Sen, Mukhtear of the Rajah of Tippera, pointed out that slaves were very numerous in those districts. There was not a family of respectability, either of Hindu or Mahomedan religion, that had not at least one family of slaves. "I should say," he added, "one-fourth of the population are slaves".[3]

Tek Loll, Mukhtear of the Sudder Dewany Adawlut at Calcutta, stated that in a total population of one lakh in the

1. The Fortnightly Review, p. 354.
2. *Ibid.* p. 384.
3. Witness No. 1, Evidence before the Indian Law Commission, Appendix I to the *Indian Law Commission's Report*, 1841.

Pergunnah of Punchroke, nearly 12,500 were slaves. And this led him to conclude that in the rest of the Zillah the same proportion might be prevalent as regards the number of slaves.[1]

Pundit Vaydia Nath Missar of Sudder Dewanny Adawlut was of opinion that in Tirhut and its adjoining districts the proportion of slaves was one, or two-sixteenth of the whole population. The great majority of the Kyburt caste were slaves. The slaves were the property, not only of the respectable class, but also of those in a state of decay.[2] From this we can very well conclude that the proportion of slaves in these districts was very great indeed.

Hamud Russool, a Vakil of the same Court, estimated that in Ramgahur, Behar and Shahabad 5 per cent. of the population were slaves.[3]

Dur'b Sing Das, Oriah Missul Khawn. in the Calcutta Court of Sudder Dewanny Adawlut, drew an appalling picture of the conditions that prevailed in the province of Cuttack. There the proportion of slaves to freemen was in the ratio of 6 to 10. Sometimes a great Zamindar possessed as many as 2000 slaves and of these Zamindars there were as many as 200 or 250.[4]

Nor were the Hindu temples exempted from it. The temple of Jagganath consisted of fifty or sixty families of slaves. The male members of the families were not married to the females, but lived in a state of concubinage. As no addition to their numbers was permitted from outside, the number of this College of Devadasis was continued by their own progeny.[5]

Sarvanand Rai, who had long lived in the Districts of Dacca and Jallalpur, affirmed among other things that his master was the owner of 1,400 families of slaves, the domestic slaves alone numbering about 450.[6]

Similar testimonies might be easily multiplied. It would seem that in the districts of Rampore, Bareilly and Moradabad in Rohilkhand slaves of both Hindu and Mahomedan castes were extremely numerous.[7] Again, in Suresur, a Pergunnah in the district of Tirhut, 2/16th of the whole population were slaves, whilst in the other Pergunnahs of this district the percentage was considerably higher.[8]

---

1. Witness No. 2, *Ibid.*
2. ,, No. 3, ,,
3. ,, No. 4, ,,
4. ,, No. 6, ,,
5. ,, No. 2, ,,
6. ,, No. 19, ,,
7. ,, No. 14, ,,
8. ,, No. 17, ,,

In Calcutta those in actual state of slavery were about one-eighth of the whole population. But it is significantly added that, with the inclusion of all those who "had the taint of slavery" those in bondage constituted six-sixteenth of the inhabitants of the city.[1]

Furthermore, according to a statement, prepared in 1839 by Edward Repton, Magistrate of Zillah Balasore, there were 8,022 slaves in a total population of 462,000 inhabitants in the Pergunnahs of Bhudruck Chucklah.[2]

Finally, in Sylhet, one of Bengal's most thickly populated districts, slavery appears to have prevailed to an unusual extent; for its proportion of slaves to freemen was in the ratio of one to three.[3] This was probably due to the preponderance of the Mahomedan religion and a large portion of the community consisting of landholders.[4] In Assam the number of slaves including bondsmen was estimated at 27,000.[5]

In 1837, the Bengal Government called upon its medical servants to report on the topography of the districts in which they practised their profession. As a result of these instructions a most valuable work was published by the Government of India, at Calcutta in 1837, known as Dr. McCosh's Topography of Assam, which contained very valuable information regarding the state of slavery in that province.

"Slavery still continues to a very considerable extent in Assam, and these poor creatures are bought and sold every day for a mere trifle. Every native in the receipt of more than ten or twelve rupees a month has one or more of them. All the drudgery of the household and the labour of the field is performed by them. Many of them have been enthralled by mortgaging their bodies for a few rupees; and for want of means of accummulating the original sum, increased by exorbitant usury, continue in bondage for life, themselves and their descendants from generation to generation. Slaves are believed to be kindly treated by their masters; but as might be expected, they make frequent

1. Witness No. 23, *Ibid.*

2. Answer of Edward Repton, Magistrate of Balasore, to the Secretary to the Indian Law Commissoners, dated 7th May, 1837, Appendix II to the Indian Law Commission's Report, 1841, p. 242.

3. Answer of Charles Smith, Officiating Civil and Session Judge, Zillah Sylhet, to the Register of the Sudder Dewanny and Nizamut Adawlut, dated 3rd June, 1836, Appendix to the Indian Law Commission's Report, 1841, p. 137.

4-5. From D. Scott, Governor-General's Agent, North-East Frontier, to George Swinton, Chief Secretary to Government, dated 10th October, 1830, Appendix VI to the Indian Law Commission's Report, 1841, p. 318.

attempts to escape. They are valued in the market according to caste; high class adults sell for about twenty rupees, boys for fifteen and girls for eight or twelve. Those of the lower castes do not bring more than one-third of the above estimate. No slaves are allowed to be exported from Assam."[1]

These various statements regarding the state of slavery in Bengal tell their own tale. Their significance may be gathered from the following table drawn up by Montgomery Martin in 1862:[2]

Northern, Central and Southern Cuttack	600,000
Moradabad	95,366
Behar and Patna	131,280
Bhaugalpore	40,861
Purneah	24,560
Rungpoor	536,140
Rajeshage	766,341
Shahabad	21,340
Assam	27,000
Dacca Jelalpore	275,190
Tipperah	343,065
Chittagong	175,200
Sylhet	361,240
Mymensingh	363,677
Tirhut	212,210
Sarun	180,509
	4,153,973

No. 3. BOMBAY

As regards Bombay it would at first sight seem that the number of slaves in that Presidency was considerably below that of Bengal. This impression is to a great extent the result of the official attempts made in Bombay either to deny the existence of slavery or to minimise its evils. Perhaps in no other Presidency were there so many staunch defenders of the supposed mildness of Indian slavery. But in spite of these repeated assertions of Government Officials, it would seem that slavery was rife in Bombay, as may be gathered from the following testimonies.

To begin with Dharwar, T. H. Baber, the Principal Collector of Dharwar, pointed out that there were several descriptions of slaves in his collectorate; but as there were no returns, it was

1. Mc. Cosh, *Topography of Assam*, 1837, p. 129.
2. Montgomery Martin, *India—Its Recent Progress and Present State*, 1862, p. 126.

difficult to ascertain the number of slaves. In 1825, he wrote that, from personal enquiry and observation, he supposed that the aggregate did not exceed a few hundred in the Company's part of the Dooab. However, they were more numerous in the territories of His Highness the Raja of Kolahpur.[1] Seven years later in 1832, he computed at about 15,000 the number of slaves in the Dooab or the southern Maratha country, including Kolahpur, which amounted to rather more than three-quarters of the population. But in the southern Maratha country the percentage was much higher. "There all the jageerdars, deshwars, zemindars, principal brahmins and sahookars retain slaves on their domestic establishments, in fact in every Maratha household of consequence they are to be found, and indeed are considered as indispensable."[2] T. H. Baber alludes also to the statement made by William Chaplin, Commissioner of the Deccan, who reported in 1822 that throughout the Deccan slavery was very prevalent; and he adds that there is no room left to doubt the correctness of this assertion.[3]

In Surat the number of slaves was estimated at 2,000 in a population of 120,000.[4] In Ratnagiri, the number of persons who were called slaves amounted to 13,000, but the number of actual slaves did not exceed 2,000.[5]

In Ahmedabad the Acting Criminal Judge pointed out that a great number of Hindu children of all castes were sold as slaves to Mahomedans; and the objections which the Hindus raised against this practice were in his opinion calculated to bring about the abolition of slavery in those parts earlier than elsewhere.[6]

As regards Surat, Mr. Lumsden, in his letter of 8th August, 1825, reported that there was as large a proportion of agricultural slaves in some of the Pergunahs of his Collectorate,

1. From T. H. Baber, Principal Collector of Dharwar, to William Chaplin, Commissioner of Poona, dated 30th September, 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.

2. Answers of T. H. Baber, Appendix to Report from Select Committee, IV, 1832, (Public), p. 422.

3. Chaplin, *Report of the Dekhan*, 1822, para 279, p. 150.

4. From the Judge of the Surat Court of Adawlut to David Greenhill, Acting Secretary to the Government of Bombay, dated 18th August, 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.

5. From the Collector of Ratnagiri to David Greenhill, Consultation No. 8 of 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.

6. From the Acting Criminal Judge of Ahmedabad to David Greenhill, dated 30th November, 1825, consultation No. 68 of 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.

as was supposed to exist in any part of India.[1]

Finally in the Deccan, William Chaplin, Commissioner of the Deccan, remarked that many slave-girls were purchased by dancing women and brought up to that profession after an education in music and dancing.[2] He also remarked that kidnapping of Indian females was a common practice amongst the Arabs in the Nizam's service.[3]

These various statements do not help us much to form a correct idea of the number of slaves in Bombay, though they make us surmise that the slave population of Bombay did not reach the 4,000,000 of Calcutta.

No. 4. MADRAS

Finally as regards the Madras Presidency the documents supply us with a good deal of information; but their contents are nevertheless disappointing, because they only deal with slavery in Canara and Malabar.

In 1801, J. G. Ravenshaw, the Collector of the Southern division of Canara, estimated that the number of slaves amounted to 52,022; but this did not exclude 722 illegitimate children and numerous other slaves imported from Arabia.[4]

In 1819, the Honourable Thomas Harris fixed the slave-population of Canara at 82,000, but at the same time added that it was practically impossible to make an exact statement, for no proper census had ever been drawn up.[5]

As regards Malabar in 1807 Mr. Warden, the Principal Collector of Malabar, reported that there were about 96,386 slaves in that district.[6]

In 1819, J. Vaughen, who was Mr. Warden's successor, stated that the slave-population of Malabar was 100,000, not including the slaves in Wynaad.[7]

In 1827, Mr. Sheffield, another, Collector was of opinion that the slave population of Malabar, exclusive of Wynaad, was 95,696.[8]

1. From Mr. Lumsden, Collector of Surat, to David Greenhill, Acting Secretary to the Government of Bombay, dated 8th August, 1825, Consultation No. 18 of 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.

2-3. From William Chaplin, the Commissioner of Deccan, to David Greenhill, Acting Secretary to the Government of Bombay, dated 6th October, 1825, Consultation No. 108 of 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.

4. From J. G. Ravenshaw to Willian Petrie, President of Board of Revenue, dated 7th August, 1801, *Parliamentary Papers*, (Judicial), 1828, paras 15 and 18.

5. From T. Harris, Collector in Canara, to the President and Members of the Board of Revenue, dated 10th July, 1819. *Ibid.*, para 7, p. 844.

6. *Parliamentary Papers*, 1828, (Judicial), p. 926.

7-8. Baber, Appendix to Report from Select Committee, IV, p. 423.

In 1830, T. H. Baber in his evidence before the Select Committee of the House of Lords stated that in Malabar also there were 100,000 slaves.[1]

In 1839, Mr. Clementson, who was likewise a Collector, took a census of the slave-population and came to the conclusion that there were 144,371 slaves.[2]

In 1841, E. B. Thomas, Judge of Malabar, informed the Madras authorities that in the short space of two years the slaves had increased from 144,000 to 159,000.[3]

These detailed numbers about slavery in Canara and Malabar make it clear what a great evil slavery was in those districts; for it would appear that the total population of Malabar in 1807 was 576,640,[4] so that the slaves formed about 20 per cent. of the whole population. But the Canara and Malabar statistics do not in any way help us to form a correct idea of the total slave-population in the Madras Presidency.

No. 5. CONCLUSION

By way of conclusion we can do no better than quote H. B. E. Frere from his article on *Abolition of slavery in India and Egypt*, in the Fortnightly Review. "Comparing such information, district by district, with the very imperfect estimates of the total population fifty years ago, the lowest estimate I have been able to form of the total slave population of British India, in 1841, is between eight and nine millions of souls. The slaves set free in the British colonies on the 1st of August, 1834, were estimated at between 800,000 and 1,000,000; and the slaves in North and South America, in 1860, were estimated at 4,000,000. So that the number of human beings whose liberties and fortunes, as slaves and owners of slaves, were at stake when the emancipation of the slaves was contemplated in British India, far exceeded the number of the same classes in all the slaveholding colonies and dominions of Great Britain and America put together."[5]

Finally, it must be borne in mind that in 1840 British India did not extend from the Karokoram Range to Cape Comorin,

1. Baber, Evidence before the Select Committee of the House of Lords, 1830, Ques. 3167, p. 384.
2-3. From E. B. Thomas, Judge of Malabar, to the Register to the Court of Sudder and Foujdarry Adawlut, dated 24th August, 1842, Home Department, Legislative Proceedings, 5th August-25th November, 1842, Imperial Record Department.
4. Hamilton, Vol. II, p. 255.
5. Fortnightly Review, 1883, p. 355.

and from Persia and Afghanistan to China and Siam. In those days, Sind, the Punjab, Travancore, Nepal, Burma were outside the pale of British administration. Moreover, Kathiawar, Baroda, Gwalior, Bhopal, Bundelkhand, Rewa, Nagpur, the Nizam's Dominions, Mysore, Rajputana, Sirhind, Garhwah, Rampur and Oudh were British Protected States. The Company's territories consisted mainly of the three Presidencies of Bengal, Bombay and Madras. And the 8,000,000 slaves lived in those three Presidencies. But in the non-British territories and in the British Protected States slavery was everywhere rife; and there is every probability that the total number of slaves in India, the Independent and the Protected States included, amounted to 16,000,000 and perhaps more. Truly an appalling picture of the deplorable condition prevailing in our land, less than a hundred years ago!

PART II

Legal Aspect of Slavery

CHAPTER I

Early Hindu Law of Slavery and its Administration in British India

PLAN : 1. Slaves and their classification. 2. Rights of slaves. 3. Administration of Hindu Law.

No. 1. SLAVES AND THEIR CLASSIFICATION

SUMMARY: I. Definition. II. Naréda's classification of slaves. III. The Labdhas. IV. Famine slaves. V. Manu's classification.

SOURCES: PUBLISHED: W. Adam, Letter I to Thomas Fowel Buxton; H. T. Colebrooke, *Digest of Hindu Law*, Vol.. II; Sir William Jones, Translation of Manu, 1825; W. H. Macnaghten, *Principles and Precedents of Hindu Law*; Sir Arthur Steele, *Law and Customs of Hindu Castes;* Sir Thomas Strange, *Hindu Law*, Vols. I-II; Appendix VIII to the Indian Law Commission's Report, 1841.

UNPUBLISHED: J. C. C. Sutherland, *Hindu Law*, a paper appended to the First Report of the Indian Law Commission, 1st February 1839, Government of India, Legislative Proceedings, February 1839, Imperial Record Department.

I. DEFINITION. In the early Hindu Law the slave was placed in the category of "persons owing service," *Sushrūshkā*. But all those who owed service were not slaves; for the meaning of "Sushrūshā" was five-fold, it comprised the pupil (Sishya), the apprentice (Antevāsi), the hireling (Bhrittaka), the overseer (Adhikarmakrit) and the slave (Dása)[1].

Afterwards Naréda, who was perhaps the most famous amongst ancient Hindu Legislators, drew a sharp line of demarcation between slaves and non-slaves. He called the non-slaves, *viz.*, the pupil, the apprentice, the hireling and the overseer, *Karmakara* or servants. To the slaves properly so called he left the name of *Dása*. The distinction made by him mainly affected the occupational pursuits. *Karmakaras* could only be assigned pure work, whilst the *Dása*, had to do tasks that were looked upon as degrading and were officially styled impure work.[2]

1. Náreda, *Vide* Digest, B. III, C. I, V. 3, Vol. II, p. 205.
2. *Ibid*, V. 29, p. 224.

Accordingly slaves were bound to perform the lowest offices.[1] The owner of a male or female slave could command him or her to do such impure work, as plastering and sweeping the house, cleaning the door-gateway, rubbing the master's naked body with oil, clothing him, removing fragments of victuals left at his table".[2]

It should however be noted that with Naréda the term *Dâsa* or slave does not denote a caste. For Naréda clearly teaches that the Sudras were not the only ones liable to be reduced to slavery. "A Kshatriya or a Vaisya could likewise become slave, in the inverse order of the classes, that is to masters of a class inferior to his own, provided he has forsaken his duty towards his own order."[3] The Brahmans alone were not liable to incur the state of slavery under any circumstances. It is true that according to the Mitakshara an apostate is generally the slave of the king. But this does not seem to apply to the apostate Brahman; for we read in Katyana, verse 57, that the apostate Brahman is to be banished. Similarly when a Brahman is unable to pay a fine, he is privileged among his Hindu fellow-men.[4] "A priest," says Manu, "shall discharge it by little and little."[5]

Finally as everywhere so in India the right of possessing slaves was inseparable from the power of inflicting punishment. Although the master's power to punish his slave is not clearly defined in old Hindu Law, it would seem that according to Manu corporal punishment inflicted on a slave was to be of the same kind, both in nature and intensity, as that with which a man might chastise his wife, his son, his pupil and his younger brother. This punishment was supposed to consist "in the infliction of blows with a rope or the small shoot of a cane (a slip of bamboo) venudula on the back of body; but not on a noble part."[6] As regards punishment, the author of Ratnakara gives a more detailed description. He mentions the following kinds of corporal punishment: flagellation with a whip and the like, vexation, tonsure, exposure on an ass, and so forth.[7] Again Naréda states explicitly that the pupil deserting his master may be corporally punished and confined;[8] and Gautama says that for ignorance

1. *Ibid.* V. 26, pp. 222-23.
2. Vrihaspati, *Vide.* Digest, B. III, C, I. S, IV. 27, Vol. II, p. 223.
3. Naréda, Digest, B. III, C.I, V. 56, Comments, p. 254.
4. Katyana, Digest, *Vide*, B. III, C. I, §. II, V. 57, Vol. II, p. 254.
5. Manu, ,, ,, B. III, C. I, V. 34, Vol. II, p. 229.
6. Jones, Manu, Chap. VIII, V. 229, 300; Colebrooke, *Digest of Hindu Law*, B. III,, C. I, V. 33.
7. Sutherland, Hindu Law, a paper appended with the 1st Report of the Indian Law Commission's, 1st February 1839,
8. Colebrooke, *Digest of Hindu Law*, B. III, C. I, V. 19.

and incapacity he may be corrected with a small rope or cane.[1] From all this it follows that the power of correction was not only everywhere acknowledged, but also extensively used. As to the nature of the punishment inflicted, the masters seem to have had a good deal of freedom, though excessive punishment was deprecated, forbidden and liable to be visited with penalties.

II. NARÉDA'S CLASSIFICATION. Firstly according to Naréda there were fifteen different kinds of slaves: (1) the house born (Grihajáta), *i.e.*, one born of a female slave in the house of her master, (2) the bought, (Krīta) *i.e.*, bought for a price, (3) the obtained (Labdhas), (4) the inherited (Dāyadupajāt), (5) the self-sold, (6) the captive in war, (7) the apostate from religious mendicity or asceticism, (8) the maintained in a famine (Anákála Bhritta), (9) the pledged by his owner, (10) the slave for a debt, (11) the won in a stake (Panejita), *i.e.*, one who is overcome in a contest and who had agreed to submit to slavery in that event, (12) the self-offered with the words "I am thine", (13) the constituted (Krita) for a stipulated time, (14) the slave for his food (Bhakta-Dās), and (15) the slave for his bride (Badáva-hrita).[2]

III. THE LABDHAS. Naréda's classification of slaves into fifteen different classes was not found fault with by other Hindu Legislators. It was accepted as a matter of course. However, among them there was one class of slaves that was made the object of special studies, *viz.* the Labdhas. In his *Digest of Hindu Law*, H. T. Colebrooke, commenting on the text of Naréda, interprets Labdha to mean "one received by donation" or "one required by the acceptance of donation, and the like."[3] This seems to be the obvious meaning which was likewise admitted in former times by Hindus skilled in the science of legislation.

But the very vagueness of the phrase "one received by donation" made it susceptible of many interpretations. Thus for example, a Hindu commentator, Jaganath, extended "acceptance of donation and the like" to boys purchased or received for adoption, provided they had become slaves through some failure in the form prescribed by the law. In other words, a boy acquired or received for adoption was liable to become a slave, when he had not been regularly and completely adopted through omission of some part of the prescribed religious ceremonies.[4]

1. *Ibid*, V. 12.
2. Colebrooke, *Digest of Hindu Law*, B. III, C. I, V. 29, Vol. JI, p. 224.
3. Sutherland, *Hindu Law*, para 3, p. 367.
4. Colebrooke, *Digest of Hindu Law*, B. III, C. I, Comment on V. 27.

Basing himself on the Calica Purana, Jaganath asserted that children who were given or otherwise made over for adopting, but in whose case the tonsure and the remaining of the prescribed ceremonies had not been duly performed, in the name of the adoptive father, must be declared slaves. However, it must be noted that invalid adoption did not result in slavery, unless either the parents had surrendered their child, or unless the boy had placed himself entirely into the power of the adopting party.[1] Jaganath explicitly states that the phrase "received or acquired for adoption" implied either the parents' consent, or the boy's declaration "I am thine".[2] In this point Jaganath's teaching is corroborated by that of Yijnyaneswara, who asserts that the parents' consent or the boy's declaration are a requisite condition, for unless one has consented to become a slave, one cannot fall under the laws of servitude.

Similarly the author of Dattaca Mīmánsá holds that invalid adoption means slavery. "If tonsure and the subsequent ceremonies are duly performed, in the family name of the adopter himself, then only do the Datta (the adopted one) and the rest become sons, otherwise they are called slaves." The author of the Dattaca Mīmánsá further observes: "The Kritima and the others, (*i.e.*, the various forms of adoption) are comprehended under the terms "the rest"; for they become sons by those religious rites (Sanscara), and not by mere acceptance. Otherwise, that is, if the tonsure and the rest of the ceremonies are not performed, or if the taking be one whose tonsure and other ceremonies have already been completed, a state of slavery ensues, not the relation of son; for it is consecration that produces this filiation."[4] Hence according to the author of Dattaca Mīmánsá the invalidating causes of adoption are excess of age, omission of rites, previously performed ceremonies.[5]

The Judges of the Sudder Dewanny and Nizamut Adawlut were not ignorant of Naréda's classification of slaves into fifteen classes. They also knew of the Labdha or the acceptance of donation extended to invalid adoption. With regard to the latter point Sir Thomas Strange was of opinion that invalid adoption did not lead to slavery. In justification of his opinion

1. See translation of the *Dattaka Mīmānsā*, S. IV, § 22; and the Mitakshara on Inheritance, Chap. XI, S. I, §13.
2-3. Colebrooke, *Digest of Hindu Law*, Comments on V. 29, Vol. II, pp. 225-26.
4. Strange, *Hindu Law*, II, C. V, p. 222.
5. *Dattaka Mīmānsā*, S. IV, § 40, 41, 46, Appendix VIII to the Indian Law Commission's Report, 1841, para 10, p. 368.

he pointed out that the earlier writers do not make any mention of it, and that Jaganath himself acknowledged it to be his own interpretation, and expressed a surprise that so apposite an interpretation should have been overlooked by the preceding authors. Sir Thomas Strange also made bold to question the genuineness of the text quoted by Jaganath in the Calica Purana. He called attention to it that the text was not found in many copies of the Calica, and that, even in those copies which contained it, it appeared to bear the mark of an interpolation, and hence did not connect well with the context.[1]

But H. T. Colebrooke was of a different opinion. He held that Jaganath's teaching was the expression of a doctrine which had received the sanction of the majority of the compilers on the subject of adoption, some of whom were undoubtedly of great authority. Furthermore he set the greatest store by the minute and careful exposition of the teaching in the Dattaca Mīmánsá. This led him to conclude that there existed in former times a widespread belief and a general practice according to which invalid adoption gave a legal right to claim the invalidly adopted as a slave.[2]

Another student of early Hindu Law, J. C. C. Sutherland does not enter into any detailed discussion of the adoption difficulty, he is satisfied with asserting that on the whole he prefers to side with Colebrooke rather than with Sir Thomas Strange. He adds an interesting detail: "The children so becoming slaves were placed in the most favourable class namely that of slaves maintained in consideration of service."[3] This last statement is in itself a convincing argument that invalid adoption was tantamount to slavery.

IV. FAMINE SLAVES: Another category of slaves calling for special attention are the famine slaves. In time of famine any individual could barter away his liberty in exchange for maintenance. But in this connection the question naturally arises whether parents were entitled legally to sell their children. The Hindu Law provided that, for the sake of obviating calamity, a father is competent to sell as a slave to another his son or daughter, who is incapable of giving assent, in other words, who is a minor; and according to usage a child so disposed of becomes the slave of

1. Sir Thomas Strange, *Hindu Law*, Vol. II, C. V, pp. 221-22.
2. Colebrooke, *Digest of Hindu Law*, II.
3. Jagannatha's Digest, Vol. II, p. 247.

the purchaser.[1] At the same time the Hindu Shaster declares that the father is incompetent to sell into slavery his son or daughter without their consent, even if he should do so to obviate calamity. But if the children's consent is obtained, the father may sell into slavery either or both of them, no matter whether the calamity existed or not.[2]

By way of corroboration of this statement we may here mention the general principle laid down in the text of Vishnu, mentioned in Veira Mitra Daya and other books: "Man, produced from virile seed and uterine blood, proceeds from his father and mother as an effect from its cause; therefore his father and mother have power to give, to sell or to abandon their son."[3] But the extent of the power is limited by Kátyayána, cited in the Vivada Chintamani and other books, according to which a wife or a son, or the whole of a man's estate, shall not be given or sold without the consent of the persons interested.[4] Moreover Pundit Vydia Nath Misra of the Sudder Dewanny Adawlut observed that, in order to obviate calamity, even the mother is competent to sell her children with their consent, whether the father be alive or dead, provided he does not oppose the sale. But a sale, effected by a near kinsman or a guardian, is invalid under any circumstances.

Furthermore, a Brahman cannot legally become a slave, he is not entitled to claim the right of selling his child into slavery; such a sale would be invalid. The same rule also applied to the Kshatriyas who cannot be the slaves of an inferior class. Therefore in all contested judicial cases the burden of the proof lay on the purchaser. The purchaser had to bring forward conclusive evidence that the slaves belonged to the classes liable to slavery according to the local usage and the custom of the country to which they belonged.[6] However, this was not a universal test; for the rule was not everywhere observed, as is made plain by the evidence taken by the Indian Law Commission.[7]

V. MANU'S CLASSIFICATION. According to Manu there are seven kinds of slaves: (1) the one made captive under a standard or in a battle, (2) the one maintained in consideration of service,

1-2. Opinion of Vydia Nath Misr, Pundit of the Sudder Dewanny and Nizamut Adawlut, on the power of parents to sell their children into slavery, Appendix VIII, to the Indian Law Commission's Report, 1842, p. 377.
3. Appendix VIII to the Indian Law Commission's Report, 1841, p. 377.
4. Appendix VIII to the Indian Law Commission's Report, 1841, p. 378.
5-6. *Ibid*, *Hindu Law of Slavery*, Addenda, p. 374.
7. Manu, C. VIII, V. 41, cited in Digest, B. III, C. I, V. 33, Vol. II, p. 228.

(3) the one born of a female slave in the house, (4) the one sold, (5) given, (6) inherited from ancestors, and (7) the one enslaved by way of punishment (Danda Dasa.) The author of the Mitakshara remarked that this enumeration included all the other descriptions of slaves; and Colebrooke in his *Digest of Hindu Law* expressed the same opinion.[1]

This list is, however, far from exhaustive; it rather serves the purpose of supplying a distributive scheme, of which the general sub-divisions are likely to cover any special case of slavery. Thus for example, Manu also mentions that a man of the military, commercial or servile class who is unable to pay a fine shall discharge the same by his labour.[2] By way of a final remark it may be added that Manu's classification of slavery does not run counter to that given by Naréda; his classification is no doubt more compendious, but it is equally comprehensive.

No. 2. RIGHTS OF SLAVES

SUMMARY: I. Right of property. II. Right of evidence and contract. III. Right to emancipation.

I. RIGHT OF PROPERTY. In order further to elucidate the nature of the early Hindu Law of slavery we shall here answer the most important question which naturally presents itself: Could a slave own or earn property independently of his master? By way of reply it may be stated as a general principle that the old Hindu Law denied to the slave every right to acquire or to possess property in his own name. Two nearly identical passages of Naréda and Manu on this subject, both declare that "a wife, a son and a slave (Dasa) can legally have no exclusive property of their own, and that whatever they acquire belongs to their owners."[3] This principle runs through the whole of early Hindu slave-legislation; but in practice the principle is in several instances mitigated in the slaves' favour.

First of all it was an acknowledged principle that the money obtained by a freeman's self-sale into slavery was his own. But this is such an obvious case of personal ownership that it can hardly be classified among the slave's rights. Apart from this, the author of Kátyayána, whilst fully admitting the master's dominion over his slave's goods, holds that the master has no right over those goods which the slave acquires with his master's

1. Sutherland, *Hindu Law of Slavery*, submitted with the 1st Report of the Law Commissioners, dated 1st February 1839.
2. Colebrooke, *Digest of Hindu Law*, II, Book II, C. I, V. XXXIV, Manu, p. 229.
3. *Ibid.*, V. 51, 52, Narada and Manu, p. 249, *Cf.* Appendix VIII, to the Indian Law Commission's Report, 1841, para 17, p. 369.

permission. This view finds corroboration in a passage from the printed copy of Chintamani which makes it clear that whatever property is obtained by a slave with his master's permission is the slave's property, and the master has no right to it.[1] Again Bhalchundre Sastree teaches the same doctrine: a slave is incapacitated from acquiring any property, except with his master's consent, and in this respect the slave was on the same footing as a Hindu minor son. Furthermore the slave of a Sudra succeeds to his master's property, if the latter dies without relations (Mitakshara); whilst the son of a Sudra by his slave is to be allotted half a son's share on the father's death; and he is even entitled to everything, if there be no daughter's son. Provision is also made that the estate of a Brahman dying in such circumstances, (*i.e.*, leaving behind a son by a slave), though taken by the Raja, it is to be committed to the slave for his maintenance and for charitable expenditure.[2]

From this it follows that in practice a distinction has to be made between the abstract principle denying to the slave every right of property and the mitigated application of this principle. This distinction was fully grasped by J. C. C. Sutherland, who stated that it appeared to him correct to say that "the goods and earnings of a slave belonged to his master, the exception being the case in which the master had assured the slave's ownership, the proceeds of sale, or anything analogous to it."[3] H. T. Colebrooke seems to have surmised the existence of the same distinction, but his comment is somewhat lacking in clearness. At one place he simply affirms that the slave may have exclusive property; and elsewhere he refutes the objection that a slave, having no property, cannot repay his food, by asserting that he may through affection possess property.[4]

II. RIGHT OF EVIDENCE AND CONTRACT. Sir William Jones, both famous as a judge and as a Sanskrit scholar, states that the evidence of a slave was generally inadmissible according to Manu;[5] but the validity given to a contract made by a slave—which the latter had no right to rescind[6]—at least invested him

1-2. Sir Arthur Steele, *Law and Customs of Hindu Castes*, para 51, p. 58; *Cf.* Yadu, Col. D. 3, 143.

3. *Cf.* Colebrook, *Digest of Hindu Law*, II, B III, C, I, V. 43, Appendix to the Indian Law Commission's Report, 1841, para 19, p. 369.

4. *Ibid.*, para 18, p. 369.

5. Sir William Jones, Translation of Manu, C. X, V. 70.

6. *Ibid*, V. 167.

(the slave) with some of the functions of a witness and free agent. From this it follows that in certain cases the slave could enter into a valid contract. It would even seem that he was not altogether deprived of the right of giving evidence in Court. For Steele asserts in his "Law and Customs of Hindu Castes" that a slave is not excluded from giving evidence as such, provided he possesses intelligence and is trustworthy, but he cannot be a witness in his master's cause. This is on the general rule of incompetency.

However this opinion of Steele does not seem to have been shared by the majority of ancient legislators; most of these blindly followed Manu in denying to the slave the competency to act as a witness in law suits. It may also be remarked here that whatever right was granted to the slave as a contracting party, was not much of a privilelge, since Manu only grants it in cases in which the slave could not rescind the contract. Therefore, the slave had practically no rights either to give evidence or make a contract.

Moreover no rights whatever were apparently vested in female slaves; they seem to have been altogether at the mercy of their masters. Thus for example, the Pundits of the Sudder Dewanny and Nizamut Adawlut, who were simply steeped in Hindu Law, declared in 1809 that, if a master violated his minor female slave, or allowed any other person to have connection with her, the Court could not emancipate her, but might impose a penalty of 50 pans. Again though it was unlawful for a master to violate his adult female slave, this crime does not seem to have been visited with heavy punishment, since in no case was the offender liable to lose his social standard by being relegated to the inferior caste to which the slave belonged. Perhaps it may be added that in most cases it was well-nigh impossible for a female slave who had been thus injured to secure her master's punishment. Her very condition rendered it difficult to approach the judges, and in a Court of Justice her testimony would not have weighed against her master's bold assertion that she had freely consented to have intercourse with him.[2]

III. RIGHT TO EMANCIPATION. As regards the slave's right to emancipation, Naréda laid down the rule that among the fifteen classes mentioned by him the first four, (those born, and

1. A. Steele, *Law and Customs of Hindu Castes*, para 51, p. 58.
2. Appendix VIII to the Indian Law Commission's Report 1841, *Hindu Law of Slavery*, p. 375.

those acquired by purchase, by gift or by inheritance) were doomed to permanent servitude, both themselves and their descendants. In their case the only release from the state of slavery was death. But even in the case of death the Hindu lawgiver made an exception, and he asserted that death arising from the slave's own act, that is, suicide, does not release the slave from servitude, because, according to religious notions of Hindus, the slave who has thus killed himself remains the slave of the same master in another birth.[1] Misra was of the same opinion; he asserted that a slave's suicide "would produce immoral consequences; hence as a man is debtor to his creditor in another birth, so he would become the slave of his former master." Hence Thomas Strange pointedly remarked that the old Hindu Law aptly serves to illustrate the slave's hopeless condition in this life, since for him there was no possible escape from servitude.[2]

However in one case Naréda makes an exception to the iron-bound rule with which he encompasses slavery. He states that if a slave should save his master's life from imminent peril, he is thereby entitled not only to emancipation, but also to a son's right of inheritance. However this was not unrestricted generosity, and the successful saving attempt was duly qualified. It was added that the master's peril must be such that the slave rescues him at the risk of his own life. Without this proviso, it was pointed out, slaves might only be too anxious to bring their masters into dangers whence they could easily rescue them.[3]

The author of Kátyayána endorses Naréda's teaching. He distinctly states that by saving his master from an imminent danger the slave is entitled to claim freedom from servitude. But this privilege is considerably curtailed by a number of other commentators. Thus for example, the Prakasa Parijata and other Mithila Books, as noticed in the Chintamani and in Colebrooke's Digest, restrict the right of claiming emancipation to cases in which the rescued master has neither son nor adopted heir.[4]

According to the author of Kátyayána, if a master co-habits with his female slave, and if as a result of such intercourse a son is born to him, both the mother and her issue are thereby enfranchised.[5] In the next place, as regards the famine-stricken, who through want and distress had been reduced to slavery, Vijnaneswara, basing himself on an obscure text of Yajnawalkya, teaches

1-2. Colebrooke, *Digest of Hindu, Law*, II, p. 234.
3. *Ibid.*, Naréda, V. 42, pp. 241-242.
4. Appendix VIII to the Indian Law Commission's Report, 1841, para 20, p. 370.
5. Kátyayána, Digest, B. III, C. I, T. III, V. 49, p. 247.

that they can obtain freedom, provided they make good the money spent on their support from the beginning of their servitude.[1] J. C. C. Sutherland is, however, of opinion that the text of Yajnawalkya does not warrant such an interpretation.[2]

In this connection Naréda's teaching throws an interesting light on the Hindu way of looking at things. He distinguishes between slaves improperly so called and slaves in the true sense of the word. The first were merely beggars maintained during famine, and were called slaves for their food, but they were not really slaves, as is made evident by Naréda's statement that a slave for his food is immediately discharged on relinquishing his food. But this was not the case with slaves in the strict sense of the word. In their case the food consumed by them during famine-time was not compensated by their labour. They could only procure their release by presenting their master with a pair of oxen.[3] The author of Ratnakara is of the same opinion as Naréda. He holds that a slave fed in time of famine obtains his liberty by relinquishing his food and by the gift of a pair of oxen.[4]

There does not, however, seem to have been a uniform rule; and H. T. Colebrooke draws attention to a statement of Viveda Chintamani according to which a slave for his food can only obtain liberty by presenting his master with a pair of oxen in addition to the amount of food he has consumed.[5] This was also the opinion of J. C. C. Sutherland, who pointed out that according to old Hindu Code it was not deemed unreasonable that a person whose life had been saved during time of famine should make some return for the benefit received, besides giving his labour. But he is of opinion that the master's demand of a pair of oxen and of the amount spent on the slave's support could hardly be just, and was probably not insisted on.[6]

Finally there are a number of instances in which the right to emancipation was conceded to slaves; some of them are so obvious as to be self-evident, but others are of a more surprising nature. The following are the most noteworthy instances that deserve to be mentioned:

1. Yajnewalkya, Digest, B. III, C. I., §II, V. 44, p. 245.
2. Appendix VIII to the Indian Law Commission's Report, 1841, para 22, p. 370.
3. Naréda, Digest, B. III, C. I, §2, V. 43, p, 243.
4. Appendix VIII to the Indian Law Commission's Report, 1841, para 23, p. 370.
5. Chintamani, Col. *Digest of Hindu Law*, V, p. 243.
6. J. C. C. Sutherland, *Hindu Law*, Appendix VIII to the Indian Law Commission's Report, 1841, p. 370.

A slave for a debt is according to Naréda released by paying his debt and the interest on it.[1] As a further illustratration of this doctrine, J. C. C. Sutherland speaks of the following case, which is mentioned both in the Mitakashara and in Colebrooke's Digest. It may happen that a slave for debt is redeemed by a third person. This person thereupon acquires a right to claim from the slave the redemption money which he has spent and the interest on it, or, in the words of the old Hindu Law, the slave for debt will only be discharged if he repays to his present creditor the sum that was paid to redeem him from his former creditor and the interest on the same sum.[2]

A slave for a term, is emancipated by the lapse of the period[3] during which he was bound to serve. A captive taken in war, the stake-won and the self-offered are enfranchised, according to the interpretation given by Naréda and cited in the Mitakshara, by producing a suitable substitute, equally capable of doing the same amount of labour, or, as it is said in Vivada Chintamani, by substituting another slave.[4] A slave for his bride, or he whom love has disfranchised in a double captivity, becomes free again by discontinuing his intercourse with, and withdrawing from, the object of his passion, because, says the author of the Mitakshara, "it is prohibited to cohabit with a slave."[5] A pledged slave reverts to his master who pledged him on his being redeemed from the mortagee.[6] Such was Naréda's teaching. Later on, Jaganath, in his comment on an obscure text of Yajnawlakya, made bold to assert that a pledged slave could redeem himself from the mortgagee by paying the amount advanced by the latter and the interest on this amount.[7] In this connection J. C. C. Sutherland remarks that "it, however, hardly can have been meant that an owner pledging his slave at an undervaluation should give the slave the right of redemption at that under price."[8]

By way of additional information we give the following details on the emancipation rites: The emancipation of a slave was supposed to be the work of a benevolent man. As regards

1. Naréda, Digest B. III, C. I. II, V. 46, p. 245.
2. Appendix VIII to the Indian Law Commission's Report, 1841, para 25, p. 370.
3. Colebrooke, *Digest of Hindu Law*, II, V. 46, p. 245.
4. ,, ,, ,, *Ibid.*, V. 47.
5. Sutherland, *Hindu Law*, para 27, p. 370.
6. Cited in Digest B. III. Cap. I, Comment on V. 46, p. 246.
7. Colebrooke: *Digest of Hindu Law*, II, V. 45, p. 245.
8. Sutherland, Appendix VIII to the Indian Law Commission's Report, 1841, para 26, p. 370.

the ceremonies to be observed, the following details are not without interest. "Let the benevolent man, who desires to emancipate his own slave, take a vessel of water from his shoulder, (the usual way in which water is carried by a slave) and instantly break it, thereby denoting the discontinuance of servile duties, sprinkling his head with water containing rice and flowers, and thus calling him free, thus confirming his emancipation with his face towards the East. Thenceforward let him be called one cherished by his master's favour; his food may be eaten, and favours accepted; and he is respected by worthy men." "This simple and graphic ceremony performed for so important a purpose," remarks Mr. Adam "is finely illustrative of ancient Hindu manners and customs."[1]

No. 3. ADMINISTRATION OF HINDU LAW UNDER BRITISH RULE

SUMMARY: I. The British policy in theory. II. The policy in practice.

I. THE BRITISH POLICY IN THEORY. Thus far slaves, their classification and their rights have been dealt with in the light of the ancient Hindu Law. All that now remains to be inquired into is the manner in which this old Hindu Law was administered by the British authorities in India.

To start with, it should be borne in mind that the British authorities in their judicial dealings with Hindus resolved from the very beginning to be guided by the principle of following the customs and practices which had been from time immemorial appealed to in settling litigious differences. Accordingly on August 21, 1772, the President and Council of Bengal laid down the following rules to be observed in the administration of justice: "In all suits in which Hindus are concerned they shall have the benefit of their own laws, as expounded by their Pundits."

How this regulation, passed by the President and Council of Bengal, was afterwards carried into effect, can only be gathered from a study of the many law suits that were tried in the Courts set up by the British authorities in the territories over which they ruled. The only book that illustrated the many cases, tried according to Hindu Law as administered in British territories, was written in 1827 by W. H. Macnaghten of the Bengal Civil Service, and is entitled "Principles and Precedents of Hindu Law". One of the remarkable features of this book is that it

1. Adam, Letter I to Thomas Fowel Buxton.

contains a number of precedents, *i.e.*, cases which were submitted to the Hindu Pundits, officially appointed by the British Authorities to give to the British Judges the benefit of their opinion and advice as regards the customs and usages formerly followed by the Hindu inhabitants of the country. The care with which Macnaghten did his task is evidenced by his own introductory remarks. "The precedents have been selected from an enormous mass of crude materials. When it is mentioned that I have examined every opinion that has been delivered in every Court of Judicature subordinate to the Presidency of Bengal, from the year 1811 up to the present day (1829), it may be a matter of wonder that the selections are not more numerous and more valuable. But the task of rejection has been found more laborious. At least nine-tenths of the opinions were ascertained on examination to be erroneous, doubtful, unsupported by proof, or otherwise unfit for publication; while in a few instances the nature of the case itself was involved in obscurity from the circumstances of the reply alone being forthcoming; the whole record of the case having been made over to the law-officer, with a view to enable him to find out and report the law upon the point or points at issue between the parties. The admitted opinions have been carefully examined, and they will, it is hoped, be in general found to have at least the merit of accuracy."[1]

II. THE BRITISH POLICY IN PRACTICE. It is of course impossible to give a detailed account of the way in which the Judges in British Court carried out the principle of basing their decisions on the ancient laws and customs of the Hindus. But even a few instances, almost chosen at random among the many cases mentioned by W. H. Macnaghten, will do for our purpose. For they will show that the British Judges were satisfied to follow blindly the advice of the Hindu Pundits, so that the decisions of the British Courts in India were nominally given by British Judges, but were really inspired by the Hindu Pundits. It was altogether both degrading to the Judges and detrimental to the slaves.

A case that occurred in 1824 illustrates the very doubtful nature of the claims brought forward by the owners of slaves. In this particular case the Court had to decide whether a person, living in service and supposed by the inhabitants of the place to be a slave, could be treated as such on the strength of this common belief; and

1. Macnaghten, *Principles and Precedents of Hindu Law*, Preliminary Remarks, pp. XXV-XXVI.

if so, whether his master was legally entitled to dispose of him by public sale? This case was referred to a Hindu Pundit who did not solve the difficulty since he was satisfied with simply enumerating the fifteen different kinds of slaves, without expressing any further opinion on the status of such individuals as were not distinctly mentioned in this general classification. Nor need we wonder at this, for there does not seem to have existed in Hindu Law any authoritative information as regards cases of servitude which were not explicitly mentioned among Naréda's fifteen well-known classes of slaves. And here it may be noticed that the majority of the cases that came before the Court were of the same nature. Persons were disposed of and held in perpetual bondage, not under any recognised system of law, but by the tyrannical usurpation solely based upon local opinion and custom. It is indeed so astonishing as to be well-nigh incredible that the parties involved ventured to appeal to a British Court to vindicate these so-called rights. What will surprise them more is to hear that in most cases the British Courts upheld the local tradition.[1]

In another case tried in 1818 in Chittagong, where slavery is said to have prevailed in its worst form, a strange claim of joint proprietorship in a female slave had to be decided. A female slave happened to belong to two masters. One of them gave her leave to marry another man's slave and to live with her husband. Thereupon the other had recourse to judicial action and claimed in Court either half the slave's person, or half the price of her person as his legal share. The Pundit on being consulted declared that the woman in question was according to Hindu Law to be considered as a coparcenary property, *i. e.*, possessed conjointly by more than one owner. He therefore argued that, as the consent of one of her legal masters had not been obtained prior to the marriage contracted by the above-mentiond slave, the claimant was entitled to half the slave's labours; and the British Court decided accordingly.[2]

Such instances of joint proprietorship in the person of a slave were not limited to Chittagong. Thus for example, in 1813, judicial proceedings were entered upon in the British Court of Mymensingh to determine the status of a person who was the joint property of three masters, and who had been emancipated by one

1. Macnaghten, *Principles and Precedents of Hindu Law*, Preliminary Remarks, pp. 264-65.
2. *Ibid.*, pp. 266-67.

of them. Did this person remain in the bonds of servitude with regard to the other two masters, or was she fully set free by the act of one of her masters ? Once more the Pundits decided against the slave; and by making the consent of all the joint owners necessary for her emancipation, they succeeded in retarding the cause of emancipation. Once more the Pundits' opinion was followed by the British Judges.[1]

Nor did minors meet with more humane treatment in British Courts. In 1819 the Judges at Chittagong had to decide the following case. A female slave, who had two daughters, the one five, and the other seven years old, was emancipated by her master. Being unable to support herself and her two daughters, she was out of dire necessity compelled to dispose of herself with her two daughters to another person, after obtaining the express consent of her last master. The question now arose whether the two minor daughters were legally entitled to emancipation on obtaining their majority. The Pundits on being asked for their opinion, held that the girls were not entitled to emancipation and had no power to nullify the contract, since they had been sold with their previous master's consent. This consent was in their opinions an essential element of the mother's contract with her new master, and deprived her children of every claim to freedom. Apparently it never occurred to the Pundits that the mother had been emancipated by her previous master, and that the consent could therefore have been dispensed with. According to the Pundits, there had been a consent; the nature of that consent did not matter; and the children were doomed to slavery. As the Pundits opined, the Judges decided.[2]

Furthermore the decisions made by British Courts at times resulted in a free person being reduced to slavery. The following case came before the Judges of the Chittagong Court in 1819. A slave-owner entered into a contract of marriage on behalf of his slave with the daughter of a free person. On the occasion of the marriage he spent some money, probably about ten Rupees, on the festivities that usually accompany the marriage ceremony. In order to recover this sum with the compound interest on it, he determined publicly to sell his slave's wife. Thereupon the question arose whether the master of the slave had any right of proprietorship over the slave's wife (even if she were a free

1. Macnaghten, *Principles and Precedents of Hindu Law*, Preliminary Remarks, pp. 266-67.
2. *Ibid.*, p. 267.

woman) by reason of her being subject to his slave; and if so, whether the sale of such a woman was countenanced by the law of the land? The Pundits stated the law as promulgated by Naréda and Manu, who had laid down the principle: "A slave for his wife" or *vice versa*. Hence they stated that a free woman on marrying a slave stepped thereby into bondage, and that the slave's master was entitled to sell her, the sale being both legal and valid. Once more the British Judges endorsed the Pundits' decision.[1]

A similar case came up for decision before the Dacca Court of Appeal, but its features are so extraordinary that it deserves at least a passing mention. Four brothers purchased a female slave and used her for their gratification, with the result that she gave birth to a son and a daughter. One of the four brothers sold his share in the woman's ownership to the other three, when the slave's son was 11 years of age. Afterwards the boy married a free woman and then died. Later on the three proprietors also died, one of them leaving behind him a son. Finally the question arose whether this surviving son and heir of one of the brothers was competent to sell the widow of the deceased slave or not? The Pundits did not hesitate for a moment, and they decided that the next heir of the deceased proprietor had a right to dispose of the slave's widow. This was also the Dacca Court's decision.[2]

Lastly though it has often been affirmed that emancipation was readily granted to the slave, and that the law decided generally in his favour, the following case tried in Sylhet, in 1825, is an evident proof of the little trust to be put in such statements. An inhabitant of Sylhet wished to sell his female slave and her family, consisting of four sons and a little daughter. The slaves were ready to serve their former master, but objected to the sale on the ground that they did not want to leave the place of their birth. Moreover they were to be sold to different individuals living in different places. Consequently they made an application to the Court to ascertain whether under Hindu Law, as administered in Sylhet, they could legally object to such a sale or not? If this was not possible, and if the master was bent on selling them, could they at least select any other suitable person as their purchaser? And if this could not be granted, would it not be possible for them to purchase their own liberty by raising the sum demanded? The

1. Macnaghten, *Principles and Precedents of Hindu Law*, Preliminary Remarks, pp. 267-68.
2. *Ibid.*, p. 268.

Magistrate of Sylhet apparently found the case too complicated, and referred it to the Supreme Court at Calcutta. There the Judges asked their Pundits what they thought of it. The Pundits declared that there were five classes of slaves who could not effect their emancipation even by paying the price set upon them by their master, inasmuch as the master's authority extended also to the property of his slaves. Now to one of these five classes belonged "the slave born in the house." And the complainants, in the case to be decided, fell under this catagory. Hence it was legally impossible for them to buy their own freedom, whilst their master was empowered to exercise his right of ownership without any legal restraint. He could sell the slaves to whomsoever he pleased, in spite of the fact that the slaves were eager to serve him. At the same time the Pundits pointed out that this was a case in which the master's right could be justly curtailed and limited by an appeal to the principle that "Judgment is not to be formed, relying on the Shaster alone; for a failure of justice is produced when an inquiry is not adopted to circumstances." This is similar to the English principle of equity, justice and good conscience. Now in the case to be decided the master was determined to part with his slaves from motives of enmity against them. Moreover, misery and injustice would be the unavoidable result of such a sale. Hence the Pandits were of opinion, that the selection of the purchaser would be left, without any objection, to the discretion of the slaves. The Supreme Court adopted the opinion of the Pundits and stated "that the slaves whom it is proposed to sell to one whose intentions they suspect and dread, may be allowed to select a purchaser with whom they are satisfied, and that in this their proprietors must acquiesce." Thus the British Judges quietly ignored the question whether it was possible for the slaves themselves to purchase their emancipation by raising the sum demanded. Perhaps the Judges were only too happy that the Pundits had in some way limited the autocratic tyrannical power of a cruel heartless slave-owner.[1]

From a perusal of the above given instances it follows, that in administering Hindu Law the British Judges were led by the principle that in the suits in which Hindus were concerned they should have the benefit of their own laws. In other words, whatever course the Pundits advised, was followed. It may be that many a judge was filled with disgust at his own decision, but there is no

1. Macnaghten, *Principles and Precedents of Hindu Law*, Preliminary Remarks, pp. 269-72.

instance of any judge reminding the Pundits "that judgment cannot be formed, relying on the Shaster alone; for a failure of justice is produced when not adopted to circumstances." Apparently such redeeming circumstances did not exist for them. Hence the administration of Hindu Law by the British Courts of Justice was not carried out on British principles of equity, justice and good conscience; it was merely the enforcement of Hindu Law according to Hindu principles, without taking into account the extenuating circumstances and without appealing to any higher ideals of justice than those of the Pundits whom the British judges relied on for their information and guidance.

CHAPTER II

Early Mahomedan Law of Slavery and its Administration in British India

PLAN: 1. Slaves and their classification. 2. Legal status of slaves. 3. Administration of Mahomedan Law.

No. 1. SLAVES AND THEIR CLASSIFICATION

SUMMARY: I. Mahomet's teaching. II. Classification of slaves.

SOURCES: PUBLISHED: N. Baillie, *Mahomedan law of Sale*; Hamilton, *Hedaya*; W. H. Macnaghten, *Principles and Precedents of Mahomedan Law*; Appendix VIII to the Indian Law Commission's Report, 1841;
Encyclopaedia Brittanica, XI Edition, Vol. XIV.

I. MAHOMET'S TEACHING. As has already been pointed out, one of the most prolific sources of slavery was capture in war. Everywhere and at all times captives in war and their descendants were doomed to slavery. The founder of Islam adopted the same teaching; he did not discover the principle that the defeated enemy who fell into the hands of his conqueror was the latter's slave. However in one respect he may be looked upon as an innovator; for he decreed that the Mahomedan conqueror had a religious right by which he could claim as his slave the defeated enemy who had been made a prisoner. For in the light of history the spread of Islam was mainly effected by force of arms; and every war became a *jehad*, a sacred contest, so that the infidels captured in war were the religious prize of what was looked upon as a sacred duty. It is self-evident that Mahomet's teaching greatly contributed to the spread of slavery, which is not only tolerated in the Koran, but is looked upon as a practical necessity. That slavery was widespread among Mahomedans in India may be gathered from the two principal authorities on Mahomedan Law to which recourse is had in the Courts of India. These are the Hédaya and the Futwa Alumgiri. The latter was compiled under the orders of Emperor Aurangzeb Alumgir. It is a collection of opinions of learned Mahomedans on points of law. It has not been translated into English, but it formed the basis of the Digest of Mahomedan Law compiled by Neil Baillie.[1]

1. Encyclopaedia Brittanica, Vol. XIV, p. 442.

In this work the Mahomedan Law of sale of slaves is treated of in great detail. The Hédaya was translated into English by Mr. Hamilton, and likewise exclusively deals with the slave-question.[1] It is true that Mr. Sutherland is of opinion that many of the rules and usages collected in this work are unknown in India and seldom practised. Hence he infers that slaves owned by Indian Muslims were comparatively fewer and less regarded as property.[2] But this inference does not hold good for the simple reason that, whatever may have been the rules and usages prevalent in India and elsewhere, so far as they were sanctioned by the Koran, no matter where the Muslims resided, these rules and customs were bound to make themselves felt.

II. CLASSIFICATION OF SLAVES. According to Mahomedan Law the state of bondage was either entire and absolute or qualified.

Those in a state of entire and absolute bondage were under the control of their master for the full duration of the period of their slavery. Every one of their actions was in execution of their master's orders; nor were they bound to perform any task which had not received their master's approval and consent.

Those in a qualified state of bondage were sub-divided into three classes : *Mukatab*, *Mudabbar* and *Umm-ul-vald*.[3]

A *Mukatab* was a slave on the understanding that he could secure his freedom by payment of a ransom, either in a lump sum, or by instalments, or even by promise of payment at some future period.

As soon as any of these conditions had been fulfilled, the *Mukatab* was entitled to freedom. But if the promise of future payment was not carried out, he reverted to his former state of qualified bondage. As long as the *Mukatab* was in his master's service, the latter could part with the possession in his slave; he could set him free, but he could not transfer his right of property in him ; and the *Mukatab* was not a fit subject of sale, gift, pledge or hire.[4] For the *Mukatab* brought back into slavery in consequence of his failure to redeem his promise of paying a ransom was practically a free man, inasmuch as his master could not exercise any act of free dominion over him.

1. Hamilton, *Hédaya*.
2. Sutherland, *Muslim Slavery*, Appendix VIII to the Indian Law Commission's Report 1841, para 7, p. 380.
3. Macnaghten, *Principles and Precedents of Mahomedan Law*, 1825, C. 9, p. 65.
4. *Ibid.*

The privileges which the *Mukatab* enjoyed were counterbalanced by several disadvantages. According to the general principles of Mahomedan Law it was unlawful for any slave, either male or female, to enter into a marriage contract without his master's consent. This rule also applied to the *Mukatab*, who with respect to marriage was subject to the common laws of bondage. What is more, the *Mukatab's* male slave was likewise incompetent to contract marriage, without the permission of the *Mukatab's* master.[1]

A *Mudabbar* was a slave to whom liberty was promised after his master's demise. The promise or *tadbir* was either absolute on conditional; and in the latter case his liberty did not materialise unless the conditional clauses had been carried out within the stipulated time.[2]

Like the *Mukatab*, the *Mudabbar* was not a fit subject of sale or gift. But labour could be exacted from him, and his services could also be hired out. This class of slaves was however subjected to the general laws of legacies and debts, and they could be as legally claimed by heirs as any other desciption of property.[3] As regards the promise of freedom after their master's demise, this was essentially in the nature of a bequest; and the slave could only be enfranchised out of the bequeathable one-third of his master's estate.[4] If the master left no other property, the Mudabar was entitled to perform emancipatory labour for the benefit of the heirs and creditors to the extent of the missing two-thirds of property. But if a master died entirely insolvent, the promise of emancipation was held in abeyance till the Mudabar had made good by his labour the full amount of his value.[5]

An *Umm-ul-vald* was a female slave who had borne a child or children to her master.[6] And according to Neil Baillie in his Mahomedan Law of sale, her offspring should be acknowledged by her master as his own. The female *Umm-ul-vald* was better off than the male slave, for she was granted emancipation unconditionally

1. Sutherland, *Muslim Slavery*, Appendix VIII to the Indian Law Commission's Report, 1841, para 18, p. 381.

2. Macnaghten, *Principles and Precedents of Mahomedan Law*, p. 65.

3. *Ibid.*, p. 66.

4. Hamilton, *Hédaya*, B. VI, C. 6, Vol. I, p. 475 *et seq. Cf.* Appendix VIII to the Indian Law Commission's Report, 1841, para 11, p. 380.

5. *Ibid.*, p. 475; *Cf.* Macnaghten, *Principles and Precedents of Mahomedan Law*, p. 66.

6. Macnaghten, *Principles and Precedents of Mahomedan Law*, p. 66.

after her master's death, no matter whether her master died in a state of insolvency or otherwise.[1]

By way of additional information mention may be made of licensed slaves.[2] They did not form a class by themselves. Like their fellow-slaves they were in a state either of entire and absolute or of qualified bondage; but they were called licensed slaves, because their masters had licensed them to trade, constituting them *Mazun* or licensed. Hence as long as they enjoyed this privilege, they were held responsible for all their doings. In case a licensed slave became insolvent, his person and all his goods were liable to be sold for the benefit of his creditors. Nor was there any danger of a slave becoming insolvent through his master's rapacity; for in cases of insolvency the master had to refund to the creditors whatever gains he had appropriated in excess of a suitable equivalent (*ghalla misla*) for the license he had granted. On the other hand, if after selling the persons and goods of an insolvent slave, there was a surplus left after paying off the creditors, the excess of the sale proceeds belonged to the slave's master.[3]

No. 2. LEGAL STATUS OF SLAVES

SUMMARY: I. The master's absolute dominion. II. The penal code. III. The slave's disabilities. IV. Sale of slaves. V. Emancipation. VI. Conclusion.

I. THE MASTER'S ABSOLUTE DOMINION. Under the Mahomedan Law the master's power over his slaves was well-nigh unrestricted. Thus for example, according to the teaching of the Mahomedan lawyers who flourished in the first centuries of Islam, the master could with impunity put his slave to death.[4] Nor was this a mere theoretical right; the masters actually exercised their power, and Hamilton's *Hédaya* mentions no less than four cases in which such an extreme penalty could be inflicted.[5]

Among these four cases there is one that deserves special notice, because it clearly illustrates that the master's power was practically illimited and that the slave was little better than an ordinary piece of household furniture. For discussing the buyer's rights to proceed against the seller if the object of the sale should

1. Hamilton, *Hédaya*, B. V. C. 7. Vol. I, p. 479: *Cf.*, Appendix VIII, para 12, p. 381.
2. Macnaghten, *Principles and Precedents of Mahomedan Law*, p. 67.
3. Hamilton, *Hédaya*, p. 504; *Cf.*, Appendix VIII, para 9. p. 380.
4. Hamilton, *Hédaya*, B. XVI, C. 4, Vol. II, p. 413; *Cf.* Appendix VIII to the Indian Law Commission's Report, 1841, para 25, p. 382.
5. *Ibid.*

prove defective,[1] the following solution is given in Mr. Sutherland's translation from the original Arabic text. "Should the buyer have killed his slave bought, or (if the article were food) have eaten it he has no recourse against the seller, according to Abu Hanifah."[2]

This absolute dominion is further evidenced by the master not being held in any way responsible for his treatment of his slaves. He was at liberty to use and abuse the person of his female slave, provided she was not a *Mukatab* or married with his consent to another. Again a celebrated Jurist, Shafei, contended that the master's power to chastise his slave, or in legal terms his power of restraint and coercion, was absolute and exceeded that of a Kazi. Hence he argued that the master was authorised to inflict the legally sanctioned punishment on a slave guilty of fornication. The Jurists of the Kufa School were, however, of another opinion; they held that in this case it was right to chastise, but wrong to kill the guilty slave. But this teaching was not likely to be generally accepted, since in the *Hédaya* it was explicitly laid down as a principle that the master is not liable to punishment on account of his slave.[3]

Gradually the power of the master was modified; and in course of time the Futwa of the Muftis of the Sudder Dewanny Adawlut distinctly laid down that the power of moderate correction was limited, and that, if it were abused to such an extent as to amount to cruelty in the eyes of the ruling authority, the master was liable to incur *Akubat* or *Tazir i.e.*, discretionary punishment and even the death penalty; for they argued that, if a master could be called to account for the murder of his slave, he was on the same principle liable to punishment for inflicting cruel treatment.[4]

But the term cruel treatment was sufficiently vague to render it possible for the master to be very cruel indeed. Thus for example, the *Hédaya* gives this as an example of cruel treatment: "It is abonimable (for which Mr. Hamilton in his translation substitutes the word unlawful,)[5] to fix an iron collar on the slave's neck whereby he may be unable to move his neck. For such is the practice of tyrants, and such is the punishment of the damned."[6]

1. Sutherland, *Muslim Slavery*, Appendix VIII to the Indian Law Commission's Report, 1814, para 26, p. 382.
2. *Ibid.*
3. *Ibid.*, para 24, p. 382.
4. *Ibid.*, para 29, pp. 382-33.
5. Hamilton, *Hédaya*, p. 125.
6. Sutherland, *Muslim Slavery*, Appendix VIII to the Indian Law Commission's Report, 1841, para 29, p. 383.

Besides this, the charge of cruelty could be easily evaded on the plea of necessity. For according to Hamilton a Mussalman master was entitled to exercise such an amount of force as would enable him to preserve the property in his slave; and accordingly he could legally restrain him from absconding by the exercise of such force. This was the common practice and in accordance with the custom, which prevailed among Muslims, of confining insane and mischievous persons.[1]

On the plea of inflicting coercion a master might easily be led to maim his slave. Was he legally entitled to do so? By way of a preliminary remark it should first be pointed out that maiming a slave is treated side by side with depriving him of his property just as though a slave's limb, say his foot or his hand, were of no more importance than his ear-rings; which, to say the least, is passing strange. This observation has to be kept in mind in order to understand the leading principle laid down in *Hédaya*. According to Hamilton's translation the master was always responsible for maiming his slave or taking away his property. This was supposed to be the teaching of the elders, Hanifah and Abu Yusuf. From this it would follow that the law protected slaves from excessive ill-treatment.[2]

But Mr. Sutherland rejects Mr. Hamilton's translation because it is not a version of the Arabic original, but a Persian paraphrase which was an explanatory interpolation inserted by the Indian Molvis. Accordingly Mr. Sutherland set to work to translate the original Arabic text. His translation runs as follows:

"A emancipated B, his female slave. Subsequently he said to B that he had cut off her hand when she was his slave; to which she replied that he had so done when she was free. In such case her assertion prevails; and so also in regard to everything which he may have taken from her, the enjoyment of her person and her earnings being excepted on a liberal construction. This is the doctrine of the two elders. Muhammad maintained that the master was only liable to an article of which specific restoration might be awarded against him according to the opinion of all jurists; for he denied his liability, inasmuch as he referred the act to a state which is opposed to such obligation; just as in the cases first put and the cases of sexual intercourse and earnings.

1. Sutherland, *Muslim Slavery*, Appendix VIII to the Indian Law Commission Report, 1841, para 29, p, 383.
2. Appendix VIII to the Indian Law Commission's Report, 1841, para 29, p. 383.

In regard to an extant object he has acknowledged the possession in admitting the abstraction from her. Subsequent to this, he asserted his proprietary dominion over her, which she denied. Hence her word as that of the negator prevails, and the award of restoration passes. But according to the elders he admitted a cause of responsibility, and then pleaded ground of exoneration. Therefore his assertion does not prevail."[1]

Though the passage is rather intricate, one conclusion may obviously be inferred from it. The master was held responsible for injuries inflicted after he had freed his slave. From this it would follow that, contrary to Hamilton's statement, the master was not held responsible for mutilations inflicted on a person who was actually in a state of bondage or slavery.

As a further illustration of the master's dominion over his slaves, we will next study the slave's status or his relations to his master as fixed by the law.

II. THE PENAL CODE. First of all there were definite penalties which the slave legally incurred for the following offences: fornication, adultery, drinking intoxicating liquor, and so on. Strange to say, the slave was only liable to half the flagellation assigned for such offences in the case of free men; and it would seem that adultery was not considered a penal offence, and the slave guilty of it was entirely exempt from punishment. But there were other crimes for which there was no excuse. Thus for example, murder, attempted or perpetrated robbery, theft and highway robbery were punished with amputation of one or more limbs. From this it may be inferred that the Mahomedan Law apparently attributed to slaves an inferiority complex in cases of sexual misdemeanour.[2]

The relations between master and slave were also partly determined by the law of retaliation, which was a private right to claim compensation for the wrong that had been done. In theory this right belonged both to the master and to the slave. When the slave was the offended party, the retaliation was generally in the nature of a fine. Again if a free man murdered a slave, the law of retaliation was applied; but if the murderer was either the master himself or the master's father, the right of claiming compensation lapsed. Though it is not explicitly said, it would seem that the compensation went to the master if his slave

1. Appendix VIII to the Indian Law Commission's Report, 1841, p. 385.
2. Appendix VIII to the Indian Law Commission's Report, para 31, p. 383.

had been injured or murdered by a third party, and that the compensation had to be paid by the master if the slave had injured or murdered a third party.

Nor must it be lost sight of that there is a good deal of contradictory legislation as regards the law of retaliation. Thus for example, it is stated on the one hand that in matters short of life retaliation does not take place as long as both the offending and the offending parties are slaves. On the other hand Shafi contends that the offended slave can legally proceed against another offending slave.[1]

Furthermore as regards the nature of the retaliation the general rule laid down by the Mahomedan Law was that the slave should either be surrendered to the offended party or that a fine should be paid by way of redemption. It was also stated in the law that one surrender or one redemption was sufficient satisfaction for all the previously committed offences; but if after coming to an arrangement, the offence was renewed, a fresh claim could be brought forward in settlement of the new offence.

But the law was not without its exceptions. Thus for example, a master could not be forced by law to surrender either a *Mudabbar* or an *Umm-ul-vald* slave; for these slaves belonged to the class of non-transferable slaves. In such cases the master made good his slave's offence either by paying the value and worth of the commodity, or by paying the legally sanctioned fine; whichever was the least. But a number of accumulated offences could not be redeemed by the payment of one value. Again the *Mukatab* slave who committed a murder was likewise intransferable. But for other offences committed by him a fine could legally be exacted. Moreover if after a fine had by judicial sentence been imposed upon him, a *Mukatab* recovered his freedom and was unable to pay the fine, he was liable to be sold into slavery by way of satisfying the debt that stood against him. After he had thus reverted to slavery, he was no longer entitled to claim the privileges enjoyed by the *Mukatabs*, and any subsequent offence was dealt with as though committed by an ordinary slave.[2]

Finally it may be added that offences short of murder against the person of a slave were always liable to be punished.

1. Sutherland, *Muslim Slavery*, Appendix VIII to the Indian Law Commission s Report, 1841, para 33, p 383.
2. *Ibid.*, paras 34-35, pp. 383-84.

The offender had to pay either the value of the slave, or to make good the injury done to him.

By way of conclusion it may be observed that the law of retaliation did not benefit the slaves. If the slave was the injured person, his master received the compensation for the injury received. If the slave was the offending party, his master had to pay the fine. It is obvious that in the latter case the master was likely to chastise his slave; and as private punishment is always likely to be excessive, it would have been preferable if in such cases the punishment to be inflicted had been determined by the judges officially appointed to deal with criminal or civil litigation.

The following additional details may give us a further insight into the law of retaliation. The extreme value of a slave was held not to exceed 9,990 dirhams. This was probably the sum to be paid to a master whose slave had been murdered. The person cutting off the hand of a slave was liable to pay half the amount of his extreme value or 4,995 dirhams; this seems to have been the heaviest penalty as long as the slave's life was spared.[1]

III. THE SLAVE'S DISABILITIES. The relations between masters and slaves are further evidenced by the disabilities inherent in the state of bondage. Thus for example, no slave could contract a marriage without his master's consent. Slaves were not entitled to be witnesses and give evidence in Courts of Justice. Nor were the statements by which they laid claim to property taken into account by the judges, unless they were licensed slaves. Their testimony in all questions relating to property did not affect their masters, who could not be fined even when the slave himself admitted to have destroyed another's property. In one case credence was given to his evidence, when a slave confessed having committed a murder. Such an admission made him liable to suffer the penalty sanctioned by the law for such crimes. Nor did the disabilities of slaves end there. They were unfit to hold any civil office in the state. They could not act as sureties, executors or guardians, except they were specially appointed by their masters to act as such in case of minor children. They could make neither gift nor sale, they could neither inherit nor bequeath property.[2]

Finally the very so-called indulgence or privileges, which were in certain circumstances granted to them, only serve the

1. Sutherland, *Muslim Slavery*, Appendix VIII, p. 384.
2. Macnaghten, *Principles and Precedents of Mahomedan Law*, paras 12-13, p. 67.

purpose of bringing out their utter destitution of every civil right. Thus for example, they could not be sued in a Court of Law, except in the presence of their master. From this it would seem that the responsibility for the slave's actions rested with his master, the slave himself was but a piece of senseless furniture. Again they were exempted from paying taxes and could not be imprisoned for debt, which was the natural consequence of their being unable to own property or to earn for themselves.[1]

In criminal matters they were treated more leniently than free men, but not because they were deserving of pity, but apparently because slaves were men of an inferior type, deprived of the moral sense of rectitude, and therefore not to be judged by the common law. Yet the Mahomedan Law speaks of indulgence or privileges granted to slaves, just as if it were a privilege that a mad dog is not sent to a lunatic asylum.

IV. SALE OF SLAVES. As the master exercised absolute dominion over his slaves, he could of course dispose of them by sale. But the sale of slaves was the object of minute legal prescriptions, which had all to be observed in order that it might be valid. These laws of sale were not meant to benefit the slave, their purpose was to safeguard the interests of the buyer who might otherwise be imposed upon by having a useless article foisted upon him. Hence there were a number of well-defined instances in which the sale was held to be invalid.

Firstly, if a purchased child developed a defect during his childhood, the purchaser was entitled to rescind the contract. But if a sold child developed a defect after he had reached the years of maturity, the purchaser could not rescind the contract. In the first case the defect was supposed to have existed prior to the sale, but not so in the second case.

Secondly, if a purchased child, either before or after attaining the years of maturity, developed a perpetual defect such as was considered to be inherent in his person, the purchaser was entitled to rescind the contract. However, this was not the case when the sold child had suffered from a passing disease which was likely to return afterwards.

Thirdly, if a purchased female slave was discovered to suffer from a bad odour, the purchaser was entitled to rescind the con-

1. Macnaghten, *Principles and Precedents of Mahomedan Law*, paras 12-13, p. 67.

tract, when the purchaser's object was to sleep with her; but such a defect could never be considered in a male slave.

Fourthly, if a female slave was discovered to suffer from the after effects of incontinency, the purchaser was entitled to rescind the contract, since he had bought the slave for the purpose of co-habitation and the generation of children, which was frustrated by her disease. If a male slave suffered from such a disease, the contract could only be rescinded after it was legally proved that the disease rendered him incapable of doing the work for which he had been bought.

Fifthly, if a purchased slave, either male or female, who was supposed to be a Mahomedan, turned out to be an infidel, the purchaser was entitled to rescind the contract on account of the natural antipathy of Mahomedans to have to live with infidels.

Sixthly, if a sold female slave was found to suffer from internal womb-disease, the purchaser was in most cases entitled to rescind the contract specially when the seller was not ready to confirm by oath that the disease had not existed whilst the slave was in his possession.

The contract was, however, never invalid when a purchased female slave was discovered to be suffering from an ulcer or some other ailment which had been healed by applying some ointment or administering some medicine; for by supplying the remedy the purchaser was supposed to have acquiesced in the defect, instead of protesting against it.[1]

Finally if previous to the sale being effected the seller had stipulated, "I sell this slave with all his defects," and if this condition had been accepted by the purchaser, the contract could not be rescinded, even though the defects were mentioned in a general way. But Shafei was of opinion that even in this case the contract could be rescinded, because of the undefined defects. His teaching, however, does not find favour with the majority of Mahomedan Jurists, who contend that when a purchaser consents to buy a slave "with all his defects" he thereby voluntarily surrenders all personal rights of protest, so that he is not at liberty to rescind the contract.[2]

Besides the above-mentioned cases in which the purchaser was entitled to rescind the contract, there were other instances in which the sale was altogether invalid.

1. Hamilton, *Hédaya*, pp. 264-65.
2. *Ibid.*, p. 260.

Firstly, the sale of an absconded slave was invalid, because there was no possibility of delivery, and because it was prohibited as unlawful by Mahomed. If the absconding slave was afterwards caught, his recovery did not validate the sale which was null and void from the first.[1]

Secondly, deception as regards sex made the sale invalid. If a person sells a slave as a female, who afterwards turns out to be a male, the sale was null and void.[2]

Thirdly, the re-sale of a slave was in certain circumstances invalid. Thus for example, if a person, having bought a female slave for a thousand dirhams to be paid either immediately or at a fixed future date, attempted to sell the slave back for 500 dirhams to the person from whom he had bought her, the second sale was deemed invalid. Though Shafei was of a contrary opinion, the traditional view favoured the invalidity of the sale. Nor was the re-sale made valid when the said slave was resold in conjunction with another slave who could be legally sold. In that case the sale of the latter slave was valid, that of the former was invalid.[3]

Fourthly, the sale was made invalid by the insertion of clauses repugnant to the very nature of the contract, as when the seller sold the slave reserving for himself certain advantages that might accrue from the slave's person or labour.[4]

Fifthly, the sale of an unsaleable person invalidated the contract. Thus for example, if a person sold together a freeman and a slave, the sale was invalid with respect to both of them.[5]

Sixthly, if a female slave had been sold illegally and the seller had been paid the price, whilst the purchaser had taken possession of the slave, the purchaser could not legally dispose of her at a profit. If he did so, it was incumbent upon him to bestow the profit so made in charity.[6]

Furthermore the purchaser's interests were further protected by the legal provisions made in his favour to claim compensation in cases of deception. Thus for example, according to the law it was held that the purchaser of a slave was entitled to claim compensation, provided he learned in time of the existence of these defects, *i.e.*, prior to the slave's death or his emancipation. But

1. *Ibid.*, p. 270.
2. *Ibid.*, p. 271.
3. *Ibid.* pp. 271-72.
4. *Ibid.* pp. 273-74.
5. *Ibid.* p. 275.
6. *Ibid.* p. 278.

if the emancipation was granted in return for property, no post-emancipation compensation could be claimed. Similarly the master was debarred from claiming compensation if the slave's death had been brought about through his master's instrumentality.

An interesting sidelight on the purchaser's liabilities is provided by the following legislation. If two slaves were purchased by one contract, and one of them should prove defective, the purchaser was not allowed to return the one and relinquish the other. For until both were taken possession of, the contract remained unfulfilled, and there would be a deviation from the bargain previously to its fulfilment, which was forbidden by the law. Hence according to Abu Yusuf the purchaser was entitled to return the defective slave to the owner after he had taken possession of him. But it would seem that the more approved method was to relinquish or to return both slaves.

V. EMANCIPATION OF SLAVES. As regards the emancipation of slaves it is evident that the master, who exercised absolute dominion over his slave, was at liberty to set him free. In certain circumstances it became the duty for the master to emancipate his slave. This was the case when a person had made a vow that he would emancipate his slave as soon as he became proprietor of one. Such a vow had to be fulfilled, and no sooner did the one who had taken the vow make purchase of a slave than the latter's emancipation followed as a matter of course. According to some the slave was liberated even though purchased conditionally, according to others a conditional sale had to be confirmed and ratified for the emancipation to be effective.

Another instance of emancipation is mentioned in the Koran, where the master is advised to grant a covenant (*Kitabut*) to his Muslim slave in whom he finds "good". The covenanted slave became a *Mukatab*, a slave who could secure his freedom on his paying a ransom either in a lump sum or by successive instalments. Though it was the custom that the annulment of the covenant and the formal declaration of his freedom was judicially pronounced after due enquiry had been made[1], this covenanted enfranchisement differed from simple manumission by the exchange of property agreed to by the two contracting parties. It was therefore in the nature of a sale, the slave being both purchased and purchaser. Anent this manner of

1. Sutherland, *Muslim Slavery*, Appendix VIII to the Indian Law Commission's Report, 1841, para 13, p. 381.

liberating slaves the Arabian Jurists discussed an interesting question. They asked themselves at what precise moment the slave became a freeman. In their answer they made a subtle distinction, theoretical rather than practical. In a covenant by which the slave was made a *Mukatab*, his freedom was secured even before the payment of the ransom, so that the ransom to be paid was not in the nature of a debt, but was allowed to exist from necessity.[1] But if the contract between a master and a slave was not made by *Kitabut*, so that the slave did not become *Mukatab*, the slave secured his freedom after paying the ransom decided upon.[2] However, it is interesting to notice that the form of emancipation did not entirely sunder the relations between the master and the emancipated slave. There arose between the two the relation of Wala which was defined as an agnate kinship between the two. The result was that in certain circumstances the master had to pay the fine for an offence committed by his liberated slave. Again if the emancipated slave left any unclaimed property, his former master had a right to claim it.[3]

VI. CONCLUSION. By way of conclusion it may be added that from a legal point of view Mahomedan bondage placed the slave in a position of absolute dependence on his master as regards his person and his labour. The Mahomedan master could also compel his slave to marry, the slave having apparently no voice as far as the choice of a partner was concerned. Again a man in entire and absolute bondage could be sold to make good his wife's dowry, whilst the slave in qualified bondage could be made to work for the same purpose. The inferiority of the slave's condition may be gathered from the fact that a man who had a free wife was incompetent to marry a female slave. One redeeming feature of Mahomedan slavery was that it absolutely forbade to separate from each other a mother and her infant. "Whosoever causes a separation between a mother and her children shall himself on the day of judgment be separated from his friends by God."[4]

No. 3. ADMINISTRATION OF MAHOMEDAN LAW

As regards the administration of early Mahomedan Law in the British territories, a reference to the immediately preceding

1. Appendix VIII to the Indian Law Commission's Report, 1841, p. 381.
2. *Ibid.*, p. 380.
3. *Ibid.*, p. 384.
4. Hamilton, *Hédaya*, p. 279.

chapter will spare us much useless repetition. In that chapter the administration of early Hindu Law in British territories was dealt with. It was there clearly shown that the British authorities in India made it a point closely to follow the legislative tenets of the Hindus both in Civil and Criminal Procedures. The British policy with regard to the Mahomedans was exactly the same. The Mahomedans were treated just like the Hindus. For, whenever a case of a Mahomedan slave was tried in British Courts, they followed the strict principle of Mahomedan Law. The Brithish Law Courts existed merely in name. We have already seen in the preceding chapter that the Pundits were all powerful; similarly the Muftis were all powerful. For the British Judges were entirely dependent upon the interpretation given by the Mahomedan Muftis, so that in their decisions they were entirely guided by the opinions pronounced by them. The result was that judgment was pronounced in British Courts not according to the strict principle of equity, justice and good conscience; but according to the technical interpretation given by the Muftis which perhaps prevailed from the time of Mahomed or even earlier. Instances of this abnormal state of affairs are not wanting, for W. H. Macnaghten in his Principles and Precedents of Mahomedan Law has mentioned at least eleven instances of the kind. It is true Mr. Macnaghten does not tell us when and where these cases occurred, but there can be no doubt that they were tried during the British regime; for they are given in form of queries and answers. One of them deserves a special mention. In case XI the Muftis were asked whether according to the Mahomedan Law a child born of a female slave was the property of her mother or of her master. Even such a simple point as this the British Judges could not decide. The Mahomedan Muftis in answer to this query stated that according to the Mahomedan Law, the term slave signified a person who became the property of a Muslim by capture in an hostile country, or descendants from such captives. Therefore the children born of such women were the property of the masters. Their interpretation was based on the authorities of *Shurhi Vijaya*, *Hédaya* and others, which stated that "the embryo follows the mother both in slavery and emancipation!"[1] Such was the advice which the Judges received from the Muftis, and which they were expected to follow in the administration of justice. No further comment is necessary.

1. Macnaghten, *Principles and Precedents of Mahomedan Law*, pp. 324-25.

CHAPTER III

Vain Attempts at Ameliorating the Law of Slavery

PLAN: 1. In Bengal. 2. In Madras. 3. In Bombay. 4. In Assam. 5. Government's policy. 6. A belated tribute.

No. 1. IN BENGAL.

SUMMARY: I. Introductory. II. Richardson. III. Leycester. IV. Harington.

SOURCES: PUBLISHED: Adam, *Letter VIII to Thomas Fowell Buxton*; Blackstone, *Commentaries*, IV; Appendix to the Indian Law Commission's Report, 1841; Parliamentary Papers, Judicial, 1828.

UNPUBLISHED: Consultation No. 53 of March 15, 1816, Judicial Criminal Proceedings; Consultation No. 47 of March 15, 1808, Judicial Criminal Proceedings; Consultation No. 48 of March 15, 1816, Judicial Department, (Criminal) the Governor-Gneral of Bengal in Council; O. C. No. 15 of December 29, 1826, Judicial Criminal; O. C. No. 18 of December 29, 1826, Judicial Criminal.

I. INTRODUCTORY. The iniquity of a bad law is at times not sufficiently realised from the want of a clear perception of its detrimental effects with regard to man either as an individual, or as the member of a family, or as a representative of a community. It may also happen that a bad institution is tolerated, because people have come to look upon it as a necessary evil which cannot be got rid of. With slavery the case stands exactly the same; the iniquity of slavery was imperfectly realised, its many evils were patiently tolerated as something unavoidable.

It is true that there were among the Government Officials men like J. Richardson, J. H. Harington, William Leycester, T. H. Baber and others who were fully aware of the many great evils that followed in the wake of slavery. This comprehensive knowledge was practically forced upon them, because their official position compelled them to see to it that the law of slavery was strictly observed. Hence it is but natural that these men tried their best to set matters right.

Their attempts at amending the law of slavery in British India were no doubt praiseworthy; and every right-minded person will sympathise with the men with whom these attempts originated. But this sympathy cannot exert any retrospective influence,

it cannot make up for the disappointment which these men must have felt when they saw their efforts doomed to come to naught. For whatever attempts they made at ameliorating the law of slavery in British India, all their attempts proved useless and vain, as we shall have occasion to show in the course of the present chapter.

II. RICHARDSON. The first person who called the attention of Government to the evil of slavery was J. Richardson, the Collector and Magistrate of Zillah Bundelkhand. In a famous Memorandum, dated June 24, 1809, and addressed to the Court of Sudder Dewanny and Nizamut Adawlut he pointed out at full length the various evils of slavery to the Judicial authorities at Calcutta. He also made bold to add to his Memorandum a Draft of a Regulation proposed by him and entitled "A Regulation for checking and reforming abuses that have crept into practice and at present exist with respect to slavery within the British dominions, subordinate to the Presidency and Government of Fort William in Bengal."[1]

The very title shows that J. Richardson was convinced that the abuses of slavery were widespread and called for drastic legislative interference. But he also knew that he had set himself a difficult task to accomplish. Hence he showed commendable prudence and concluded an earlier letter of his, dated March 23, 1808, as follows: "Aware of the great importance, and convinced of the cautions with which innovations should be attempted, or the ancient laws, customs or prejudices of a people infringed, I presume not even to sketch out the mode, or to fix the period of general emancipation; and perhaps the sudden manumission of those now actually in a state of bondage, though abstractedly just might be politically unwise; but there can exist no good reason, either political or humane, against the British Government prohibiting the purchase or sale of all slaves whether legitimate or illegitimate after a specified time, and likewise ordaining and declaring that all children male and female born of parents in a state of slavery shall from like date be free. In the name of God let not the interest or convenience of one portion of the community, committed by the inscrutable will of Heaven to our governance and protection, forge claims for,

1. Draft of a proposed Regulation submitted by J. Richardson to the Court of Nizamut Adawlut with his letter of June 24, 1809, Extracts from Consultation No. 53 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

and hold in perpetual and miserable bondage, a large portion of the wretched remainder."[1]

Richardson's letters were not without their effect upon the Supreme Judicial authorities. A month after his letter of June 23, 1808, the Supreme Judicial Courts at Calcutta, the Sudder Dewanny and Nizamut Adawlut, addressed the following questionary to the Hindu Pundits and the Mahomedan Muftis.

(1) What descriptions of slaves were authorised by the Hindu and Mahomedan laws respectively ?

(2) What legal powers were the owners of slaves allowed to exercise upon the persons of their slaves; and particularly of their female slaves ?

(3) What offences upon the persons of slaves and particularly of the female slaves, committed by their owners or by others, were legally punishable, and in what manner ?

(4) Were slaves entitled to emancipation upon any, and what maltreatment? In particular may such judgment be passed upon proof that a female slave had during her minority been prostituted by her master or mistress ? or that any attempt of violence had been made upon her person by her owner ?[2]

In course of time both the Mahomedan Muftis and the Hindu Pundits sent in lengthy replies, which will here be summarised. First of all the Mahomedan Muftis said that all men were by nature free and independent, and that no man could be the subject of property, except an infidel inhabiting a country orignally not under the power and control of the faithful, but afterwards conquered and subdued.[3] The right of possession which the Moslems claimed to have over Hurbees (*i. e.*, infidels at war with Islam) was acquired by Istula, which means 'conquest by force of arms.' The original right of property, therefore, which one man possessed over another, could not be acquired in the first instance, either by purchase, donation, or heritage. Therefore when an Imam

1. From J. Richardson, Judge and Magistrate of Zillah Bundelkhund to the Judges of the Sudder Dewany and Nizamut Adawlut, dated March 23, 1808, Extracts from Consultation No. 47 of March 15, 1808, para 35, Judicial Criminal Proceedings, Bengal Record Department.

2. Resolutions of the Court of Sudder Dewanny Adawlut, under date the 28th April, 1808, No. 48, enclosed in Nizamut Adawlut Regrs. Lr. of January 11, Extracts from Consultation No. 48 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

3. From J. Richardson, Judge and Magistrate of Zillah Bundelkhund to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated June 24, 1809, Extracts from Consultation No. 15 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

subdued by force of arms any one of the cities inhabited by infidels, such of the inhabitants as were taken prisoners became his rightful property, and he had the power of putting them to death, or making them slaves and distributing them amongst the Ghazees (*i. e.*, victorious soldiers, particularly when fighting against infidels). He could also grant them liberty and permission to live in a Mussulman country, but had the right to levy the capitation tax. Should he, however, choose to make them slaves, they became his legal property and were transferable either by sale, gift, or inheritance; but if after captivity they became converts to Islam, they could no longer be put to death; though they continued to be slaves.[1] As the main idea was that slavery was the necessary consequence of original infidelity, subsequent conversion to Islam did not cancel the state of bondage to which the individual had been legally reduced by Istula. On the other hand, Istula was always strongly insisted on as an essential factor without which no man could be claimed as another man's property.[2]

From this the Mahomedan lawyers concluded that the same rules equally applied to male and female slaves. Slaves who were the property of the Imam or of the Ghazees who shared in the distribution often passed into other hands. They then became slaves under three different classes according as they were disposed of either by purchase, donation, or inheritance.[3]

In case a female slave gave birth to a child by another man who was not her legal lord and master, the offspring was born a slave, and became what was known as *Khanazad*, *i.e.*, born in the family of the same master.[4] Such was the law, whether the father was a slave or a free man; whether he was the slave of his wife's master or of another person. But it often happened that a female slave bore children by her avowed and acknowledged legal lord. Such children were free, but the mother remained in bondage until the death of her master, when she became a free woman; the result being that she was the parent of her free children by her master. This rule was applicable not only to the mother and her children, but also to all their descendants.[5]

Furthermore the practice amongst free men and women of selling their own children in times of famine was extremely rare;

1-5. A Regulation for the guidance of the Courts of Judicature in cases of slavery, submitted by J. H. Harington, Judge of the Sudder Dewanny and Nizmut Adawlut, dated November 21, 1818, with his memorable Minute of the same date, Judicial Department, (Criminal), the Governor-General of Bengal in Council, No. 14 of December 29, 1826, Bengal Record Department.

and it was not countenanced by the Mahomedan law, since it was a form of slavery in direct opposition to the principle of Istula, according to which no man could become another man's property unless he became so by force of arms. Therefore in no case could a person legally free become another man's property. As regards the children, as they were not their parent's property, all sales or purchases of them were invalid.[1]

It was also illegal for any free man to sell his own person, either because he was suffering the pangs of famine, or because he was unable to discharge his debts. For according to these lawyers, in the first case a famished man even might feed upon a dead body, or might steal what was necessary for his support; whilst in the second case a distressed debtor was not liable to any fine or punishment.[2]

"We are not acquainted," wrote those Muftis, "with the principle or the detailed circumstances, which led to the custom prevailing in most Mussulman countries of purchasing and selling the inhabitants of Zanzibar, Ethiopia, Nubia, and other Negroes; but the ostensible causes are either that the Negroes sell their offspring, or that Mussalman or other tribes of people take them prisoners by fraud, and direct or seize them by stealth from the sea-shores."[3] In all such cases these poor people, either sold or kidnapped, could not be legally considered as slaves; and their sale and purchase was consequently invalid. But in case a Mussalman army should by orders of an Imam invade their country, and make them prisoners of war, they became *ipso facto* legal slaves, provided that such negroes were inhabitants of a country which was originally under the control of rulers who were infidels, and in which a Mussulman was not entitled to receive the full benefit and protection of his own laws.[4]

There was, however, a custom prevailing in the country, of parents hiring out their children for a considerable period of time, extending to 70 or 80 years, with the intention of making them and their progeny slaves. Such slaves were called *Khanazad* (*i.e.*, domestic slaves). Now according to Mahomedan Law it was lawful and proper for parents to hire out their children on service, but the contract of service became null and void as soon as the child reached the years of discretion, when the right of parentage at

1-4. A Regulation for the guidance of the Courts of Judicature in cases of slavery, submitted by J. H. Harington, Judge of the Sudder Dewanny and Nizamut Adawlut, dated November 21, 1818, with his memorable Minute of the same date, Judicial Department, (Criminal), the Governor-General of Bengal in Council, No. 14 of December 29, 1826, Bengal Record Department.

once ceased.[1] Similarly a free man who had reached the years of discretion could enter into a contract to serve another, but not for any such great length of time as 70 years. For the seventy years' service was a mere pretext, and was tantamount to slavery pure and simple. It was opposed to the privilege according to which every free man had on certain occasions the option of dissolving any contract of hire.

Thus for example, it was a custom that in all service contracts the person hired should receive as wages money, clothes and food. Accordingly as long as a man received these wages, he was in duty bound to serve; but if the wages were not paid, he was entitled to rescind the contract.[2]

Again one of the terms of these service-contracts was that the wages should correspond to the services rendered by the workman. Consequently, as these services grew in importance, the wages also increased. A refusal on the master's part to observe this rule conferred upon the workman the right to withhold his service.[3]

Gradually the iniquity of this long time service contracts was brought home to the people; and it was therefore deemed expedient to limit the period of service time to one month, one year or at most three years as in the case of Ijari Wakf (*i.e.*, a form of endowment).

The long time service contract was not the only social evil prevalent in the community. A greater evil still was the practice of *Zunani Tewaif* women, who engaged the services of dancing girls to purchase female children from their parents, or to contract with the girls themselves. These same girls were taught dancing and singing for the pleasure of others, and were also used as prostitutes which was explicity forbidden by the law.[4]

Another instance of the iniquity of slavery was the absolute control which the master exercised over his slaves. He had a claim to the service of such slaves, to the extent of their powers and ability, that is, he might employ them in baking and cooking; in making, dyeing and washing clothes, as agents in mercantile transactions; in attending cattle, in tillage or cultivation, as

---

1-4. The answers of the Mahomedadan Muftis mentioned in the letter of J. M. Harington to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated November 24, 1818, Judicial Department, (Criminal), No. 14 of December 29, 1826, Bengal Record Department.

carpenters, ironmongers or goldsmiths; in transcribing as weavers; and in manufacturing woollen clothes, as shoe-makers, boatmen twisters of silk or water-drawers; in shaving, in performing surgical operations, brick-layers and the like; and he might hire them out on service in any of the above capacities. He might also employ them himself or for the use of his family, in other duties of a domestic nature such as fetching rubbish, for washing or Wazoo, (religious purification) in anointing his body with oil, rubbing his feet, in attending his persons whilst dressing and guarding the door or his house. He might also have connection with his legal female slave, provided that she has reached the age of maturity, and that the master had not previously given her in marriage to any other person.[1]

However, the master was not allowed to act as he liked. For, if he oppressed his slave, by employing him in any duty beyond his power and ability, such as insisting upon his carrying too heavy a load, or climbing an impossible tree, the Hakim or the Ruling Power might chastise him. It was also improper for a master to order his slave to do that which was forbidden by the law: *e.g.* to put an innocent person to death, to set fire to a house, to tear the clothes of another, to prostitute himself by adultery and fornication, to steal or drink spirits, to slander and abuse the chaste and virtuous. If a master was found guilty of such like oppression, the Hakim might inflict exemplary punishment by *Tazeer* and *Akoobut*, which means by the right of God and the commonly held principles of public justice. It was further unlawful for a master to inflict on his male or female slaves, for disrespectful conduct and such like offences, another punishment than *Tadeeb* (*i.e.*, correction or chastisement) as the power of passing sentences of *Tazeer* and *Quissas* was solely vested in the Hakim. If, therefore, the master exceeded the limits of the power of chastisement stated above, he was himself liable to *Tazeer*. If the master had connection with his female slave before she arrived at the years of maturity, and if the female was thereby seriously injured or died, the Ruling power (the Hakim) could punish him by *Tazeer* and *Akoobut* as before described.[2]

Again if the master of the male or female slaves tyrannised over them, by beating them unjustly, by giving them stunted food,

1-2. The answers of the Mahomedan Muftis, mentioned in the letter of H. J. Harington, to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated November 24, 1818, Judicial Department (Criminal), No. 14 of December 29, 1826, Bengal Record Department.

or imposing upon them duties of a difficult or oppressive nature, so as to cause them affliction and distress, or if a master had connection with his slave-girl before she arrived at the years of maturity, or gave her in marriage to another with permission to cohabit with her in that state, such a master was said to have sinned against the Divine Laws, and the Ruling Power (the Hakim) could punish him by *Tadeeb* and *Tazeer*. However, the commission of such crimes by the master did not entitle the Hakim to grant the ill-used slaves emancipation.[1] "Adverting, however, to the principle," they remarked, "upon which the legality of slavery was originally established (namely that the subject of property must be an Infidel and taken in the act of hostilities against the Faith) and to the several branches of legal slavery arising from the principle, as by purchase, donation, inheritance and *Khanazadie*, whenever a case of possession of an unlawful male or female slave shall be referred to the Hakim for investigation, it is the duty of the Hakim to pass an order recording the original right of freedom of such individual, to deprive the unjust proprietor of possession and to grant immediate emancipation to the slave."[2]

In the next place the Hindu Pundits, Chutroo Bhooj and Chitro Pute, gave the following version of the Hindu Law of slavery.

In answer to the first question they said that the Hindu Law recognised fifteen different kinds of male and female slaves. (1) *Grihayjāta*, that is one born of a female slave; (2) *Krita*,[3] that is, one bought for a price, either from the parents or from the former owner; (3) *Labdha*, that is one received in donation; (4) *Dāyadupajāt*, that is one acquired by inheritance; (5) *Anákála* Bhritta, that is one maintained or protected in time of famine; (6)

1-2. The answers of the Mahomedan Muftis, mentioned in the letter of H. J. Harington, to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated November 24, 1818, Judicial Department (Criminal), No. 14 of December 29, 1826, Bengal Record Department.

3. The English translation of the Vyavastha of the Pundits was made from the Persian translation which was always subjoined to the original Sanskrit. "These versions" remarks J. C. C. Sutherland in 1840, "were generally slovenly made." He points out that in the English version above noticed the "Krita" Slave is described as one bought from his parents or former masters. But on reference to the original Sanskrit, he does not find these words of illustration. Mr. Macnaghten in his work on Principles and Precedents of Hindu Law has given us an abstract of Vyavastha, which is apparently taken from the English version. There he has retained the illustration of a slave sold by his master, but omitted the instance of purchase from parents. It may be presumed that, as he has not questioned the parents' power in his section on slavery, it is certain that the omission did not proceed from any doubt in his mind. Hence Mr. Sutherland concludes that the words of illustration found in the Persian version from which the English translation was made, were inserted on the explanation of the Pundits. (Hindu Law of Slavery, Addenda, Appendix VIII to the Indian Law Commission's Report, 1841, p. 374).

Aput, that is a slave pledged by his master; (7) *Reendus*, that is a distressed debtor who voluntarily engages himself to serve his creditor for a stipulated period; (8) *Juhoh Puroput*, that is one taken captive in war; (9) *Panejita*, that is one won in a stake or a gambling wager; (10) *Oafigut*, that is one who offered himself in servitude without any compensation or return; (11) *Purbburgeea Busit*, that is a Brahmin who relinquishes a state of religious mendacity, which he had voluntarily assumed, an apostate mendicant was however the slave of the Rajah or governor only; (12) *Krit Kal*, that is one who offered himself a servitude for a stipulated time; (13) *Bhakta-Dās*, that is one who offered himself in servitude for the sake of food; (14) *Badāva-hrita*, that is one who became a slave on condition of marriage with a slave girl; (15) *Atma Bikrita*, that is self-sold or one who sold himself for a price. These fifteen different kinds of slaves were declared by *Narida mimi* (Narad Muni) according to the undermentioned authorities namely, "Mituckshara Upruk, Rutnakar, Bibad, Tandub, Summrita, Summucheea, Madhubhee and others."[1]

In answer to the second question the Hindu Pundits were of opinion that the owner of a male or a female slave could exact the performance of impure work, such as plastering and sweeping the house, cleaning the door, gateway, rubbing his master's naked body with oil, removing fragments of victuals left at his master's table and so on. In case of disobedience or any other fault committed by the slave, the master was authorised to beat him with a thin stick, or to bind him with a rope; and if he considered the slave deserving of a more severe punishment, he could even go to the extent of pulling his hair or expose him upon an ass. But if the master exceeded the extent of the authority conferred on him, and inflicted punishment upon his slave of a more severe nature than above stated, he was liable to be fined a thousand Puns and eight thousand Kowries. This was declared to be the law of Manoo as interpreted by Rutnacar, Bibad, Chinta Muni and other authorities.[2]

1. The answers of the Hindu Law Officers mentioned in Harington's Regulation for the guidance of the Courts of Judicature in cases of slavery, Judicial Department, (Criminal), the Governor-General of Bengal in Council, No. 14 of December 29, 1826, Bengal Record Department, *Cf.*, Appendix VIII to the Indian Law Commission's Report, 1841, p. 376.

2. Answers of the Hindu Pundits, mentioned by J. H. Harington, in his "Regulation for the guidance of the Courts of Judicature in cases of Slavery," submitted to the Court of Nizamut Adawlut, dated November 21, 1818, Judicial Department, (Criminal), the Governor-General of Bengal in Council, No. 14 of December 29, 1826, Bengal Record Department.

Moreover a master had no right to command his male or female slave to perform any other duties than those specified in the above answer to the second question. If he did so, he was liable to incur the same penalty, namely one thousand Puns of Kowries. This was the teaching of Manu and Bishen.[1]

However the commission of the above offences by the master against his slave did not in any way affect the state of bondage of the slave, and the Ruling Power had no right of granting him manumission. But if it was proved that any person had forcibly reduced another to a state of slavery, the Ruling Power might then order the victim's emancipation. Again if a master or any other person with the master's permission cohabited with a slave girl before she had reached the age of maturity, and this fact was proved, the Ruling Power could sentence such offender to pay a fine of 50 Puns of Kowries. But under no circumstances could the slave-girl be emancipated. However when a slave-girl bore a child by her master, she together with the child became free; and the Ruling Power had the authority to emancipate them. This was the Hindu Law as declared by "Jak, Bulk, Munoo and Kutwa Bum," according to Mitakshara and other authorities.[2]

These answers of the Mahomedan Muftis and Hindu Pundits were submitted to J. Richardson by the Court of Sudder Dewanny and Nizamut Adawlut on March 29, 1809 with instructions, that, if in the light of the information contained in those papers, any further provisions or modifications of the existing laws of slavery appeared to him necessary, he should submit to the consideration of the Court a draft of regulations in conformity with the rules contained in Regulation I of 1803.[3]

Thus the Court of Sudder Dewanny and Nizamut Adawlut did not even deign to take in consideration Richardson's own Memorandum and Draft of a Regulation, presented in 1809. This conduct is all the more strange, because Richardson knew perhaps better than any man then living how imperative it was that slavery should be done away with as soon as possible. Naturally Richardson was greatly disappointed, but without losing courage he forthwith addressed himself to the new task which the Court of Sudder Dewanny and Nizamut Adawlut had set to him, *viz.* to elucidate the answers of the Mahomedan Muftis and the Hindu

1-2. *Ibid.*

3. From W. B. Bayley, Register to the Court of Sudder Dewanny and Nizamut Adawlut, to J. Richardson, Judge and Magistrate of Zillah Bundelkhund, dated March 29, 1809, Extract from Consultation No. 51 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

Pundits. In so doing he passed in review the laws of slavery. It was, therefore, not without grim humour that he confessed to have doubts about his own capability in dealing with a question of such magnitude, which required to be well weighed and considered in all its branches by "that so called superior legislative wisdom, and more extensive, political, moral and religious knowledge of the Court of Nizamut Adawlut." However, that he was sorely disappointed, may be gathered from his letter, dated June 24, 1809 and addressed to the Court of Sudder Dewanny and Nizamut Adawlut. "I most respectfully state I was not entirely unacquainted, having taken some pains to inform myself, not only of the law as it exists according to both pursuasions, but also of the opinion of respectable and well-informed men of both religions, as to the propriety or utility of slavery; and I can safely aver that I never met a man of good sense and character of either religion that did not admit of its inhumanity; and after that admission to discuss the point of utility, would, I humbly conceive, be a perversion of the reason, with which it has been pleased God to bless mankind.[1]

Any other man in his situation would have given up the struggle. But Richardson knew that the freedom and happiness of the thousands of his fellow-creatures was at stake; and therefore he wrote, not without a touch of sarcasm, that he could not help hoping "that perhaps the Court of Nizamut Adawlut thought proper to reserve the application of its wisdom and legislative knowledge to the question, till from discussion the subject was more advanced and in a mature state.[2]

Without losing confidence he once more took up the noble task he had set before him; but before presenting the draft of a Regulation to the Court of Nizamut Adawlut, as he had been directed in their letter, he deemed it to be of still greater importance to elucidate the answers given by the Mahomedan Muftis and the Hindu Pundits. Accordingly he commented on the laws of slavery as they then existed in that part of Hindustan, "which it has pleased God to destine and allot to the control and Government of the British nation."[3]

Richardson had nothing to say on the answer of the Mahomedan Muftis to the first question. But as regards their answer to the second question, he had several observations to make. In his opinion the obvious immorality and the great impolicy and inhumanity of the licentious authority mentioned in the second

1-3. Richardson's Letter, dated June 24, 1809, *Ibid.*

answer was beyond belief. The Mahomedan Muftis started only a part and not the whole of the truth. The Islamite has the power by the Mussulman Law of exercising as regards his female slaves licentious intercourse, at the mention of which modesty recedes with blushes, and humanity shudders with horror. The spirit of the prescriptions limiting and defining the services which a master is forbidden to exact from his slaves, under the penalty of being liable to exemplary punishment by the Hakim, on principles of public policy and justice, is no doubt humane and proper. But the question is whether this spirit of the law is ever carried into effect. To any one acquainted with the manners and customs of the natives, it is not at all necessary to prove that reverse is the case. Nor is this surprising; for no slave will ever think of appealing to a judicial Court against his master. What can one expect from a poor, illiterate, wretched and desponding slave who from his infancy is accustomed to look upon his lord or master as the sole arbiter of his fate, and who depends on his master for the little happiness or rather the absence of misery which he is anxious to enjoy? It is almost unthinkable that under such circumstances, a slave would venture to apply to the Hakim or the Ruling Power for redress. "I am afraid," Mr. Richardson writes, "those who deem specious dead letter, a sufficient security to preserve a fellow-creature from oppression are little acquainted with the operations of the human mind and the effect of habitual depression and gross ignorance on our part and arrogance and power on the other."[1]

Furthermore distributive justice seems to be impartially meted out to the master and the slave; but in this respect grave abuses are daily perpetrated. The punishment inflicted by the master is as a rule excessive, because the offended party is at the same time judge and executioner. This is surely an anomaly that is bound to be the source of cruel treatment.[2]

Suppose a master, excited by lust and unrestrained by shame, has connection with a female slave before she has reached the age of maturity. Even if, as the result of such iniquitous intercourse, the female is severely injured or dies, the Ruling Power can only punish him by fining him a paltry fifty Kowries. "Great God," exclaims the indignant writer, "how is it possible that the British Government has sanctioned so horrid a law?"[3]

The purport of the fourth and the last question is whether excessive ill-treatment ever entitles a slave to claim emancipation

---

1-3. *Ibid.*

and whether the Courts of Justice are authorised to set a slave free, particularly in cases in which female slaves are made the victim of their master's bestial lust, before they have reached the age of puberty. From the answers given by the Muftis it is clear that acts of tyranny and oppression and even bodily violence on the person of a female slave before she has reached the age of puberty, as well as giving her in marriage to another who is allowed to satisfy his lust whilst she is in that premature state, are justly considered by them as crimes against the Divine Laws. But it is surely a matter of surprise that according to the Mahomedan Law, the commission of these crimes neither entitles the wretched slave to claim manumission, and that the Ruling Power is not authorised to grant her emancipation.[1]

As regards the answers of the Hindu Pundits, Richardson begins by pointing out that the whole system of slavery as sanctioned by the Hindu Law is unjust and unreasonable, and that such widespread degradation of the human race is an appalling thought indeed; for the whole of the Hindu Law of slavery is such that no part of it can be defended; the whole of it is simply to be rejected like foodstuffs unfit for consumption. As regards the facility and the impurity with which a master could tyrannize over a slave, it is difficult to imagine to what length cruelty may go. Nor is there any adequate punishment; for, if the tyrant is perchance brought to justice and is even convicted, the punishment is a mere pecuniary fine.[2] In such cases the Ruling Power may find the delinquent 50 Kowries for committing a crime most monstrous in itself, offending the very laws of nature, and endangering not only the very end for which women are intended, but also their life. Such a crime is punished with a pecuniary fine; but this is obviously not a sufficient punishment, all that can be said of it is that it benefits the Ruling Power.[3] Finally it is obvious that, since the British Government judges according to the Mahomedan Law, in cases of life and limb, it ought to apply these same law to personal freedom, for without personal freedom, life and limb, the first and the best gifts of nature, have no meaning.

Nor can any reasoning be brought forward why the British Government should not set aside the Hindu Law of slavery. The British Government has conquered most of its territories in India from a Mussalman Power. Now in these territories the

1-3. Richardson's letter of June 24, 1809, *Ibid.*

Hindu Law of slavery was for a long time in abeyance, whilst the people were under Mahomedan rule. There was, therefore, no reason for reviving the Hindu Law concerning slavery; and Government should have been satisfied with enforcing the existing Mahomedan Law in all cases of life and death, and of personal freedom.[1] In a footnote to the letter of June 24, 1809, Richardson adds, "I am still of opinion that great alterations are indispensible in the application of the law and in practice with regard to the slaves throughout the dominions dependent on the Bengal Government; whether we consider the question either as a measure of justice and policy, or as spreading wider the blessings of personal freedom and increasing the stock of human happiness; on the above considerations I solicit and rely upon the aid of the Court of Nizamut Adawlut, to supply my deficiencies, to promote so great a purpose of liberating a great portion of our fellow-creatures from bondage and preventing slavery throughout the British dominions in future."[2]

Together with his comments on the Mahomedan and Hindu answers to the Government inquiry of 1808, Richardson submitted to the Court a new draft of a Regulation, a Proclamation and an Advertisement, which assumed in its Preamble, that "no reason exists why the state of slavery throughout the British possessions should not be determined by the Mahomedan Law; the British Government having acquired the right of legislation from a Mussulman Power in previous possession of these territories for centuries, and having adopted the Mahomedan Law particularly in all criminal cases, and indeed in all judicial cases except those of heirship, marraige, caste or matters connected with religion."[3] He therefore drew up a code of procedure consisting of a number of regulations which were afterwards embodied in Harington's Minute. These regulations ran as follows:—

(1) All claims and disputes relating to slavery should be made cognisable by the Magistrates.

(2) The Mahomedan Law, as expounded by the Mussalman Law officers of the Sudder Dewanny and Nizamut Adawlut, should be made the standard for regulating the Magistrate's decision in all claims and disputes respecting slavery, whether the claimant be a Mussalman or a Hindu.

1. Richardson's letter of June 24, 1809, *Ibid.*
2. P. S. to the letter of J. Richardson, dated June 24, 1809, *Ibid.*
3. Draft of a Proposed Regulation, Proclamation and Advertisement, submitted by J. Richardson, with his letter of June 24, 1809, Extracts from Consultation No. 53 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

(3) When the claimant and also the person claimed as a slave were not Mahomedans, the claim should be dismissed, and the alleged slave should be declared free.

(4) A similar judgment should be given when the claimant was a Mahomedan, unless the former's right of property over the latter be proved according to the letter and spirit of the Mahomedan Law.

(5) The sale of children as slaves, whether by their parents or others, should be prevented, and measures should be adopted through the Police Officers for rendering the prohibition effectual; the theft and fraudulent sale of children, by persons not their parents, as well as the purchase of such children with the knowledge that they had been stolen, should be declared punishable by the Courts of Circuit; and parents selling their children and the purchasers of such children were likewise to be subjected to a fine equal to the price given for the child in each instance.

(6) Proclamations should be issued to the Magistrates, half yearly for five years, and afterwards annually, notifying the rules enacted respecting slavery, and inviting all persons wrongfully detained in bondage contrary to the letter and spirit of the Mahomedan Law to apply to the local Magistrates for emancipation; and any forcible means or severities, practised by claimants on slaves for the prevention of such application, should be made punishable by fine or imprisonment.

(7) The decisions of the Magistrates under the proposed Regulation should be opened to revision in all cases of a written application for that purpose by the Judges of Circuit holding the district or city jail delivery or by the Court of Circuit at the Sudder station of the division.[1]

(8) All reputed slaves or all those of this description, who conceived themselves suffering under the illegal bondage, may apply and receive redress from the Magistrates who were to apprise of this right all the slaves concerned by publishing an advertisement to the following effect.[2] Magistrates having jurisdiction in British India shall grant a written document declaring

1. Minute of J. H. Harington, Judge of the Sudder Dewanny and Nizamut Adawlut, dated November 21, 1818, Judicial Department (Criminal), the Governor-General of Bengal in Council, No. 14 of December 26, 1826, Bengal Record Department, Note: Harington's Minute contains only *seven* principal rules of J. Richardson.

2. Proposed Proclamation of J. Richardson, submitted with his letter of June 24, 1809, Extracts from Consultation No. 53 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

those slaves to be free, whose bondage is not according to the spirit and the letter of the Mahomedan Law. Moreover, magistrates are empowered to fine or otherwise punish such persons as have actively endeavoured to prevent slaves from appealing to the Judicial Courts against their masters.[1]

(9) "In case of any person being summoned by the Magistrate, in confirmity to Regulation VIII, and the party so summoned shall abscond or conceal himself, or shall resist the orders of the Magistrate, the process directed in the II and IV sections, of the III Regulation, 1804, shall be carried against the offender."[2]

(10) Persons who considered themselves aggrieved by the decision of the Magistrate might have a revision of the suit before the judge of Circuit.[3]

The most important were the exclusive recognition of the Mahomedan Law of slavery by the British Government and the strict application (*i.e.* with some modifications) of the letter and spirit of that law to all the existing cases of slavery. It is true that Richardson did not venture to propose the formal abolition of slavery; but there can be no doubt about it that the measures which he suggested, if they had been adopted would have greatly contributed towards its final abolition. For in that case all the slaves held in bondage by non-Mahomedans would have been immediately emancipated by the mere fiat of the law; so that the Mahomedans alone could have been entitled to possess slaves. And this right would still have been limited by the proviso that the slaves they possessed had been captured in warfare with the infidels, or were the descendants of such captives.

Unfortunately Richardson's assumption that the Mahomedan Law of slavery should be alone enforced to the exclusion of Hindu Law of slavery was not admitted by all. It was indeed based on a misconception. It is not true that the British Government had adopted the Mahomedan Law particularly in all criminal cases, and indeed in all judicial cases, except those of heirship, marriage, caste and religion. In all other cases (of which slavery was one) the British Government had preserved for itself the freedom of legislating and of judging between the rights of man and man on the principles of equity. Hence according to this rule there was no reason why the British Government should recognise the institution of slavery in India according to any law. It depended entirely on its will and governance, and the good will and the

1-3. Proposed Advertisement of J. Richardson, *Ibid.*

governance, which it exercised was to uphold the claims of bondage and to perpetuate the unjust dominion of the master over the slave.

The conclusion naturally forces itself upon us that Richardson's attempts ended in failure. Taking a survey of the whole matter we find that the question of slavery was first taken up by Richardson in March 1808, and that he was still interested in it in June 1809. In the 30th paragraph of his last letter, he expressed the hope that his humble endeavours would meet with the most liberal and serious consideration, and requested that his letters together with the draft of the proposed Regulation, etc., be submitted to the Governor-General in Council with the necessary observations of the Court.[1] But it was not till January 1816 that the Court submitted Richardson's letter to Government; and even on that occassion they did not forward together with the letters Richardson's Draft of the Regulation, on the plea that they had not yet made up their minds as regards the best policy to follow. They, therefore, notified Government that the draft of the Regulation would be submitted later on. The learned members of the Court are alone in a position to tell us why they dallied so long in dealing with this matter. Unfortunately they have not condescended to enlighten us on this point.

In May 1816, Government frankly admitted that upto that date there was no registry of slaves in India. For in a letter from the Secretary to Government, dated 24th May 1816, the Court were desired to prepare a draft of the proposed Regulation regarding slavery in India, and to take moreover into their consideration the expediency of requiring that the future purchase or transfer of slaves should be regularly registered and "that any breach of the rules which may be framed for that purpose, shall entitle the slave to demand and obtain his freedom."[2]

III. LEYCESTER. In the same year 1816, Leycester, another Judge of the Court, of Circuit, made a report to the Supreme Court suggesting the entire abolition of slavery in India. In answer to the Report the Court of Nizamut Adawlut passed the following resolutions on June 12, 1816. The Court fully

1. Richardson's letter, dated June 24, 1809, *Ibid.*
2. A letter from the Secretary to Government in the Judicial Department, dated May 24, 1816, referred to in Mr. Harington's Minute of November 21, 1808, Judicial Department (Criminal), the Governor-General of Bengal in Council, O. C. No. 14 of December 29, 1816, Bengal Record Department.

shares in and approves of the sentiments expressed by Leycester but the reason for declining to settle this question that time, is that as long as slavery existed in the West Indies, the abolition of it on general principles of justice and humanity cannot be proposed for India, where the state of slavery is of a milder form than in other countries.[1] This argument advanced by that learned Court is merely mentioned here to do justice to Leycester, who stepped out of his ordinary routine of office, to propose an entire abolition of slavery.

IV. HARINGTON. Another public officer who exerted himself in favour of the slaves in India was J. H. Harington. His sentiments and recommendations are contained in his original minute of November 21, 1818. This comprises the draft of Richardson's Regulations and Harington's own draft for the guidance of the Court of Judicature in cases of slavery.

To begin with, Harington passes in review Richardson's proposals, and comments on every one of them.

(1) As regards Richardson's first proposal, and first regulation concerning the rights to be vested in the Magistrates, Harington fully concurs with Richardson on the expediency that all claims respecting slavery should be made cognisable by the Magistrates, subject to the established control of the Courts of Circuit. The reason put forward by him is that the proceedings of the Civil Court are too slow for investigating and determining cases of this nature. Moreover, such cases involve the right of personal freedom, and can therefore be considered as falling within the jurisdiction of the Criminal Courts. In support of this he quotes a letter from the Acting Magistrate of Zillah Furruckabad, dated February 17, 1817 which strongly corroborates his own view. This Magistrate is of opinion that he should have jurisdiction to try cases in which the slave's interests are at stake: "Seeing, that years may elapse, before the cause can be tried and decided that the owner is deprived of his slave's services; in the meanwhile that he continues to feed and clothe him; that the refractoriness of the slave may have subjected him to the costs and expenses of a civil suit, which the slave can never reimburse him; that slaves are possessed of and can acquire no property to enable them to institute or defend a suit; that such slave, it may be, is kept in actual confinement, or continues subject to such degree of restraint as his bail may think necessary to impose upon

1. Extract from the Proceedings of the Nizamut Adawlut, under date, June 12, 1816, Parliamentary Papers, 1826, Judicial, p. 346.

him, ought not all suits of this nature to be preferred and tried as summary ones."[1]

(2) In connection with Richardson's second proposal in his third and fourth Regulations dealing with the Mahomedan Law of slavery Harington sets aside Richardson's view that in continuance of the law existing under Mahomedan rule Mahomedans alone should be allowed to possess slaves. Harington admits that the Regulation of 1772 according to which Mahomedans and Hindus should be ruled by their respective laws in all questions of succession, inheritance, marriage, caste and religious usages and institutions, did not apply to slavery. But he points out that, in spite of the Regulation of 1772, the Court of Sudder Dewanny and Nizamut Adawlut had in 1798 decided that the same procedure should be followed in all cases of slavery, the Court basing its decision not on any written law, but on the long established practice prevailing in the Bengal provinces; this practice being a fair expression of what may be called the spirit of the law. On April 12, 1798, the Governor-General in Council had confirmed the Court's decision. For, though the British Government had acquired the right of legislation from a Mussulman power, it was also borne out by all the Regulations of local enactment, according to 35 Geo. III, C. 155 that it was the duty of the United Kingdom, "to promote the interest and happiness of the native inhabitants of the British Dominion in India,"[2] with an additional clause stating explicitly "that the principles of the British Government on which the natives of India have hitherto relied for the free exercise of their religion be invariably maintained."[3]

Bearing in mind these considerations, Harington boldly asserts that he fails to understand why both Mahomedans and Hindus should not enjoy the privilege of being amenable to their respective personal laws. He calls attention to the fact that Richardson is not consistent with himself. In a letter, dated March 23, 1808, Richardson admits that numerous slaves were owned by the Hindu landholders, particularly in the district of Ramghur[4];

---

1. Extract of a letter from the Acting Magistrate of Zillah Furrackabad, dated February 17, 1817, referred to in para 8 of Harington's Minute, dated November 21, 1818, Judicial Department, (Criminal), the Governor-General of Bengal in Council, O. C. No. 14 of December 29, 1816, Bengal Record Department.

2. Harington's Minute, dated November 21, 1818, para 19, *Ibid.*

3. *Ibid.*

4. From J. Richardson, Judge and Magistrate of Zillah Buudelkhund, to the Judges of the Sudder Dewanny and Nizamut Adawlut, dated March 23, 1808, extracts from Consultation No. 47 of March 15, 1816, Judicial Criminal Proceedings, Bengal Record Department.

but in his very next letter, dated June 24, 1809, he contradicts himself by supposing that the Hindu Law of slavery had been in abeyance under Mussalman rule.[1] It may here be remarked that Harington's way of arguing is not open to objection. But the same cannot be said of the decision of 1798 of the Court of Nizamut Adawlut and of the confirmation of the decision in the same year 1798 by the Governor-General in Council. It may rightly be questioned whether by bringing into force the Hindu Law of slavery "the United Kingdom was promoting the interest of the native inhabitants of the British Dominion in India."[2]

As for ourselves, we do not agree with Harington's interpretations for it condemned hundreds of thousands of human beings to a state of slavery by merely discovering in the spirit of the law what was neither directly nor indirectly in the letter of it. We are of opinion that the rejection of this interpretation by the Court would not only have done away with the Hindu Law of slavery, but would also have given a death blow to the Mahomedan Law of slavery.

To come back to Harington, since slavery was not sanctioned by any recognised system of laws other than the Hindu and the Mahomedan Law, he was of opinion that no claim to the property, possession or service of a slave, should be enforced or admitted by the Magistrates, except on behalf of Hindu or Mahomedan petitioners. Of course, both Hindus and Mahomedans had to justify their claims by appealing to existing legal enactments. There was, however, one instance in which this restriction (*i.e.*, the appeal to existing legal enactments) was not necessary. This was in cases of contracts of hire and service, which had been or might be entered into, by grown up persons competent to do so, whether the contract was for a limited period or for life. Moreover, he did not deem such contracts incompatible with the principles of justice and policy which had dictated the laws of England.[3] He was, therefore, in favour of hoping that the Hindu practice of voluntary slavery in times of famine or scarcity, would ultimately mitigate the sufferings of the slave and his family.

At the same time Harington holds that a person could under no circumstances subject himself to voluntary slavery, in such a

1. Richardson's letter, dated June 24, 1809, extracts from Consultation No. 52, *Ibid.*
2. Adam, *Letter VIII to Thomas Fowell Buxton.*
3. Blackstone, Commentaries, IV, p. 425.

manner as thereby to bring his children into bondage. But if a person was unable to maintain his children, he might be permitted to hire out their services for a period sufficient to provide ample remuneration for their support.[1] It seems to us a pity that Harington made this concession. He seems not to have taken into account the many abuses which would arise if the British Government legalised the hiring out of children. These abuses had already been pointed out by the Mahomedan Muftis, who looked upon such contracts of hire and service, whether for a longer or shorter period, as mere pretexts for legalising slavery both for parents and children alike. Twenty years hence, on September 7, 1838, Orders in Council were passed by the Home Government to the effect " that no contract of service made out of the colony shall be of any force or effect in it; that no contract of labour shall remain in force for more than four weeks unless it be reduced to writing; and that no written contract of service shall be binding unless signed by the name or the mark of the person contracting in the presence of a stipendary Magistrate, nor unless the Magistrate shall certify that it was made voluntarily and with a full understanding of its meaning and effect; nor can any contract remain in force for more than one year."[2] But these provisions were made only for the slaves of the West Indies. As regards Indian slavery, even as late as 1840, Government of the East India Company had not thought of any measure to protect the interest of the free-born subjects, who were in constant fear of being entrapped into bondage.

Speaking of Richardson's fifth regulation to check the sale of slave children, Harington agreed with Richardson, since no parent could have a legitimate right to impose the yoke of slavery upon his children and their descendants in perpetuity. But he recommended that parents and guardians, having care of children under the age of fifteen years, (this being the age of maturity both according to the then Hindu and Mahomedan Laws) should be expressely empowered to contract for the support and service of such children, whenever it was indispensably necessary for their maintenance; provided that the contract did not extend in any instance beyond the 25th year of their age.[3] However well-intended Harington's intentions may

1. Harington's Minute, dated November 1818, para 15, *Ibid.*
2. Adam, *Letter VIII to Thomas Fowell Buxton.*
3. Harington's Minute, dated November 21, 1818, para 16, *Ibid*, Bengal Record Department,

have been, it seems to us that in recommending even the restricted hiring out of children, he once more overlooked the abuses which sooner or later were bound to follow.

Though Harington countenanced the hiring of children, he regarded it, however, as obviously repugnant to every principle of natural justice, and inconsistent with the common rights of mankind, that a person should be deprived of his personal freedom during the whole of his life, without his consent, and without having committed any offence subject to so heavy a punishment. It appeared to him, therefore, that it was incumbent upon the British Government (for reasons which could not be made light of or disapproved), to modify the laws in force by providing for the future emancipation of slaves, hereafter born under the protection of the British Government at the expiration of a certain period, when their services might be presumed to have fully compensated for all the expenses incurred in their support from infancy to the age of 25 years.

First of all it should be noticed that Harington's proposed legislation anent the hiring out of children was not retrospective. The only reason why he did not consider the case of children already born under their protection was that a sudden alteration of established proprietary rights, by immediately affecting the interests and convenience of a considerable number of persons, would produce widespread dissatisfaction, an evil which might be avoided by rendering the operation of the proposed amendment more remote and contingent.[1]

In the second place the legislative measures contemplated by Harington did not afford any practical relief. In most cases an Indian woman is at the age of 25 mother of several children, who being born in slavery, would be slaves, and would, therefore, be obliged to work out their liberty, till the age of 25, and so the members of the same family would continue to live in slavery, from generation to generation.

Finally, in regard to the kidnapping of children, Harington was merciless towards the offenders. He proposed that considering the heinousness of the crime the punishment attached to it ought to be more exemplary than what was already prescribed by the law.[2] Therefore he proposed to insert in Section 18 of his Regulation a clause to the effect that Magistrates should commit

---

1. Harington's Minute of November 21, 1818, paras 18-19, *Ibid.*
2. *Ibid*, para 22.

the offender for trial to the Court of Circuit, whenever there appeared sufficient ground for his conviction, and there were no extenuating circumstances; since in this eventuality the punishment which the Magistrates were empowered to adjudge, was inadequate and not proportional to the guilt of the prisoner.[1]

But Harington was not satisfied with indulging in criticism. After having thus commented on several of Richardson's Regulations, Harington makes the following personal suggestions. He fully approved of the proposal made by the Court of Sudder Dewanny and Nizamut Adawlut in a letter, dated May 24, 1816. He even recommended two distinct registers to be kept by the Zillah and City Magistrates, according to the forms prescribed by the Court of Nizamut Adawlut. One register was to contain the names of ascertained slaves and the other those of the hirelings. The detailed rules relating to this double registration will be found in the proposed Regulation of Mr. Harington's minute.[2]

Moreover, he intended to put a check to the ill-treatment of which the slaves were often the helpless victims. As the Hindu and Mahomedan laws did not contain any specific and adequate rules for preventing the maltreatment of slaves by their owners, and as they did not sanction the emancipation of slaves in cases that appeared to call for that measure, on grounds of justice and humanity, it was found indispensably necessary to lay down rules for the guidance of the Magistrates and the Criminal Courts in such cases.[3] It was already provided by Section II, Regulation VIII of 1799 and Section IV, Regulation VIII of 1803, that the guilty party should suffer the supreme penalty in every case of wilful murder, wherein the crime appeared to the Court of Nizamut Adawlut to have been fully established against the prisoner accused. But in spite of this the Futwa of the Law Officers of that Court declared that under the Mahomedan Law delinquent was not liable to suffer death by Kissas, or another person's slave or singly, or a slave appropriated for the service of the public. However, the Court of Nizamut Adawlut would sentence the murderer to suffer death, provided they saw no extenuating circumstances in the case, which might render the prisoner a proper object of mercy.[4]

1. Harington's proposed Regulation, Section XVIII.
2. *Ibid.*
3. Harington's Minute of November 21, 1818, *Ibid*, para 21.
4. Harington's proposed Regulation, Section XVI, first clause, *Ibid.*

In commenting on this state of affairs Harington further declared that in every other case, wherein a criminal offence of a heinous nature might be committed on the body of a private slave, or of a slave appropriated to the public service, the person duly convicted of such offences, whether he be the owner of the slave or not, would be liable to the same punishment, under the laws and regulations in force, as would be incurred for the like offence, if committed on the body of one not being a slave. At the same time it was explicitly stated that this clause in no way restricted the owners of slaves from the exercise of a just authority over the slaves, in requiring them to perform their duties and services, as sanctioned by the Mahomedan and Hindu Laws respectively.[1]

However, in cases of repeated gross maltreatment inflicted either by the slave's owner or with the owner's knowledge and permission the competent Court should be authorised not only to pass sentence against the guilty party but also to order the injured slave's emancipation. In pronouncing such judgments the Court should furnish the slave with an authenticated copy of it, which would be deemed a sufficient voucher of the emancipation so ordered. At the same time it was suggested that in case a Magistrate passed orders for the slave's emancipation, the carrying-out of these orders would be delayed, if the slave's owner or another person in his behalf would appeal to the Judge of Circuit against the pronounced sentence. If such an appeal was filed the Magistrate's orders were not to be carried out till the Court of Circuit had revised the trial and approved of the first sentence as directed in Section IV.[2]

Furthermore, Harington wanted to put a stop to the practice of selling slaves to merchants who did not live in India. It is true that a Proclamation had been issued by the Governor-General in Council on July 22, 1798, forbidding the exportation of the natives of India to be sold as slaves; but the existing Regulations did not contain any specific provision and therefore Harington proposed that such a provision should be supplied.[3]

Finally, he took up the case of slaves imported into India from foreign countries. By Regulation X of 1811 the importation of slaves from foreign countries in the territories immediately dependent on the Presidency of Fort William had been prohibited and declared punishable.[3] By the Statute 51 Geo. III, C. 23, it had also been declared felony to import slaves by sea into

1. *Ibid*, clause second.
2. Harington's proposed Regulation, Section XVI, clause third, *Ibid*.
3. *Ibid*.

any part of British territories in India.[1] But in spite of this double legislative prohibition, merchants seemed to have been able to evade the law by pretending that the persons imported and afterwards sold were not slaves. Hence Harington suggested that Regulation X of 1811 should be extended to the importation of any person whatsoever to be sold or otherwise disposed of or dealt with as a slave.[2] By proposing this measure he hoped to eradicate for good the evil practice of importing slaves who were chiefly imported from Nepal.[3]

Harington embodied his comments on Richardson's second draft and his personal suggestions in two official documents. There is first of all a Minute written by him when he was the Chief Judge of the Sudder Dewanny and Nizamut Adawlut on November 21, 1818.[4] The Minute is followed by a Regulation for the guidance of the Courts of Judicature in cases of slavery.[5] This is Harington's contribution towards the amelioration of slavery in British India.

Harington's attempts like those of Richardson and Lycester were doomed to failure. Harington submitted his minute and his proposed Regulation to His Excellency the Governor-General in Council, with an earnest request "that the provisions contained in it, with such amendments, as would arise from a deliberate consideration of the subject, might under Providence, prove effectual to the attainment of the important object proposed, an increase of security, ease and happiness to a considerable portion of the human species, present and future, who though exempted from many other evils to which slaves in other parts of the world had been exposed, were in a state of pitiable degradation which the well-known commentator on the laws of England had pronounced repugnant to reason and to the principle of natural laws; with an argument which showed that the assinged origins of the slavery in the Civil Law, which corresponded partly with the principles of Hindu and Mahomedan Laws, were all of them built upon false foundation."[6]

But if Harington ever expected that his draft of Regulation was going to be accepted in the near future, he must, in course of time, have been a sorely disappointed man.

The Court of Sudder Dewanny and Nizamut Adawlut only carried out Harington's instructions of submitting his minute and

1. Harington's proposed Regulation, Section XIV, clause third, *Ibid.*
2-4. Harington, Minute dated November 21, 1818, O. C. No. 16 of December 29, 1826, Judicial Criminal, Bengal Record Department.
5. "A Regulation for the guidance of the Courts of Judicature in cases of slavery", *Ibid.*
6. Harington, Minute dated November 21, 1818, *Ibid.*

the draft of the proposed Regulation for the consideration and orders of the Governor-General in Council after a lapse of nearly four and a half years, that is, on June 6, 1823.[1] At the same time they refused to offer any opinion as to the probable advantages that would result from the proposed enactment. The only thing they consented to do was to go through the proceedings they had had recourse to on previous occasions. They called for the opinions of the several judicial officers to ascertain the prevalence and the state of slavery in their respective districts, and the probable effects of a partial interference, "before coming to a final decision on a question which involved considerations and consequences of serious importance, to some of the most valuable rights and interests of a large part of the community.[2]

Harington's Regulation far from being welcomed was considered to be inopportune. Mr. Adam who was probably one of the members of the Council declared that the proposition involved a most difficult and embarassing question. According to him legislative interference could not tend to improve the condition of persons in a state of slavery, nor could it hasten the hour of general emancipation by the complete abolition of slavery. A summary abolition was quite out of the question. He felt that the practice of domestic slavery was so much interwoven with the customs and feelings of the natives that its sudden suppression would create extensive and well-founded discontent. He also strongly opposed the passing of half measures; for such scanty relief was not likely greatly to benefit the slaves. He himself admitted that slaves employed in agricultural labour were in a worse condition than the ordinary population, nevertheless he doubted the expediency of any legislative interference for its regulation. "I think," observed Adams, "we ought to call for information and opinion as suggested by the Sudder Dewanny and Nizamut Adawlut and suspend any further deliberation till the replies of the public officers are collected and embodied in a general report." His concurrence even in a reference to the Judicial Officers for information and opinion seems only to have been given because "the question had been revived."[3]

The Governor-General, Lord Amherst, found no statement of existing evils which rendered it incumbent on the Government to

1-2. From W, H. Macnaghten, Register to the Court of Sudder Dewanny and Nizamut Adawlut to W. B. Bayley, Chief Secretary to Government, dated June 6, 1823, Bengal Record Department.

3. Observations in pencil of Mr. Adam upon the proposed Regulation respecting slaves, O.C. No. 15, of December 29, 1826, Judicial Criminal, Bengal Record Department.

enter into the consideration of the state of slavery in India. Therefore in the absence of a complaint and want of any pressing necessity for inquiry, he thought it inexpedient to hazard the inconvenience.[1] However, it may be remarked that slavery, its laws, and local usages were in Bengal, one strange mass of anamoly and contradiction.

Consequently nothing was done in the matter and as far as the official documents go, that is upto the year 1843, we are in a position to say that both in law as well as in practice, slavery was in substance the same as when Richardson in 1808 first proposed to check and reform its abuses. A period of thirty-four years passed away, an entire generation of the human race disappeared, and slavery in Bengal, nay even in the whole of India remained unchecked, unreformed and unremedied.

No. 2. IN MADRAS

SUMMARY: I. Baber. II. Campbell.

SOURCES: PUBLISHED: Adam, *Letter VIII, to Thomas Fowell Buxton*; Appendix to Report from Select Committee, IV, (Public) 1832; Parliamentary Papers (Judicial) 1828.

I. BABER. Baber exerted himself in the Bombay and Madras Presidencies on behalf of the slave. During his residence in India for a period of nearly 32 years, Thomas Baber was actively employed during the term of his office, in every department of the public service, Revenue, Police, Magisterial, Judicial and Political; in various provinces where both domestic and agrestic slavery prevailed.[2] We have had occasion to refer to him on several occasions in previous chapters, hence we shall here only point out the recommendations suggested by him in order to redress some of the most crying evils of the practice of slavery.

As regards the Presidency of Madras Baber strongly protested against the high-handedness of Government Officials in commandeering slaves. In 1812 one of the most prominent causes that led very nearly to an incipient rebellion in the mountaneous country of Wynad, was the seizure of slaves by the Government authorities for the purpose of making them serve as coolies. The demand for these slaves by the Government was so urgent that every kind of cruelty was inflicted upon the inhabitants, if they

1. Minute of Lord Amherst, dated January 25, 1826, O. C. No. 18 of December 29, 1826, Judicial Criminal, Bengal Record Department.
2. Answers of T. H. Baber, Appendix to Report from Select Committee, (Public) 1832, IV, (A) para 1, p. 421.

had not the means of providing them. Mr. Baber earnestly requested the Government authorities, to stop this oppressive practice, but no regard was paid to the remonstrance. "On one occasion", Baber relates, "while on my return from delivering the gaol at Seringapatam in July 1820, I was met in the Peria Pass by several hundred Coorchers, all armed with bows and arrows, "who, reminding me of my promises that they should not be seized and made to serve as coolies, complained of the almost daily violations thereof by the Revenue servants." Four of the principal inhabitants followed him to Tellicherry and they complained of these and other grievances. Their petitions were forwarded by him to the Magistrate, with directions to afford them prompt and effectual redress. Unfortunately, instead of obeying Baber's instructions, on the ground that it was a necessary evil, the Collector justified the practice and in this he was supported by the Government.[1]

Again Baber was of opinion that there was no legal justification of slavery in British India. Commenting on the Mahomedan and Hindu Laws of slavery he remarked that under the Mahomedan Criminal Law of the land, a Mahomedan master was entitled to inflict upon his slave simple chastisement; but if we look into the law itself we find that no man, except a Mussalman can have the right of property over another, and that too when he was an infidel taken in arms fighting against the faith.[2] From this he logically infers that the Mahomedan Law of slavery was meant for countries under Mahomedan rule, and could not be appealed to as a legislative principle binding within the territories of British Rule.

Furthermore Baber points out that it seemed no useful purpose to speak in connection of the practice of slavery in British India, of the prevailing Hindu Law, which was then the Civil Law of the land. For this law was hopelessly defective inasmuch as it did not and could not effectively deal with the commission of violence and of any offence upon the person of slaves; nor could the Hindu Law authorise the manumission of slaves under any circumstances.[3]

Again on another occasion in 1812, the evils of slavery were suddenly brought to the notice of the public in Madras. But

1. Answers of T. H. Baber, Appendix to Report from Select Committee, IV. (Public) 1832, (F), para 4, pp. 432-33.
2. *Ibid*, (G), para 2, p. 433,
3. *Ibid*.

the Madras Government displayed an almost panicky reluctance to have anything to do with the matter. In the course of that year an objection was raised by the Provincial Court of Circuit in connection with the depositions of the 76 kidnapped slaves and freeborn children whom Baber discovered in the possession of Mr. Brown. The Court apprehended that a " prosecution could not be supported against the perpetration of that heinous offence, unless the charge shall have been previously preferred by the owners of the bondsmen, parents and relations of the free-born children and other evidence adduced thereof". Another reason assigned for not proceeding with the trial was that the Law Officer objected to the legality of the Sirkar Vakil (Government pleader) being appointed a prosecutor, while the parents or relations of the free-born children, who had been kidnapped or sold as slaves were existing.[1] The obvious result of these pronouncements was to encourage the cruel traffic in human flesh. Full reports of the cases were brought to the notice of the Madras Government by Mr. Baber, which will be found in the volume of Parliamentary Papers published by the House of Commons in 1828.[2]

Apart from this, the views taken by the Judges of the Provincial Courts seem to us so strange as to be indefensible. Thus for example, Baber points out that the evidence of slaves had never before been rejected in the British Courts of Justice, for, there were actual cases of persons who had been tried and convicted of murder before the Judges of the same Provincial Court on the complaint of the slaves.[3] Hence he rightly concludes that he fails to understand the decision of the Provincial Court to set free the perpetrators of such a heinous crime. If slaves were not on former occasions disqualified from giving evidence; it is certainly inconsistent with reason and justice to deny them the full benefit of the same trustworthiness as legal witnesses, protection afforded by those laws. "The servitude they are doomed to," reports Mr. Baber, "by the usages of the country, (which the British Government legally recognised and enforced) is sufficiently deplorable and humiliating without our adding to their degradation."[4] Again to dismiss the complaint on the second ground that it was illegal that the Government pleader should lead the prosecution, does not seem to be either rational or just. Such an objection had

1-4. From T. H. Baber, Judge and Magistrate of Malabar, to the Secretary to Government, dated February 29, 1812, Parliamentary Papers, Judicial, 1828, para 85, p. 582; *Cf.* Appendix to Report from Select Committee, Public, IV, paras 5-6, pp. 434-35,

never been raised before because it would plainly defeat the ends of justice, since every offender, provided he had money, influence, could either intimidate or prevent the accusers from coming forward.

Besides this, the Court in its decision seemed to be strangely unaware of the circumstances of the case, and the legal technicality to which it had recourse, could hardly be applied in the present instance. It was not only improbable but also impossible that parents and relatives should come forward as accusers since the kidnapped children came from the most remote parts of Travancore, and since even their parents and relatives did not know what had become of the children. Even if we admit that they did know of their having been carried away to Malabar, and that a number of them were in possession of Mr. Brown, they would have never dared to appeal to a British Tribunal and to come forward as accusers of a wealthy European settler in Malabar.[1]

Though Baber's first attempts ended in failure he did not lose courage as is proved by his enactment of August 29, 1829. According to this enactment the Mahomedan Law which recognised those absurd distinctions between freemen and slaves as regards the right of giving evidence, was superseded. T. H. Baber declared that the evidence of slaves was as much to be fully depended upon as that of free-born persons, provided that their master had not been tempering with them, when through sheer fright of his anger, they would hardly dare to depose otherwise than he had tutored them.[2]

Again Baber took the earliest opportunity of introducing into the body of a general police regulation, a few rules, which appeared to him urgently called for, to put a stop to the abuses of slavery, which were at that period prevalent to a great extent in the Madras Presidency.[3]

By the ancient laws of Malabar, a master was not accountable to any person for the life of his slave. He could even put him to death. But this absolute dominion of master over the slave was curtailed and a master became amenable to punishment, if he put his slave to death without a cause. That there was good reason for this change is proved by the fact that since the estab-

1. Parliamentary Papers, Judicial, 1828, para 61.
2. Answers of T. H. Baber, Appendix to Report from Select Committee, Public, IV, 1832, para (G) 7, p. 435.
3. *Ibid.*

lishment of the British Rule, Baber, through the agency of the police brought to light several instances of free persons, convicted of murdering and maiming their slaves.[1]

However, it must not be thought that all British Officials entertained the same noble sentiments as Richardson, Harington and Baber. It was time after time repeated by those upholders of slavery that slavery in India was of a very mild form, when compared to the conditions prevailing in the West Indies. Some even went so far as to express that the masters were very kind to their slaves, and treated them as members of the family. The slaves were even allowed marriage expenses, and that they were on the whole very happy. But there is a case reported in the volume on "East India Slavery," which strikingly illustrates to what length the tyranny of masters could go. It is sufficient for our purpose to quote the observations of Mr. Warden, the presiding Judge. "The two cases tried in Canara wherein the accused were charged with causing the death of their slaves by severe chastisement, induce me to make inquiry at Mangalore regarding the prevailing custom in instances wherein the slave of one master marries the slave of another and particularly whether their respective owners can prevent them from living together. The frequent absence from his master's work, which occasioned the deceased's chastisement, in one of the above cases, was owing to visits to his wife, who resided at a distance on her master's estate, who would not allow her to live with her husband."[2] Mr. Warden upon satisfying himself that "it was usual for the female slave to reside with her husband, suggested that under the authority of Government, the obligation to be enforced upon owners to allow their married slaves to live together."[3] But the Government saw no necessity of enacting a new Regulation ; they were of opinion that, if the usage of the country imposed upon the owners the obligation to allow their married slaves to live together, there was no reason for the Governor-in-Council to adopt the Circuit Judge's suggestion, that the Magistrate should be required to enforce that obligation.[4] Evidently the Government lost sight of the fact that the usage to which they referred was practically a dead letter in Madras.

1. Answers of T. H. Baber, Appendix to Report from Select Committee, Public, IV, 1832, para (G) 9, pp. 435-36.

2-3. Extract para 3, from the Calender of Trials, First Sessions, Parliamentary Papers, Judicial, 1828, p. 936.

4. Extract para 3 to the Register to the Court of Foujadary Adawlut, *Ibid*, p. 937; Baber's Answers, Appendix to Report from Select Committee, IV, Public, 1832, p. 439.

Another crying evil in the Madras Presidency was that in Malabar slaves were sold at the pleasure of their masters in execution of judgment decrees and in satisfaction of revenue arrears. Baber's repeated remonstrances did not prove effectual; for though on May 13, 1819 orders were issued prohibiting the sale of slaves in future on account of arrears of revenue in Malabar; it appeared from inquiries made in every talook in Malabar, and forwarded to the Board of Revenue by Collector of Canara himself, J. H. Vaughen, on July 20, 1819 that the practice had not till then discontinued.[1]

However, it was in vain that Baber called the attention of Government to the evils of slavery which were countenanced by law in the Madras Presidency. Nor were his recommendations to remedy these evils adopted. His superiors J. H. Vaughen and C. M. Lushington did not see the necessity of taking any such measures. Now these men were entrusted by the Supreme Legislative Body with controlling authority over the facts of the executive administration, and Baber's exertions remained unsupported.

At the same time the statements of those who opposed Baber's reforms were contradicted by other Government Officials appointed to inquire into the matter, notably Francis Buchanan and Commissioner Graeme. Thus for example, Warden asserts that cruel treatment to slaves was punishable by the Regulations. He makes bold to say that they had the protection and benefit of the law, and could apply to a Court of Justice, though he cannot give a single instance of slaves having availed themselves of this right. Again he claims that it was the duty as well as the interest of the master that the subsistance called "Walli" was regularly served out to his slave, but never troubled to inquire whether it was paid or not. Vaughen goes a step further and adds that slaves were as well protected by the laws as any other human beings. On the contrary Buchanan points out that slaves were very cruelly treated. They did receive the subsistence but only two-seventh of what was a reasonable allowance. Again Commissioner Graeme looked upon a slave in the interior as a wretched, half-starved, dimunitive creature, stunted in his food and exposed to the inclemencies of the weather. His state was one that demanded the commisseration and amelioration of the

1. Extract para 45 from the Proceedings of the Board of Revenue, dated November 25, 1819, Parliamentary Papers Judicial, 1828, p. 900.

British Government.[1]

Not only the noble purpose which Baber had in view was defeated but a conspiracy was also formed against his life through the machinations of Mr. Brown, the principal slave-owner in Madras, and in 1813, was deserted by the Government itself.[2] "Since that time," writes Baber in 1832, "I have confined myself to occasional notices of the condition of the Malabar slaves as often as my public attention has been drawn to the subject; but with little or no benefit to the unfortunate slaves, who continue the same reprobated people as ever, as their half-famished persons, their sieves of huts and the diminution of their numbers, while every other class of the people is increasing, abundantly testify."[3]

II. CAMPBELL. Baber was not the only man who exerted himself in order to obtain the abolition or mitigation of slavery in British India. Mention has also to be made of A.D. Campbell's activities in the Madras Presidency. He resided in India for nearly a period of twenty-two years and had more than one occasion to study the state of slavery; for he was successively Secretary to Government, a Member of the Board of Revenue of Madras, Superintendent of Police at the Presidency, Register of the Foujdarry Adawlut, Judge of Circuit in the provinces, and Principal Collector and Magistrate in Tanjore, and in the Bellary division of the Ceded districts.[4] Owing to the various offices he held, his testimony is naturally of great weight.

In a Minute drawn up by him when Secretary to the Board of Revenue in Madras, dated January 5, 1818, Campbell induced the Board to call for information from various provinces, with a view to provide legislative enactment by which the powers to be exercised by the masters over their slaves could be defined and determined, in order thereby to prevent abuse or oppression. However, his efforts were solely directed towards remedying abuses; for he pointed out to the Board that it would be "unjust to interfere with the private property which the masters possessed over their slaves, merely on the ground that long established

1. Table of opinions recorded by T. H. Baber, Appendix to Report from Select Committee, IV, Public, 1832, p. 443.
2. Government's Minute, dated January 22, 1813, Parliamentary Papers, Judicial, 1828, pp. 789-90.
3. Answer (Q) of T. H. Baber, Appendix to Report from Select Committee, IV, Public, 1832, p. 448.
4. Answer 2 to the questions of the Commissioner of Circuit for India, dated November 4, 1832, Appendix to Report from Select Committee, IV, Public, 1832, p. 451.

relations, which society recognised, would be disturbed if they interfered between these two orders."[1] Nevertheless he was of opinion that British policy ought to be directed not only to the immediate practical amelioration of East Indian slavery, but to its ultimate though gradual abolition.[2]

Speaking of the abuses prevalent on the Western Coast in particular, Campbell proposed that a legislative enactment ought to be made, in order to stop the slaves being removed from their native place, or being exposed to sale by auction, in execution of decrees of Court, or in fulfilment of the arrears of revenue.[3]

Baber had already repeatedly in 1819 condemned this practice of selling slaves for arrears of revenue; but nothing had been done in the matter as we gather from a letter written by Campbell on 23rd December, 1819, where he mentions that the Board of Revenue had given directions that the practice was to be discontinued only in the district of Malabar in the Madras Presidency, where this practice had occurred.[4] But the orders of the Board of Revenue were only partially carried out; for the sale of slaves in execution of decrees of Court which belonged to the Judicial Department of Government was not forbidden; nor could master be prevented from selling their slaves to meet the Revenue demands of the Government. Besides this, the publicity given to these orders was so limited that ignoring the knowledge of the inhabitants themselves, Baber who lived in Madras till the end of 1828, "never heard of it (them) till he saw the fact (s) stated in a Parliamentary Paper after his arrival in England."[5]

The information for which Campbell had called from the various provinces in the beginning of the year 1818 was at last collected and laid before the Government of Madras on December 13, 1819. The result was that the Board of Revenue at his instance proposed that the Madras Government should pass an enactment to declare:

(1) that the purchase of free persons as slaves should be illegal, and subject to penalties;

1. A. D. Campbell, Answer to the questions of the Commissioner of Circuit for India, Appendix to Report from Select Committee, Public, 1832.
2. *Ibid*, para 16, p. 457.
3. *Ibid*, para 17, p. 457.
4. From A. D. Campbell to the Collector in Malabar, dated December 23, 1819, Parliamentary Papers, Judicial, 1828, para 2, p. 873.
5. Extract para 45 of the Proceedings of the Board of Revenue, *Ibid*, p. 900; *Cf.* Answers (K) of T. H. Baber. Appendix to Report from Select Committee, IV, Public, 1832, para 1, p. 440.

(2) that the children of parent born after certain date should be declared free, with the exception of course of a registry of slaves, and of the children born previously to such date ;

(3) that the voluntary contract to serve for a term of years or for life should bind the individual alone, and neither his wife nor children after the years of discretion ;

(4) that slaves should be competent to possess and dispose of property independently of their master ;

(5) that the purchase of children to be trained for the profession of prostitution should be subjected to special penalties ;[1]

(6) that the local civil officers should by a summary proceeding, have power to cause masters to provide wholesome food and decent clothing for their slaves, and to prevent their neglecting them in sickness, age or infirmity ;

(7) that the power of corporal punishment should be transferred from the masters of slaves to the local civil officers ;

(8) that slaves bought by their masters should, by repayment of the purchase money, recover their liberty ;

(9) that all slaves attached to lands or estates escheating to Government should be declared free ;

(10) that slaves on being ill-treated by their masters, should at the option of the slave entitle him to liberty ;[2]

(11) that the share of the harvest granted to the agrestic slaves in the Tamil country should be augmented at the expense not of their masters, but of the Government itself.[3]

It may be noted that the 5th clause was found fault with by Mr. MacLeod, who in a letter, dated January 13, 1826, argued that parents or guardians should not be prevented from assigning children in the customary modes to be brought up as dancing women. However, Munro pointed out that MacLeod's objection was based on false premises ; for the fifth clause of the enactment was that parents or guardians could not be prevented from assigning children in the customary modes to be brought up as dancing women, quite distinct from "the purchase of children" on that account.[4]

1. Answers of A. D. Campbell, Appendix to Report from Select Committee, IV, Public, 1832, para 17, p. 457.
2. Answers of A. D. Campbell, Appendix to Report from Select Committee, IV, Public, 1832, pp. 457-58.
3. *Ibid*, p. 458.
4. Parliamentary Papers, Judicial, 1828, pp. 907, 923,934, and 935.

Several of those recommendations met likewise with the approval of Graeme and Baber.[1]

Such were the recommendations suggested by A. D. Campbell in his letter dated from Paris, 4th November, 1832. In the last para of the above letter, he expressed the hope "that setting aside the fifth suggestion, the absence of any objection against the other enactments proposed by me, and recommended by the Board of Revenue at Madras for adpotion by the Government confirmed as the expediency of several of them has been by the other authorities I have mentioned will I trust, under the moderate caution and attention to vested rights, which I hope will be found to pervade the proposal of the whole, find for some of them at least, a more able and successful, though not a more zealous advocate."[2] However, whatever hopes Campbell entertained, they all came to nothing. His recommendations like those of his predecessors were not adopted by the Madras Government. They were merely "ordered to be recorded"[3] and were afterwards shelved without any one caring to look them up even for reference. Campbell knew the fate of his suggestions only after his arrival in England.[4]

It is useless here to enter into any minute discussion of the recommendations offered by Campbell, as these proposals were never adopted by the Madras Government. Yet the importance of the ninth recommendation deserves to be pointed out on account of the weighty results that would have followed from it.

There was no doubt, that lands and estates with slaves attached to them were escheating in course of time to Government. Hence there is no escape from the compromising structures of Adam's indictment, "that the proprietors of East India Stock were in their own right as a Chartered and incorporated Company, the owners and masters of the slaves attached to those lands and estates, that they were the only slave-holders in Great Britain, and that the half-yearly dividends which they drew from India were in part the direct and indubitable product of slave labour, suffering and degradation."[5]

During his twenty-two years of service in India, Campbell found no material changes taking place in the condition of slaves

1. *Ibid.*, p. 458.
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*
5. Adam, *Letter VIII, to Thomas Fowell Buxton.*

in the territories of Madras. Not a single measure was adopted by the Madras Government either to abolish or to ameliorate the state of slavery,[1] except perhaps the prohibition to sell slaves for arrears of revenue, if this could at all be called an amelioration, since the restraint thereby imposed was limited to specified cases as has already been pointed out in a preceding paragraph.

No. 3. IN BOMBAY

SUMMARY: I. Stevenson and Baber.

SOURCES: UNPUBLISHED: Judicial Department, Vol. 25-126, 1826; Judicial Department, Vol. 24, 1835.

STEVENSON AND BABER. Baber's activities in Madras have already been dealt with in a preceding part of this chapter. In 1825, he was transferred from Madras to Bombay and became Collector of Dharwar; and as he had fought in defence of slaves in Madras, so he came forward as their champion in Bombay. About that time a circular letter had been despatched by Government calling upon the several sub-collectors and Mamlatdars of the taluks to submit the information they possessed and the opinions they wished on the various points noted in the Government's Circular. Thereupon J. A. R. Stevenson, the sub-collector of Ranibidnoor expressed it as his opinion that the leading features of the state of slavery were so mild that they did not call for the interference of the Legislature.[2] Baber, commenting on that statement, agreed that, if the slaves were treated with humanity, Government could not interfere with the rights which the Mahomedan and Hindu masters possessed over their slaves. But at the same time he denounced the nefarious practices in Bombay, and he strongly protested against the theft and the fraudulent sale of children, the wrongful detention of any person in bondage and the severities to slaves. He looked upon this cruel ill-treatment of slaves as an indictable offence, according to the spirit of the general regulations, which therefore did not even require any legislative enactment. Furthermore he denounced as illegal the sale of children as slaves for life upon the principle that no parent or guardian could have a legitimate right to impose the yoke of slavery on his children or wards, and their descendants

1. Answers of A. D. Campbell, Appendix to Report from Select Committee, IV, Public, 1832, para 13, p. 456.

2. From J. A. R. Stevenson, Sub-Collector of Ranibidnoor, to the Political Agent, and Principal Collector, dated July 29, 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department,

in perpetuity, and that compensation for their support during childhood might be otherwise provided for.[1] It was also during his stay at Dharwar that Baber issued on July 15, 1826, an order to the Mamlatdars to find out the best mode of checking this inhuman traffic.[2]

Besides the above information the official records do not shed any further light on Baber's activities in the Bombay Presidency. However he continued to exert himself on behalf of the slaves; for in 1835 he was second time appointed a Collector at Dharwar. On this occasion he wrote: "When in authority here 9 years ago, I took great pains to discountenance this inhuman traffic.[3]"

No. 4. IN ASSAM

SUMMARY: I. Neufville.

SOURCES: PUBLISHED: Appendix VIII to the Indian Law Commission Report, 1841.

NEUFVILLE. Nor was the state of things more encouraging in Assam. In that province the master of slaves possessed the right of selling and actually sold their slaves, their slaves' wives, and their children indiscriminately every one of them to the highest bidder, making light of breaking up countless families. In 1830 Captain J. B. Neufville proposed to Government the general abolition of the future sale of slaves, except with the consent of the parties. And in order to give effect to this proposed prohibition he suggested that all transfer of slaves should take place before the Chiefs of Khels or village, whose duty it would be to ascertain that the consent of the person sold was obtained and that no forcible means were adopted to separate a man from his wife or parents from their children. Similarly in order to check the cruel usages indulged in by the slave-owners, he recommended that the same sort of investigation should be made by the heads of the villages; and if any person was found guilty of cruelty he should be visited with a fine. If the cruelty amounted to revolting savagery, the perpetrator of the offence should be deprived of his right of possession and the ill-treated slave should be set free.

1. Resolution of June 30, 1825, Judicial Department, 1826, Vol. 25-126, Bombay Record Department.
2. Order issued to the Mamlatdars, dated July 15, 1825, Judicial Department, Vol. 24, 1835, Bombay Record Department.
3. From T. H. Babar, Magistrate of Dharwar, to the Secretary to Government of Bombay, dated June 24, 1835, Judicial Department, Vol. 24, 1835, Bombay Record Department.

With regard to the frequent sale of slaves as a marketable property without obtaining the slaves' consent, J. B. Neufville advised that such sales should be held before a 'parish meeting' (village meeting) which should be satisfied of the character of the purchaser. He also called the attention of the Government to the barbarous system which prevailed in the province of Assam of selling female children, not only by the Assamese *inter se*; but actually as an article of exportation, and he requested that this traffic should be forbidden by a Proclamation under severe penalties.[1] It can be said that he was as unsuccessful in Assam as Baber and Campbell had been in Madras. For in fact all his proposals were quietly ignored by Government.

Captain Neufville is the last of the high-minded English officials who did their best either to abolish slavery or to ameliorate the lot of the unfortunate wretches who were the victims of this inhuman practice. We have had occasion to point out that on the whole their endeavours ended in dismal failure and that this disheartening disappointment was the only reward of these courageous pioneers in the field of suppressing slavery in British India.

No. 5. GOVERNMENT'S POLICY

SUMMARY: I. Alleged justification. II. Attempted explanation. III. A belated tribute.

SOURCES: PUBLISHED: Sir Frederick John shore, *Notes on Indian Affairs*, II; Appendix VI to the Indian Law Commission's Report, 1841; Catholic Encyclopædia, XIII.
UNPUBLISHED: O. C. No. 15 of December 29, 1826, Judicial Criminal; Government of India, Legislative Proceedings, April 1—May 27, 1839.

I. ALLEGED JUSTIFICATION. But the question naturally represents itself: "Why did these men fail? How must we account for the fact that their earnest endeavours met with no response on the part of British Government?"

To begin with this question, we may mention some of the arguments brought forward by those who, not satisfied with excusing the apathy of the Government, are actually bent on approving Governments non-interference.

Some went so far to asseverate that it was the sacred duty of the Government to see to it that the natives should enjoy the

1. From Captain J. B. Neufville, Political Agent in Upper Assam, to Mr. David Scott, Agent to the Governor-General, North-Eastern Frontier, dated July 26, 1830, Appendix VI to the Indian Law Commission's Report, 1841, p. 315.

full privilege of those laws and customs which were not repugnant to humanity and good morals, especially in the eyes of a nation professing Christianity since slavery was enjoined by God himself to his favoured people the Jews, and since it was practised in a mild spirit in India.[1]

It is sufficient here to remark that the slavery existed in Judea under a form very different from the Indian form. The Mosaic Law was merciful to the slave (Exodus, XXI, Levites, XXV, Deuteronomy V, XVI, XXI), and carefully secured the fair wage to the labourer (Deuteronomy, XXIV, 15). In Jewish society the slave was not an object of contempt because labour was not despised as elsewhere.[2]

Other officials without defending excused Government's delay in dealing with the slave question on the following plea. They said that the abolition of slavery would upset all the established usages and customs. They pointed out that Assam in particular was as yet in a very rude state of society and that with progressive improvement, slavery and bondage would gradually diminish of itself. It was also suggested that the evils of slavery were to a large extent imaginary rather than real and that slavery existed in the prejudiced mind of certain Englishmen, rather than in deed.

The following reasons were also put forward against abolition of slavery—they referred in the first instance to Assam but can also be applied to the rest of India. First of all without making compensation to individuals for the loss of valuable private property, the Government could not contemplate any measure of relief. Nor could Government incur the expenditure of indemnifying the slave-owners. This was impracticable as the compensation would amount to no less than thirty or forty lakhs of rupees in the two districts of Sylhet and Lower Assam.

In the next place it was represented that the Government was pledged to administer to the natives their own laws in matters of contracts, inheritance, &ca. And therefore it was inconsistent to infringe this principle by the abrogation of a practice which was so closely interwoven with the whole frame of society, and which was essential to the comfort and honour of the families of the

1. From D. Scott, Governor-General's Agent North-East Frontier, to George Swinton, Chief Secretary to Government, dated October 10, 1830, Appendix VI to the Indian Law Commission's Report, 1841, para 13, p. 321.

2. Catholic Encyclopædia, XIII, p. 36.

higher classes. Those who brought forward this excuse were evidently lacking in democratic spirit since they were ready to sacrifice the well-being of the lower to the comforts of the higher classes. Nor were they skilled logicians since they supposed what was to be proved, and made the little word "&ca." include slavery.

In the third place, it was doubted whether the adoption of a measure which was bound to prove very unpopular with the higher classes would be in reality beneficial to the multitude of the oppressed; because from a moral point of view, the slaves were degraded, and of dissolute and depraved habits in comparison with the free population. As regards this objection, without denying the unpopularity involved in the abolition of slavery, it may here be remarked that the low moral status of the slaves was the evil result of the bondage in which they were held. For this bondage had made them the most imprudent and spendthrift class of society.[1]

Such were some of views by which the servants of the East India Company defended the continuance of slavery in India.

It remains now for us to animadvert the attitude of Government towards slavery. To begin with it would be absurd to doubt that the British authorities were perfectly aware of the many evils entailed prevailing practice of men claiming their fellow-men as marketable property. It is true that Adam was of opinion that Government was not sufficiently aware of the prevailing evils of slavery, and advised that a public inquiry should be held.[2] This was probably about the year 1823. But apart from the specified first hand information supplied at various times by the men who exerted themselves in the cause of the suppression of slavery, special inquiries had already on more than one occasion been made notably in 1808, 1809, 1812, 1816 and 1818. Moreover the data supplied by these inquiries were absolutely reliable for they had been gathered by high officials who were men of sound judgment and of extensive local experience and who had spent nearly half of their lives in India, so that they were in a position to get fully acquainted with the usages and

1. From D. Scott, Governor-General's Agent, North-East Frontier, to George Swinton, Chief Secretary to Government, dated October 10, 1830. Appendix VI to the Indian Law Commission's Report, 1841, para 12, p. 320,

2. Observations in Pencil of Mr. Adam upon the proposed Regulation respecting slaves, O. C. No. 15 of December 29, 1826, Judicial Criminal, Bengal Record Department.

customs of the country. This consideration is, sufficient refutation of A. Amos' statement to the effect that investigations which had taken place before the Law Commission (*i.e.* before 1838) showed that a very imperfect knowledge of slavery in India was in possession of those who were the authors of the recommendation of the abolition of slavery.[1] It stands, therefore, to reason that the ruling authorites were in possession of a full knowledge of what slavery really stood for; they knew and could not help knowing that it was a dreadful evil.

How then must we account for Government's lack of initiative, we feel almost inclined to say, indifference, whenever the question of slavery came to the fore?

II. ATTEMPTED EXPLANATION. Without intending either to defend or even to excuse their policy of procrastination, we may perhaps account for what might at first seem a callous unconcern where the fate of millions of poor suffering wretches was at stake. First of all slavery existed before the English occupied the country, it existed on an extensive scale, as a matter of fact, it had become a part and parcel of the social economy. Its abolition was therefore a difficult task. The Government could not possibly indemnify the slave owners, and there is little doubt that the upper classes would have tried their utmost to defeat any active attempts at depriving them of their slaves who were a valuable article of property. Accordingly, if we may slightly change the phrase, the ruling authorities acted on the principle "to let bad alone." They were afraid of having to face a wide-spread upheaval in those parts of the country over which they ruled. Fortunately what is uppermost in our mind as regards this point is also given expression to by Sir Frederick John Shore in his notes on Indian Affairs, Vol. II. In a chapter dealing on "Interfering with native customs," where he cursorily alludes to the subject of slavery, he takes cognisance of the following facts. He gives credance to his opinion by saying that Government was often urged to enact some district rule, either abolishing slavery altogether, or allowing it to exist in a modified degree, but in this, as in some other cases of difficulty they followed the vacillating course so characteristic of the British rule in India. They always refused to give any specific orders; at the same time hints were given to the Civil Officers of the

1. Minute by the Hon'ble A. Amos, dated April 1, 1839, Government of India, Legislative Proceedings from April 1 to May 27, 1839, Consultation No. 15, Imperial Record Department.

anxiety of Government to put a stop to slavery. The object of this mode of proceeding was, that if the exertions of the subordinate functionaries proved successful, Government would take the credit in a flaming letter to the Court of Directors of having abolished slavery; while, if any disturbance occurred or anything went wrong, the blame would be thrown on the unfortunate district officer.[1]

Nor must it be forgotten that in those days the ruling authorities were in the service of the East India Company; for it was only in 1858 that India came officially under the direct control of the Crown. The ruling authorities had, therefore, to please the Directors of the Company; and they in their turn had to please a multitude of share-holders. Now what the share-holders wanted was a fat yearly dividend. They thought more of £.-s.-d. than of the welfare of the country. The natural result was that the Directors and their servants in India did not care to go in for any policy that might result in any material losses. This is perhaps one of the chief reasons of Government's apathy whenever the question of abolition of slavery turned up.

Besides the abolition of slavery meant a great change in the social economy of Indian life and usages; it was a change which was tantamount to a revolution. Now it is a fact that such great changes are not carried out in a day, nor in a year. In this connection, it may be well to bear in mind that changes involving dashing material interests have always taken a long time to materialise. The history of the abolition of slavery both in America and in England is an evident proof thereof.

From this point of view the policy of Government to have nothing to do with the abolition of slavery can at least be accounted for. But what is more difficult to understand is the total lack of sympathy displayed by Government, when its attention was called to the miserable condition of the slaves in India, with a view to ameliorate their lot. It has to be frankly admitted that in this respect the prudence of Government and its anxiety to steer clear off every difficulty amounted to cowardice, pure and simple.

III. A BELATED TRIBUTE. By way of conclusion, we cannot but pay a brief homage to the little band of noble-minded men who left no stone unturned to remedy the evils of slavery in India. Richardson, Harington and Leycester in Bengal, Baber and

1. Notes on Indian Affairs, II, by Sir Fredrick John Shore, p. 404.

Campbell in Madras, and Neufville in Assam proved themselves possessed of that fellow feeling which makes all men kin. In estimating their work it must be borne in mind that, (with the triumph of Harington who was aware of Richardson's proposals) all others acted on their own personal initiative, for they were stationed in different and distant provinces. Hence it follows that if they came to the same conclusion and proposed at times the same regulation, their collective concurrence was an additional proof of the greatness of the evil with which they were grappling. Their names have practically been consigned to oblivion; and it is not without a feeling of legitimate pride that we claim to have contributed a little towards rendering them tardy justice for the noble work they attempted, by making known the unpublished documents that make manifest their unselfish efforts on behalf of down-trodden humanity.

CHAPTER IV

Partially successful attempts at ameliorating the Law of Slavery

INTRODUCTORY. The attempts, dealt with in the previous chapter and made by Richardson, Harington, Leycester, Baber, Campbell, Neufville and others, ended in failure. But from this it should not be concluded that the British Government were either not aware of the evils of slavery or too callous to take them into account. Accordingly mention has here to be made of partially successful attempts. These comprise the Parliamentary Statute 51 Geo. III, C. 23, affecting the whole of India, and a number of local ameliorations introduced at one time or another in Bengal, Bombay, Madras and Assam. However both the Statute and the local enactments should not simply be taken for granted on the principle that they were approved of and sanctioned by the authorities who wished to enforce them; for we shall have occasion to show that they did not always achieve their object, and they may be rightly described as partially successful.

PLAN: 1. 51 Geo. III, C. 23. 2. Local enactments in Bengal. 3. Local enactments in Bombay. 4. Local enactments in Madras. 5. Local enactments in Assam. 6. Conclusion.

No. 1. 51 GEO. III, C. 23

SUMMARY: I. Parliamentary activity. II. Divergent views. III. Concluding remarks.

SOURCES: PUBLISHED: Appendix to Report from Select Committee, (Public) 1832; The Fortnightly Review, No. CXCV. 1883; The Dictionary of English History.

UNPUBLISHED: Judicial Department, 1821-22, Vol. 44; Judicial Department, 1821, Vol. 44-53, Judicial Criminal, Consultation No. 26 of the Governor-General of Bengal in Council; Political Department, 1837, Sind, Vol. 880.

I. PARLIAMENTARY ACTIVITY. The Government of India were following a policy of non-interference on the plea that it was not only inopportune, but also positively dangerous to meddle with the ancient custom and time-honoured usages of Indian slavery. Meanwhile the question of slavery had occupied the attention of the British Parliament off and on since 1772. It was in 1772

that Lord Mansfield in the case of the Negro Somerset had decided that slavery could not exist in England, and had no legal foundation. Ten years later (1782) Thomas Clarkson started the movement for the abolition of slavery, and was supported by many philanthropists, notably by Wilberforce, who in 1792 gained the support of Pitt. But it was only fifteen years later that the Act of 1807, known as the General Abolition Bill, was passed. The Bill condemned the principle of slavery, but did not effectually abolish slavery by the sanction of deterrent punishment. Nevertheless the interest of the nation was now fully aroused;[1] and in 1811, whilst the Government of India were following a policy of procrastination, the British Parliament enacted an anti-slavery Statute which was destined to become a turning point in the history of slavery in all the British dominions, India not excluded. The enactment is officially known as the Felony Act of 1811, but in the course of the following pages, it will be alluded to as 51 Geo. III, C. 23, by which name it is always designated in the published and the unpublished documents. It was passed on May 14, 1811.[2]

As regards this new Act, the purport which the British Parliament had in view is clearly indicated in the first section of 51 Geo. III, C. 23. According to this section it was enacted that "if any subject or subjects of His Majesty, or if any person or persons, residing or being within this United Kingdom or in any of the Islands, Colonies, Dominions, Forts, Settlements, Factories, or Territories now or hereafter belonging thereto, or being in His Majesty's occupation or profession, or under the Government of the United Company of Merchants trading to the East Indies, shall, from and after the first day of June next, by him or themselves, or by his or their Factors or Agents, or otherwise howsoever, carry away or remove, or aid or assist in the carrying away or removing as a slave or slaves; or for the purpose of being sold, transferred, used, or dealt with as a slave or slaves, any person or persons whatsover, from any part of Africa, or from any other country, territory or place whatsoever, either immediately, or by transhipment at Sea or otherwise, directly, or indirectly, or shall import or bring, or aid or assist, in the importing or bringing into any Island, Colony, Country, Territory, or place whatsoever, any such person or persons as aforesaid, for

1. *The Dictionary of English History.*
2. Anno Quinquagesimo Primo, George III, Regis. Cap. XXIII, dated 14, May, 1811, No. 53, Judicial Department. 1821-22, Vol. 44, Bombay Record Department.

the purpose aforesaid; or shall knowingly and wilfully ship, embark, receive, detain, or confine on board any ship, vessel, or boat, any such person or persons as aforesaid, for the purpose of his, her or their being so carried or removed, imported or brought as aforesaid, or of being sold, transferred, used, or dealt with as a slave or slaves; or shall knowingly and wilfully use or employ, or permit to be used or employed, or let or take to freight or on hire any ship or vessel to be used or employed in carrying away or removing, importing or bringing, or for the purpose of carrying away or removing, importing or bringing or for the purpose of carrying away or removing, importing or bringing as aforesaid, any such person or persons, as a slave or slaves, or for the purpose of his, her, or their, being sold, transferred, used or dealt with as a slave or slaves; or shall fit out or cause to be fitted out, or shall take the charge or command of, or navigate, or enter and embark on board any such ship or vessel, as Master or Captain, Mate, Supercargo, or Surgeon, knowing that such ship or vessel is actually employed, or is, in the same voyage for which he or they shall so enter and embark on board, intended to be employed in carrying or removing, importing or bringing as aforesaid any such person or persons, as or for the purpose of his, her or their being sold, transferred, used, or dealt with as a slave or slaves; then and every such case, the person or persons so offending, and their Counsellors, Aiders and Abettors, shall be and are hereby declared to be Felons, and shall be transported beyond seas for a term not exceeding fourteen years, or shall be confined and kept to hard labour for a term not exceeding five years, nor less, than three years, at the discretion of the Court, before whom such offender or offenders shall be tried and convicted."[1]

Moreover India was to all appearances to reap the full benefit of this Statute; for whilst the fourth section provided that the Act did not apply to the removal of persons, who were already slaves from the West Indies, no such exception was made in regard to Indian slaves.[2]

II. DIVERGENT VIEWS. The first section of 51 Geo. III, C. 23 is so comprehensive in its details that the meaning of it would seem to be clear beyond all doubt. First of all, the section states the persons for whom the enactment is meant, and the places in which the enactment is operative. Next the section defines in what the legal offence consists. Finally the section

1. *Ibid.*
2. *Ibid.*, Section 4.

fixes the penalty wherewith transgressors will be punished. Yet difficulties of interpretation did not fail to crop up when the application of the Act in India became the subject of discussion.[1]

The Indian Government held that the Parliamentary Statute applied to the removal *i.e.*, the importation and the exportation of slaves by sea alone and not by land.[2]

First of all the Government pointed out that there was a close relation between 47 Geo. III, C. 36, and 51 Geo. III, C. 23. The object of the first Act was the suppression of the African slave-trade which was exclusively carried on by sea. But as the Legislature in England was probably aware that the traffic in slaves was likewise carried on from Africa, Madagascar and the Eastern Islands into India, it could be reasonably inferred that it was the abolition of that traffic, which was mainly intended by 51 Geo. III, C. 23.[3]

In the second place, it was a common practice in India that slaves were transferred from one British possession in India to another. This practice existed from time immemorial under the sanction of laws recognised by Parliament. Hence 51 Geo. III, C. 23, could not possibly refer to the removal of slaves by land; otherwise it would make the great majority of the Hindu and Mahomedan inhabitants liable to suffer the severe punishment of transportation, whilst they were acting according to the established usages of the country.[4]

In the third place, the 6th section of 51 Geo. III, C. 23, determined that offenders were to be tried by the Court of Admiralty. But this Court could only take cognisance of offences committed on sea. Hence if removal by land was also forbidden by the Statute, the Act would have to be construed to mean that any person, removing a slave from one part of the Indian territories to another, was liable to be sent to England there to be tried for felony.[5]

From this they concluded that 51 Geo. III, C. 23 forbade the exportation and importation of slaves by sea alone.

1. *Ibid.*, Section 1.

2. Extracts from the Resolutions of the Honorable the Vice-President in Council in the Judicial Department, dated September 9, 1817, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

3-5. Extracts from the Resolutions of the Honourable the Vice-President in Council in the Judicial Department, dated September 9, 1817, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

On the contrary, according to Mr. Macklin, the Act extended to the importation of slaves both by land and by sea.[1]

In support of this assertion he quoted the following extract from 51 Geo. III, C. 23: "If any person, residing or being in any of the Islands &ca or territories under the Government of the United Company of Merchants trading to the East Indies, shall &ca carry away or remove &ca as a slave or slaves &ca, any person or persons whatsoever from any part of Africa or from any other country, territory or place whatsoever any such persons as aforesaid, then in every such case &ca the person so offending &ca are declared to be felons."[2] From this verbatim quotation from the Act, the Advocate-General inferred that the new law included every possible case of importation of slaves into British territory.[3]

Accordingly Mr. Macklin, referring to the distinction made by the Government of India between transportation by land and transportation by sea, observed: "The words of the Statute admit of no such distinction; and if in gathering the intention of the Legislature we were to confine ourselves to the language which they have thought proper to use, I should feel myself bound to conclude that no such distinction was intended."[4]

At the same time Mr. Macklin admitted that the distinction made by the Supreme Government between transportation by land and by sea was as wise as it was opportune. He likewise agreed with the Supreme Government that by forbidding transportation by land Parliament had acted contrary to the spirit of English Legislation, by enacting a penalty against that which was protected by law. But for all that, the wording of the Act did not justify the distinction between the transportation by sea and by land.[5]

Therefore Mr. Macklin did not hesitate to state that 51 Geo. III, C. 23, was "a virtual repeal of that part of the Hindu and Mahomedan Laws within our own dominions."[6]

1. From Hugh George Macklin, Advocate-General of Bombay, to William Neurihane, Chief Secretary to the Government of Bombay, dated February 2, 1813, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.
2. Preamble of the Statute 51 Geo. III, C., 23, quoted by Mr. Macklin, *Ibid.*
3. *Ibid.*, Note 1.
4. From Hugh George Macklin, Advocate-General of Bombay to Francis Warden, Chief Secretary to Government, Judicial Department, dated July 28, 1818, 1821-23, Vol. 44-53, Bombay Record Department.
5. *Ibid.*
6. Opinion given by Hugh George Macklin, dated August 22, 1816, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

Mr. Macklin totally differed from the Government of India as regards their assertion that offences against the removal of slaves by land should have to be tried in England. He pointed out that offences of the kind, committed on land in Africa, had been dealt with in Africa itself. In this connection he alluded to a trial held in April and June 1812 before the Honorable Thorpe, Chief Justice of Sierra Leone. In this trial the Attorney-General admitted that the essential proof against Samuel Samo, one of the culprits, was brought from the place where illegalities were committed, *viz.*, the territories of Mungo Catty Thing of the Soosoo nation. Yet the Chief Justice of Sierra Leone never doubted that he had jurisdiction to try the offence according to the ordinary course of law. Hence it could be logically argued that a similar offence committed in India need not be tried in England.

This was not the only difficulty. Besides differing on the all important point whether 51 Geo. III, C. 23, forbade the removal of slaves by land or by sea, the authorities in India had soon to face another point as difficult to solve as the first. The question presented itself whether, according to the new enactment, Government could interfere in the restoration of run-away slaves.

The Advocate-General of Bombay was of opinion that the words of the Statute 51 Geo. III, C. 23, forbade all interference on the part of Government in the restoration of run-away slaves to their masters. In Macklin's own words: "Suppose a slave runs away from his master and refuses to go back to him, how can any person aid or assist in restoring that slave to his master by force, without placing himself within the purview of the Statute?" Therefore, Macklin held that any slave could emancipate himself by simply running away from his master.[1]

Accordingly when on March 17, 1816, an application was submitted by the widow of Nana Fadnavis requesting the Government to restore her eight run-away slaves who had fled to Thana, Mount Stuart Elphinstone, who was the then Resident at Poona, felt diffident whether he was justified in rendering assistance or not, and requested the Bombay Government to obtain legal advice in the matter.[2] Mr. Macklin, the

1. From Hugh George Macklin, Advocate-General, to Francis Warden, Chief Secretary to the Government of Bombay, July 28, 1818, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

2 From Mount Stuart Elphinstone, Resident at Poona, to Francis Warden, Chief Secretary to the Government of Bombay, dated March 17, 1816, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

Advocate-General, replied that 51 Geo. III, C. 23, put an end to all doubt, so that no subject of His Majesty, nor any other person, whether subject or not, residing in British India, could either directly or indirectly assist in restoring a run-away slave without incurring the penalty of transportation.[1] But the Bombay Government were not ready to adopt the view of the Advocate-General till they had heard from the Supreme Government and the Government at Madras what opinions they held on the subject;[2] and it turned out the Governor-General in Council did not agree with Mr. Macklin.

The Vice-President in Council in the Judicial Department declared in a resolution, dated September 9, 1817, that the construction which had been uniformly given by the Supreme Government to 51 Geo. III, C. 23, was that, since it was only intended to apply to the importation or removal of slaves by sea, it would not involve any alteration in the course of proceedings which had been so far adopted in cases of run-away slaves. Therefore, neither could a slave become free by entering the Company's territories, nor could any one, who was lawfully a slave, emancipate himself by running away from a country where slavery was lawful to any other place where it was equally unlawful. In spite of the fact that the slave had escaped to a different country, the master still continued to own him and could claim him back, provided he established his right in the mode prescribed by local laws and regulations.[3]

However this opinion of the Supreme Government was practically ignored in Bombay in a case in which the laws neither of the Mahomedans nor of the Hindus could be resorted to, because the owner was subjected in all respects to the existing English Laws in regard to slavery. Mrs. Nesbitt, an inhabitant of Bombay, endeavoured to recover three slave-boys, who were natives of Africa, and who had escaped from her and joined the European regiment in its march towards the Deccan. As a matter of course the Bombay Government referred the subject to the Advocate-General. Hugh George Macklin commenting on the resolution of the

1. Opinion of Hugh G. Macklin to Francis Warden, Chief Secretary to the Government of Bombay, dated April 23, 1816, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.
2. Proceedings dated September 18, 1816, Judicial Department, 21-23, Vol. 44-53, Bombay Record Department.
3. Extracts from the Resolutions of the Honorable the Vice-President in Council in the Judicial Department, dated September 9, 1817, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

Vice-President in Council remarked that the words of 51 Geo. III, C. 23, appeared to him actually to restrain the Government of the East India Company from restoring a run-away slave to his master, and thereby actually gave the slave a power to emancipate himself.[1] The words of the Statute were such that if a slave ran away from his master and refused to go back to him, no person was entitled to restore such a slave by force to his former master, without placing himself within the purview of that Statute.[2] Thus it was impossible to restore a run-away slave to his master, without violating 51 Geo. III, C. 23.

III. CONCLUDING REMARKS. The Supreme Government and the Bombay Government were hopelessly divided as regards the meaning of the Act and its application. They could not come to an agreement whether 51 Geo. III, C. 23 forbade removal of slaves by sea alone, or by land and by sea. Moreover they likewise could not arrive at a conclusion whether the restoration of run-away slaves was prohibited by the Act or not. Accordingly they felt that there was no alternative left to them but to refer the matter to the Honourable the Court of Directors.[3]

Their decision is a clear proof that 51 Geo. III, C. 23, was only partially successful as an anti-slave trade measure. The same is also brought home to us by the following remarks made by the Honourable J. B. E. Frere, Governor of Bombay, in an article published in the *Fortnightly Review* in 1883. He wrote: "In 1824 extracts from the Statute 51 Geo. III, C. 23, with translations in Persian and Arabic, were circulated in Calcutta and in the Ports of the Red Sea and the Persian Gulf. This had the effect of decreasing the traffic and of increasing the prices of slaves, but not of entirely stopping the trade. Later on a prohibition to ships sailing for Calcutta was issued by the Local Government authorities at Muscat and Judda; and more efficient customs supervision in the Hooghly, under rules issued in 1834, still further checked the import; but as late as 1833 the Resident at Lucknow ascertained that two batches of African slaves, numbering in all 22 females and 12 males, had been imported *via* Bombay by

1. Extract of a letter to the Hon'ble the Court of Directors in the Judicial Department, dated July 29, 1818, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

2. From Hugh George Macklin, Advocate-General to Francis Warden, Secretary to the Government of Bombay, dated July 28, 1818, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

3. Extract of a letter to the Hon'ble the Court of Directors in the Judicial Department, dated July 29, 1818, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

Moghul merchants. One of these batches had been sold to the King of Oudh and the Padshah Begum, (the Queen-mother). The rank of the purchaser illustrates the difficulty of checking this traffic. Importation of slaves by land from neighbouring countries into India and from one province of India to another was reported from almost every district of Bengal, the North-Western Provinces, and Central India, as a frequent origin of slavery."[1]

Finally the most convincing proof that 51 Geo. III, C. 23, was not adequately enforced throughout the British Territories in India is gathered from a letter written by the Register to the Provincial Court of Circuit, dated July 1, 1829. When C. M. Whish, Joint Criminal Judge of Tellicherry, had addressed the Provincial Court of Circuit, Madras, for the loan of a copy of 51 Geo. III, C. 23,[2] Mr. C. M. Bushby wrote the following incredible reply: "I am directed by the Judges to acknowledge the receipt of your letter of this day's date, and to inform you that copy of the Act required by you has never been received in this Office."[3]

If the highest Criminal Court of Madras was not even in possession of a copy of 51 Geo. III, C. 23, there can be no further question of this Statute having played an important part in the suppression of the slave traffic throughout India. Rightly does Mr. A. D. Campbell conclude in connection with the practical effects of the enactments and re-enactments in the Madras Presidency: "the Slave Act as it now stands (1832) must remain a dead letter everywhere in the Madras territory, except at the Presidency, until Parliament give power to the tribunals in the provinces to enforce its penalties."[4]

No. 2. LOCAL ENACTMENTS IN BENGAL

SUMMARY: I. Regulation of 1774. II. Proclamation of 1789. III. Regulation X of 1811. IV. Regulation X of 1811 and 51 Geo. III, C. 23. V. Regulation IV of 1832. VI. Bengal Regulation III of 1832.

SOURCES: PUBLISHED: W. Adam, *Letter IV to Thomas Fowell Buxton.* UNPUBLISHED: Home Department, Public Proceedings, January-August, 1757; General Letters from the Court of Directors,

1. The Fortnightly Review, No. CXCV, New Series, March 1, 1883, p. 36, *Cf.* From Magistrates of Calcutta to W. H. Bayley, Chief Secretary to Government, dated March 22, 1824, No. 646, Political Department, 1837, Sind. Vol. 880.

2. From C. M. Whish, Joint Criminal Judge to the Register to the Provincial Court of Circuit, Western Division, dated July 1, 1829, No. 26 of Judicial Criminal, dated April 13, 1830 of the Governor-General of Bengal in Council, Bengal Record Department.

3. From C. M. Bushby, Register to the Provincial Courts of Circuit, to C. M. Whish, the Joint Criminal Judge of Tellicherry, dated July 1, 1829, *Ibid.*, Bengal Record Department.

4. Appendix to Report from Select Committee (Public) 1832, 4th Answer of A. D. Campbell, p. 453.

1755-58, (Public); Home Department, Public Consultation No. 7 of June 9, 1777; Public Proceedings, July 1-29, 1789; O. C. No. 13 of December 29, 1826, Judicial Department; Home Department, Public Consultation No. 20 of August 5, 1789; O. C. No. 14 of December 29, 1826, Judicial Criminal; Judicial Department, 1821/23, Vol. 44/53; Letters to the Court of Directors, Judicial Department, 1817; Political Department, 1837, Sind, Vol. 880; Extracts from the Judicial Record, September 29, 1812.

I. REGULATION OF 1774. The exportation of slaves from India constituted an organised trade. One of the earliest unpublished documents referring to the matter is dated 1757. About that time there was such a demand for slaves in the West Indies that the gentlemen of the West Indies wrote to the Honourable Company "to appoint a ship from Europe for that service."[1] *i. e.*, the transportation of slaves to the West Indies. Meanwhile, they advised that the servants of the Company in India should contract with private owners to carry slaves from Madagascar or other Islands to Calcutta, whence the slaves might afterwards be shipped to the West Indies. The document further reveals that there was a greater demand for male slaves than for female slaves and children.[2] Naturally Government Officials profited by this to get rid of undesirable elements, but this did not prove successful. From a document, referring to letters written by the Honorable the Court of Directors from 1755 to 1758, we learn that of ten malefactors shipped from Malabar to St. Helena as slaves "five of them soon after their arrival desperately hanged themselves, and the survivors threatened to destory themselves rather than submit to any kind of work."[3] One thing is, therefore, sure: Slaves were exported from India to Madagascar, St. Helena, Mauritius, Colombo and other Islands.

To put a check to this inhuman traffic a Regulation was passed at Fort William on June 14, 1774.[4] But this prohibitory Regulation remained a dead letter.

II. PROCLAMATION OF 1789. Therefore, the Governor-General in Council at Fort William issued a Proclamation on July 22, 1789.

1. Proceedings, dated June 13, 1757, Home Department, Public Proceedings, January to August 1757, Imperial Record Department.
2. *Ibid.*
3. From the Hon'ble the Court of Directors to the President and Council at Fort William in Bengal, (Public) General Letters from the Court of Directors 1755 to 1758, Imperial Record Department.
4. Extract of the Proceedings of the President and the Council of Revenue, dated June 14, 1774, Home Department, Public Consultation, June 9, 1777, No. 7, Imperial Record Department.

"Whereas information, the truth of which cannot be doubted, has been received by the Governor-General in Council that many natives and some Europeans, in opposition to the Laws and Ordinances of this country and the dictates of humanity, have been for a long time in the practice of purchasing or collecting natives of both sexes, children as well as adults, for the purpose of exporting them for sale as slaves in different parts of India or elsewhere," it was declared that all those persons who would be found guilty of this detestable crime would be prosecuted with the utmost rigour in the Supreme Court at the expense of the Company. If the delinquent was a British-born subject, he would be either sent to Europe or would be apprehended by the Magistrates of the place or district in which the offence was committed and kept in confinement to be dealt with according to the laws of the country.[1]

As an inducement to the discovery of such offenders, a reward of one hundred rupees was offered to those upon whose information the culprits were discovered and convicted, and an additional fifty rupees were promised for each slave who was thereby delivered from slavery or unlawful confinement. Furthermore, British commercial houses and private merchants were called upon to co-operate with the Government in detecting the offenders; and commanders of vessels both English and native had to declare on oath that they had no slaves on board their ships, whilst pilots were to be deprived of their office if they piloted out a vessel which they knew to be carrying natives meant to be sold as slaves.[2]

The new law was apparently efficacious. "I am not aware that there is any reason to believe," writes Mr. Adam, "that the natives of India have since been exported as slaves."[3] Similarly Mr. Colebrooke states in 1812 : "there is not any cause to believe that such a trade at present exists. Many years ago a clandestine export by sea to the French Islands was detected; and being immediately prohibited by Proclamation, and the first subsequent instance which was discovered being prosecuted to punishment, it was entirely suppressed, and no surmise of its revival has since been entertained."[4]

1. Proclamation, dated July 22, 1789, Public Proceedings, 1-29 July, 1789, Imperial Record Department.
2. *Ibid.*
3. W. Adam, *Letter IV, to Thomas Fowell Buxton.*
4. Observations of H. T. Colebrooke, 1812, O. C. No. 13, Judicial Department, dated December 29, 1826, Bengal Record Department.

Probably the first subsequent instance to which Mr. Colebrooke refers is Mr. Peter Horrebow's conviction before the Supreme Court for kidnapping sundry natives of these provinces, and transporting them beyond, the sea for the purpose of selling them as slaves. Being a European, Mr. William Jackson, the Attorney to the Hon'ble Company, recommended the Court that he had received instructions from His Lordship not to press for a rigorous or exemplary punishment. And hence the Court pronounced the following sentence: "That Mr. Horrebow be imprisoned for the space of three months, that he pay a fine of five hundred Sicca Rupees to the King, and that he be further imprisoned until such fine shall be discharged and until he shall give such security for his good behaviour for three years, himself in five thousand Sicca Rupees, and two or more securities in a further sum of the same amount.[1]

However it should first be noted that the statements made by Colebrooke and Adam refer only to the Bengal Presidency, and not to the whole of India. For the Bombay Records clearly establish that children continued to be exported as slaves for a number of years after the passing of the Proclamation of 1789, as it will be pointed out later on.

Moreover, it would appear that in Bengal itself the Proclamation of 1789 soon ceased to be enforced. For in the subsequent Regulations, which were from time to time transmitted to the Magistrates for their guidance, no mention is made of the Proclamation of 1789. In support of this contention we may refer to Mr. Harington's declaration made in 1818. He was in a position to affirm that, though a Proclamation, forbidding under penalties the exportation of Natives of India to be sold as slaves, was issued by the Governor-General in Council on July 22, 1789, the existing Regulation did not contain any specific provisions on that point."[2] He, therefore, suggested that the exportation from the British territories of any person born in those territories, either to be disposed of or dealt with as a slave, should be declared a criminal offence punishable on conviction in any of the Criminal Courts established under the British Government.[3] However, Mr.

1. From William Jackson, Attorney to the Honorable Company, to John White, Deputy Secretary in the Public Department, dated August 5, 1789, Home Department, Public Consultation, dated August 5, 1789, No. 20, Imperial Record Department.

2. Minute of the Chief Judge of the Sudder Dewanny and Nizamut Adawlut, dated November 21, 1818, O. C. 14, Judicial (Criminal), dated December 29, 1826, Bengal Record Department.

3. A proposed Regulation for the guidance of the Courts of Judicature in cases of Slavery by J. H. Harington, O. C. 14, Judicial (Criminal), dated December 29, 1826, Bengal Record Department.

Harington's suggestion was not acted upon by the Governor-General in Council. Hence it may be concluded that even in Calcutta the prohibition was, to a large extent, nominal. As regards the assertions of Colebrooke and Adam, they may perhaps be explained by charitably supposing that their sources of information were not up-to-date.

III. BENGAL REGULATION X OF 1811. In the next place the British Government concerted measures to prevent the importation of slaves from foreign countries into the British territories in India.

By this Regulation the importation of slaves whether by land or by sea was prohibited, and the person infringing the rule was liable to a punishment of six months' imprisonment, and to a fine not exceeding 200 Rs., in default of which he was liable to be imprisoned for a further period of six months. The Regulation also provided that persons so imported would be discharged or sent back to their own country. Furthermore, by way of rendering the Regulation more effective it was decreed that Captains of private ships before landing their cargo were to execute a penalty bond of 5,000 Rupees to the effect that they would not sell slaves.[1]

Besides this, Regulation X of 1811 was extended to the removal of children in order to bring them up as nautch girls. In 1812, the following case happened in the Zillah Agra. Beroo, a Cherumar girl residing at Kharee, was bought from Maiyeet Goojeer by the Nawab Hyder Ali Khan and brought to his residence in the Dholpoor territory. She was given by the Nawab to his nephew Waris Ulee Khan, who in turn transferred her to Bega Towaif, who was his servant. This servant imported by land the said Beroo with the intention of training her to become a nautch girl.[2] Hence the question arose whether by Regulation X of 1811 Beroo's importation was forbidden.

The Court of Fort William decided that the provisions in the aforesaid Regulation were only applicable to the importation of slaves for the purpose of being sold, given away or otherwise disposed of. Therefore, the importation of a child with a view to make her a nautch girl did not seem to fall within the provisions of that Regulation.[3] Later on, however, the Government of India

1. Regulation X of 1811, Regulations of the Government of Fort William in Bengal, Vol. II, 1806 to 1834, pp. 176-78.

2. From N. J. Halhed, Acting Magistrate of Zillah Agra, to N. H. Turnbull, Register to the Court of Nizamut Adawlut, dated April 12, 1812, Judicial (Criminal) O. C. 16 of May 16, 1812, Bengal Record Department.

3. From M. H. Turnbull, Register, to N. J. Halhed, dated April 23, 1812, Judicial Department, (Criminal) O. C. 16 of May 16, 1812, Bengal Record Department.

overruled the decision of the Court of Fort William, and declared that the intention of the enactment was to prohibit the importation of slaves altogether, no matter whatever the purpose might be.

IV. REGULATION X OF 1811 AND 51 GEO. III, C. 23. Both the Regulation and the Statute were passed about the same time. But the Regulation had one great advantage over the Statute. It clearly specified that it was an offence to remove slaves both by land and by sea, whilst it was a controverted point whether 51 Geo. III, C. 23 forbade the removal of slaves by sea alone or by sea and by land. Hence it is but natural that in Bengal much more importance was given to Regulation X of 1811 than to 51 Geo. III, C. 23.

Regulation X of 1811 was in some measure instrumental in supressing the traffic in slaves, though it is not easy to determine the extent of its efficacy. From the Reports of the Magistrates at the head of the districts of Bareilly,[1] Moradabad,[2] Cawnpore,[3] Furrackabad,[4] Etawa,[5] Alwa,[6] Aligarh,[7] Sharanpoor,[8] and other districts, it would appear that Regulation X, 1811, proved effectual in many parts of Bengal. Moreover H. T. Colebrooke did not hesitate to affirm that Regulation X of 1811 was a complete success.[9] But his testimony is not altogether trustworthy; for Colebrooke was inclined to take a too optimistic view of the efficacy of anti-slave-trade measures. It has already been pointed out that his remarks about the exportation of slaves were not true to fact. He also minimised the evil of the importation of slaves.

Thus for example, H. T. Colebrooke stated that prior to Regulation X of 1811, the importation of slaves by sea into the Bengal Presidency consisted only of a very few African slaves, brought by Arab ships into the Port of Calcutta. Approximately their number amounted annually to no more than a hundred of both sexes.[10] But an extract from a letter to the Court of Directors presents a somewhat different view of the extent of this traffic. According to that document, it would seem that, prior to Regulation X of 1811, the traffic by sea was carried on from the Easter Coast of Africa, from Madagascar and from the Eastern Islands into the highlands and territories in the East Indies. By

1-9. From F. Hawkins and A. Ross, Offig. Judges of the Barelly Court of Circuit, with copies of Letters from Magistrates of varlous districts, to George Dowdeswell, dated December 4, 1812, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

10. Opinions of H. T. Colebrooke, dated 1812, Judicial Department O. C. 13 of December 29, 1826, Bengal Record Department.

passing Regulation X of 1811, the Legislature wanted to provide for the effectual abolition of that traffic, which was in fact and tendency less objectionable than the trade which was carried on between the West Coast of Africa and the West Indian Islands.[1]

This makes it clear that Colebrooke's views are not to be taken unreservedly; and there are documents that convincingly prove that the importation of slaves went on long after the passing of Regulation X of 1811. In November 1823, the editor of the Calcutta Journal wrote :—"We are informed that 150 Eunuchs have been landed from the Arab ships this season (*i. e.*, in 1823) to be sold as slaves in the capital of British India. It is known that these ships are in the habit of carrying away the natives of this country, principally females, and disposing of them in Arabia in barter for African slaves for the Calcutta market."[2] This article came to the Government of India as a rude awakening. The Government tried their best to throw discredit on the writer by holding him guilty of gross exaggeration. Nevertheless, they thought it useful to concert a number of measures to restrict the slave traffic in Calcutta.[3]

Hence it may be inferred that Regulation X of 1811 was far from being as efficacious as Colebrooke would have us believe. Even in Calcutta the importation and the exportation of slaves continued to flourish. Other instances of the continuance of the traffic in slaves in Bengal and other parts of India after the passing of Regulation X of 1811 could here be multiplied, but this would mean rewriting to a great extent the contents of the chapter on "the Sources of Slavery."

V. DELHI PROCLAMATION OF 1812. Finally Sir Charles T. Metcalfe, the then Resident at Delhi, issued a Proclamation on September 4, 1812, to the effect that if any person within the territory of Government bought or sold any slave, or imported such persons with a view to sell or purchase them, both the buyer and the seller would be considered as deserving of punishment and would be punished accordingly. The Proclamation also provided that every slave, whether the slave be a male or a female, bought or sold after the issue of the Proclamation in the territory, would be released and made free.[4]

1. Extracts from General Letters to the Court of Directors, dated October 14, 1817, para, 162, Judicial Department, October 29, 1817, Bengal Record Department.
2. An Article on Slavery in British India in the Calcutta Journal of November 1, 1823, No. 646, Political Department, 1837, Sind, Vol. 880, Bombay Record Department.
3. No. 646, Political Department, 1837, Sind, Vol. 880, pp. 116-172, Bombay Record Department.
4. Translation of a Proclamation issued at Delhi, on September 4, 1812, Extract from the Judicial Record, dated December 29, 1812, Bombay Record Department,

This Proclamation produced the desired effect so far as the sale of slaves within the territory of Delhi was concerned; but as regards the purchase of slaves beyond the frontier and their importation into Delhi territory, Sir Charles Metcalfe deemed it necessary to issue a supplementary Proclamation.[1] However, the Governor-General in Council, was not prepared to sanction its promulgation in the form proposed by Sir Charles Metcalfe, who wanted not only to prohibit the future importation of slaves for sale into the assigned territories, but also wished that the past sale of slaves within those territories should also be declared illegal by the supplementary Proclamation. "For these reasons," wrote J. Adam, Secretary to Government on November 13, 1812, "and from other considerations of much apparent weight (though these considerations are not even hinted at in this letter) the views of the Government have been limited to the prohibition of the further importation of slaves for sale into the territories of the Honourable Company; and you will observe that Regulation X of 1811 is confined to this object." Accordingly the terms of the supplementary Proclamation were to be modified so as to be in conformity with the enactment contained in the abovementioned Regulation.[2]

It has not been possible to ascertain whether this supplementary Proclamation was ever issued. It may further be remarked that, though the Proclamation of 1812 proved successful, it was enforced in a comparatively small district, so that it would be a gross misrepresentation to speak of it as an amelioration of the state of slavery throughout Bengal. The correct view is to look upon it as the proverbial exception proving that throughout Bengal, Delhi excepted, the lot of the slaves remained practically the same in spite of various attempts made on different occasions to improve their position.

VI. BENGAL REGULATION III OF 1832. Twenty-one years later, when the East India Company began to acquire one territory after another, it became questionable whether the provisions of Regulation X of 1811 applied to cases of slaves removed from any part of the British possessions acquired subsequently to the passing of that Regulation or not. This doubt was removed by

1. From Charles T. Metcalfe, Resident at Delhi, to N.B. Edmonstone, Chief Secretary to the Government at Fort William, dated October 14, 1812, Extract from the Judicial Record, dated December 9, 1812, Bengal Record Department.
2. From J. Adam, Secretary to the Government at Fort William, to Charles T. Metcalfe, Resident at Dehli, dated November 13, 1812, Extract from the Judicial Record, dated December 19, 1812, Bengal Record Department.

enacting Regulation III of 1832 on March 13, 1832.[1]

The first clause of the new Regulation provided that all slaves, removed for the purpose of traffic from any province, British or foreign, into any province subject to the Presidency of Fort William, or from one province so subject to another, subsequently to the enactment of Regulation X of 1811, should be considered free. And the penal part of the new Regulation remained the same as in the old Regulation.[2] Neither the unpublished nor the published documents supply any information as regards the success of this new enactment.

No. 3. LOCAL ENACTMENTS IN BOMBAY

SUMMARY: I. Bombay Proclamation of 1805. II. Bombay Proclamation of 1807. III. Bombay Regulation I of 1813. IV. Bombay Regulation XIV of 1827.

SOURCES: PUBLISHED: Regulations of the Government of Fort William in Bengal, Vol. II, 1806-34; Regulations of the Government of Bombay, prepared under the authority of the Honorable the Court of Directors.

UNPUBLISHED: Judicial Department, 1821-23, Vol. 44-53; Judicial Department, 1847, Vol. 1363; Judicial Department, 1848, Vol. 1499; Extract from Judicial Record, dated September 26, 1812; Letters to the Hon'ble the Court of Directors, Judicial Department, 1841, Vol. 26; Judicial Department Compil., 1840; Vol. 681.

I. BOMBAY PROCLAMATION OF 1805. A Proclamation similar to the one of Calcutta was issued in the Bombay Presidency on February 25, 1805. This Proclamation was intended to prohibit the importation and exportation of slaves at the Port of Bombay, and all other Ports subject to the immediate authority of that Presidency. Accordingly the Customs duties which used to be levied on slaves were abolished.[3] In spite of this Proclamation, the nefarious practice of exporting slaves from the Bombay Presidency still continued. Thus for example, Aga Boozoorg, an Arab who carried on a clandestine trade in women and children, was publicly charged with the offence of exporting a Malabar slave-girl (or girls) to Muscat. She was discovered in that place by Captain Hopewood; and the notice of the authorities was drawn to this particular incident. A Committee was

1. Regulation III of 1832, Regulations of the Government of Fort William in Bengal, Vol. II, 1806 to 1834, pp. 920-21.
2. Regulation III of 1832, Regulations of the Government of Fort William in Bengal, Vol. II, 1806 to 1834, pp. 920-21.
3. Bombay Proclamation of 1805, dated February 26, 1805, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

appointed to inquire into the whole matter;[1] and as a result a fresh Proclamation was issued on September 23, 1807.

II. BOMBAY PROCLAMATION OF 1807. According to this Proclamation European Commanders of vessels had to make a written declaration that they would in no way engage in the slave-trade; and all Asiatic Commanders of vessels had to produce a similar declaration signed by the owner of the vessel. Every infringement was liable to be punished with a fine of 500 Rupees which fine was offered as a reward to be conferred upon any person giving information which would lead to the detection of such an offence.[2]

The following information is supplied by a judicial Minute of 1847. "As I observe that during the last four or five years various instances have been brought to our notice, in which natives of India have been found in Arabia in a state of slavery; and as there is reason to suppose that some of these persons were exported from the shores of the Bombay Presidency, I am desirous of adopting such measures as may be likely as far as possible to put a stop to this practice, which at this time, when we are engaged in the suppression of the African slave-trade, we must be particularly anxious to check. I propose, therefore, to direct the attention of the Sudder Adawlut to the subject, and to request them to call upon the Magistrates whose districts lie along the coast to report what means at present exist for discovering whether any such traffic is now carried on from Ports on the Malabar Coast under this Presidency, and whether anything can be done to render them more effectual."[3]

Again the Governor-in-Council in his Minute of March 5, 1848, was of opinion that a large number of Indian children, of whom a few were kidnapped, were annually exported from this coast to Arabia. But the greater number of them were annually purchased for the purpose of prostitution.[4]

In the same year Mr. Bittington, the Deputy Collector of Surat, remarked: "The facilities and temptations to this nefarious traffic are exceedingly great; every inquiry I have made and the

1. From P. T. Travers, Customs Master, to the Honorable President and Governor in Council at Bombay, dated September 10, 1807, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.
2. Bombay Proclamation, dated September 22, 1807, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.
3. Minute, Judicial Department, 1847, Vol. 1363, Bombay Record Department.
4. Governor in Council's Minute No. 919, dated March 5, 1848, Judicial Department, 1848, Vol. 1499, Bombay Record Department.

further consideration I have given to the subject convince me that it does and must prevail."[1]

Still in the same year the Secretary to the Government of Bombay in a letter, dated October 19, 1848, to the Secretary to the Government of India wrote as follows: "Various instances having during the last few years been brought to notice, of natives of India having been found in Arabia in a state of slavery, and there being reason to suppose that some of them were exported from this Presidency, the attention of the judges of the Sudder Adawlut was directed to the subject, and they were requested to call upon the Magistrates whose districts extend along the coasts to state the means at their command for ascertaining the existence of such a traffic, and to suggest efficient measures for preventing it."[2]

Again a report[3] (an abstract of it is found in a letter from the Register of the Sudder Adawlut, dated January 25, 1848), mentions that there is every reason for believing that a clandestine traffic in slaves is to a certain extent carried on between this country and Arabia, whereby a few Hubshees are annually imported into India, and a large number of Indian children are exported from the Western Coast to Arabia. "It did not appear that any special measures were employed to discover and suppress this traffic."[4]

Finally, in 1851, Askins Hammerton, Agent in the Dominions of the Imam of Muscat, in a letter to A. Malet, Chief Secretary to Government, dated August 29, 1851, pointed out that: "The slave trade, had beyond all doubt been carried on by Banians and others, natives of the Protected States in India, particularly those of Cutch and Kattywar. The Banians are and have always been, from all I can learn, much more engaged in the slave-trade than

1. From Bittington, the Deputy Collector of Surat, to J. G. Lumsden, Secretary to the Government of Bombay, dated July 4, 1848, No. 326, of 1848, Territorial Department, Revenue, Judicial Department, 1848, Vol. 1499, Bombay Record Department.

2. From the Secretary to the Government of Bombay to G. A. Bushby, Secretary to the Government of India, in the Legislative Department, dated October 19, 1848, No. 99 of 1848, Judicial Department, 1848, Vol. 1499, Bombay Record Department.

3. From the Register of the Bombay Sudder Foujdarry Adawlut to the Secretary to the Government of Bombay in the Judicial Department, dated January 25, 1848, Judicial Department, 1848, Vol. 1499.

4. From the Secretary to the Government of Bombay to G. A. Bushby, Secretary to the Government of India, in the Legislative Department, dated October 19, 1848, No. 99 of 1848, Judicial Department, 1848, Vol. 1499, Bombay Record Department.

the Indian Mahomedans, who chiefly purchase slaves for domestic servants, whilst the Banians deal in them in thousands for exportation."[1]

III. BOMBAY REGULATION I OF 1813. Accordingly in 1812 instructions were sent by the Supreme Government to the Governor in Council at Bombay to pass a Regulation corresponding in substance with the provisions of Regulation X of 1811 of the Bengal Code, with a view to the accomplishment of the same important object.[2] This led to the passing of Bombay Regulation I of 1813 on May 5 of that year.

The importation of slaves whether by land or by sea into any part of the Bombay Presidency was made a criminal offence, punishable with 6 months imprisonment and with a fine not exceeding 200 Rupees, whilst the imported slaves were given their freedom and could either be permitted to remain in the British territories, or were to be sent back to their country at the expense of the party who had imported them. It may be remarked that the Bombay Regulation I of 1813 slightly differed from the Bombay Regulation X of 1811, inasmuch as it provided for the repatriation of imported slaves at the expense of the party who imported them.[3]

It would seem that this Regulation was no more successful than its predecessors; for fourteen years later the Bombay Government issued a new Regulation to forbid the importation of slaves.

IV. BOMBAY REGULATION XIV OF 1827. This Regulation was passed in 1827. It prohibited (Section XXX, 1) the importation of slaves for sale, of grown-up slaves, and children above or under ten into any Zillah of Bombay. Any transgression of this law, conclusively proved within one year after its commission, was liable to be punished with fine, or imprisonment, or both.

It prohibited also the simple importation of slave-children (not for sale) except in time of famine or with a magistrate's written permission. Such importation was punishable with a fine to be expended in repatriating the slave who became *ipso facto* emancipated. The fine was however commutable into imprisonment.

1. From Major Askins Hammerton to A. Malet, Chief Secretary to the Government, dated August 29, 1851, Political Department, Vol. 65, 1851, Bombay Record Department.
2. From George Dowdeshwell, Secretary to the Goverment of India in the Judicial Department, to the Secretary to the Government of Bombay, dated Septemeber 26, 1812, Extract from Judicial Record, dated September 26, 1812, Bengal Record Department.
3. Bombay Regulation I of 1813, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

It prohibited (Section XXX, 2) likewise a simple exportation of slaves without a written permission of a Magistrate, only to be granted when the slave was not exported for sale. Any contravention to this law (Section XXXII) was punishable with fine or imprisonment.

Furthermore, the Regulation not only dealt with the importation and exportation into and from the Bombay Presidency, but also with the sale of slaves in the Presidency.

The Regulation also prohibited (Section XXXI) the sale of a female slave, involving her separation from her child under ten years of age ; the sale of slave children under ten years of age except in time of famine ; the sale of any slave children by any of their parents except in time of famine and the sale of a female slave for common prostitution.

Other sales of slaves within the Zillahs of the Bombay Presidency were allowed, provided they were registered before a Magistrate.[1]

Unfortunately Regulation XIV of 1827 was not destined to contribute in a large measure towards checking the evils of the slave-trade. For in course of time its meaning and purpose gave rise to protracted controversies, which came to nothing and were only settled when Act V of 1843 was passed. Thus for example, it was apparently in flagrant opposition to Regulation XIV of 1827, that the Judges of the Sudder Foujdarry Adawlut decided on October 23, 1839 that the sale of a slave into a foreign territory was not an offence punishable by law.[2]

The Judges were perfectly aware of Regulation XIV of 1827, which only allowed the exportation of slaves on condition that a written permission was obtained from a magistrate, it being understood that the slave was not exported with a view to sale.[3] But they made a distinction between exportation with a view to sale and exportation with permission and subsequent sale. They held that exportation with permission and subsequent sale was only punishable in the case of Hindus and Mahomedans, but not in the case of people belonging to other religious denominations.[4]

---

1. Regulation XIV of 1827. Chapter V, The Regulations of the Government of Bombay, prepared under the authority of the Honorable the Court of Directors of the East India Company by Richard Clarke, pp. 182-83.

2. Letter to the Hon'ble the Court of Directors, Judicial Department, Vol. 26, 1841, Bombay Record Department. Interpretation of Regulation XIV of 1827, Section XXXI. Judicial Department Compl. 1840, Vol. 681, Bombay Record Department.

3-4. From G. Grant, Register of the Bombay Sudder Foujdarry Adawlut, to J. P. Willoughby, Secretary to the Government in the Judicial Department, dated April 3, 1840, Judicial Department Compl. Vol. 681, Bombay Record Department ; *Cf.* Letter to the Hon'ble the Court of Directors, Judicial Department, Vol. 26, 1841, Bombay Record Department.

Accordingly the Bombay Government decided to ask the Judges of the Sudder Foujdarry Adawlut for further explanations. J. P. Willoughby, the Secretary to the Government of Bombay, wrote to the Register of the Sudder Foujdarry Adawlut that he might approach the Judges and ask them to favour the Bombay Government with their opinion on the following point: "Whether the exportation of a slave with permission, under clause 2nd, Section XXX of 1827, and his subsequent sale, contrary to the terms of the permission, was punishable by law or not ?"[1]

All the Judges were hopelessly divided among themselves. S. Marriott was of opinion that exportation with subsequent sale was not punishable by law. In his own words, "the responsibility of guarding against the sale of a slave after exportation appears to have been thrown by the Legislature on the Magistrate in the mode of preventive procedure provided by Regulation XIV of 1827 and Section XXX, clause 2nd."[2] A. Bell was inclined to think that in the case referred to, as the certificate or permission was obtained under a fraudulent misrepresentation, the person so offending rendered himself liable to the punishment of fraud.[3] D. Greenhill stated that the case of exportation and subsequent sale was not distinctly provided for by the Code; he, therefore, deemed it advisable to pass an additional enactment; for he thought it possible that a subsequent sale could take place without there having been any fraud, when the permission of exportation was obtained.[4] G. Giberne argued as follows: A Magistrate could either grant the permission of exportation, or withhold it, or make the granted written permission conditional. In the last case he could say that permission was given to export a slave, but that, in the event of the exporter selling or attempting to sell such a slave, the permission was cancelled, and the seller would be subject to the punishment provided for in the Regulations. In this hypothesis there could be no difficulty about exportation and subsequent sale. It was clearly punishable by law. On the other hand, if a Magistrate gave a simple unconditional permission, the exporter,

1. From J. P. Willoughby, Secretary to the Government of Bombay, to G. Grant, Register to the Bombay Sudder Foujdarry Adawlut, dated May 21, 1840, Judicial Department, Compl. 1840, Vol. 681, Bombay Record Department.

2. Minute by Mr. S. Marriott, Judicial Department, Compl. 1840, Vol. 681, Bombay Record Department.

3. Minute by Mr. A. Bell, Judicial Department, Compl. 1840, Vol. 681, Bombay Record Department.

4. Minute by Mr. D. Greenhill, Judicial Department, Compl. 1840, Vol. 681, Bombay Record Department.

who, without any intention at the time of export of selling his slave, eventually sold him, did not disobey any law; and the Regulation XIV of 1827 did not apply to him.[1]

As the Judges failed to arrive at a final decision in which all concurred, the papers relating to the subject were forwarded to the Government of India. But as the question of slavery had already become the subject of deliberation by the Indian Law Commission, the Bombay Government requested His Lordship in Council, if he thought it fit, to place the same before the Law Commissioners for their final deliberation and advice.[2]

This final step amply proves that the famous Regulation XIV of 1827 cannot be numbered among the successful measures to ameliorate the state of slavery in Bombay Presidency.

No. 4. LOCAL ENACTMENTS IN MADRAS

SUMMARY: I. Regulation II of 1812. II. Madras Board of Revenue Order of 1819. III. Regulation II of 1826. IV. Regulation VII of 1829.

SOURCES: PUBLISHED: Appendix to Report from Select Committee, (Public), 1832.

I. REGULATION II OF 1812. To begin with, a passing reference may be made to Regulation II of 1812. It was meant to prohibit the exportation of slaves from the province of Malabar. But from a letter of A. D. Campbell, dated November 4, 1832, it would seem either that the Regulation was never enforced, or that it was singularly shortlived. For the Advocate-General, to whom it had been referred for consideration, advised the formal repeal of it. He pointed out that 51 Geo. III, C. 23 already sufficiently prohibited the slave-traffic by sea, and provided severe penalties for it. Hence Regulation II of 1812 would serve no useful purpose.[3]

II. MADRAS BOARD OF REVENUE ORDER OF 1819. In the Madras Presidency, Government had recourse to the seizure and the sale of slaves off the land in satisfaction of revenue arrears. They also compelled slave-owners, who were revenue

1. Minute by Mr. G. Giberne, Judicial Department Compl. 1840, Vol. 681, Bombay Record Deparment.
2. From J. P. Willoughby, Secretary to the Government of Bombay, to F. I. Halliday, Secretary to the Government of India, in the Legislative Department, dated September 22, 1840, Judicial Department Compl., Vol. 681, 1840, Bombay Record Department.
3. Appendix to Report from Select Committee, (Public) 1832, p. 452, 4th Answer of A. D. Campbell.

defaulters to do so. Moreover the Collector encouraged the continuance of such a practice, quoting in justification of his policy a passage occurring in Mr. Vaughan's letter of July 20, 1819. Mr. Vaughan wrote: "The partial measures, declaring them not liable to be sold for arrears of revenue, will be a drop of water in the ocean, though why Government should give up a right which every proprietor enjoys, is a question worthy of consideration." The result of such a declaration on the part of an official of the Madras Government was that the slave-owners claimed their slaves to be as much their property as any other chattel or thing.[1]

Mr. T. H. Baber was the only servant of the East India Company in the Madras Presidency who made a determined stand against this evil custom. Whenever the question came before him, he repeatedly refused to sanction such proceedings. His continual remonstrances had their desired effect; for the Madras Board of Revenue issued orders under the date May 13, 1819, which prohibited the future sale of slaves on account of the arrears of revenue in Malabar.[2]

However, Mr. Baber's triumph did not effect any change for the better in Judicial Courts as far as the seizure and sale of slaves in satisfaction of revenue arrears were concerned. For the passing of the order was so little known, that Mr. Baber never heard of it, as long as he was in India, though he stayed in Madras till the end of the year 1828. It was only after he had returned to England, that he came to know of the passing of this order in a Parliamentary Paper of March 12, 1828.[3]

III. REGULATION II OF 1826. It has just been pointed out that Regulation II of 1812 was repealed because 51 Geo. III, C. 23 sufficiently prohibited the slave-traffic by sea. It is, therefore, rather astonishing that the same Government of Madras passed Regulation II of 1826 for the express purpose of enforcing 51 Geo. III, C. 23.

Regulation II of 1826 passed by the Government of Fort St. George declared the sale of slaves off the land in payment of revenues to be "the offence of carrying away or removing from any country or place whatsoever any person or persons as a slave or slaves, or for the purpose of being sold or dealt with as a slave

1. *Ibid.*
2. Appendix to Report from Select Committee (Public), 1832, Baber's Answers, para 5, p. 425.
3. Answers of T. H. Baber, (K) p. 440,

or slaves;" and "which applies," according to the opinion of the Advocate-General at Madras, "in all its consequences and penalties to all persons residing within the King's or Company's territories including, therefore the native subjects of this Government." The repeal of Regulation II of 1812, on the ground that 51 Geo. III, C. 23 made it unnecessary, and the passing of Regulation II of 1826 to enforce 51 Geo. III, C. 23 testify to the confusion, which prevailed in the Madras Presidency in regard to the law of slavery. It also brings to light one more instance of the laxity with which Acts of Parliament were put in force in the Presidencies. If 51 Geo. III, C. 23 was legally enforced before the year 1826, what was the use of Regulation II of 1826? May we not rightly suppose that 51 Geo. III, C. 23 had not been put in force prior to 1826, as is borne out by the new Regulation passed in that year? This shows that the British Indian Officials could apparently ignore with impunity the authority of British Parliament.[1]

Finally, considering that 51 Geo. III, C. 23 was but very indifferently enforced in the Madras Presidency, it is not rash to surmise that Regulation II of 1826 did not prove greatly beneficial to the slave-population. In other words, if successful, it was only partially successful.

IV. REGULATION VII OF 1829. The enactment of this Regulation was due to the ceaseless efforts of T. H. Baber on behalf of the slave-population in Madras.

It had been a long-standing custom in many courts of Madras that slaves were not allowed to give evidence in cases in which they themselves were involved. As an instance in point, a case cited by Mr. Baber himself may here be mentioned. In 1812, 76 kidnapped children, some of them slaves and others free-born, were not allowed to give evidence before the Provincial Court of Circuit on the ground that a prosecution could not be supported against the perpetration of that heinous offence, "unless a charge shall have been previously preferred by the owners of the bondsmen, parents and relations of the free-born children, and other evidence thereof." It was also urged that the trial could not be proceeded with because "the Law Officer objected to the legality of Government pleader being appointed a prosecutor, whilst the parents or relations of the free-born children, who had been kidnapped or sold as slaves,

1. *Ibid.*, para 1, pp. 440-41.

were still in existence." The result was that the perpetrators of this crime were allowed to go unpunished.[1]

T. H. Baber, commenting on the dicta of the judges and of the Law Officers of the Court of Circuit, remarked that there was no reason for the Court to set aside the testimonies of so many persons. He made bold to affirm that the British Courts of Justice had never before rejected the evidence of slaves. In this connection he reminded the authorities that persons had been tried and convicted of murder by the judges of the same Provincial Court of Circuit on the complaint and testimony of Pooliar slaves. If these Pooliars were not disqualified from giving evidence, it was certainly inconsistent with reason and justice to deny other slaves the right and protection to which they were fully entitled.[2]

This is only one case, but there is little doubt that there must have been many others of the same kind; otherwise it cannot be explained why Mr. Baber continued to agitate in order to secure the suppression of this evil. His efforts only bore fruit in 1829, when Regulation VII of 1829 was enacted.

The enactment recognised that slaves had the right of prosecuting and giving evidence in the same manner as free-born persons.[3]

This Regulation only applied to Madras, and the documents do not give us any information about its efficacy.

No. 5. LOCAL ENACTMENTS IN ASSAM

SUMMARY : I. Government's Resolution of 1829. II. Registration of slaves in Upper Assam. III. Upper Assam Proclamation of 1833. IV. Temporary Order of August 1834. V. Permanent Order of September 1834. VI. Upper Assam Order of 1836.

SOURCES : Indian Law Commission's Report, 1839-41.

I. GOVERNMENT RESOLUTION OF 1829. On April 10, 1829, a Government Resolution was passed, prohibiting the sale of slaves for arrears of revenue.[4] There is every likelihood that this Resolution of 1829 remained a dead letter; for on August 25, 1834, the Secretary to Government referred to a Communication of February 26, 1830, according to which the Resolution of 1829 was not intended to apply to the sale of slaves in satisfaction of

1. Answers of T. H. Baber, para 5.
2. Appendix to Report from Select Committee (Public) 1832, Answers of T. H. Baber, para, 6, p.
3. *Ibid.*, para 8.
4. Indian Law Commission's Report, 1839-41.

the decrees of the Court, and that it was inexpedient on the part of the Government to interfere in that matter. Consequently the sale of slaves in satisfaction of revenue arrears was carried on till the year 1834.[1]

II. REGISTRATION OF SLAVES IN UPPER ASSAM. Meanwhile, local attempts at suppressing slavery had been attempted in Upper Assam. Mr. D. Scott, who was the Commissioner of Assam in 1830, instructed Captain S. B. Neufville, the Political Agent of Upper Assam, to ascertain the number of slaves in his province. In case no census had as yet been taken, he was to open a register for a period of six months, with a view to record the names of all the slaves within his jurisdiction. He was also ordered to issue a Proclamation that, in the absence of such registration by the masters, the slaves should be declared emancipated. According to Mr. D. Scott this Regulation had received the sanction of Government. But the Report of the Law Commission (1839-41) brings to light that, from the evidence of one of the witnesses taken by them, the sale of slaves and of free children by their parents was not registered in Upper Assam.[2]

III. UPPER ASSAM PROCLAMATION OF 1833. After the suppression of slavery by registration had failed, the Commisioner of Upper Assam Mr. D. Scott issued a Proclamation in July 1833. It prohibited the sale of any individual to a foreigner under the penalty of being fined 100 Rupees, and, in the event of such person being removed from his or her residence, to an imprisonment for a period not exceeding six months.[3]

IV. TEMPORARY ORDER OF AUGUST 1834. In 1834, Government meant to pass measures for the gradual mitigation of slavery and bondage in Assam. Accordingly Captain F. Jenkins, the then Commissioner of Assam, was informed that the subject of slavery and bondage would be taken into consideration hereafter. He was also directed that in the meanwhile the Courts should abstain from selling slaves in execution of decrees or for any other object whatsoever.[4]

This sudden change in Government's attitude was probably due to the Court's despatch of January 3, 1834, where remarking upon the previous determination of the Government of India on this subject (*i.e.* the communication of February 26, 1830,) the Directors observed: "We are hardly prepared to sanction the rule you have adopted, of allowing slaves to be sold by public auction for the benefit of private creditors."[5]

1-5. Indian Law Commission's Report, 1839-41.

V. PERMANENT ORDER OF SEPTEMBER 1834. Shortly afterwards, in September 1834, a permanent prohibitory order to the same effect was issued by the Government to the local Officers; and according to Captain Bogle's evidence there was immediately a very great decrease in the value of slaves.[1]

VI. UPPER ASSAM ORDER OF 1836. In June 1836, the Political Agent in Upper Assam had consented to restore a fugitive slave to one of the Kampti Chiefs who had applied to him for the slave's recovery. Accordingly he was called upon by the Government of India to explain his reasons for having acted so in the matter. It was his defence that, 10 years prior to the passing of this order, Messrs. D. Scott and Colonel Richards had issued a Proclamation notifying that the right of the Assamese to a property in their slaves would be respected, that it was the practice of the Courts, both in Lower and Upper Assam, to restore fugitive slaves to their owners, and that his order was based upon this precedent. Thereupon on September 12, 1836, the Governor-General of India in Council informed the Political Agent that henceforward it was the wish of the Government that their judicial functionaries in all such cases should consider it as a general rule to refrain from any summary interference for compelling the return to a state of slavery of individuals who might have effected their escape from it. "Every individual, they said," must be presumed to be in a state of freedom until the contrary was proved."[2]

The Order of 1836 was not even in the nature of a local legal enactment; for the Governor-General of India in Council was satisfied with informing the authorities in Assam that it was "his wish" not to help in the restoration of run-away slaves. Hence it is not rash to conclude that this order may also be added to the list of only partially successful anti-slavery measures.

No. 6. CONCLUSION

In justification of the heading of this chapter we may briefly point out by way of conclusion the inadequacy, of the anti-slave measures passed by Government from 1774 to 1836.

As regards 51 Geo. III, C. 23, it promised much, but effected little. The Indian authorities were hopelessly divided to what extent it prohibited the removal and sale of slaves, whether by

1-2. Indian Law Commission's Report, 1839-41.

sea only, or by land and by sea. Moreover, it is difficult to ascertain how far it was enforced in various Presidencies and Provinces. It is known for sure that in 1829 the Madras Government was not even in possession of a copy of the famous Felony Act; whilst it would seem that, as regards the Bengal Presidency, extracts from 51 Geo. III, C. 23, with translations in Persian and Arabic, were first circulated in Calcutta and in the Port of the Red Sea and the Persian Gulf thirteen years after its promulgation, that is, in 1824. Besides this, when it came to the application of the Statute to the removal of slaves from one part of the British territory in India to another, the Provincial authorities were still more divided amongst themselves.

As regards the local provincial enactments their very number is evidence of their inadequacy. Four anti-slave enactments, were passed in Bengal; four in Bombay; four in Madras; and six in Assam. In most cases every new enactment was decided upon because the previous enactment had proved useless. With the exception of Sir Charles Metcalf's Proclamation for the small District of Delhi, it may be confidently affirmed that the other local enactments afforded little more than a temporary relief. Hence it may be safely concluded that, just as 51 Geo. III, C. 23 failed to effect any general improvement in the condition of the slaves in the whole of the British territories in India, so the local enactments did not bring about a permanent amelioration in the limited areas for which they were meant.

CHAPTER V

Sidelight on British Attitude Towards Slavery

PLAN: 1. A study of court-cases. 2. Conclusion.

INTRODUCTORY. From the unsuccessful and partially successful attempts, made by the British authorities to ameliorate the law of slavery in India, some may perhaps feel inclined to jump at the conclusion that the British authorities were never wholeheartedly bent upon redressing the many evils of slavery, let alone the question of suppressing slavery altogether. But in this connection it should be remembered that to find fault with others seems ever to be a more congenial and a more easy task than delivering a fair-minded judgment, balancing circumstances and facts against bias and prejudice. It may as well be remarked here that the severest critics of the British policy towards slavery were officials in the service of the Company, notably Richardson, Harington, Leycester, Campbell, Baber and others. However, their statements cannot simply be taken for granted, because there rankles in them an undertone of disappointment and frustrated hopes. These men wanted to suppress slavery wholesale by a one simple ukase: Slavery is illegal. Their wishes failed to become realities and hence they naturally felt embittered.

In order to give a correct idea of the policy of the British authorities towards slavery, we cannot do better than give a number of cases mentioned in the published and unpublished documents, cases in which the restoration of run-away slaves is involved. The question to be decided was whether any assistance on the part of the British authorities given to slave-owners, who claimed that run-away slaves should be restored to them, ran counter to 51 Geo. III, C. 23.

In most of these cases the Local Government, and also the Supreme Government were asked for guidance, and could not help giving their opinion. It is true this opinion deals with a particular aspect of slavery, and it refers to a well-defined period of time, *viz.* from 1816 to 1844. Nevertheless the practice and policy of Government as regards the restoration of run-away slaves from 1816 to 1844 may perhaps supply us with the necessary data that will enable us to determine the general policy of the British authorities in India with regard to slavery.

No. 1. A STUDY OF COURT-CASES

SUMMARY: I. A Poona case. II. A Bombay case. III. An Ahmedabad case. IV. A Kathiawar case. V. Three Baroda cases. VI. A Surat case.

SOURCES: UNPUBLISHED: Judicial Department, 1821-23, Vol. 44-53; Political Department, Ahmedabad, 1838, Vol. 990; Political Department, Maheecanta, Vol. 990; No. 437, Political Department, 1838, Baroda Government, Vol. 990; No. 653, Political Department, 1839, Vol. 990; No. 19, Judicial Department Compilation, 1841, Vol. 771; Political and Secret Department, 1844-45, Vol. 1621; No. 557, Political Department, 1838, Cutch, Vol. 990.

I. A POONA CASE. In March 1816, the widow of Nana Farnavis asked for the restoration of eight run-away slaves who had fled to Thana. Mountstuart Elphinstone was then Resident at Poona, and to him the application was of course made. As he was not certain whether it was a case in which assistance could be granted without infringement of 51 Geo. III, C. 23, he asked Government to let him know their views on the matter in order to regulate his conduct thereby in cases of similar complaints from other quarters.[1]

Accordingly, the Bombay Government referred the case to Hugh George Macklin, the Advocate-General of Bombay. He gave it as his opinion that 51 Geo. III, C. 23 did not leave room for the least doubt on the question, and that no subject of His Majesty's, nor any other person, whether subject or not, residing in British territory, could either directly or indirectly assist in such restoration without incurring the penalty of transportation.[2]

This wholesale condemnation of every attempt to restore a run-away slave did not altogether meet with the Bombay Government's approval. Accordingly they determined to refer the disputed point to the Supreme Government.[3] In doing so they were mainly inspired by motives of political expediency, as may be gathered from a letter which they subsequently wrote to the Court of Directors. In this letter they did not hesitate to confess: "We are not without apprehensions that the knowledge of

1. From Mountstuart Elphinstone, Resident at Poona, to Mr. Warden, Chief Secretary, dated March 17, 1816, Judicial Department, 1821-23, Vol. 44-53, Bombay Record Department.

2. From Hugh George Macklin, Advocate-General, to Mr. Warden, dated April 23, 1816, *Ibid.*

3. Proceedings, dated September 17, 1817, *Ibid.*

the obligations, imposed on the British Government by the Legislature in respect to slaves, and the protection which those from Poona and Baroda have received in your dominions will be widely deferred, and that other instances may occur which may lead to more formal applications from the Paishwa and Guickwar the refusal of which may be attended with considerable inconvenience."[1]

In this letter the Bombay Government plainly informed the Court of Directors that, if they were to follow the practice of protecting run-away slaves, both the Peshwa and the Gaekwar were likely to consider themselves ill-used. The Gaekwar was here mentioned, because, in addition to the request made by the widow of Nana Farnavis, a similar application for the restoration of an absconding slave had been made to the Resident at Baroda by the Gaekwar, who asked that the slave that had taken refuge in the Company's territories should immediately be returned to him. This request had been forwarded to the Resident at Baroda, who was as much puzzled what to do, as the Resident at Poona had been. Accordingly he had also asked the Bombay Government for advice, so that he might know what course he should follow. As the whole matter had already been referred to the Supreme Government, the Bombay Government were satisfied with forwarding to him the Advocate-General's opinion. As the Resident at Baroda did not deem it prudent to be guided in such a momentous matter by the Advocate-General's personal views, he wrote to Bombay for further instructions. Thereupon he was informed that the only course to follow was to await the final decision of the Supreme Court on this delicate and important matter.

The political issues at stake were of too comprehensive a nature for the Supreme Government unduly to procrastinate in settling the case. Accordingly on September 9, 1817, the following Resolution was passed by the Honourable the Vice-President in Council. "The construction which had been uniformly given by the Supreme Government to 51 Geo. III, C. 23 was only intended to apply to the importation or removal of slaves by sea and would not involve any alteration in the course of proceedings hitherto adopted in similar instances.

---

1. Extract para 196 of a letter to the Hon'ble the Court of Directors in the Judicial Department, dated April 2, 1817, Political Consul. 1816, June 19, fol. 2426, November 13, fol. 4504, Judicial Department, 1821-23, Vol. 44-53.

"A slave by entering the Company's territories did not become free, nor can he who was lawfully a slave emancipate himself by running away from one country where slavery was lawful to another country where it was equally unlawful."

"In their opinion the property in the slave still continued to be vested in the master, and the master had the same right to have it restored to him, supposing that right to be established in the mode prescribed by the local laws and Regulations."[1]

This Resolution was forwarded to the Bombay Government by whom copies of these instructions were circulated to all the Provincial Magistrates and Residents in the Presidency for their information and guidance whenever cases of this nature occurred within their jurisdiction.[2]

As regards the case itself the final decision is not mentioned in the documents. According to the instructions of the Supreme Government the widow of Nana Farnavis should have been informed to lay her claim before the local British Court of Justice. However, it may also have happened that the slaves were returned to their mistress, because the British authorities were not at all anxious to get into trouble with persons belonging to ruling families who held sway in India ; for it was the British Government's opinion that the high rank of the claimant prevented them from interfering.

II. A BOMBAY CASE. Shortly afterwards, in 1818, S. Babington, Magistrate of the Northern Konkan, had to decide a case in which recourse could not be had either to Mahomedan or Hindu Law, since the complainant was subjected to the existing laws of England in regard to the laws of slavery.[3]

Mr. Babington was approached by Mrs. Nesbit, an inhabitant of Bombay, and was asked to secure for her three slave boys, natives of Africa, who had escaped from her and joined the European Regiment on its March towards the Deccan. By the Magistrate's orders the slaves were apprehended at Thana, in order to prevent their escape into the territories of a foreign Prince, and they were sent back to Bombay to be handed over to

1. Extract from the Resolution of the Honourable the Vice President in Council in the Judicial Department, under date September 9, 1817, *Judicial Department, 1821-23*, Vol. 44-53, Bombay Record Department.

2. Extract para 358 of a *Letter to the Honourable the Court of Directors in the* Judicial Department, dated July 29, 1818, *Ibid.*

3. From S. Babington, Judge and Magistrate of Northern Konkan to Mr. Warden, Chief Secretary, dated October 25, 1817, Judicial Department, 1821-23, Vol. 44-53.

the Police Magistrate.[1] The documents do not supply us with any information about the ultimate disposal of these slaves, so that it cannot be ascertained whether they were restored to Mrs. Nesbit. There is, however, an allusion to the case in a letter to the Honourable the Court of Directors, dated July 29, 1818. From this letter it is evident that, in spite of the Supreme Government's decision of September 9, 1817, the Bombay Advocate-General continued to hold the same views as he held prior to that decision. According to him it was impossible to restore a run-away slave to his master without violating 51 Geo. III, C. 23.[2]

III. AN AHMEDBAD CASE. Full eighteen years later, on November 6, 1837, J. H. Jackson, Acting Magistrate of Ahmedabad, solicited instructions as to whether certain slaves who had resided for a period of three years in one of the villages under his superintendence, but who were claimed by the Thakoor of Roopal, should be compelled to return to that individual. The Thakoor at the same time was informed that the question had been referred for the decision of the Bombay Government.[3]

However, before the Bombay Government gave its decision, J. C. C. Sutherland, the Political Commissioner for Gujerat, reported that a party of sowars, headed by the son of the Thakoor of Roopal, had violently seized the persons of these slaves in consequence of their not having been given up to the Thakoor.[4] On this occasion the Acting Political Agent observed: "Claims for the restoration of fugitive slaves are by no means unfrequent ; and in such a rude state of society as exists in this province, non-compliance would not only be regarded as great injustice, but be apt to lead to acts of violence and retaliation. I would, therefore, suggest that, except when decided ill-treatment appears to have taken place, I should be authorised to interfere to cause the restoration of run-away slaves, or compensation and satisfaction to their owners from the parties obtaining them."[5]

1. Extract para 360 of a Letter to the Hon'ble the Court of Directors.

2. Extract para 363 of a Letter to the Hon'ble the Court of Directors, dated July 29, 1818, Judicial Department, 1821-23, Vol. 44-53.

3. From J. H. Jackson, Acting Magistrate of Ahmedabad, to E. H. Townsend, Acting Secretary to the Government of Bombay, dated November 6, 1837, No. 628, Political Department, 1838, (Ahmedabad) Vol. 990 ; *Cf.* Extract para 2 of a General Letter to the Court of Directors, dated May 20, 1840, No. 16, No. 297, Political Department, 1838, (Maheecanta), Vol. 990.

4. *Ibid., Extract para 3.*

5. From the Acting Political Agent in Maheecanta, to the Hon'ble James Sutherland, Political Commissioner and Resident at Baroda, dated February 5, 1838, No. 628, Political Department, 1838, (Ahmedabad), Vol. 990.

In reply the Bombay Government informed Mr. Sutherland that, whatever might be the system in Gujarat in respect to enforcing the return of slaves to their owners, they could not in any circumstances tolerate the adoption of such a course as the one pursued by the son of the Thakoor of Roopal, which could be regarded in no other light than that of an aggressive inroad into the British territories for the purpose of violently righting himself. By adopting such an act both the Thakoor and his son forfeited all claim on the British Government for assistance in compelling the return of the slaves in question. As a general rule the only method open to an individual for recovering run-away slaves was to prove his claim before the local Magistrates.[1]

Mr. Sutherland also insisted that in such cases British Government were bound to respect the laws of slavery prevalent in this country, and that they had no right to interfere in any way contrary to the established customs and usages that had obtained for centuries.[2]

IV. A KATHIAWAR CASE. Thus it remained a moot point whether it was permissible to restore a run-away slave. This lack of a definite policy was at least in one instance detrimental to the treasury of the Bombay Presidency. In December 1837, a native of Kathiawar, approached J. Erskine, the Political Agent in Kathiawar, with the request that a run-away slave should be restored to him. Whilst the case was being investigated, it was brought to light that the slave's master had acquired him by purchase from a Sindhian. Therefore, the only course left open to Government was to obtain his freedom by the payment of the purchase money. After some discussion the Governor in Council finally decided that the owner should, as a special case, be paid Rs. 65-15-5 by Government, the price for which the slave had been purchased.

V. THREE BARODA CASES. The first of them occurred in 1838, when the Gaekwar of Baroda applied to the Resident for the restoration of two female slaves who had escaped

1. From J. P. Willoughby, Secretary to Government, to J. C. C. Sutherland, Political Commissioner and Resident at Baroda, dated March 23, 1839, No. 297, Political Department, 1838, (Maheecunta), Vol. 990.

2. From J. C. C. Sutherland, Political Commissioner and Resident at Baroda, to J. P. Willoughby, Secretary to Government, dated February 14, 1839, No. 628, Political Department, 1838, (Maheecunta), Vol. 990.

whilst accompanying his daughter, Eshuda Bai Ghorepooree, from Poona to Nasik. It was afterwards proved that one of the women had run-away because of the ill-treatment she received; and from the evidence of the other slave it was made quite clear that her escape was due to the same cause.[1] When the Baroda Resident applied to the Bombay Government for advice, Sir Robert Grant, the Governor of Bombay, remarked that there was a good deal of difficulty in dealing with such like cases. It was, however, his opinion that, as slavery was not unlawful in the Bombay Presidency, "the Gaekwar did not call upon the Government to do anything illegal or anything so palpably *contra bonos mores* as to be for that reason out of the question."

"No doubt it was true that the slaves pleaded that their desertion was due to the ill-treatment they had suffered at the hands of their mistress. In the ordinary course of procedure it would have been Government's duty to inquire into the truth of this allegation. But the high rank of the mistress precluded any such interference on the part of Government, and the best course advisable was to redeem these slaves."[2] Accordingly Mr. Farish, a member of the Bombay Council, suggested that the best way out of the difficulty was for the Bombay Government to forward to the complainant in Baroda the redemption price of the slaves.[3] But this proposal gave rise to further discussions. The Governor of Bombay, Sir Robert Grant, agreed with Mr. Farish; but Mr. Anderson strongly objected to this way of proceeding. He opined that if there existed no such obligation, the slaves had better be left alone; evidently the idea of advancing redemption money did not appeal to him.

When the Governor of Bombay Sir Robert Grant, became aware of the reluctant tone of Mr. Anderson's Minute, he wrote as follows: "I trust I shall not be thought to act disrespectfully towards the Board, if I do not prolong discussion in cases where the measures I take the liberty of proposing are objected to, but without any one specific proposition being made on the other side. I am aware that the case is a different (difficult) one, and think it probable that a better adviser might devise some better mode of dealing with it than I have done; but none such has occurred to

1. Robert Grant's Minute, dated April 8, 1838, No. 653, Political Department, 1838, Baroda Government, Vol. 990.

2. *Ibid.*

3. *Minute by the Hon'ble Mr. Farish, dated April 10, 1838, Ibid.*

him."[1] Thereupon Mr. Anderson replied that the question to be decided was whether Government were obliged to restore run-away slaves. Anyhow the payment of redemption money was neither advisable nor expedient, unless the Supreme Government were ready to confirm the expenditure. He further suggested that, as it was a question of political consideration, he deemed it advisable to refer the case to the Government of India to know how such a case would likely be dealt with by the Magistrates there, on a similar demand being made by any foreign prince with whom the English were in alliance.[2] The Governor of Bombay, Sir Robert Grant, seconded the proposition; and the matter was accordingly referred to the Government of India.[3]

After due consideration the Supreme Government of India replied that in ordinary cases the jurisdiction in matters relating to property in slaves rested with the Civil Courts, and that a Magistrate would not be justified in interfering and compelling the return of the slaves to the persons without having recourse to a judicial trial. In the case under consideration the Court of Sudder Adawlut were of opinion that the Magistrate of Nasik acted rightly in refusing to deliver up the slaves. The Court further observed that on a former occasion the Government had authorised the payment of the value of certain slaves claimed under somewhat similar circumstances. At the same time it was remarked that, whatever reasons might exist for maintaining the existing laws respecting the existence of domestic slavery among the two great classes of the native subjects of this country, the Mahomedans and the Hindus, the Governor-in-Council of Bengal was not aware of any principle of justice or policy which required Government to render British Courts of Judicature the instruments for compelling persons who might seek an asylum in British territories to return in bondage to the countries from which they emigrated. The principle involved was applicable to the case of a slave, seeking the protection of the Company's Courts, though brought within their jurisdiction by the foreign proprietor himself.[4]

---

1. Minute by the Hon'ble the Governor, Sir Robert Grant, dated May 1, 1838, No. 653, Political Department, Vol. 990.
2. Minute by the Hon'ble Mr. Anderson, dated May 3, 1838, *Ibid.*
3. *Minute by the Right Hon'ble the Governor, dated June 8, 1838, Ibid.*
4. From the Secretary to the Government of India, to J. P. Willoughby, Secretary to the Government of Bombay, dated January 9, 1839, enclosing a letter from J. Hawkins, Register to the Court of Sudder Foujdarry and Nizamut Adawlut, to F. J. Halliday, Secretary to the Government of Bengal, in the Judicial Department, dated November 9, 1838, No. 653, Political Department, Baroda Government, Vol. 990, Bombay Record Department.

Whilst the case just mentioned was still under consideration, J. C. C. Sutherland, the Political Commissioner for Gujerat, reported another case in April 1838, in which a person of Baroda went to Poona accompanied by a male slave belonging to his father. When the Baroda gentleman was about to return home, the slave, in spite of every inducement being tried to make him change his mind, absolutely refused to start on the return journey, and remained at Poona. Accordingly the traveller's father who was the owner of the slave, applied to the Political Commissioner to have his slave restored to him. Thereupon J. C. C. Sutherland wrote to the Police Superintendent at Poona, and requested him to see to it that the slave should be sent back to Baroda. But the Police Superintendent signified his inability to comply with the request, on the ground that no such power was vested in him.[1]

Then Mr. Sutherland started pleading the slave-owner's cause. He observed that this refusal to restore the slave was tantamount to a denial of justice of which the master of the slave was made the victim. He contended that the Superintendent was not justified in acting as he had done; for Police Superintendents possessed the same powers within military limits, as a Zillah Magistrate did within his jurisdiction, under the General Regulations. He also emphasised the fact that at the time of the introduction of British Rule in India, slavery not only existed, but was also sanctioned by the laws of the country. Nor had the British authorities passed any legislative enactment doing away with slavery; on the contrary they had recognised the master's right of ownership in his slave, and had respected it as much as the Hindu or the Mahomedan Law had ever done.

It was, therefore, Mr. Sutherland's opinion that Magistrates were bound to restore run-away slaves, that they could not refuse their help when asked to effect the slave's restoration, and that in all slave-questions they should be guided by the same principles which they followed in deciding cases in which servants were implicated, or in which it was contended that a man's property was being forcibly detained.[2]

---

1. From J. C. C. Sutherland, Political Commissioner and Resident at Baroda, to J. P. Willoughby, Secretary to the Government of Bombay, dated April 2, 1838, No. 437, Political Department, 1838, Baroda Government, Vol. 990.

2. From J. C. C. Sutherland, Political Commissioner and Resident at Baroda, to J. P. Willoughby, Secretary to the Government of Bombay, dated April 2, 1838, *No. 437, Political Department, 1838*, Baroda Government, Vol. 990.

When the Bombay Government were informed of Mr. Sutherland's view, they replied to him, in a letter dated May 18, 1838, to the following effect. They readily admitted his contention that European standards of law or feeling were not to be applicable in cases connected with slavery in India, because the status of domestic slavery in this country was legally recognised; and whilst it subsisted, there were obligations arising out of it, which none could be justified in violating, and which the Magistrate was bound to enforce. But as regards the case under discussion, the Bombay Government remarked that the Regulations were silent as regards the nature of the proof required, by which a slave could claim immunity from servitude. It was, however, their opinion that the slave should be allowed a sufficient *locus standi* in the Magistrate's Court to dispute the claimant's title, either on the ground that he was not his slave, or on the ground that, having been such, the relation had by subsequent consent or by some other cause been dissolved, or at all events on the ground that the master had by cruel treatment forfeited his right to enforce his claim of ownership.

The Bombay Government were not slow to stress the great difficulty of this case. A resident of Baroda claimed to be the master of a person resident in the Bombay Presidency, and through the British Resident at Baroda he called upon the local Bombay Magistrate to seize that person and to deliver him up to his foreign master. Hence in this case the owner's title to this slave was made out, if made out at all, before the British Resident at Baroda, who was not even a judicial officer and by an *ex parte* proceeding in the absence of the party who was so deeply affected by it. If the local Bombay Magistrate complied with this request, the slave's restoration would be the result of a mere intimation received by letter, and not the conclusion of a judicial trial; and such a judicial proceeding was however necessary in all other cases in which detained property was being claimed by its alleged owner.

By way of illustration, the Bombay Government adduced the following hypothetical instance: Let it be supposed this Baroda inhabitant informed the British Resident that there was a horse or any article of merchandise in the possession of a person at Poona, which such person refused to give up, and then let it be supposed the Resident writing to the Magistrate of Poona assured him that he (the Resident) had satisfied himself of the justice of the claim, and therefore requested the Magistrate to seize such horse or merchandise, and forthwith to send

it with a careful person to Baroda ; it is clear that no Magistrate could comply with such an application. Yet it cannot be conceived that less care or ceremony is necessary where the property claimed is the person of a human being.[1]

Again, so argued the Bombay Government, let us suppose that a foreign subject accused of crimes or suspected of machinations against the state to which he belonged, fled into the British territory, and being reclaimed through the British Resident in that State, was given up by order of this Government. Even in this case, the compliance with the demand would by no means be a matter of course. It must be an act of Government, done either on solemn consideration of the particular circumstances, or in fulfilment of some stipulation in a treaty. But even in such a case the Bombay Government affirmed : "No Magistrate would give effect to such a demand, except under orders general or particular from his Government, nor would any Government exercise on light grounds a power which implies a supercession of the ordinary forms of procedure."[2]

It was difficult to determine how far the case under consideration came within the class just prescribed. Of course, it would undoubtedly fall within that class, if the fugitive slaves were suspected of having wronged his master or of some other crime, when the very fact of the flight would possibly afford a *prima facie* ground for such suspicion. But to apply the rule where no such crime was alleged or pretended to have been committed, would be a very harsh way of proceeding.

Therefore under the circumstances it was the opinion of the Bombay Government that Mr. Sutherland was labouring under an error in conceiving that he possessed authority as "Resident" at Baroda to require a "Magistrate at Poona" to apprehend or give up a slave claimed by an individual at Baroda.

Furthermore, if the Poona Magistrate was not in a position to comply with the request of the Resident in a foreign State, much less was he entitled to take action against a slave on the application made by the owner himself without the Resident's intervention.

1. From J. P. Willoughby, Secretary to the Government of Bombay, to J. C. C. Sutherland, Political Commissioner and Resident at Gujerat, dated May 18, 1838, No. 437, Political Department, 1838, Baroda Government, Vol. 990.
2. *Ibid.*

But for all that the Bombay Government did not mean to suggest that a foreigner was incapable of asserting his rights. He could always apply to a British Court of Justice for the restoration of property illegally withheld from him. But it was then necessary for the claimant to appear before the Court, either personally or by an attorney lawfully constituted. Next he must establish his claim by sworn proofs, subjected to strict examination in the presence of the resisting party, it being understood that his allegations would render him liable to penalties of perjury if found to be false.

Furthermore, by way of additional corroboration the Government of Bombay pointed out that the Criminal Branch of the Bombay Code did not debar a slave from protection. It said nowhere that either a master or any other person assaulting a slave could do so with impunity. Nor did it say that a slave who was being ill-treated could not seek release. Nor was it anywhere laid down that, if the slave refused to return to his master, the Magistrate could cause him to return. Finally, the Bombay Government reminded the Resident that his views were open to discussion; for on no point was the law more undefined and therefore more uncertain than on the subject of slavery in India. Accordingly upon no other question did the Law authorities in India gave more diversified opinions than on the principles to be followed by Magistrates in deciding slave-litigation.

Consequently, because of the peculiar difficulties attendant on this question, Government felt averse to proceed in a summary way. "It appears that the master," they conclude, "or at least the person whom the proper master allowed and directed the slave to attend as such, had the full opportunity of preferring his claim in the regular manner before the Magistrate of Poona, or before the Superintendent of Bazars, and so far as appears voluntarily pretermitted such opportunity. He was at Poona when the slave refused to follow him; and it cannot but be regarded as singular that he did not at once summon him before the Magistrate or the Superintendent of Bazars. It is therefore inferrable that he felt that he could not prove or press his title. Perhaps he had treated him cruelly. And all this would have appeared, had he gone before the Magistrate. He therefore abstained from so inconvenient a course, assured in his own mind that, on his return to Baroda, a short application to the British authority there would set everthing right and restore to him the slave in spite of all resistance."

Thus the Bombay Government were clearly of opinion that the request made by the Resident at Baroda to the Superintendent of Police at Poona for the restoration of the slave could not be legally complied with. But it would never do to notify the Baroda Resident that his application had been simply rejected. Such a blank refusal might stir up ill-feeling and cause dissatisfaction in Baroda, and this was to be avoided at all costs. Instead of telling the Gaekwar that his request could not be complied with, a safer course to follow was to point out to him what steps he should take in order that the wrong he had suffered might be made good.

Accordingly on February 12, 1839, the Magistrate of Ahmednagar, the Political Agent for Governor and the Bombay Sudder Adawlut were supplied with copies of the decision given by the Supreme Government in India. According to this decision, all cases involving the restoration of run-away slaves had to be decided judicially in British Civil Courts.[1]

It was evidently in pursuance of the same policy that on April 4, 1839, the Bombay Sudder Adawlut issued a Circular to all the Magistrates within their jurisdiction to the effect that as the Bombay Government did not contemplate to make any alterations in the existing judicial practice, the Bombay Code placed the investigation of all slave-questions in the hands of the Magistrates, to whom the cognisance of such cases had always in practice appertained. The Magistrates were likewise reminded that in all instances, the importation of slaves above 10 years of age into British territories had been declared illegal by the official interpretation given on August 30, 1833, in Section XXX of Regulation XIV of 1827, and that Government were legally competent to prevent the restoration of run-away slaves seeking refuge into British from foreign territory; but in all such cases the Magistrate should make it a point to refer to Government on the subject.[2]

The policy adopted by the Bombay Government in the case of the Roopal Thakoor and the sentiments of the Government of India relating to the principle of the restoration of run-away slaves were fully approved of by the Honourable the Court

1. From the Secretary to the Government of Bombay, to the Magistrate of Ahmednagar, Political Commissioner for Gujerat and the Court of Sudder Adawlut, dated February 12, 1839, No. 653, Political Department, 1838, Baroda Government, Vol. 990.
2. From P. W. LeGeyt, Register to the Court of Sudder Adawlut to the various Magistrates, dated April 4, 1839, No. 653, Political Department, 1839, Vol. 990.

of Directors. In their despatch of December 23, 1840, they wrote: "The surrender of fugitives is systematically confined to cases of the more serious crimes: political malcontents, revenue defaulters and debtors in general are not delivered up; and we see no reason why run-away slaves should be treated with greater harshness than these. Our territories should be an inviolable asylum for all persons not guilty of offences against the peace and good order of society."[1]

Four years later, in 1844, Mr. Remington, in temporary charge of the Baroda Residency, reported that two slaves belonging to His Highness, the Gaekwar of Baroda, had sought an asylum at Ahmedabad, and that His Highness requested that they might be sent back to Baroda. His Highness charged these slaves with having absconded with some jewels. But the slaves denied the truth of this charge and asserted that they had sought refuge in the British territory to escape the ill-treatment to which they were subjected.[2] With reference to the charge of robbing advanced against these slaves by His Highness of Baroda, the Magistrate of Ahmedabad stated that, when they were apprehended in his zillah, they had no property of a suspicious nature in their possession. Accordingly, pending the orders of Bombay Government, he refused to surrender the slaves to the Gaekwar, unless convincing proof was adduced as to the commission of the crime imputed to them.[3] The Bombay Government agreed with Mr. Remington, and also declined to surrender the slaves against their will, unless His Highness substantiated to the satisfaction of Government, the charge of robbery against them.[4]

But the Gaekwar persisted in urging his request on the strength of Article IX of the Treaty of 1805, concluded between the British authorities and His Highness Anand Rao Gaekwar. Article IX of this Treaty provided that, in order to prevent protracted discussions, all absconding offenders should be surrendered to the Gaekwar, and that the Gaekwar's servants, dependents, ryots, female and male slaves and offenders should not be detained

1. Extract para 4 of a Despatch from the Hon'ble the Court of Directors, dated December 23, 1840, No. 19, Judicial Department Compl., Vol. 771, 1841.

2. From A. Remington, 1st Assistant Resident in charge at Baroda, to J. P. Willoughby, Secretary to the Government. dated April 9, 1844, Political and Secret Department, 1844-45, Vol. 1621.

3. From E. G. Fawcett, Magistrate of Ahmedabad to A. Remington, 1st Assistant Political Commissioner in Charge, dated March 25, 1844, *Ibid.*

4. From J. P. Willoughby, Secretary to the Government of Bombay, to A. Remington, dated May 10, 1844, *Ibid.*

by the Company's Government.[1] But the Political Commissioner for Gujerat interpreted Article IX merely to mean "that the Hon'ble Company should not retain such persons in their services."[2] But the Gaekwar objected against this interpretation, and claimed that, in virtue of the provisions, offenders were to be mutually given up by each Government.[3] Finally, in order not to be drawn into a personal quarrel, the Political Commissioner referred the matter to Bombay Government. On October 16, 1844, the Bombay Governor-in-Council informed T. Ogilvy, second Assistant Political Commissioner of Gujerat, that under provisions of the article above cited, His Highness was not authorised to demand the surrender of slaves against whom no offence had been judicially proved.[4]

VI. A SURAT CASE. Lastly the Official Records mention an application made by Maha Rana Raja Veejadewjee Roopdewjee of Dhurampore to the Agent for the Hon'ble the Government at Surat, asking him to surrender three female slaves who had absconded from his house. When this application was sent for consideration to the Bombay Government, they called upon Sir R. K. Arbuthnot, the Agent at Surat "to report the usage in cases of this nature and other independent Chieftains residing within the Hon'ble Company's territories."

It is difficult to ascertain what this usage may have been. The only information that may be gathered from the Surat Records is the Bombay Advocate-General's instructions to the Acting Judge of Surat, dated June 11, 1832. According to these instructions, persons in the suit of a foreign prince, residing within the territory of the Company, were not liable to the jurisdiction of the British Courts of Law. Therefore the most proper course to be followed in the event of any of them being guilty of offences of a criminal nature within these limits would be to hand them over to be punished by the head of the State to whom they owed allegiance.[5]

1. Translation of His Highness's reply to a Note from A. Remington, dated June 6, 1844, Political and Secret Department, 1844-45, Vol. 1621.
2. Translation of a Note addressed by the Political Commssioner for Gujerat and Resident at Baroda to His Highness the Gaekwar, dated June 7, 1844, No. 344, *Ibid.*
3. Translation of His Highness's reply, dated September 4, 1844, *Ibid.*
4. From J. P. Willoughby, Secretary to the Government of Bombay, to T. Ogilvy, 2nd Assistant Political Commissioner for Gujerat, dated October 16, 1844, *Ibid.*
5. From R. K. Arbuthnot, Agent for the Hon'ble the Governor at Surat to J. P. Wiloughby, Chief Secretary to Government, dated December 9, 1844, Political and Secret Department, 1844-45, Vol. 1621, *Ibid.*

Furthermore, Section V of Regulation XI of 1827 provided that refugees from foreign districts might be handed over to a foreign authority, if the Magistrate was of opinion that there were grounds for believing the accused to be guilty of the crimes alleged against him. But if the offence was of the nature of a fraud, or constituted a direct injury to the ruling authority, the Magistrate should report to Government and should act according to these directions in respect of the surrender of the individual.[1]

From the above statement it may be inferred that Government were legally authorised to surrender an accused person to the authority to which he properly owed allegiance; whilst the accused person who owed allegiance to another State could not claim as a right not to be given up to the ruling authority of the State.[2] Hence it would seem that it was entirely in the discretionary power of Government, either to surrender or protect the slave. It was to a large extent a question of general justice and particular expediency.[3]

Now coming back to the case of the Rajah of Dhurampore, "the question simply resolved itself," wrote Sir R. K. Arbuthnot, "as to the property of a civilised Government to surrender the female slaves in question to a barbarian like the Rajah of Dhurampore with reference to the belief in their guilt and his probable conduct towards them, consequent on the offence alleged being of the nature of a fraud or direct injury to himself, aggravated probably by the length of time that has elapsed since they first absconded and the opposition he has met with in seeking to have them delivered up to him".[4]

Viewing it in this light and taking the character of the Rajah into consideration, Sir Arbuthnot was of the candid opinion that it would be improper to place the power of injuring them in the Rana's hands, specially as their guilt had not been established. Therefore the best way for Government was to act according to the discretionary power implied in clause 2 Section V of Regulation XI of 1827 and to refuse to deliver up the slaves to the Rajah.[5]

In the meanwhile the Rajah of Dhurampore continued to urge his request, as may be gathered from his letters to Sir R. K.

1-5. From R. K. Arbuthnot, Agent for the Hon'ble the Governor at Surat to J. P. Willoughby, Chief Secretary to Government, dated December 9, 1844, Political and Secret Department, 1844-45, Vol. 1621, *Ibid.*

Arbuthnot[1] and to Sir G. Arthur,[2] the Governor of Bombay. But the Bombay Government were determined in their resolve, and gave instructions to Sir R. K. Arbuthnot to refuse to deliver up the female slaves against whom no offence could be proved.[3]

On February 1, 1845, the Rajah applied once more to the Bombay Government, asking them to reconsider and to reinvestigate the case.[4] Three weeks later he made another application.[5] But Government stood by their first decision and considered the case as closed ; for after due investigation no offence was proved against the women.[6]

No. 2. CONCLUSION

By way of conclusion the following remarks made by Henry Pottinger, the Resident at Cutch, give a fair view of the *pros and cons* involved in the practice of the restoration of run-away slaves. He wrote in his letter to Captain Lang, Assistant Political Agent in charge of Rajkot, dated 1838: "I should not be understood to be an advocate for slavery, when I remark that it seems to me a bad principle to inculcate that persons of this class will be allowed to desert from their owner, and will be protected by the British Government."[7] Though it cannot be denied that a direct and active interference on the part of Government between slaves and masters would be attended with bad consequences, yet such were in no way apprehended, except indeed in a minor and comparatively insignificant degree from what might be termed the passive opposition to the whole slavery system as such. On the other hand there was great reason to believe that discontinuance of slavery and the recognition by the British Government of the natural right of freedom in a class of people, who were looked upon by those who trafficked in them as mere cattle, would not be without its good effects not only in eventually suppressing the system, but in inducing, if not compelling masters to treat their slaves with kindness, since such was the only tenure by which they could retain them.

1. From the Rajah of Dhurampore to Sir R. K. Arbuthnot, dated December 20, 1844, *Ibid.*
2. From same to Sir G. Arthur Bart, dated December 26, 1844, *Ibid.*
3. From the Governor in Council to Sir R. K. Arbuthnot, dated January 18, 1846, Political and Secret Department, 1844-45, Vol. 1621.
4. From the Rajah of Dhurampore to Sir R. K. Arbuthnot, dated March 6, 1845, *Ibid.*
5. *Ibid.*, dated February 22, 1845.
6. *Ibid.*, From J. P. Willoughby to Sir R. K. Arbuthnot, dated March 6, 1845.
7. From Henry Pottinger, Resident in Cutch, to Captain Lang, No. 557, Political Department, 1838, Cutch, Vol. 990.

PART III

Abolition of Slavery

Act V of 1843

PLAN: 1. The dawn of a new era. 2. The Report of 1839. 3. The Anti-slavery Report of 1841. 4. Study of the Report. 5. The Draft Act of 1841. 6. Act V of 1843.

No. 1. THE DAWN OF A NEW ERA

SUMMARY: I. Policy of procrastination abandoned. II. The Indian Law Commission of 1835.

SOURCES: Evidence before the Select Committee of the House of Lords, 1830; Fortnightly Review, 1883.

I. POLICY OF PROCRASTINATION ABANDONED. From what has been said in the foregoing pages, it clearly follows that Government always considered questions relating to slavery and the slave-trade as fraught with considerable danger both to themselves and to the country. The result was that all attempts at ameliorating the condition of the slaves or at emancipating them ended in failure. Statesmen came ultimately to the same conclusion: Let us defer action to some more convenient time. Procrastination was therefore the leitmotif of slave-administration in India. However, the sway of procrastination was coming to an end, Act V of 1843 and its inclusion in the Indian Penal Code of 1862 sounded the death-knell of a system which for many centuries was a prolific source of untold miseries for at least nine million of the inhabitants of the land. This is Sir H.B.E. Frere's estimate of the number of slaves in India and his estimate is generally believed to be reliable.[1]

II. THE INDIAN LAW COMMISSION OF 1835. The Indian Law Commission of 1835 is one of the great landmarks in the history of anti-slavery legislation; for more than anything else it prepared the way for Act V of 1843 by which slavery was finally suppressed. On account of its importance it may serve a useful purpose to give a brief outline of the various measures which led to it.

The first step towards the appointment of the Indian Law Commission of 1835 was the Committee of 1830. Already as far back as 1774, slavery in India had arrested the attention of the

1. Fortnightly Review, p. 354.

Court of Directors of the East India Company. In course of time the interest of the Court Directors was more fully roused by the anti-slavery agitation in England. In fact Wilberforce, Clarkson, Buxton and Gurney, all of them champions of anti-slavery legislation, were personal friends of some of the members of the Court of Directors. However, the subject of Indian slavery was not broached in Parliament till 1830, when the Select Committee of the House of Lords heard the evidence of Indian Officials, such as Baber, Warden, Campbell and a host of others. This was the first step leading to the appointment of the Indian Law Commission of 1835.[1]

The second step was the Charter Act of 1832. It contained several directions for the guidance of the Indian Government; and some of them referred to slavery and suggested that the Governor-General in Council should take into consideration the means of mitigating the state of slavery and of ameliorating the condition of slaves, "as soon as such extinction shall be practicable and safe;" and "should prepare drafts of laws and regulations for the purposes aforesaid."[2]

The third step was a despatch from the Hon'ble the Court of Directors, dated December 10, 1834, which gave instructions as to the manner in which the intentions of the Legislature, as expressed in the Charter Act, should be carried into effect. At the same time the delicacy of the question was not lost sight of; and the Court, besides making other suggestions, added that "the law should be made as severe against injuries done to a slave as if they were done to any other person." This was the third and final step leading to the appointment of the Indian Law Commission of 1835.[3]

For less than a year after the Despatch of 1834, on June 15, 1835, the Bengal Law Commission, more generally known as the Indian Law Commission, was formed, with Macaulay at its head. It consisted of some of the ablest judicial officers selected from the Civil Service of each Presidency. Their duty was to devote their primary attention to the preparation of a Criminal Code for all parts of the British Indian Empire and for all classes of subjects irrespective of the distinction of caste or creed.

From this it appears that the Commission was not in the first instance appointed to study the question of slavery. But before a month had elapsed, as early as August, 1835, the Commission

1. Evidence before the Select Committee of the House of Lords, 1830.
2-3. Fortnightly Review, 1883.

had entered upon a study of slavery administration in India. In fact the Commission performed a two-fold task. It prepared the Criminal Code of 1837, and it drew up the anti-slavery Report of 1841. This report gave rise to Act V of 1843, which was in turn embodied in the Penal Code of 1862.

No. 2. THE FIRST REPORT OF 1839

SUMMARY: I. Proposing the Draft Act of 1839. II. Extending the Draft Act of 1839. III. Draft Act discussed. IV. References to the Bombay and Madras Governments.

SOURCES: PUBLISHED: Fortnightly Review, 1883; Parliamentary Papers, Judicial, 1828, Vol. IV.

UNPUBLISHED: Home Legislative, General Letter to Court, 1835; Home Department, Legislative Despatch from Court, 1837-38; Government of India, Legislative Proceedings, February, 1839; April-May 27, 1839; Law Proceedings, July 22-September 30, 1839; March 30-May 11, 1840; May 25-June 29, 1840.

I. PROPOSING THE DRAFT ACT OF 1839. One of the first results of the widespread activities of the Indian Law Commission of 1835 was to elaborate the Draft Act of 1839.

To begin with, the members of the Indian Law Commission made a memorable recommendation, which was destined to give a new orientation to the British attitude towards slavery. In this connection the following events are here noted in their chronological order. The Governor-General of India wrote to the Court of Directors: "The delicate question of slavery in India will shortly be referred to the consideration of the Law Commissioners. At present it is only necessary to communicate our cordial agreement in the just, enlightened and moderate views entertained by your Hon'ble Court upon the subject."[1] This information which was dated August 31, 1835, was forwarded by the Supreme Government in India to the Court of Directors in England. It was the reply to the home-despatch of September 10, 1834, wherein it was stated that it was high time for mitigating the state of slavery in India, and to bring about its complete extinction at the first safest moment.

From this it would appear that the attention of the Law Commission was as early as 1835 called to the subject of slavery. Two years later in 1837 the first draft of the famous Penal Code,

1. From the Governor-General of India in Council to the Hon'ble the Court of Directors, dated August 31, 1835, Home Legislative, General letter to Court, No. 3 of 1835, para 29, Imperial Record Department.

with which Macaulay's name will ever be associated, was published. Whilst drafting the Code it became apparent that the general existence of slavery rendered it of primary importance to decide how far the status of slavery in any of the parties should affect the criminality of any Act.[1] Moreover in 1838 the Law Commission found out from the enormous mass of correspondence they had received that a separate report on the subject of slavery was required. Thereupon the Law Commissioners suggested to the Government that some of their members should be detached for the purpose of local inquiry, which they considered necessary to enable them to pronounce with confidence on the time at which, and the means by which the abolition of slavery could be effected.

But the Government of India had never intended that the Law Commission, established in order to codify the Penal Law, should prepare an anti-slavery report as well. Accordingly they informed the Commissioners in a letter dated November 26, 1838, that "it was not the intention of the President in Council to direct them to institute such an inquiry into the state of slavery in India in the manner in which they had suggested."[3]

Meanwhile the anxiety of the Court of Directors increased, and in their letter of August 29, 1838, they gave orders that the attention of the Law Commissioners should be immediately recalled to this question and that the report on the means of carrying out the remedial measures to the fullest possible extent should be forwarded to them with as little delay as possible.[4] It was the persistent demands of the Court of Directors which triumphed over the vacillating policy of the Government of India. The latter gave in, and this enabled the Commission to make the following recommendation:

"No act falling under the definition of an offence should be exempted from punishment because it was committed by a master against his slave."[5] This recommendation was fully concurred in by the Court of Directors,[6] and it was destined to inflict the death-blow on slavery.

1. Fortnightly Review, p. 352.
2. *Ibid.* p. 351.
3. Fortnightly Review, 1883, H. B. E. Frere on Abolition of Slavery, p. 352.
4. From the Hon'ble the Court of Directors to the Governor-General of India in Council, dated August 29, 1838, Home Department, Legislative Despatch from Court, 1837-38, para 5, No. 14 of 1838, Imperial Record Department.
5. *Ibid.* No. 15 of 1838, *Cf.* Fortnightly Review, p. 352.
6. From the Hon'ble the Court of Directors to the Governor-General of India in Council, dated September 26, 1838, Home Department, Legislative Despatch from Court, No. 15 of 1838, Imperial Record Department.

No sooner was the recommendation published than the Government of India were up in arms against it. The Governor-General strongly asserted his belief that the recommendation was useless because its principle was already invariably acknowledged and everywhere acted upon in all the Courts of Justice in Bengal.[1] In all cases of criminal litigation the Courts of the North-Western Provinces had always placed master and slave on a footing of perfect equality. Therefore as far as the Bengal Presidency was concerned, it was thought proper to defer the immediate enactment of such a law.[2] The Governor-General was convinced that Government were mainly concerned with carrying out the wishes of the Home Government into complete effect. In his opinion the law as it actually existed in every part of British India was such as not to make the passing of a new law necessary. The existing law was fully in conformity with the wishes and directions of the Hon'ble the Court of Directors.[3]

This was what the Governor-General thought; but the Law Commission entirely disagreed with him. They wrote in their report of February 1, 1839 that a new law was absolutely requisite in order to carry out the intentions of the Home Government to their fullest extent. And their opinion rested on a more solid basis than that of the Governor-General, which was merely founded upon certain inquiries made by the Court of Sudder Dewanny Adawlut.

The first reason why the Law Commissioners were in favour of a new enactment was the lack of uniformity as regards the protection extended to slaves by legislative enactments in various parts of India. The law was in some parts of British India in conformity with the wishes of the Home Government, but in other parts it was not so, and in still other parts, it was such that no one could say with definite certainty whether it was or was not in conformity with the intentions of the Home Government. Moreover the interpretation of the law as it stood varied with the sentiments of the various judicial functionaries; and it may be presumed that with the change of the functionaries the law, as it depended upon the opinions of those functionaries, was also likely

1-3. From the Officiating Secretary to the Government of India with the Governor-General, dated December 18, 1838, quoted in the Report of the Law Commission, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

to change it course.[1] Nor were the Commissioners mistaken; for the uncertain state of law in British India may be easily gathered from the answers given by a number of Judicial functionaries.[2]

In Bengal, Mr. C. R. Martin, the then Officiating Judge of the 24 Pergunnahs, declared that, though according to Mahomedan Law the authority of the master over his slave was absolute, so that protection could not be extended in case of cruelty or hard usage, yet it was an acknowledged fact that there were cases in which the Court punished the master for not clothing and feeding his slave properly, for not allowing them to marry or for punishing them without cause.[3]

Mr. C. Hardinge, the Commissioner of the Circuit of the 12th Division stated: "Complaints between master and slave are of such occurrence, and the practice of Courts so different according to circumstances, that it is impossible to reply to this question satisfactorily. If a master without due provocation seriously maltreated his slave, he would probably be fined and admonished. If he moderately chastised him for impudence, disobedience or neglect of duty, he would be considered justified in so doing."[4]

In the Lower Provinces the judicial functionaries did not agree among themselves, but they concurred in upholding the right of correction by the master. However, nearly half of them made no distinction between the treatment of a slave and that of a free man. It may perhaps be proper to quote here the words of the Court of Nizamut Adawlut in answer to the inquiries of the Law Commission: "A master would not be punished for inflicting a slight correction on his legal slave, such as a teacher would be justified in inflicting on his scholar, or a father on his child."[5]

In the Upper Provinces the principle obtained that in criminal matters no distinction was to be made between master and slave. In spite of this, the Judicial functionaries were left free to decide what course they should pursue in such matters.[6]

As regards Madras and Bombay, it is hardly necessary to make mention here of these two Presidencies; for it is admitted on all hands that the laws of slavery prevailing in these extensive

1-6. Report of the Law Commission, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

provinces, far from being in conformity with the wishes and intentions of the Home Government were diametrically opposed to them.[1]

Besides this lack of uniformity as regards the protection extended to slaves in various parts of India, there was a bewildering confusion arising from the uncertain state of the law; and this was the second and perhaps the more significant reason why the Commissioners deemed a new law necessary to mitigate the state of slavery in India.

From the collection of statements made by various Judicial functionaries it was apparent that people were not supposed to be acquainted with the intricacies of the various laws regulating the system of slavery. What was worse, had they wished it, they could not have come to a clear knowledge of the state of the law as it actually existed. Slaves were not told which were their rights. They were advised to leave this matter to the judge's decision. In the words of the Officiating Magistrate of South Cuttack: "It does not signify whether the ill-treatment of the master or alleged cause of dissatisfaction on the part of the slave is substantial or not. We do not recognise slavery, you may go where you please; and if your master lays violent hands on you, he shall be punished."[2] This was surely a state of affairs calling for immediate redress.

Not only was the law unknown to the common people; but the available sources of information were also such as to mislead even a capable lawyer. The sources of information were the Hindu Law, the Mahomedan Law and the Regulations.

The answers given by the Mahomedan Muftis have already been dealt with elsewhere, and need not be repeated here. As regards the Mahomedan Law, they contained a medley of so called legal rules, oftener in conflict than in concord with each other. Moreover the Law Commissioners observed that the status of slavery could hardly be said to have any existence in the Bengal Presidency, because the only persons recognised as slaves were the infidels captured in war and their descendants. Hence the answers of the Muftis were very much in the nature of a blind alley in which clever lawyers amused themselves by playing at blind man's buff.

1. Report of the Law Commission, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.
2. First Report of the Indian Law Commission, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

As regards the Regulations of the Bengal Code, apparently they supplied no more reliable information than the Mahomedan Law. They provided that a master who murdered his slave could not shield himself under the technical objection derived from the principle of Kisas or Retaliation. Hence it follows that the Regulations fell back upon the Mahomedan Law,[1] the uncertainty of which has just been mentioned above.

Furthermore according to the Hindu Pundits, all litigation concerning slavery was to be adjudged by the Criminal Law, which meant by the Mahomedan Criminal Law, since it had superseded the Hindu Criminal Law. The Law Commissioners were, however, of a different opinion. They thought that slavery did not belong to the criminal branch of the then existing law, but to the law of person or status. The reason assigned for this interpretation was that, when the Mahomedan conquerors introduced their own criminal law and left to the Hindus their own law of person or of status, they left to them that exception of defence against criminal charges which arose out of the Hindu status of slavery. As an illustration of this doctrine they thought that a Mahomedan judge would hold a Hindu exempted from punishment for restraint upon the person of a woman who was his wife by Hindu Law, though he might have more than four wives by the Mahomedan Law of marriage.

This would mean that, according to the Commissioners, there was a Civil Hindu Law of slavery not superseded by Mahomedan Law. Mr. Mansel, the Magistrate of Agra, held it as his opinion that the Mahomedans did interfere to a certain extent with the Hindu status of slavery. In support of his view he cited the following passage from Ayeen Akbaree, where Emperor Akbar, giving instructions for the guidance of the police, says: "He must not allow private people to confine the person of any one, nor admit of people being sold as slaves."[2] Upon this the Commissioners commented: "Whatever may be Mr. Mansel's standpoint of view from the historical side, it need not necessarily be concluded that the British Government of India, in adopting the Mahomedan Criminal Law, adopted also the Mahomedan modifications of the Hindu Law of status."[3]

Moreover, the Commissioners made capital out of the interpretation of Sec. 15, Regulation IV of 1793. It is indeed noteworthy

1. First report of the Indian Law Commission, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

2. Galdwin's Ayeen Akbaree, Volume I, p. 302.

3. First Report of the Indian Law Commission, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

that by the construction put upon this section, the spirit of the rule contained in that section, for observing the Hindu and Mahomedan Laws in suits regarding succession, inheritance, marriage and caste and all religious usages and institutions was acknowledged to be applicable to cases of slavery, though not included in the letter of it.[1]

The Regulations are absolutely silent on this subject. But this silence of the Regulations was considered by some of the Judicial authorities specially in the North-Western Provinces as "involving a negation of the power in question."[2]

But the Commissioners did not interpret this silence as a condemnation of the applicability of Sec. 15, Regulation IV of 1793 to cases of slavery. The Regulations were not meant to be a complete code, and therefore such an inference from mere silence was altogether unwarranted. The Regulations were merely a supplement and corrective of Mahomedan and Hindu Law. Therefore it was very unsafe to infer that any provision of those two systems was repealed by the mere omission to notice it in the Regulations.[3]

By way of conclusion it may here be mentioned that the lack of legislative uniformity, the uncertain status of Law and the uselessness of the available sources of legal information made the Commissioners come to the conclusion that a new enactment of the Law of slavery was of imperative necessity. Nor is it possible to find fault with their verdict; for under the old system of legislation the people were being misled to an alarming degree. Such was the chaotic confusion of the then existing legal rules, customs and enactments that it was high time once for all clearly to define the relations between master and slave. This was moreover the avowed opinion of Amos, Cameron, Millet, Elliot and Young, the members of the Indian Law Commission, on the important point raised by the Hon'ble the Court of Directors whether an express enactment of law was necessary or not to mitigate the state of slavery in British India.

Accordingly, the Commissioners drew up the following Draft Act, which was submitted to the approval of the Supreme Government with their report of February 1, 1839.

"It is hereby declared and enacted that whoever assaults, imprisons or inflicts any bodily injury upon any person being a slave

1-3. First Report of the Indian Law Commission, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

under circumstances which would not have justified such assaulting, imprisoning or inflicting bodily hurt upon such person if such person had not been a slave, is liable to be punished by all Courts of criminal jurisdiction within the territories subject to the Government of the East India Company, as he would be liable to be punished by such Courts if such person had not been a slave."[1]

But in order to make the purpose of the Draft Act more apparent in its whole intent and purpose, the Council of India added to it the following few words :—

"Being a slave either by way of punishment or of compulsion, or in the prosecution of any purpose, or for any other cause, or under any other pretext whatsoever."[2]

II. EXTENDING THE DRAFT ACT OF 1839. According to the Draft Act bodily hurt inflicted on a slave was to be made a punishable offence. One of the members of the Law Commission, Mr. Cameron, submitted a separate minute in which he pleaded for the extension of the Draft Act. He wished also the practice of moderate correction to be included in the Act and to be held unlawful in future.

There was no difficulty as regards the meaning of the phrase "moderate correction." All understood by it such correction as a parent would inflict upon his child, and not the severe punishment which a West Indian master would visit upon his Negro slave. The question, therefore, to be discussed was whether the master should have the right of paternally chastising his slave.[3]

Mr. Cameron wanted this right to be taken away from him. He submitted that the right of inflicting punishment in general could only be justified on the plea of extorting productive labour from an unwilling slave. But the experience of West Indian slavery and English pauperism provide ample proof that productive labour cannot be extorted, unless the master has recourse to a form of punishment which amounts to cruel ill-usage such as English manners will not tolerate and was already proscribed by the Draft Act itself.[4]

1. First Report of the Indian Law Commission, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

2. Submitted by the Law Commission, with certain amendments made by the Council of India, Government of India, Legislative Proceedings April 1, to May 27, 1839, Imperial Record Department.

3-4. Separate Minute of C. H. Cameron, dated February 1, 1839, submitted to the Supreme Government by the Law Commissioners with their Report of the same date, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

Hence the right of moderate correction served no useful purpose and was of no substantial value to the master. By way of proof Mr. Cameron draws the following touching picture of Indian slavery which we here reproduce though it is not true to fact. (See Part I, Chap. I.) "Indian slavery is a system in which the ties of the master and the slave were held together by mere force of habit. No doubt the ties were loose; yet they were sufficient to produce the desired results. In India, the reason for existence of such a relationship was that the upper classes required perpetual and heriditary service of their domestics in order to preserve the privacy which belonged to their household. On the other hand the lower classes were glad to bind themselves and their descendants to such perpetual service in order to protect themselves in old age, and in periods of scarcity." Therefore, according to Cameron a poor family served a rich one from generation to generation; in return the rich family supported the poor in old age and sickness as well as in health and vigour and in periods when the poor family could not maintain itself. So that it would seem that in India slavery was in a great measure voluntary on the part of the slave.[1]

As has already been pointed out the picture of Indian slavery seems to be a travesty of the reality. But granting the truth of the premises, the conclusion drawn by Mr. Cameron logically follows. In his own words: "I feel little doubt that slavery in Bengal has subsisted for ages without any such power being vested in the master as would enable him to extort productive labour; and I believe that the power of parental correction, which he possesses, when it has not already been taken away from him by Judicial direction, may be taken away from him without any real injury to his interests." He adds these significant words which suggest that he himself has his doubts about the mild form of slavery which he supposes to prevail in India. "I do not mean to say that it (moderate correction) may not be convenient to the master in the government of his household, but I think that a great liability of such a power to run into excess when it is exercised against adults more than counterbalances any good to the master, which can result from it when confined within its legal limits."[2]

From this it may be concluded that Cameron ultimately based his reasons for the suppression of the master's right of moderate

1-2. Separate Minute of C. H. Cameron, dated February 1, 1839, submitted to the Supreme Government by the Law Commissioners with their Report of the same date, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

correction not on the mild form of Indian slavery, but on the danger that such a right was always liable to be grossly abused.

III. DRAFT ACT DISCUSSED. The Draft Act had been drawn up. The wishes of the Home Government had been emphatically asserted. But when the time came for carrying out the intentions of the Home Government by passing the Draft Act, the question of expediency was uppermost in the minds of the Law Commissioners. They asked themselves whether there was any reason to suppose that the proposed law would excite dissatisfaction in any such degree so as to preclude its enactment.

To ascertain this, Mr. Cameron thought it best to take into consideration the acquiescence of the public in the changes already introduced with regard to slavery, prior to the proposed enactment.

The first important change regarding slavery took place in 1811, and was meant to affect—at least in theory—the whole of India. The importation of slaves by land was prohibited by Regulation X of 1811. There were conflicting views whether the prohibition applied to slaves meant to be sold or otherwise disposed of. In 1820 the Court of Directors held that the prohibition was applicable generally, but contrary opinions were held by different authorities both prior to and after 1820. Again Regulation IV of 1832 prohibited the removal of slaves for the purpose of traffic from one province to another. These regulations were first enacted in Bengal and afterwards in Bombay and Madras. They were apparently the only laws which regulated the rights of master and slave;[1] and there had been no disturbances.

Besides this, various local authorities at some time or other passed of their own accord measures based on the prohibition of 1811 and 1832; but these measures effected neither a permanent nor a widespread improvement, and may therefore be disregarded as of little or no importance. However among these local changes there was one which deserves more than a passing notice. Sir Charles T. Metcalfe succeeded in practically abolishing slavery in the Delhi territory. His successful achievement carried along with it an important lesson; for there could be no possible reason assignable why a venture that proved feasible in Delhi was to be looked upon as unfeasible in the rest of India. In Delhi people acquiesced in the change; therefore it was senseless to imagine that people would oppose the change in the rest of India.

1. Separate Minute submitted by Mr. C. H. Cameron, dated February 1, 1839, to the Supreme Government with their Report of the same date, Government of India, Legislative Proceedings, February 1839, Imperial Record Department.

Another important change, which had been introduced without causing any public disturbance, had been effected in Delhi. In 1812 Sir Charles T. Metcalfe issued a Proclamation at Delhi which prohibited absolutely the sale of slaves. The Government of India doubted the expediency of this Proclamation on the ground that the law relating to slavery in the Delhi territory would be entirely different from what it was in the rest of British India, and Government expected dissatisfaction amongst the people of that territory. But a letter from Sir Charles, dated January 3, 1813, reveals that such was not the case. "I do not find that the prohibition of the sale of slaves has occasioned any surprise at this place. It is considered to be merely extensive to this territory of the orders promulgated in other parts of the British Dominions; and from a general misunderstanding of the orders of the Government issued elsewhere on this subject it is not known that greater restrictions are in force in this district at the present moment than in any other part of the country. It is desirable in my humble opinion that this delusion should not be done away with here or elsewhere by a formal sanction for the sale of slaves."[1]

Sir Charles Metcalfe also supplied the Government with the following piece of interesting information. If a prohibition of the traffic in slaves excited a certain degree of dissatisfaction amongst the people, it was amongst the worst orders of the community, the professed dealers in human flesh, whose livelihood would be affected by the abolition of such a traffic. Besides the slave dealers, the detestable class of brothel-keepers, who suffered most by these measures, showed also signs of dissatisfaction; but the respectable classes, though put to inconvenience, acknowledged that it was an abuse that human beings should be disposed as though they were no better than brute animals.[2]

Consequently Sir Charles issued a Proclamation of which the 2nd Article provided that the sale and purchase of slaves in the Delhi territory was strictly prohibited; and if any person bought or sold slaves or indulged in that traffic, he would be punished by the Court of Criminal judicature.[3]

The final result was as unexpected as significant; for it succeeded in abolishing not only the sale of slaves but slavery itself in Delhi. It was a permanent change; and 27 years later the Law Commis-

1. *East India Parliamentary Papers, Jundicial, 1828, Vol. IV, p. 101.*
2-3. Separate Minute of C. H. Cameron, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

sioners could testify that slavery did not exist in Delhi, though the people of the district had lost all recollection of the decree by which its abolition had been brought about.[1]

So great was the change effected in Delhi that its Commissioner in his answers to the questions of the Law Commissioners testified that since the promulgation of the law prohibiting slavery in that territory not a single male slave applied for emancipation. At the same time he admitted that there were still many applicants from the unfortunate class of female slaves who were purchased for the avowed purpose of prostitution.[2]

The Judge of Delhi commenting on the same subject remarked that since the issue of the Proclamation of 1811 he had good reason to believe that the Courts were guided in their decisions by Metcalfe's regulations. As far as his knowledge went, all distinctions between master and slave were abolished, and no right other than that of service was recognised by the Courts of Justice.[3]

The Officiating Session Judge of Cawnpore was of the same opinion. He stated that from six years experience (1833–39) in the Delhi territory "he had formed an opinion that for a long time the name of slavery has existed, its reality has been long extinct."[4] This had surprised him all the more because, as a Register and Civil Judge in South Behar for 8 years prior to his appointment at Delhi, he had daily decided cases of purchase of whole families of praedial slaves. The usage in Delhi was, that, whenever a person petitioned that another had claimed him or her as a slave, an *azadnamah* or certificate was at once given to the effect that they were free. This usage was already followed by Mr. Seaton who was the immediate predecessor of Sir Charles Metcalfe. Sir Charles himself fully approved of the existing custom, but he went a step further. The granting of *azadnamahs* or certificates seemed to him to amount in some degree to an acknowledgment of slavery in one form or another. Therefore, the method he adopted when similar applications were made, was to act as though slavery did not exist at all; and therefore if a slave was molested, the offending party was liable to be punished.[5]

Delhi was not the only place where the local authorities were successful in enforcing anti-slavery enanctment. In the district of Burdwan the universal impression that prevailed amongst the

1-5. Separate Minute of C. H. Cameron, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

natives was that the existing laws prohibited the sale or purchase of slaves though in reality this was not the case.[1]

In Hooghly, Bugrah and other places the general idea predominant was that slavery had long been abolished under the new rulers (the British Government); and even in Calcutta where all kinds of slaves were sold in the public market, it was generally held that the consent of the slave was absolutely essential. This custom arose out of a Proclamation issued by Mr. Robert Kerr, the Commissioner of Cuttack. The effect of such a Proclamation was that slavery was checked to some extent.[2]

All these instances of popular acquiescence in anti-slave legislation in Delhi, Behar, Hoogly, Bugrah and other places led to the conclusion that slavery was advocated by the worst sort of society only, that influential and respectable elements of the community were ready to obey the commands of the ruling power by protecting the slaves from oppression, and that therefore the fears of the Supreme Government not to interfere in religious and social practices of the people of Hindustan were rather illusionary.

However as in most cases, so in the present case, the lesson of past experience was not taken into account by the experts, who were entrusted with the task of drawing up anti-slavery legislation. Several members of the Law Commission and of the Governor-General in Council did not hesitate to assert that the Draft Act and the extension of it proposed by Cameron should not be passed on the plea of inexpediency.

In the first place Mr. A. Amos strongly objected to the right of moderate correction being suppressed by law. This abolition would leave the master helpless and encourage the slave to be recklessly lazy. In his own words: "if a charge of an assault not amounting even to touching the person, still more if a charge of beating, however slight, be preferred by a slave against his master, the master will not in future be permitted to justify himself by a plea of moderate correction, however gross the misconduct, however wilful the disobedience, however reckless the negligence of his slave may have been.....The proposed act leaves the master of the slave without means, either by his own personal corrections or through the intervention of a Magistrate, of compelling the services of his slave."[3] Hence he thought it expedient that a pro-

1-2. Separate Minute of C. H. Cameron, dated February 1, 1839, Government of India, Legislative Proceedings, February, 1839, Imperial Record Department.

3. Minute by A. Amos, dated April 1, 1839, Government of India, Legislative Proceedings, April 1 to May 27, 1839, Imperial Record Department.

viso should be added to the Act to the effect that a slave may be punished under the same circumstances and in the same manner as a menial servant.

Mr. Amos also pointed out that the passing of the Draft Act would serve no useful purpose as far as the amelioration of the condition of slaves was concerned. He was of opinion—but we are firmly convinced that it was an opinion based on false information or prejudiced views (see Chapter I)—that both law and practice were opposed to immediate correction by a master of his slave and that Magistrates decided doubtful cases in favour of a slave. Moreover, he doubted whether cases of moderate correction for misconduct, if made penal, would stand the slightest chance of being brought before a Magistrate, since there would be a great difficulty in establishing them.[1]

Finally Mr. Amos objected to the immediate passing of the Draft Act, on the ground of the many difficulties that would arise. The then existing state of India made him fear that objections might be at any time raised against it. Such an opposition might ultimately result in jeopardising even moderate measures of practical relief in favour of the slaves in India. He also called attention to the fact that by Criminal Law the master's only legal means of demanding work from his slave was taken away, the British Government was in justice bound to compensate his loss. He advised the postponement of the Draft Act on the plea that the Commissioners had not sufficient data as regards the subject of slavery in Madras. Hence he deemed it inexpedient to pass an Act affecting the whole of India.[2] We cannot help wondering whether Mr. Amos was not aware of Dr. Buchanan's masterly inquiry into the state of slavery in Madras published in his Book "*Journey through Mysore, Canara and Malabar*" (1807). There were many other documents, published and unpublished, which might have given Mr. Amos a perfect knowledge of slavery in Madras.

He admitted that the orders of the Court of Directors were most peremptory. No discretion was left in the hands of the British Indian Officials. And therefore, in spite of the many objectionable features of the proposed Act and the incalculable mischief it might create in indiscrete hands, Mr. Amos (and Mr. Robertson concurred with him) was of opinion that the

1839, respectively.

Government c
Department.

Imperial Re

Act ought to be promulgated. The only exception which he made was that, if the Governor-General and the members of the Council together with the Government of Madras and Bombay were unanimously of opinion that the publication of the Act should be postponed, then alone there would be reasonable grounds for delaying the execution of the orders from the Home Authorities.[1]

After Mr. Amos, Mr. Bird objected to the immediate enactment of the Act on the ground that the Draft Act submitted by the Law Commissioners was in its scope wider in effect than the intentions of the Court of Directors in this respect that it deprived the master of the power of moderate correction which was legally vested in him and which he could inflict on the rest of his family. He was convinced that such were not the instructions of the Court of Directors. Hence if the Law Commission contemplated that an enactment could not be framed without releasing the slave from the necessary control for the preservation of good order and sobriety of conduct, it was advisable to abstain from legislating on the subject before referring the matter again to the Home authorities.[2]

In the third place, Lord Auckland, the Governor-General of India, did not approve of the law in the form in which it was proposed; for it mainly attempted to define and regulate the conduct of the masters towards their slaves, without doing away with slavery itself.

The reason why he wished that such an enactment should not be passed was that all such regulations implied a recognition of slavery by the British Government. "If we in this manner recognise the state of slavery," remarks Lord Auckland, "we shall incur a great danger of directly defeating our own intentions, and of becoming parties to the maintenance of that state by being led into different measures for the regulation of the rights and obligations incident to it."

He was against the passing of an enactment in conformity with the wishes of the Home Government. He merely wished that there should be no ostensible recognition of slavery by the British Government. Circumstances proved that relations between

1. Minute by A. Amos and T. C, Robertson, dated April 1-5, 1839, respectively, Government of India, Legislative Proceedings, April 1 to May 27, 1839, Imperial Record Department.

2. Minute by W. W. Bird, dated April 5, 1839, Government of India, Legislative Proceedings, April 1 to May 27, 1839, Imperial Record Department.

master and slave existed by mere force of habit, by fixed national usage and opinion, and by sure means of good, moderate and even indulgent and favourable treatment. Therefore, under the circumstances, he thought it advisable not to legislate in the matter because in course of time these confirmed rights were likely to lose all their force.

Lord Auckland's opposition was not like that of others inspired by fear that the enactment would create serious dissatisfaction and inconvenience. On the contrary, he was prepared to sanction the enactment, if in the opinion of others it was likely to produce any good, provided that the law could be passed without doing any injustice to masters and in the more general form suggested by the Hon'ble Court.[1]

IV. REFERENCES TO THE BOMBAY AND MADRAS GOVERNMENTS. From what has been said it may be inferred that Amos, Bird, and Auckland were determined to prevent either the passing of the Draft Act of 1839, or at least its proposed extension. Mr. Amos had already suggested a means by which this procrastination movement might be successfully carried out. In speaking against the immediate passing of the Draft Act Mr. Amos had plainly stated that if the Governor-General and the members of the Council together with the Governments of Madras and Bombay were unanimously of opinion that the publication of the Act should be postponed, then the authorities in India would be justified in delaying to comply with the orders of the Home Authorities. Perhaps it was this utterance of Mr. Amos, in which Mr. Robertson concurred, that was partly responsible for the reference of the Draft Act to the Madras and the Bombay Governments.

Accordingly on May 27, 1839, letters were addressed by the Supreme Government to the Secretaries of the two Governments in order to gain information on the following points: 1. Whether it was expedient or not to pass any special law to carry out the intentions of the Home Government into complete effect ? 2. If such a law as the one proposed would be passed what compensation should be allowed to the owners of the slaves ? 3. Whether it should be in a more general form ?[2]

1. Minute by Lord Auckland, the Governor-General of India, dated May 6, 1839, Government of India, Legislative Proceedings, April 1 to May 27, 1839, Imperial Record Department.

2. From J. P. Grant, Officiating Secretary to the Government of India, to the Chief Secretary to the Government of Fort St. George and Bombay, dated May 27, 1839, Government of India, Legislative Proceedings, April 1 to May 27, 1839, Imperial Record Department.

The Bombay Government as usual did not express any personal opinion but forwarded without adding any comment the views of the Sudder Court of that Presidency. The Court gave it as their opinion that there was no necessity to pass any special law. Further they remarked, that such a special law would not cause injustice or inconvenience, nor call for compensation. They observed that the power of master to correct a slave by inflicting immoderate punishment was not recognised by the Bombay Code and by the general practices of the Magistrates, and that the infliction of moderate correction was likewise not admitted.[1]

However, the Supreme Government doubted the accuracy of the information supplied by Sudder Court of Bombay regarding the unlawfulness of immoderate and moderate punishment in Bombay. Accordingly the Supreme Government called for further information in a letter dated September 2, 1839.

For the completion of the report on slavery, as well as with respect to the Draft Act, the Supreme Government deemed it desirable to enquire of the Advocate-General of Bombay whether in any proceeding for false imprisonment the Bombay Regulation would amount to a legal justification,—the person imprisoned being a slave and not under any specific contract of service ? They also addressed the following questions to the Judges of the Sudder Foujdarry Adawlut at Bombay. 1. In how many cases the Regulation had been put in force against the slaves ? 2. Whether under the Bombay Regulation a master, punishing a servant, who was not a slave, either young or old by moderate correction for gross negligence or misconduct, would be punishable as for an assault ? 3. In how many cases the masters had been punished by Magistrates for moderate correction of their slaves ?[2]

The Bombay Government were more than slow to reply, and on April 27, 1840, the Supreme Government had to remind them that they were still waiting for a reply.[3] The reply finally came in May, 1840, when the Governor-in-Council without expressing

1. From L. R. Reid, Acting Chief Secretary to Government, to the Officiating Secretary to the Government of India, in the Legislative Department, dated August 5, 1839; Minute by the Hon'ble Mr. Amos, August 27, 1839, Law Proceedings, July 22 to Septemper 30, 1839, Imperial Record Department.

2. From J. P. Grant, Officiating Secretary to the Government of India, to L. R. Reid, Esq., Acting Chief Secretary to the Government of Bombay, dated September 2, 1839, Law Proceedings, July 22, to September 30, 1839, Imperial Record Department.

3. From F. J. Halliday, Secretary to the Government of India, to L. R. Reid, Chief Secretary to the Government of Bombay, dated April 27, 1839, Law Proceedings, March 30 to May 11, 1840, Imperial Record Department.

their own opinion merely submitted the opinions of the Acting Advocate-General and the Judges of the Sudder Foujdarry Adawlut on the points referred to in Mr. Secretary Grant's letter of September 2, 1839.

The Advocate-General's answer to the second inquiry was rather curt. He stated that there was no regulation or law prevailing in the Bombay Presidency which authorised slavery in any form. Except in certain cases, the English Law prevailed all over the Island. In reference to an action for criminal prosecution for false imprisonment, it would be no defence to aver that the plaintiff or the prosecutor was the slave of the defendant.[1]

The Judges of the Sudder Foujdarry Adawlut stated that there were no cases on record of the Regulation against slaves having been put in force in the Bombay Presidency, except in the district of Ratnagiri where instances occurred of female slaves having escaped from their masters and being restored by the Government.[2]

They declared that a master, inflicting moderate correction for gross negligence or misconduct on a servant, not his slave, would be punishable as for an assault, in point of law; but in point of fact the law, as in other cases, was seldom appealed to; and when it was, its penal exercise was entirely governed by the character of each individual case.[3]

They finally affirmed that the only case in which a master was punished for ill-treating his slave happened in the Surat Zillah in 1835, when the offender was punished with a fine of 5 Rs. and, in default of such a fine, with five days simple imprisonment for putting his slave in stocks.[4]

As regards Madras, both the Government and the Sudder Court concurred with the Supreme Government in doubting the expediency of the proposed law. They feared that its advantages would be outweighed by serious drawbacks which were bound to

1. From William Howard, Acting Advocate-General, to the Acting Chief Secretary to Government, dated October 5, 1839, Law Proceedings, May 25 to June 29, 1840, Imperial Record Department.

2-3. From G. Grant, Register to the Bombay Sudder Foujdarry Adawlut, to W. R. Morris, Secretary to Government, in the Judicial Department, dated May 5, 1840, Law Proceedings, May 25 to June 29, 1840, Imperial Record Department.

4. From G. Grant, Register to the Bombay Sudder Foujdarry Adawlut, to W. R. Morris, Secretary to Government, in the Judicial Department, dated May 5, 1840, Law Proceedings, May 25 to June 29, 1840, Imperial Record Department.

follow in its wake. They believed that the question of compensation could not simply be shelved, so that they were in favour of postponing the passing of the Act.[1]

Such were the answers from Bombay and Madras. The documents do not inform us to what extent these answers influenced either the Supreme Government or the members of the Law Commission. All that can be said is that they were probably partly instrumental in bringing about the decision that the First Report of 1839 was unsatisfactory, and that a new Report should be drawn up.

No. 3. THE ANTI-SLAVERY REPORT OF 1841

SUMMARY: I. Its preparation. II. Its reception in England.

SOURCES: UNPUBLISHED: Law Proceedings, March 30–May 11, 1840; August 24–October 12, 1840; Home Department, Legislative Despatch from Court, 1840-41.

I. ITS PREPARATION. The Government of India had succeeded in defeating the projects of the Law Commissioners as embodied in the proposed Draft Act of 1839. But unknowingly they overreached themselves; for their policy of obstruction was chiefly instrumental in bringing about the anti-slavery Report of 1841. The Law Commission had been appointed in 1835. From the very beginning the question of slavery had engrossed their attention, and from 1838 they had decided on drawing up a separate Report on anti-slavery legislation. But after the drawing up of the Draft Act of 1839, their work had practically come to a standstill. Accordingly the Hon'ble the Court of Directors, anxious to see their wishes complied with, sent to the Supreme Government a despatch dated July 29, 1840, reminding them that "Parliament and the public are becoming impatient at the delay."[2] Thus it came about that in September, 1840, the Governor-General of India in Council pressed the Indian Law Commissioners to devote their entire attention to the drawing up of a new Report at the earliest possible opportunity.[3] The Commissioners had plenty of material on hand, and they forthwith started the work of printing the anti-slavery Report of 1841. The entire Report, it was computed, would run to nearly

1. From T. H. Davidson, Acting Register to the Madras Foujdarry Adawlut, to H. Chamier, Chief Secretary to the Government of Fort St. George, dated July 17, 1839: Minute by the Hon'ble A. Amos, dated August 27, 1839, Law Proceedings, July 22 to September 30, 1839, Imperial Record Department.

2-3. From F. J. Halliday, Junior Secretary to the Government of India, to the Indian Law Commissioners, dated September 28, 1840, Law Proceedings August 24 to October 12, 1840, Imperial Record Department.

1850 pages of printed matter. The task was entrusted to the Military Orphan Press, which found it impossible to cope with the work within the requisite time.[1] For the Report which the Law Commissioners submitted to the Right Hon'ble the Governor-General of India in Council included: 1. A review of the evils which resulted from slavery in India, based upon the evidence taken by the Law Commission and the official documents to which they had had access, with suggestions of remedial measures. 2. A digest of such evidence and documents applicable severally to the provisions dependent on the three Presidencies. 3. An appendix containing evidence taken, and official documents collected by the Law Commission.[2]

Meanwhile the Court of Directors, who probably did not realise the magnitude of the task, continued to urge the Supreme Government to expedite the drawing up of the Report. It is true that by November, 1840, the Law Commission had finished its work, and that some portion of the Report was already published. The Court of Directors, who were most anxious to receive what had already been published, were sorely disappointed when no copy of this was forwarded with the Governor-General in Council's despatch of November 16, 1840.[3] Accordingly they informed the Governor-General in Council that this should be forwarded to them by December 1840. In case this was impossible, they desired that three copies of the Report should be forwarded to them immediately after the receipt of their letter of March 3, 1841, so that the same might be laid before the two Houses of Parliament.[4] It was not till February 8, 1841, that two copies of the full Report together with an appendix were forwarded to the Hon'ble the Court of Directors.[5]

II. ITS RECEPTION IN ENGLAND. Whilst the Court of Directors were studying the Report, they received a letter from

1. From T. H. Maddock, Secretary to the Government of India, to J. C. C. Sutherland, Secretary to the Indian Law Commission, dated April 27, 1840, Law Proceedings, March 30 to May 11, 1840, Imperial Record Department.

2. From J. C. C. Sutherland, Secretary to the Indian Law Commission, to T. H. Maddock, Secretary to the Government of India, in the Legislative Department, dated April 4, 1840, Law Proceedings, March 30 to May 11, 1840, Imperial Record Department.

3-4. From the Hon'ble the Court of Directors to the Governor-General of India in Council, dated March 3, 1841, Home Department, Legislative Despatch from Court, 1840-41, Imperial Record Department.

5. From the Hon'ble the Court of Directors to the Governor-General of India in Council, dated October 13, 1841, Home Department, Legislative Despatch from Court, 1840-41, Imperial Record Department.

the Governor-General in Council, dated May 10, 1841, and forwarding a copy of a Minute by the Governor-General on the Report. At the same time the Governor-General requested them to consider the subject as still under discussion by the Supreme Government in India, and he promised them that the sentiments of the remaining members of the Council would be communicated to them with the least possible delay.[1]

Thereupon the Court of Directors expressed their cordial approbation of the candid manner in which the Governor-General had expressed his sentiments and of the laborious attention he had devoted to the question. They decided to defer passing a final judgment on the Report till the other members of the Council had forwarded a statement of their own personal views.[2]

Meanwhile, the Report with the annexed appendix was laid before the Houses of Parliament in April 1841. It naturally excited a widespread interest in the public mind, and therefore the Court of Directors impressed upon the Supreme Government of India the necessity of strictly following the course of procedure prescribed by the British Parliament in the enactment of anti-slavery legislation.[3]

In Acts 3rd and 4th, Bill 4, C. 85, Sec. 88, Parliament had distinctly indicated that legislation upon the subject of slavery in British India should originate with the Governor-General in Council. Parliament had also vested the Supreme Government in India with extensive powers to carry out anti-slave legislation. Hence the Court of Directors were anxious that the Supreme Government in India should leave no means untried to bring their work to a successful close.

If they did not make use of these powers to mitigate the state of slavery, ameliorate the condition of slaves, and finally extinguish slavery itself throughout the British territories in India, then "we cannot conceal from you our apprehension," wrote the Court of Directors in their letter of October 13, 1841, "that any delay in complying with the intention of Parliament and the people of this country, might lead to some act of hurried and imperfect legislation, which, (if) adopted under feelings of excitement and without the local knowledge and information you possess, might have consequences injurious to the public peace and tending to defeat the benevolent designs of its promoters."[4]

1-4. From the Hon'ble the Court of Directors to the Governor-General of India in Council, dated October 13, 1841, Home Department, Legislative Despatch from Court, 1840-41, Imperial Record Department.

No. 4. A STUDY OF THE REPORT

SUMMARY: I. Recommendations of the Law Commissioners. II. Recommendations commented upon. III. Recommendations discussed.

SOURCES: PUBLISHED: Indian Law Commission's Report, 1839-41; Appendix to the Indian Law Commission's Report.
UNPUBLISHED: Law Proceedings; August 2–September 20, 1841.

I. RECOMMENDATIONS OF THE LAW COMMISSIONERS. It does not seem necessary to give a detailed account of the Report. To do so would mean useless repetition of what has already been said before. Thus for example, the Report deals with the extension of slavery in the various Presidencies; it investigates the evils of slavery; it records the opinions of various officials, such as Collectors and Magistrates, as regards the administration of slavery in India in general, and in particular districts. But all these details have already been touched upon in the preceding pages of this work. In fact giving a detailed account of the Report would practically mean re-writing word for word what has been said in the preceding chapters of this book. Hence the omission of a detailed account can in no way be regarded as a desideratum impairing the historical value of this study of anti-slavery legislation. Moreover any lack of completeness will be made good by an account of the recommendations and the observations of the Law Commission. Both recommendations and observations form the most important part of the Report; they contain the practical measures which in the opinion of the Commissioners would bring about the end of Indian slavery.

Of the thirty-three recommendations made by the Law Commissioners the first ten refer to free persons in relation to slavery.

No. 1. It would be unlawful for any free person to become a slave by any means whatever.

No. 2. It would be lawful for any person of full age to contract to serve another for life or for any number of years.

No. 3. It would be lawful for the parents or guardians of minors to apprentice them till majority or for any shorter period.

No. 4. All contracts under recommendations 2 and 3 would become void upon the ill-treatment or prostitution of the servant or apprentice, and would be void *ab initio* if made with a view to prostitution.

No. 5. All contracts under recommendations 2 and 3 should be registered within a fixed time by some public officer to be designated by the Executive Government, who would exercise his discretion in granting or refusing registration for a sufficient cause to be assigned, and that every such contract should be declared void if not registered within the time fixed.

No. 6. Any person who would pretend to apprentice or sell any minor, of whom such person was not the parent or guardian, would be punished by fine not exceeding.....or by imprisonment with or without hard labour for a term not exceeding ..... or by both.

No. 7. Any person who would purchase or receive as an apprentice any minor from any person whom he had not good reason to believe to be the parent or guardian of such minor would be punishable by fine not exceeding.....or by imprisonment, with or without hard labour, for a term not exceeding .....or by both.

No. 8. Any person having in his possession one or more minors with the intention of selling or apprenticing them, such person not being the parent or guardian thereof, would be punishable by fine not exceeding..... or by imprisonment with or without hard labour for a term not exceeding.....or by both.

No. 9. Any party to any contract under recommendations 2 and 3 omitting to apply for the registration of such contract within the time fixed would be punishable by fine not exceeding .....or by imprisonment with or without hard labour for a term not exceeding.....or by both.

No. 10. No rights arising out of any contract under Recommendations 2 and 3, shall be enforced by a Magistrate, and no wrongs which were violations of such rights, except such wrongs as were specified in the 23rd Chapter of the Penal Code, would be punished by a magistrate.

Then follow 17 recommendations directly referring to slaves:

No. 11. It should be unlawful for any person to acquire any slave or to hire the services of any slave from his master except persons who were the issues of Hindu and Mahomedan fathers and mothers.

No. 12. Any act which would be an assault if done to a free man would be an assault and punishable as such if done to a slave by his mother or by any other person.

No. 13. No sale or gift of a slave nor any transfer of his services for a limited time, except where the land in the cultivation of which the slave was employed was sold given or transferred for a limited time, would be valid, unless it was made in writing and authenticated by some public officer to be designated by the Executive Government and unless it was made with the consent of the slave if adult, or of his parent or natural guardian if a minor.

No. 14. No slave should be sold by public authority in execution of a decree of Court or for the realisation of arrears of revenue or rent.

No. 15. No sale or gift or transfer of services for a limited time of any female slave for the purpose of prostitution would be valid.

No. 16. Any slave would be entitled to emancipation upon the neglect refusal or inability of his master to provide him with customary maintenance.

No. 17. Any slave who had been treated with cruelty by his master would be entitled to emancipation.

No. 18. Any female slave who had become a common prostitute through the influence of her master would be entitled to emancipation.

No. 19. Any slave would be entitled to emancipation if a reasonable price was tendered to his master.

No. 20. Whenever any slave was entitled to emancipation the wife or the husband and the minor children of such slave should also be entitled to emancipation provided they were slaves of the same master.

No. 21. Any person claiming emancipation from slavery should be entitled to enforce his claim either in a Civil or Criminal Court.

No. 22. Any person claiming emancipation from slavery or claiming to be a freeman should be entitled to the privileges of a pauper in a Civil Court.

No. 23. Every decree by which slavery of any person was affirmed would be appealable to the Sudder Dewanny Adawlut.

No. 24. Any person who was found exporting a slave by land from the British territories into those of any foreign power against the will of the slave or removed a slave against his will

with a view to such exportation would be punishable by a fine not exceeding.....or by imprisonment with or without hard labour for a period not exceeding.....or by both.

No. 25. Any person selling a minor slave without the consent of his parent or natural guardian or having in his possession one or more minor slaves with the intention of selling them would be punishable by a fine not exceeding..... or by imprisonment with or without hard labour for a period not exceeding.....or by both.

No. 26. Any person who would remove from the British territories any slave who might have taken refuge therein or any slave who might have been brought into those territories and who was unwilling to return, would be punishable by fine not exceeding ..... but would be entitled to have the fine remitted upon bringing such slave into the British territories.

No. 27. No rights arising out of slavery should be enforced by the Magistrate and that no wrongs which were violations of such rights, except such wrongs as were analogus to those specified in the 23rd Chapter of the Penal Code, would be punishable by a Magistrate, except by an emancipation under recommendation 16.

With the adoption of the above recommendations, it was suggested by the Law Commissioners that in future no bondage should be considered as lawful, except such as was recommended by the second suggestion, and those connected with it. The following four suggestions were rendered necessary by the nature of the actually existing bondage.[1]

There are also four recommendations referring to bondsmen.

No. 28. No rights to the services of any bondsman should be transferred without his consent.

No. 29. No rights to the services of any child or other descendant or of the wife of any bondsman would accrue upon the death of any bondsman to the person entitled to his services notwithstanding any agreement to the contrary, express or implied, between the bondsmen and the person entitled.

No. 30. All contracts of bondage would be void upon the ill-treatment of the bondsman or upon the ill-treatment or prostitution of the bondswoman.

1. Indian Law Commission's Report, 1839-41, pp. 365-68.

No. 31. No rights arising out of any contracts of bondage would be enforced by a magistrate, and that no wrongs which were violations of such rights, except such wrongs as were specified in the 3rd Chapter of the Penal Code, would be punished by a Magistrate.[1]

Finally the last two recommendations refer to Act V, Geo. IV, C. 113.

No. 32. The Government of India should request the Home Authorities to cause Commissions of Vice-Admiralty to be sent to all places within the limits of the Company's Charter where there was a Court of Admiralty and where no Vice-Admiralty existed.

No. 33. The Government of India should request the Home Authorities to apply to Parliament for an Act declaring and enacting or simply enacting that the Governments of Madras and Bombay and of the Straits should exercise the same powers as by that statute were to be exercised by Her Majesty's Officers both Civil and Military.[2]

II. RECOMMENDATIONS COMMENTED UPON. The recommendations were in the first instance commented upon by the Law Commissioners themselves. Nor was their comment out of place. For these thirty-three recommendations were so concise that they were likely to be differently interpreted by different people. It was therefore of the greatest moment that the members of the Commission who had framed these recommendations should give their personal opinion on their bearing.

As to the comment of the Law Commissioners it may be said that on the whole the Commissioners approved of the Report. However, this does not mean that they agreed amongst themselves on every particular detail. As a matter of fact the Law Commissioners were divided into two parties. Of the five members of the Commission, the minority (Messrs. Cameron and Millet) remarked upon the evils of Indian slavery in the light of West Indian slavery; whilst the majority (Messrs. Amos, Elliot and Borradaille) merely directed their attention towards the immediate evils of Indian slavery. This diversity of opinions led to different comments on the recommendations.[3]

The majority of the Commissioners observed that, looking to the different classes of slaves in India, there was not a general

1. Indian Law Commission's Report, 1839-41, p. 368.
2. *Ibid.* pp. 368-69.
3. *Ibid.* p. 371.

desire for freedom. It was their belief that, comparing the advantages of slavery with its evils, few slaves under ordinary circumstances would voluntarily choose to abandon the services of their masters and emancipate themselves.[1]

They agreed with the minority in thinking that the greatness of the evils incident to slavery in India arose out of illegal acts perpetrated under colour of slavery and neither warranted by law nor by general custom. They felt convinced that it would be a wiser and a safer policy to direct their immediate attention to the removal of the abuses of slavery rather than to its sudden and abrupt abolition.[2]

However in the proposal of the remedies for checking the abuses of slavery the majority of the Commissioners were unable to concur with their dissenting colleagues. The main point of disagreement was the question of the power of coercion and restraint which the masters already possessed for enforcing their slave's services, the effects of that power and the consequences that would arise from its abolition.[3]

They regretted that the general impression prevailed amongst the natives that the master was entitled to such a degree of coercion as was recognised by the Circular Order of the Madras Foujdarry Adawlut. The slave, therefore, readily submitted to moderate correction without any complaint, because he and his family secured compensation by way of maintenance not only during health and vigour but also in sickness and old age.[4]

However they felt inclined to believe that a power of moderate correction should be vested in the master; for in the absence of such a power, slaves employed in field labour would not be induced to work with the same amount of industry as hired labourers who had to depend for their bread by giving as much satisfaction to their employers as they could, and who knew full well that, if they did not complete the task assigned for the day, they would not get their wages, and would run the risk of not being engaged on the next day.[5]

The slave also knew that he was of a certain value to his master, and that he could not be discharged with the ease of an ordinary servant, without his master incurring a considerable loss. Hence the master was already under some sort of restraint; and

1-2. Indian Law Commission's Report, 1839-41, p. 372.
3-5. *Ibid*, p. 372.

if he were to be deprived of the right of moderate correction, his slave would take advantage of it to do as little work as possible.[1]

The majority of the Commissioners were convinced that in those parts of India where agrestic slavery existed, masters would not tolerate that the slaves upon whose labour they depended for the cultivation of their lands would be less industrious than their hired servants. Many masters would be naturally anxious to increase their wealth and comfort; and in proportion to their eagerness to add to their income they would exact a greater amount of work from their slaves. This was notably the case in Malabar where Mapla merchants cared little for the maintenance of the slaves and only thought of raising the largest possible produce.[2]

This was no doubt a great evil. Yet the majority were not in favour of depriving the master of the power of correction. They feared lest the slaves should then become dissatisfied with their master and desert him. It is true that in some parts of the country the masters had been successfully restrained from exercising their power of punishment by severe means. For example, in the neighbouring towns of Madras, where praedial slavery was in full force, where the wages were high and the chances of freedom more preponderate, the master's power of correction was little more than nominal. And the same practice was gradually gaining ground in other larger towns and seaports of the Malabar Coast. Hence the majority hoped that the evil would be remedied in course of time without the necessity of passing a legal enactment.[3]

The majority of the Commissioners considered that a law, taking away all power of correcting and restraining slaves, was tantamount to the abolition of slavery. They called attention to the Note B to the Penal Code in which it was pointed out "that a labourer who knows that if he idles, his master will not dare to strike him, that if he absconds his master will not dare to confine him, and that his master can enforce a claim to service only by taking more trouble, losing more time and spending more money than the service is worth, will not work from fear." In such a case slavery merely becomes a name, because the labourer is no more a slave.[4]

Therefore, the majority of the Commissioners concluded that the power of coercion and restraint which the master already possessed over his slave could not in reason and justice be taken

1-2. Indian Law Commissions Report, 1839-41, p. 372.
3-4. *Ibid*, p. 373.

away without the Government compensating the masters or without transferring this power to the Magistrate. But on a careful consideration of the whole question it was deemed advisable not to adopt neither of these courses. The adoption of either of these courses would result in innumerable complications.[1]

As regards compensation, the making of it would be attended with numberless difficulties. On the one hand it was well-nigh impossible to make adequate reparation for the loss that would accrue to the slave-owner. On the other hand every slave-owner would make it a point to exaggerate his claims. As a result whatever loss befell an estate cultivated by slaves would be ascribed indiscriminately to this measure. Moreover it would serve as a ready pretext whenever a land-owner found himself in difficulties. If a proprietor, for instance, fell in arrears of the revenue payable by him, he would express his inability to pay, either because he could no longer compel his slaves to work, or because he was put to a greater expense in paying his slaves extra allowances. If one master acted thus, his neighbours would not be slow to follow his example and would prefer similar claims.[2]

There was still another inconvenience in suppressing the power of moderate correction by a legal enactment. Such a law would not come into general operation as quickly as was intended, because the ignorant slaves, not being aware of its promulgation, would not take advantage of it. On the other hand, the masters would be slow to obey such a law, because it affected adversely their interests. In some parts of India it would provoke a degree of discontent which to their minds it was not prudent to provoke.[3]

Secondly, it would be an impossible task to satisfy all the demands for compensation. Even if it was decided to award compensation only in case of loss being proved, it would be extremely difficult to judge of it ; and however reasonable and sound the judgment might be, it was most likely to disappoint the claimant. The inquiry into the question would not only occupy a great length of time, it would also give rise to the most perplexing questions. And, therefore, looking to the trouble bestowed, the expense incurred, and the dissatisfaction provoked, there would

1. Indian Law Commission's Report 1839-41, p. 373.
2. *Ibid.* p. 374.
3. *Ibid.*, p. 373.

be very little furtherance of fulfilling the object of compensation.[1]

Next the Commissioners discussed the advisability of transferring from the masters to the Magistrates the power of punishment and restraint from absconding. In this connection they observed that even in the West Indies the master's power of punishment was not taken away from him by the Imperial Parliament until the status of slavery was abolished. It was only when the change took place from the status of slavery into contract of service for a certain time that the power of punishment was transferred from the master to the Magistrate.[2]

Hence the majority concurred with their colleagues in thinking that in India it was unadvisable to transfer this power to the Magistrate. On the other hand, whilst they were careful not to adopt any measure which tended to destroy the authority of the masters, they greatly objected to any measure which would confirm and give permanence to so debasing a practice. After a most mature deliberation they were convinced that a magistrate could not force a slave to yield obedience and render service to his master, as this would be nothing else but giving effect to slavery on a more permanent and firm basis. They thought of carefully abstaining from taking any step which would prove prejudicial to the slave.[3]

And since the majority of the Commissioners were not prepared to recommend the interference of the magistrates in compelling the slaves to perform their duties or punish them for default, they did not think it advisable to dwell upon the general question of the propriety of the Regulations which empowered Magistrates to interfere in cases of complaints of masters against their servants for misconduct or neglect of duty. The only remark that they were prepared to offer was that, if the slaves were left to act according to their will, they would certainly be placed in a more independent position than the free servants in India.[4]

Under these circumstances the majority of the Commissioners proposed the leave untouched the lawful status of slavery and with it the lawful power of the master to punish and restrain. They said that it would be legal to correct a slave moderately

---

1. Indian Law Commission's Report 1839-41, p. 374.
2. *Ibid.*, pp. 374-75.
3. *Ibid.*, p. 374.
4. *Ibid.*, p. 374.

and to restrain him by the use of force which, if used to a free man, would amount to an assault, and that there was no need to be afraid of this vested power being used by the masters immoderately, because the law as it existed was sufficient in itself to punish any cruelty and unnecessary oppression on the part of the master. The majority were of opinion that this power was necessary to check the slave's propensity to idleness. They were led to believe that the liability of the master to be punished, if he inflicted immoderate correction, was already a notable mitigation of the cruel treatment of slaves. They had reason to hope that this check on the masters to abuse their power of moderate correction would gradually gain ground. Thus the result would be finally obtained of meeting the wishes of the Court of Directors without precipitation or disorder. This would ultimately lead to the gradual extinction of slavery, whilst in the meantime the condition of the slaves would be greatly improved.[1]

With these views in their minds the majority thought it prudent not to add any new provisions which would be offensive, injurious and irritating so far as they operated in regard to the masters. The only point they wished to emphasise was that they should strain every nerve to give as much effect to the administration of the existing law as possible, so that the masters would think twice before they made an abusive use of the power with which they were entrusted. For the fulfilment of the latter object the majority concurred with their colleagues in recommending "that any slave shall be entitled to emancipation, and that any female slave who has become a common prostitute through the influence of her master shall be entitled to emancipation, provided they are slaves of the same master."[2]

Further, with regard to the transfer of slaves, the majority agreed with their colleagues in the restrictions proposed, which would eventually lead to the mitigation and extinction of slavery. They also acquiesced in the recommendation that any slave would be entitled to emancipation if a reasonable price was tendered to his master. It appeared to the majority of the Commissioners that the right of slaves to retain possession of the property which they had acquired was practically admitted by the masters and that, if such a right were permanently established by law, no injustice or danger would arise from its maintenance.

1. Indian Law Commission's Report 1839-41, p. 375.
2. *Ibid.* pp. 375-76.
3. *Ibid*, p. 376.

Next the Commissioners addressed themselves to the question of emancipation. For the purpose of obtaining emancipation it appeared to the majority of the Commissioners that a provision enabling slaves to purchase their emancipation with their property would produce a beneficial result, specially upon the slaves in Malabar. Such a provision, if introduced, would be beneficial both to the master and the slave, particularly where the advantages of freedom so decidedly overbalanced those that belonged to the servile condition. Such was the case in those parts of the country where the slaves were under a constant temptation to escape, and where the masters found it difficult to exercise their power of control. It would then be of advantage to both the parties that the master would be ready to give up his right for a very small consideration, and that the slave would be able to raise a sufficient sum for the purpose by hiring his services to a new master, and thus obtaining his freedom. This system would prove very beneficial to the slaves of Malabar who were sometimes compelled to leave the services of their masters when there was no work for them, and who were permitted to seek an employment elsewhere. The hope of being able to purchase their freedom would encourage the slaves under such circumstances to save their wages; and their temporary masters, if they found their slaves diligent and active, would willingly advance money to them to enable them to procure their freedom.[1]

The Commissioners commented also on the sale of slaves. The suggestions offered in the Report for the prevention of the sale of free persons into slavery, particularly with a view to put a stop to the abuses arising from the sale of children, and for restricting within the British territories the sale of slaves and the recommendations relating to bondage were founded upon the principles unanimously agreed to by the Commission.[2]

The Commissioners then strongly animadverted upon what may be called simulated emancipation. The majority suggested a provision which was not recommended by the other members of the Commission, but which they considered essential to guard against a great evil and one which they conceived was not likely to occur in the gradual decay of slavery. It was a provision to prevent masters from getting rid by pretended emancipation of the obligation of supporting those slaves who, after having worked through their youth and manhood, had become too old and weak

1-2. Indian Law Commission's Report, 1839-41, p. 377.

to render efficient service. Accordingly they proposed that any slave before the age of 50, or under that age, but rendered infirm so that he was unable to earn his own livelihood by labour, would be entitled to refuse his emancipation, and the master would be bound to support such a slave during his lifetime, unless the slave formerly accepted his freedom, and surrendered his claim to maintenance by an act done and recorded in a Civil Court before a Magistrate. Moreover the judge or Magistrate should ascertain that the slave's consent was obtained of his own free will and with a full knowledge of the consequences to which he was exposed.[1]

In the next place the majority approved of the recommendations relating to 5 Geo. IV, C. 113 for the purpose of rendering its provisions effectual in India for the prevention of the importation and exportation of slaves by sea.[2]

The Commissioners unanimously agreed on the principle that every means should be adopted to prevent adding to the already existing stock of slaves in British India, and that a provision should be enacted that no person should be recognised as a slave in the British territories on the ground that he had been a slave in a foreign territory, and that any act would be punishable if done to a freeman who, having been a slave in a foreign country, was brought into or took refuge in the British territories.[3]

The majority concurred with their colleagues in thinking that the exportation of slaves against their will should be generally prohibited; and in order that the slave's willingness might be ascertained, they considered it necessary that the provision should be expressed as follows:

"That any person exporting or attempting to export a slave from the British territory into a foreign territory, without the consent of the slave having been declared by him personally before a Magistrate and certified by the Magistrate, shall be punishable by a fine not exceeding.....or imprisonment with or without hard labour for a period not exceeding.....or with both.[4]

Finally, with respect to the other recommendations which were not minutely examined by them, the majority of the Com-

1. Indian Law Commission's Report 1839-41, pp. 377-78.
2-4. *Ibid.* p. 378.

missioners wished the Supreme Government to understand that on the whole they concurred with their colleagues.[1]

By way of additional information a few words may be said to account for the comparatively small number of recommendations and their lack of precision in defining the rights of master and slave. The Law Commissioners were well aware that the recommendations made by them did not cover the whole field of anti-slavery legislation. However they had good reasons for limiting themselves to the recommendations quoted above. They abstained from recommending several other measures which had occurred to them, because they did not deem it advisable to pass a legal enactment defining the mutual relations between master and slave; they preferred to leave things in such a state as would gradually lead to a suppression of undesirable customs in accordance with the feelings of the people. Laws productive of benefit to the slave were easy of enactment; but such laws would tend to give stability to slavery, such legislation would confirm the rights that arise out of slavery. And therefore no better way of ameliorating the lot of the slaves could be devised than to convince the slave that he could look upon the Magistrate as a sure protector in cases where there were violations of rights which he was bound to enjoy in an equal degree as if he were a freeman. The Law Commissioners were not prepared to confer upon the slaves new rights in addition to those already possessed by them, in spite of their knowledge that the effectual enforcement of such rights would render the status of slavery in some instances more bearable than it actually was. In fact, they earnestly wished for the extinction of slavery in India; but they earnestly hoped for its extinction by the force of custom; and they looked to the kindly feelings of the master rather than to any positive enactment. Therefore they were determined to confine legislation merely to the prevention of the evils of slavery.[2]

In this connection it may be useful to point out the different principles by which the majority and the minority were respectively guided in formulating their views on the subject. The course recommended by the minority was to undermine slavery without abolishing it, to recognise the right of master in his slave and at the same time to deny him the power of enforcing it, to acknowledge the legal existence of slavery and at the same time to refuse the judicial protection, to countenance its continuance

1. Indian Law Commission's Report, 1839-41, p. 379.
2. *Ibid.*

for some time in order to bring about imperceptibly its ultimate extinction, and thus gradually to render the master's rights so trifling as to be valueless. On the other hand the majority objected to any new provisions being added to the law, which, while acknowledging the right of the master in the slave, left him no means of enforcing the right to which he was entitled under that acknowledgment. However they concurred with their colleagues in thinking that it would be a wiser and safer step for the Government to direct their immediate attention first to the removal of the abuses of slavery rather than recommend its abrupt abolition.

III. RECOMMENDATIONS DISCUSSED. Next to the Law Commissioners the Members of the Governor-General in Council were best qualified to pass judgment on the recommendations made by the Law Commission; for from their long stay in India and the position which they held the members of the Governor-General in Council had an intimate knowledge of the subject. Therefore the Court of Directors acted with commendable prudence when they asked the members of the Supreme Government to express their opinions on the recommendations made by the Law Commission.

As Lord Auckland was the Governor-General of India his views are here recorded in the first place. Speaking of the state of slavery in British India, Lord Auckland fully admitted that degradation, poverty and helplessness existed amongst the lower classes of the British Indian subjects who were doomed to live in undue subjection to those of better birth. But the only immediate course left open to Government was to watch the condition of the slaves with a vigilant eye, and to do every thing that was in the power of Government for their amelioration. In his opinion the word slavery was misused to such an extent as to lead others to form an erroneous idea of things; for in reality those features which constitute the very essense of slavery were practically abolished throughout India. There was no more any legal subjection of an individual and his family to the will of his master, and the master's absolute claim of property as well as the right to enforce that claim was no longer recognised by the Criminal Courts of India. Any force used upon the slave by his master was punished; and the magistrates did not interfere in the restoration of runaway slaves to their master.

1. Minute of the Governor-General, Lord Auckland, dated May 6, 1841, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.

In order to show the importance of this practice among the magistrates of the various districts of the provinces of India the Governor-General cited a few instances which deserve to be noticed.

Captain Jenkins speaking of Assam says: "I consider that the Government by withholding a Regulation making it legal to have recourse to the Criminal Courts for the apprehension and restitution of slaves have virtually abolished slavery. The means of escape from their owners being so easy and the difficulty expense of recovery being so great, that no slaves.....need be detained in bondage except with their own free will."[1]

The Principal Collector and Magistrate of Tanjore remarked to the same effect. "So long as a slave chooses to remain with his master he does so, but he can leave him for a better at pleasure. Nothing but a civil suit, which would cost more than 10 years of his labour, can recover him; and being recovered, there is nothing to prevent his walking about his own business as soon as he has left the Court which has pronounced him to be the property of another. This Magistrate, it seems, declines to assist a master to recover a runaway slave, and leave him to his own resources, which the slave could easily defy. Under these circumstances mutual interest seemed to be really the bond between them."[2]

The usage in the Bombay Presidency, as recorded in the Law Commissioners' Report, shows that a suit against a slave for the recovery of his services was almost a thing unheard of.[3]

Furthermore the Governor-General thought that the Criminal Law on the subject was correctly expressed by the Mahomedan Law Officers of the Madras Foujdarry Adawlut in their Futwa of February 10, 1841, where a female slave was charged with having eloped from her master and refused to return in his service. The Law Officers held that under the Mahomedan Law, the prisoner was not liable to any punishment for her elopement because she was not a "true slave"[4] according to that law.[5]

Lord Auckland, therefore, remarked that since the Mahomedan Criminal Law was the law by which the judges of the British Criminal Courts in India were guided, there was no reason why

1. Appendix to the Indian Law Commission's Report, 1839-41, p. 335; *Cf.* Governor-General's Minute, dated May 6, 1841, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.
2. Indian Law Commission's Report, 1839-41, pp. 199-200.
3. *Ibid.*, p. 269.
4-5. Minute of the Governor-General, Lord Auckland, dated May 6, 1841, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.

any benefit it conferred on slaves should at all be denied or abridged. It appeared to him that this exemption from criminal or magesterial process, which was summary and effective, would directly lead to the destruction of all that was legally coercive in the maintenance of the statute of slavery; and hence it was unessential to dwell on what would be the decrees of the Civil Courts when questions concerning that Statute were brought before them.[1]

Lord Auckland recognised that the Civil Courts were less favourably disposed towards slaves; since the person, decreed by the Civil Court to be a slave and refusing to serve or comply with the award, could be imprisoned as long as the master desired to pay the subsistence money. The very possibility that such a sentence could be passed should not be overlooked, since the slave thus sentenced might be exposed to suffer considerable vexation and incovenience. But effecting any change in the process of civil jurisprudence would involve the legislators in intricate questions of law. Therefore it was not advisable to embark upon hurried legislation. The best course to follow was to urge the application of the already existing protective measures that curtailed the master's powers of inflicting personal injuries or practising violent coercion. Thus for example, he advocated that a wider publicity should be given to the principles enunciated by Captain Jenkins in Assam and by the Mahomedan Futwa of 1841. Such publicity might even take the form of an express enactment passed by the British Indian Legislature.[2]

Taking all this into consideration, Lord Auckland was prepared to pass a law "declaring that any act which would be an offence if done to a freeman would be equally an offence if done to a slave or to any one in any condition of dependence on a master." In other words he agreed with the minority, who laid it down as a principle that no rights, arising out of an alleged state of slavery, shall be enforced by a Magistrate."[3]

Lord Auckland did not agree with the majority of the Commissioners as regards the power of moderate correction to be granted to the masters. Owing to the imperfect police supervision and the small number of Magistrates, it was unsafe to commit any power of punishment to the masters. Since there would be no security against their occasional excesses, it was advisable to withhold from them all power of personal coercion.[4]

1-4. *Ibid.*

Nor did he see eye to eye with the majority in the question of compensation. He held that there were two reasons for not granting compensation to the owners for being deprived of the power to inflict punishment on their slaves. First of all the ground on which claims for compensation would be based was not capable of exact estimation. In the next place wherever the masters enforced the power to punish their slaves, their authority to do so was founded upon no solid ground, with the result that in most districts it had actually ceased to exist. Nor was he in favour of allowing Magistrates to enforce any rights arising out of slavery, because in India the state of slavery could not be summarily presumed against any person and when a case was brought before the Court, it required the most mature and grave consideration.[1]

Lord Auckland felt convinced that the Act proposed by him would fully meet with the wishes of the Court of Directors. The many and detailed recommendations proposed by the Law Commissioners would give to such transactions a legal standing, which would make it very difficult afterwards to declare them invalid. Similarly allowing compensation for depriving the master of the power of coercion was courting magesterial interference on behalf of slavery.[2]

Therefore, under the existing circumstances a short and comprehensive enactment, such as he proposed, would do more to advance the great object of practical freedom and to bring about the entire extinction of slavery in any form whatsoever.[3]

Lastly, Lord Auckland considered the recommendations proposed by the Law Commissioners in regard to 5 Geo. IV, C 113 as just and necessary.[4]

The second member of the Council, who expressed his sentiments on the subject, was W. W. Bird.

The plan suggested by the minority appeared to him to involve an inconsistency which precluded its adoption as a legislative measure. Its chief defect was that it granted a license for dereliction of duty towards the master without liberating the slave. It injured the one by encouraging idleness and immorality in the other, and was consequently harmful to both.[5]

The second plan proposed by the majority of the Law Commissioners was free from this inconsistency, but was open to

1-4. *Ibid.*

5. Minute by W, W. Bird, dated June 18, 1841, Consultation No, 11, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.

objection inasmuch as it tended rather to promote than to suppress slavery. The numberless and the detailed provisions set forth by them were likely to strengthen the obligations arising out of slavery, and to perpetuate an evil which, left to itself, would in course of time die a natural death.[1]

Hence Mr. Bird made bold to state that the Report, as it was drawn up by the Law Commissioners, made it quite apparent that slavery in India was little more than in name. The motives which induced the slave to serve his master were the fear of losing the advantages to which service entitled him. If then the character of slavery in India was the cardinal point to be taken into consideration, the best plan would be to abstain altogether from interference, and to leave it to time, progress of civilization and the operation of the general principles of British administration to work out their way towards obliteration and practical abolition. Not slavery as such, but the evils following in its wake were so serious and prejudicial to the general welfare of the community at large that Government should try their utmost to check and do away with them. These evils were innumerable. Slavery was an incentive to kidnapping, child-stealing, the sale and purchase of male and female children, the murder of parents for the sake of stealing their children, prostitution and other revolting practices. To put an end to the perpetration of these enormities it was essential to pass a law *refusing to recognise slavery as a status in any form.* Such a declaration could be passed without the slightest difficulty; for it would remove all the inconveniences and embarassments felt from the absence of their being any uniform rule on the subject and from "the law being one thing and the practice of our Civil and Criminal Courts another in almost every district."[2]

W. W. Bird did not apprehend any discontent arising from the measure proposed by him in the Presidencies of Bombay or Bengal, because the feelings of Government and of the local authorities on the subject were well understood. As regards the Madras Presidency, Malabar and Canara, no laws were passed by Government to discourage slavery by public auctions; and the most objectionable practice of selling slaves by public auction in execution of the decrees of Court was still in existence (1841). But the fears of the Government Officials that any attempt to restrain slavery would produce excitement and opposition were groundless,

---

1-2. *Ibid.*

It could be shown by the attempts made by Sir Charles T. Metcalfe at Delhi in 1812, and the rules introduced by the Bombay Government in 1820, that neither of these produced any unsatisfactory results, though the one was used in the Mahomedan metropolis of India where domestic slavery was in full force from ancient times, and the other became law in a part of the country, where slavery had taken as deep root as in any other district of British India.[1]

Mr. Bird was not in favour of any further delay. The Law Commissioners, it is true, were in favour of passing the grand measure; but they preferred to postpone its promulgation to a future period when it could be carried into effect with greater safety. Unfortunately, when that particular period was to arrive, was not even approximately stated. Such a delay was altogether reprehensible. In the past, rules and regulations were enacted with a view to restrict within the narrowest possible bounds the performance of the abominable practice of Suttee. But experience soon taught that these half-measures were ineffective, and even produced the contrary effect; and Mr. Bird remarks: "We were obliged to do at last what might have been done twenty years sooner with equal facility," or rather we should say with equal difficulty. What took place in the case of Suttee would repeat itself, if the restrictions imposed on slavery by the Law Commission were legalised and confirmed to the extent allowed. The ultimate extinction of slavery would be rendered more remote and moral difficult.[2]

W. W. Bird claimed that the measure proposed by him, *viz.* to enact a law refusing to recognise slavery in any form, had several distinct advantages. The greater part of India was fully prepared for it, and it could be adopted without any reasonable complaint. It consisted in reconciling the law with the practice of the local authorities and in withdrawing from slavery throughout India the sanction and support of the British Government, so that no rights arising out of an alleged state of slavery, could be enforced by a Magistrate; nor could human beings be sold in execution of decrees of Civil Courts.[3]

There was an inconsistency in passing a law to the effect "that any act which would be an offence if done to a free man shall be equally an offence if done to a slave," and at the same time legally to countenance the sale of slaves. For it was contradic-

1-3. *Ibid.*

tory to forbid the one and openly to allow the other in any other part of British India.[1]

Accordingly it was his candid opinion that, if the Government was resolved to do anything in the matter of Indian slavery, nothing would answer the purpose short of a declaration that the law no longer recognised any distinction between a free person and a slave, and that the Courts, Civil and Criminal, were no longer competent to enforce any claim on the grounds of slavery. Such a declaration would do openly what the Law Commissioners recommended should be done imperceptibly. Moreover, the passing of such a measure would release the Government from the equivocal position in which they were placed by the law being one thing and the judicial practice of the Company's Courts another. In addition it would make clear the intention of Government no longer to recognise slavery in any form or to countenance in the least any evils which were resulting from it.[2]

As to compensation, W. W. Bird concurred with the Governor-General. He was not ready to grant compensation, because the state of slavery in India was not to be summarily presumed against any person, and because the probability was that even with the aid of the Hindu and Mahomedan Laws few claims could be established if a regular inquiry was made before a Court of Law.[3]

Finally, he entirely concurred in the recommendations made by the Law Commissioners in regard to 5 Geo. IV, C. 113.[4]

The third member of the Council to give his opinion on the recommendations made by the Law Commissioners was H. T. Prinsep. He observed that the aim of the recommendation made by the Law Commission was to prevent the sale of children into slavery, which was a common practice in times of scarcity when the parents had recourse to it in order to escape starvation. But the questions of law arising out of this practice were open to some doubt. The Hindu Law recognised children, so disposed of, as slaves. In some parts it decreed that captivity in battle with infidels was the only recognised form in which a free person could become a slave.[5]

If these recommendations of the Law Commissioners were carried into effect, they would place the children, so disposed of, on the same footing as bondsmen for a certain number of years.

1-4. *Ibid.*

5. Minute by H. T. Prinsep, dated July 31, 1841, Consultation No. 12, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.

No one can deny the equity and fairness of the principles on which these recommendations were framed; but Mr. Prinsep neither saw the necessity nor the expediency of declaring them by a specific law.[1]

For, to the best of his knowledge, no Criminal Court in India could assist a master in the assertion of his authority over his slave. Therefore a Civil Court was the only alternative open to him; and even in this case a decree in his favour was more than doubtful. Hence it was taken for granted that no person need continue as a slave; but if he chose to do so, it was at his own risk; and interference on the part of the legislature to make him desist was altogether uncalled for.[2]

Mr. Prinsep next dealt with the recommendations referring to existing and future slaves. On the one hand they minutely defined the persons to be considered as slaves; on the other hand they gave many facilities for obtaining exemptions, and included rules which prohibited transfers by sale. Again the recommendations, suggested by the minority of the Law Commissioners, prohibited Magistrates from assisting in the coercion of slaves. They also proposed to grant to the slaves the same remedy for assault, etc., as free men had against each other. However the majority strongly opposed such a measure, on the plea that it amounted to an encouragement given to the slave to defy his master.[3]

Accordingly Mr. Prinsep approved of the Governor-General's proposition, suggesting "the prohibition of the Magistrate to interfere in support of the master in the coercion of his slave." However his approval was made dependent on the views expressed on this subject by the Courts and other public officials in the investigation that had just taken place. And these views could hardly be doubted; for the Magistrates were daily more and more disposed to apply the principles of freedom to the cases that came before them. Hence the promulgation of a fixed rule would fetter rather than enlarge their discretion. For the same reason he objected to the passing of laws which confirmed assignment of children to apprenticeship; because "all these points seem to me," writes Mr. Prinsep, "to be all in a train of sufficiently speedy settlement in the way we desire by the quick action of the Courts and forms of administration which exist,

1-3. Minute by H. T. Prinsep, dated July 31, 1841, Consultation No. 12, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.

operating on the condition of things prevailing within their respective jurisdictions."[1]

Moreover, Mr. Prinsep observed that slavery, as it existed 300 years ago in Europe, prevailed now in India, and that the same influences that had brought about its abolition in Europe were in course of progress in all parts of India. Hence it would be a safe policy to leave these influences to complete the work which was already more than half-attained. Government's interference was absolutely uncalled for; and the pace at which slavery was making its disappearance was quite satisfactory. Therefore the application of the recommendations made by the Law Commissioners would retard rather than expedite the object in view.[2]

Again Mr. Prinsep was rather surprised that no proposition had been suggested to make changes in the law of property and of inheritance. This law, under the admission of slavery as a legal status, was particularly severe. It was severe in this respect that all that belonged to the slave was his master's property, and that nothing could be acquired by the slave's wife or children. Perhaps the reason why this particular evil was not animadverted on by the Law Commissioners was that they realised that the slave's right of acquiring property was in most parts of India tacitly recognised, notwithstanding that the letter of the law was adverse to it. Furthermore even when the slave's right was not tacitly recognised, the master's difficulty to establish his title of ownership was sufficient safeguard, according to the Law Commission, to protect the slave and his natural heirs against his master's rapacity. But if this was an instance in point in which the Law Commissioners thought it best not to interfere, it naturally followed that their interference in other instances was likewise undesirable.[3]

Furthermore, the recommendations of the Law Commissioners were, in Mr. Prinsep's opinion, most unsatisfactory. It is true, it was proposed in them that the slave should be able to purchase his freedom; but no mention was made in them of the slave's right to possess property. Thus they neglected to remedy an evil which called for immediate legal redress. The particular case to which Mr. Prinsep refers was one of Darab Allee, the well-known chief eunuch of the Fyzabad Begum. He had lent a large loan at 6% to the Fyzabad Government. He willed his property to his brother, who was not a Mahomedan. But the King of Oudh

1-3. *Ibid.*

contested the will on the plea that Darab Allee had been a slave to Sheya-nud-daulah, the king's grand-father. Since the Law Commissioners were so anxious to propose legal enactments to remedy the evils of slavery, it was strange that this case should have escaped their attention. However Prinsep's personal opinion was that it would be better not to interfere. Such cases were of too rare occurrence to require any special enactment; and the advisable course to adopt was to leave the inheritance of slaves and the administration of their estates to the conscience and discretion of the Civil Judges like other questions in regard to their treatment or condition.[1]

As regards slavery in Malabar, Mr. Prinsep called attention to the fact that slavery in that place presented a different aspect. There, the cultivating class were all slaves. Though they were widely different from the Negro slaves of the West Indies, they were still in a state of degradation which it was most extremely desirable to abolish. But even if the condition of slavery in India was the same as that obtaining in Malabar, Mr. Prinsep still opposed such legislation as was recommended by the Law Commission. However this was not the case. Malabar was only an isolated instance, and the assimilation of its condition to the rest of India would gradually but surely result to break up its exclusive system.[2]

Thus for example, the continual influx of strangers either to trade or settle in Malabar and the spread of free opinions were bound to effect a gradual change. Moreover the administration of the province was conducted by functionaries who were trained to the condition of things that prevailed generally, and therefore were not favourable to Malabar's exclusive and peculiar institutions. The best policy to follow was to rely on the silent effect of the influences already at work and to leave the slavery of Malabar to its own process of decomposition.[3]

In one point Mr. Prinsep was prepared to concur with the Law Commissioners. He was in favour of any enactment prohibiting the importation and sale of foreign slaves. As regards the prohibition of the exportation of slaves, he was inclined to think that any prohibition would be both as unnecessary or at any rate as nugatory. It was unnecessary, because, if the law did not confer on the master any power to export slaves, it was easy for the slaves to refuse to go beyond the frontier, as he would be

1-3. *Ibid.*

supported in his resistance by the authorities. It was likewise nugatory, because the very fact of export carried both master and slave beyond the jurisdiction of the law so as to enable the former to defy the penalty.[1]

From what has been said it is clear that Mr. Prinsep practically opposed every form of legislation, apart from legally prohibiting the importation and sale of slaves. Everything else he left to the discretion of the Courts and public authorities, in the hope that, with the desire, the disposition and the various means at their disposal, they would do all in their power to bring about its entire abolition as circumstances would permit. He thought that it would be the sacred duty of Government to render all possible help and encouragement to the public functionaries in their benevolent endeavours. He insisted however on the immediate prohibition of the importation and sale of slaves by any public officer on any plea or under any process whatsoever; for this was a thing unheard of in any other part of British India, and was entirely inconsistent with the principles of British general administration.[2]

A fourth member of the Council who remarked on the observations made by the Law Commissioners was Mr. Amos. He was not satisfied with discussing the recommendations of the Law Commissioners, but also commented on the observations made by the other members of the Council.

Mr. Amos was apparently in favour of Lord Auckland's proposal. He fully approved of the Act proposed by the Governor-General. He pointed out that by it the Magistrates were forbidden to enforce any alleged rights of slave-owners; so that an act which would be criminal, if committed against a freeman, would be equally criminal if committed against a slave. Moreover such an act would supersede all the detailed recommendations made by the Law Commissioners, several of which were impracticable. There was even a strange contradiction committed by the minority of the Law Commission. They wanted to confer freedom on the slaves, and at the same time they outlined a number of elaborate provisions apparently meant to ameliorate the condition of slavery, but in reality furthering its continuance.[3]

Mr. Amos was also of opinion that another great advantage of the Act was that it would have widespread publicity and

1-3. *Ibid.*

paramount authority, and would restrain the Magistrates from all active interference on behalf of the masters, a practice which under the sanction of Government had almost become universal.[1] In one respect he disagreed with the Governor-General. He was not in favour of depriving the master of every practical means of obtaining legal redress against a recalcitrant slave.[2]

But though he agreed in the main with the proposals of the Governor-General, he did not wish them to be legally enforced.

As regards Mr. Bird's proposal to abolish slavery altogether by passing a law refusing to recognise slavery as a status in any form, Mr. Amos apparently agreed fully with him, and he did so to such an extent that he wrote: "I prefer the view of Mr. Bird to that of the Governor-General."[3] According to him, Mr. Bird's Act would avoid many nominal and perhaps real inconsistencies which the Governor-General's Act was likely to create. Moreover, Mr. Bird's Act was sure to give full satisfaction to the authorities in England, while the Governor-General's Act was likely to be found fault with on the plea of conniving at slavery.[4]

But this does not mean that he was anxious to see Mr. Bird's Act become a law; for in many points he entirely disagreed with him.[5] He entertained serious doubts: (1) that "in India slavery is little more than a name";[6] (2) "that a declaration of the entire extinction of slavery might be made without the slightest difficulty;"[7] (3) that the abolition of slavery in Delhi and the abolition of Suttee in India are precedents on which a cogent argument in favour of the entire abolition of slavery can be based;[8] (4) that by abolishing slavery no injury would be done to the slave-owners.[9]

Mr. Amos was likewise in many respects in perfect agreement with Mr. Prinsep, but he strongly objected to Mr. Prinsep's plan that "the progressive impairing of slavery can be expediently left to the Courts of Justice." Such a course, if adopted, would give rise to great inconveniences; it would destroy all confidence in the administration of British justice, since it would introduce lax and varying principles of decisions.[10] Besides this, the law would be differently applied by different Magistrates in the same district, which would be an intolerable evil. Hence he absolutely deprecated that Government should in any way interfere in impeding

1-2. *Ibid.*

3-10. Minute of A. Amos, dated August 5, 1841, Consultation No. 15, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.

the course of justice in all cases connected with slavery. There could be no greater end than substituting Government's will for the dictates of law.[1]

After having thus discussed the views of the other members of the Council, Mr. Amos commented on the various recommendations and observations made by the Law Commission. He pointed out that many provisions had been suggested by the Law Commissioners to check the evil abuses of slavery. This was very true. At the same time he was of opinion that this was a fault on the right side; for it enabled Government to exercise its discretion in selecting, instead of devising expedients.[2]

Mr. Amos fully shared the Law Commissioners' and Mr. Prinsep's opinion not to interfere with, but rather to trust "the operation of circumstances which were tending so favourably to work out the extinction of slavery in India."[3] Past history bore witness to the fact that progress and improvement had been less advanced by legislative fiats of Government, than by strengthening the already existing checks universally acknowledged to be operating for the obstruction of abuses. Hence it would be a safer and more effectual course to trust to time; for sooner or later the progressive revolution which society was undergoing would lead to the attainment of an order, which it had of itself a tendency to assume.[4] Therefore he would rather protect and accelerate than anticipate and disturb the gradual but inevitable course of events. It was foolish to substitute the wisdom of man to that of Nature.[5]

Mr. Amos further remarked that, if the proposed Act was passed, its significance should be stated as clearly as possible in the Preamble; for he apprehended that very few of the interested parties would be able to realise the bearing of the enactment from a bare perusal of its terms. He was confirmed in this opinion by the erroneous interpretation made by the Government of Madras and the Madras Sudder Court, when in their latest communication upon the subject they argued that according to the terms of the Act the slave-masters could rightly claim compensation.[6] Again in the appendix to the Report of the Law Commission it was stated that the judicial functionaries recognised no distinction in Criminal Courts with regard to assaults or other offences committed by masters or by slaves. But at the same time the master's right of moderate correction and of restraint from absconding

1-6. *Ibid.*

was recognised. The same vague phraseology was used in the Act itself, and was bound to give rise to difficulties unless the Act be properly understood. A proper understanding of the Act was of paramount importance.[1]

Accordingly Mr. Amos insisted strongly on the significance of the Act. According to the Act, if a master went beyond moderate punishment in correcting his slave or restraining him from absconding, he had no right to say that this was a case in which he was entitled to make use of violent correction, nor could he claim that either his person or his testimony should be held by the judges in greater regard than the person and the testimony of his slave. In this respect the Act could hardly be said to be an innovation upon the established and known law throughout India. Nevertheless this first part of the Act was likely to prevent a distinct comprehension and to prejudice the consideration of its further import and of the real change it meant to effect. For under general terms, applicable to grievous assaults without cause, the Act included likewise moderate correction and restraint; which under various important checks were the last practicable means left to maintain slavery in India. Thus the Act did in reality extend its protection to idle, disobedient or runaway slaves. Grievous assaults without cause were already prohibited prior to the drawing up of the Act; slight assaults for the best of reasons were now likewise prohibited; as a matter of fact they were put on the same footing as grievous assaults without cause. Thus no distinction was made between unjustified assault and justified correction, and an important civil right was simply done away with. Now it was generally considered a principle of jurisprudence that where there was a right, the State was bound to provide a practical safeguard, but here the right was simply destroyed.[2]

Mr. Amos next alluded to the popular objection to the continuance of slavery in any shape. Slavery, it was said, is contrary to natural law, justice and humanity; no one could with reason speak of the rights of slavery; no one could justly demand compensation, because his slaves were set free. In dealing with this objection Mr. Amos, referring specially to Malabar, held that it was necessary to distinguish between slaves that were being sold and agrestic slaves.

1-2. *Ibid.*

According to the Futwa of 1841 slaves of every caste were sold by their parents. This was one of the grossest misrepresentations of fact ever made in any public document. There were plenty of slaves who had not been reduced to slavery by sale. Where children were sold into slavery, the practice was an abuse of the ancient system of Indian slavery. This practice was already illegal, and required no new law to abolish it, though like other abuses of slavery it required more stringent checks.[1]

But Mr. Amos was not at all of opinion that any useful purpose would be served by setting free the many agrestic slaves who were neither free born nor sold into slavery. "Is it not much too late", he asked, "to denounce as scandalous and suicidal the usages which existed long before our connection with India, and of which the British Government made no exception in pledging itself to maintain the ancient usages of the country; those usages of slavery which had been particularly regulated by the Acts of Legislature, rocognised in Proclamations of Government, enforced by Decrees of Courts, and proceedings of every grade of public officers, from the first dawning of our power to the present day? What would the native community think of the consistency of the moral feelings, and the promptings to which the English nation had, as far as they could judge, become so much alive? For the last fifty years and more the British government had recognised the system of agrestic slavery. Its sudden suppression would sap to its very foundation every feeling of trust entertained by the people in British administration. To make use of his own words: "How can they calculate in future that the transactions in which they engage and the speculation in which they embark, however recognised by proceedings of Government by laws and by Courts of Justice may not be suddenly reprobated and annulled?" There was therefore every likelihood that setting free the agrestic slaves would be viewed with great dissatisfaction since it would cause the utter ruin of many a family.[2]

Furthermore Mr. Amos pointed out that the abolition of slavery was bound to give rise to widespread opposition, as soon as it would be realised by the people that the proposed Act that was to abolish slavery was based on a misinterpretation of the law of the land. Those who advocated the abolition of slavery based their arguments on the declarations made in the Madras Futwa of 1841.[3]

1-3. *Ibid.*

According to this Futwa, drawn up by Mahomedan Officials, a true slave was a person who was acquired by way of booty in a Mussulman war; and as no other form of slavery was legally recognised, the slaves of the Madras Presidency could not be sold and purchased, and they were entitled to go without permission when and wherever they pleased.[1]

In Mr. Amos' opinion these Mahomedan law officials were not qualified to decide on questions of Hindu usage and custom. Besides this, the Law Commissioners totally disagreed with these Mahomedan Officials. They had come to an unanimous and unhesitating conclusion, that the Indian Criminal Courts were bound to recognise as a "true slave" whoever was a slave by the Hindu, as distinguished from the Mahomedan Law, and to deal with a Hindu slave just in the same way as they would deal with a "true slave" under the Mahomedan Law.[2]

This view expressed by the Law Commissioners was not an unheard of and new interpretation; for already in the year 1820 the Madras Foujdarry Adawlut and their Law officers, with express reference to the Cherumars or rustic slaves of Malabar, had issued a Circular Order which expressly defined by legal limits the right of masters over their slaves. The Circular declared "that under the Mahomedan Criminal Law (as it must be applied to Hindus) a master is justified in inflicting correction on his slave for acts by which Tazeer was incurred, but that a master is not justified in punishing his slave except it be for such acts; and when a master does punish his slave for them, the punishment must not exceed the lawful extent of Tazeer."[3] Hence the Circular Order of 1820 admitted the existence not only of true slaves according to Mahomedan Law but also of customary slaves according to Hindu usage.

Moreover the Circular of 1820 was subsequently acknowledged and acted on by the highest judicial authority in the Madras Presidency. In 1830 the Judges of the Court of the Foujdarry Adawlut, referring to the customary slaves of the country and not to the "true slaves" according to Mahomedan Law, stated as their express opinion that the correction which a master could legally inflict upon his slave could not be defined with greater precision than was done by the Circular Order of 1820.[4] Again in 1831, the Judges of the Madras Foujdarry Court approved the Circular Order of 1820, and their approval seems to have been shared by the Madras Government.[5]

1-5. *Ibid.*

Finally in 1839 the Judges of Foujdarry Adawlut, approved for the third time of the Circular of 1820 as a uniform course to be followed "and as furnishing a general rule for ascertaining the occasions and the degree of punishment which a master might inflict on his Hindu customary (not a true) slave."[1]

The existence of Hindu "customary slaves" was, therefore, acknowledged by the Circular of 1820, repeatedly approved of by the highest judicial authority in the Province, and found correct by the Law Commissioners. Moreover, it was practically acknowledged by the subordinate Magistrates; and in the appendix to the Report a case is actually cited which may here be mentioned as an instance in point.[2]

"The case occurred in Canara, and the slaves were probably Dhers, but certainly not Mahomedans, and the master was a Hindu. The obligation on the part of the slaves to reside with their master was determined upon the simple issue whether the fugitives were the descendants of the master's slaves. Upon this issue it was determined that the slaves were bound to live with their alleged master." And this decision was given by a Mahomedan Criminal Judge.[3]

Hindu slavery was more prevalent in Madras than in the Bengal Presidency, but in the Bengal Presidency it was likewise legally recognised. In a case, referred by a Magistrate to the Nizamut Adawlut of Calcutta and mentioned in the Law Commission's Report, the point at issue was whether the master had power to sell his Hindu slaves against their will to another person who intended to separate them by sending them to different parts of the country. Thereupon the Nizamut Adawlut, after calling upon their Pundits for an exposition of the Hindu Law, furnished the Magistrate with instructions for his guidance, founded upon that law and not upon the Mahomedan Law.

Nor could any valid argument against the existence of Hindu slavery in Bengal be drawn from the fact that in the Calcutta Courts claims founded upon Hindu slavery were frequently unsuccessful; for in all such cases the decisions against masters upon points of Hindu Law entirely ignored the Madras Futwa; "for it was only necessary to look beyond the mere surface of words in order to be satisfied that no Bengal Futwa or decision gave any continuance to the late Futwa from Madras."[4]

1-4. *Ibid.*

Furthermore, the Madras Futwa was not held in great reverence in Bengal. For whilst the Madras Futwa defined a true slave as one made captive in Mahomedan warfare, the Calcutta Law Officers extended the definition of a true slave to descendants from such captives. But for all that, the Calcutta Courts were not favouring slavery; for they insisted on the capture being proved by direct evidence.[1] As this was well-nigh impossible, the following great difference existed between the Calcutta and the Madras Courts. The Calcutta Courts endeavoured to abolish Mahomedan slavery by judicial decrees, whilst the Madras Courts, if the Futwa was to become their guiding rule, would attempt to abolish Hindu slavery and perpetuate Mahomedan slavery.[2]

Finally the allegation was made to the effect that the Dhers and other slaves of the Madras Presidency had been sold into slavery by their parents. But this allegation was a matter of fact and not of opinion. The uniform statement of all classes of functionaries, in all parts of the Madras Presidency, betrayed as to this point nothing but ignorance and misrepresentation; for the alleged origin of the Madras slavery in the Futwa was most erroneous. The great mass of Madras slaves were not free-born and purchased from their parents; they were descendants of slaves. The origin of their servitude dated long before the Mahomedan conquests, and could be traced back to the earliest annals and traditions of the country. In fact in the Madras Presidency slaves who were not "true slaves" according to the sense of the Futwa had been sold and transferred by their masters in a variety of ways generally and immemorially; and such transactions had been confirmed by numerous decrees of Courts.[3]

The Madras Futwa would also make us believe that Hindu slavery never existed in Malabar; but it was precisely in Malabar that, cases arose which occasioned the Circular Order of 1820. It was likewise a common practice of the Courts of Malabar to decide cases between masters and slaves who were not true slaves by Mahomedan Law. In Malabar alone there were between 30,000 or 50,000 Dhers, or Hindu slaves, and in Canara alone the number of slaves, not being true slaves according to Mahomedan Law, was estimated at 82,000. Yet according to the Futwa all these men were not slaves. In this connection may be mentioned a letter addressed by the Sudder Court to the Law Commissioners. In this communica-

1-3. *Ibid.*

tion dated September 10, 1836, it is stated "Hindoos in this district possess no other description of slaves but such as have been born of parents who have been slaves of caste."[1]

From the preceding remarks it follows that the Futwa is inconsistent with the Mahomedan Law as declared by the Nizamut Adawlut of Bengal, inconsistent with the due application of the Mahomedan Law as declared by the Law Commissioners, inconsistent with the order which had been the guiding principle of all Courts and Magistrates within the Madras Presidency for 20 years, and which during those 20 years had been on several occasions expressly recognised by the Foujdarry Court and the Government, inconsistent with the real facts as to the origin of Hindu slavery in the Madras Presidency, and inconsistent with the immemorial usages of the country and specially of Malabar.[2]

With this conclusion ends the Minute of Mr. Amos, the fourth member of the Governor-General in Council.

Before forwarding the Minutes of the other members of the Council, the Governor-General added the following Minute dated August 27, 1841.

In spite of the comments made by the members of the Council, his views remained unchanged. In his opinion it was best to allow sound principles of administration to extend themselves gradually without any direct interference of Government. But, in case the authorities in England considered legislation necessary, they should confine themselves to the declaration of such rules as by evidence had been established to be nearly universally prevalent, namely that the Magistrates should not interfere in favour of the return of persons, claimed as slaves, to their masters, and that in cases brought before them they should admit of no distinctions founded on the relation between master and slave.[3]

Though Mr. Amos held that the power of moderate punishment and restraint is possessed by the masters and should not be taken away from them,[4] the Governor-General was not ready to admit the existence of such a right. Moreover he was also of opinion that any future legislation should be in favour of the slave and should not curtail or recall the already existing protection granted to him.[5] Hence he strongly deprecated that the masters should be granted the right of moderate coercion, inasmuch as the exercise of that right was impossible to control.[6]

1-2. *Ibid.*

3-6. Minute by the Right Hon'ble the Governor-General of India in Council, dated August, 27, 1841, Consultation No. 16, Law Proceedings, August 2 to September 20, 1841, Imperial Record Department.

Finally he proposed that future legislation on slavery should be confined to establishing certainty and uniformity in the administration of the law already generally enforced; for in this manner the extinction of slavery could be accelerated.[1] In other words the Governor-General was in favour that legal force should be given to the enactment proposed by him, *viz.* "that any act which would be an offence if done to a free man would be an offence if done to slave or to any one in any condition of dependence on a master so that no rights arising out of an alleged state of slavery shall be enforced by a magistrate."[2]

No. 5. THE DRAFT ACTS OF 1841.

SUMMARY: I. The First Draft Act of 1841. II. The amended Draft Act of 1841. III. The amended Draft Act discussed. IV. Appeal to the Court of Directors.

SOURCES: UNPUBLISHED: Consultations Nos. 1-15, Law Proceedings, January-March, 1842.

I. THE FIRST DRAFT ACT OF 1841. Whilst the observations of the Supreme Council on the Recommendations of the Law Commissioners were on their way to England, the members of the Council continued to discuss the subject of slavery. What is more, a new Draft Act was prepared. Mention of it is made in a Minute drawn up by Mr. Amos, the author of the new Draft Act and it was dated December 27, 1841. It was entitled "An Act concerning the execution of decrees and the security of property acquired in certain cases."

The new Draft Act of 1841 ran as follows:—

"First. It is hereby declared and enacted that no public officer shall in execution of any decree or order of Court, sell the property in any person or the right to the compulsory labour of any person on the ground that such property or right is parcel of any estate or effect which such officer is authorised to sell.

"Second. And it is hereby declared and enacted that when any person has by trade or industry or by inheritance acquired property such person shall not be dispossessed thereof on the ground that such person had no right to acquire property unless for the use of another provided always that this Act shall not prevent any lawful contract which for valid consideration any person shall have contracted to trade or labour wholly or in part for the benefit of another.

1-2. *Ibid.*

"Third. And it is hereby declared and enacted that no right to property in any person or right to the compulsory labour of any person shall be acquired except by lawful contract with such person and except by lawful contract of apprenticeship."[1]

This new Act recommended three very important measures: (1) It proposed to forbid the sale of slaves in execution of judicial decrees. (2) It warranted to safegaurd the property acquired by slaves from rapacious masters. (3) It intended to regulate the sale of children in times of famine. Mr. Amos was of opinion that these measures proposed by him were comprehensive enough to check the worst evils and abuses of slavery and would at the same time render it impossible for any master to claim compensation. However for the sake of prudence he thought it advisable to consult the Madras Government on the subject before forwarding the Act to the Home Authorities and before publishing it in India.[2]

II. THE AMENDED DRAFT ACT OF 1841. The Governor-General, Lord Auckland, agreed with Mr. Amos, that it was proper to forward this Draft Act to the Home Authorities. But he advised to publish it in India without positive orders from the Hon'ble the Court of Directors. He attached the highest importance to the views expressed in his former Minute and suggested the following additions to the Draft Act of Mr. Amos.

"First. It is hereby declared and enacted that any act which would be a penal offence if done to a free man shall be equally an offence if done to any person in any condition of dependence on a master and

"Second. It is hereby enacted that no rights gained as arising out of an alleged state of slavery shall be enforced by any Magistrate within the Territories of the East India Company."[3]

The grounds on which these amendments were proposed by the Governor-General have already been mentioned elsewhere.[4] It is sufficient here to state that the Governor-General was convinced that these amendments were bound effectively to contribute towards the forwarding of the great object, namely the ultimate extinction of slavery throughout India.[5]

1. An Act concerning the execution of decrees, enclosed in a Minute by the Hon'ble A. Amos, dated December 27, 1841, Consultation No. 2, Law Proceedings, January-March, 1842, Imperial Record Department.

2. Minute by the Hon'ble A. Amos, dated December 27, 1841, Consultation No. 1, Law Proceedings, January-March, 1842, Imperial Record Department.

3-5. Minute by the Right Hon'ble the Governor-General, dated January 9, 1842, Consultation No. 4, *Ibid.*

In compliance with Lord Auckland's second suggestion Mr. Amos was ready to add to his Draft Act a clause to the effect that Magistrates should not be allowed to enforce any so-called rights arising from an alleged state of slavery.[1]

As regards Lord Auckland's first suggestion which practically forbade masters to chastise their slaves, Mr. Amos was not inclined to change his mind. He was still strongly opposed to the view that the master should be deprived of the right of moderate correction. A clause to that effect would be contrary to the draft of all the former Minutes written by the members of the Government. It would render all other clauses superfluous, and it would create also a reasonable ground for compensation. Besides this, the Report of the Law Commission showed that from time immemorial it had been the undoubted law in the country that a master was vested with the right of moderately correcting his slaves for gross neglect or disobedience. A master could even make use of moderate force to prevent his slaves from absconding. No doubt there were deviations from this principle, but these deviations were merely the partial aberrations (misrepresentations) of some Magistrates "who substituted the notions of humanity for the law of the land." This right of moderate correction was the only means left to the master to enforce the obligations of slavery. And if the master should be deprived of this last resource, it would be an abuse of language to talk of slavery in India; for slaves would then be free to do as they wished, they would either work, or not work at all, or leave their masters whenever they pleased.[2]

It is true that this clause if adopted, would lead indirectly to the universal abolition to slavery in British India. Nevertheless, A. Amos objected to its enactment, because it would affect natives in their Zenanas, in their temples, as well as in their agricultural and domestic pursuits. Accordingly Government should refrain from passing such a measure at least on the grounds of justice and political prudence.[3]

Except for dissenting with Lord Auckland on the question of moderate correction of slaves by their masters, Mr. Amos agreed to the other suggestions made by the Governor-General, and the clauses of the amended Draft Act of 1841 ran as follows :—

1-2. Second Minute by the Hon'ble A. Amos, dated January 10, 1842, Consultation No. 5, Law Proceedings, January-March, 1842, Imperial Record Department.
3. *Ibid.*, Consultation No. 6.

Section I. "It is hereby declared and enacted that no public officer shall in execution of any demand of rent or revenue sell any claim of property in any person, on the ground that the property or the right of labour so claimed is parcel of any estate or effects which such officer is authorised to sell and that such person is in a state of slavery[1] (*i.e.*, the sale of slaves in execution of judicial decrees is prohibited).

Section II. "And it is hereby enacted that no rights arising out of an alleged state of slavery shall be enforced by any Magistrate within the territories of the East India Company[2] (*i.e.*, the magistrates are not to uphold slavery).

Section III. "And it is hereby declared and enacted that no person shall be dispossessed of any property on the ground that such person had no right to acquire property unless for the use of another as his slave[3] (*i.e.*, the property of slaves is their own).

Section IV. "And it is hereby declared and enacted that the transfer of a right to the person and labour of a minor excepting with the sanction of the Magistrate of the district in which the transfer may be made or except upon a lawful contract of apprenticeship shall be a penal offence and void in law and that all persons concerned in any such transfer shall be punishable on conviction with imprisonment with labour for any period not exceeding two years or by any fine not exceeding 1,000 Rupees"[4] (*i. e.*, the sale of children as slaves is regulated).

III. THE AMENDED DRAFT ACT DISCUSSED. But the Draft Act thus amended led to a fresh interchange of views. Thus for example, W. W. Bird, concurred in the modified Draft Act of Mr. Amos; but in conformity with his former Minute of September 6, 1841, he emphasised that a short forcible declaration should be made to the effect that the law no longer recognised any distinction between a free person and a slave, and that the Civil as well as the Criminal Courts were no longer competent to recognise any claim on the ground of slavery. This declaration would meet the wishes of the Home Authorities and secure the object which they had in view, "namely the withdrawing from slavery throughout India the sanction and support of the British Government, and extending to slaves the protection of their laws both for person and property."[5]

1-4. Consultation No. 6.

5. Minute by W. W. Bird, dated January 11, 1842, Consultation No. 7, *Ibid.*

In the next place Mr. Prinsep fully approved of Section I prohibiting the sale of slaves in execution of judicial decrees. To his mind it was absolutely and urgently necessary that the authorities should check and prohibit a custom which was said to prevail to a considerable extent in the province of Malabar, namely the sale of slaves as personal property in payment of a debt. He considered the first section of the modified Draft Act to meet that particular purpose and object.[1]

However, commenting upon Section II forbidding Magistrates from legally enforcing any rights arising out of an alleged state of slavery, Mr. Prinsep stated that he was not quite convinced of the necessity of adding this clause, because from the evidence he had before him he had inferred that this proposed enactment was already a law everywhere enforced throughout India. However he did not object to the clause remaining a part of the Act.[2]

Again in his comment on Section III safeguarding the slave's right to acquired property he fully admitted the slave's property should be his own. However he wished to make an exception as regards goods acquired by a slave, subject to a bond executed between him and his master. In the latter case the agreement should be adhered to.[3]

But Mr. Prinsep was entirely opposed to Section IV regulating the sale of children as slaves. He was convinced that in times of famine such sales were a blessing in disguise, and that this practice had the approval of a long-standing custom. Hence he proposed the following enactment: "And it is hereby declared and enacted that the transfer of a right to the person and labour of an infant or minor run in a state of freedom shall not give to the purchaser any right over such child at all or minor as a slave, but shall be deemed and held to be an apprenticeship or assignment for the benefit of the minor during the minority that is to say an engagement on the part of the person who takes the child or minor to maintain or support him for the consideration of his labour and services until he shall come to the age at which he shall be entitled by law to claim."[4]

Mr. Prinsep foresaw the objection that his amendment would injure the cause of freedom on the plea that it favoured the legal recognition of slavery by the State. But this inconvenience was due to the special circumstances prevailing in India.[5]

1-5. Minute by the Hon'ble H. T. Prinsep, dated January 11, 1842, Consultation No, 8, *Ibid.*

The Governor-General concurred with Mr. Prinsep in this comment on the various Sections of the amended Draft Act. As regards Section III he suggested the following wording: "That no rights arising out of an alleged property in the person and services of another, as a slave shall be enforced by any Magistrate in Criminal Court." He restricted the non-interference of Magistrates to criminal actions, because he believed that in the present circumstances, it was inexpedient to go further. He believed that the time had not yet come for following the same policy in civil actions. Accordingly, it would certainly be wise on the part of the authorities to prepare the ground for further legislation by a guarded, preliminary manner of proceeding, namely the refusal of criminal actions; since this refusal was already to a very great extent a practice sanctioned by the usages of the country. For these reasons he deemed it wise to postpone legislation about civil actions to a later period.[1]

As regards Section IV, the Governor-General pointed out that in the strict sense of the Section the sale of children as slaves had to have the sanction of a Magistrate, or was to be in the nature of a lawful contract of apprenticeship.[2] He was strongly in favour of magisterial sanction, because this would enable Government to interfere in favour of the slave whenever circumstances permitted. He, therefore, wanted to make the sanction of the Magistrate essential by substituting the word "and" for the word "or" *i.e.*, the sanction of the Magistrate is required and the transfer is to be in the nature of an apprenticeship.[3]

Moreover the Governor-General insisted that the enactment contained in his former Minute should be forwarded to the Home Authorities together with the amended Draft Act. According to this enactment "an act which would be a penal offence if done to any free man shall be equally an offence if done to any person in any condition of dependence on a master."[4]

Finally the Governor-General made light of Mr. Amos' fears that this enactment, depriving the masters of the power of moderate correction, would leave them helpless, whilst it would encourage laziness on the part of the slaves. He pointed out that, if the power of moderate correction was acknowledged by the British Government as lawful, masters would surely under the pretext of that power exercise upon the slaves an oppression

1. *Ibid.*
2-4. Minute by the Right Hon'ble the Governor-General, dated January 16, 1842, No. 9, Imperial Record Department.

which would be of the most serious and revolting character.[1] He set so much stress by his own views on the matter that he took the trouble to refute the objections raised by Mr. Amos against it. Accordingly he found fault with Mr. Amos' assertion that the right of moderate correction was everywhere acknowledged throughout the country; for he felt convinced that this statement was not borne out, but contradicted by the recorded evidence.

The following was according to the Governor-General a true representation of the state of affairs. First of all the Report of of the Law Commissioners makes it clear that throughout the Upper Provinces of the Bengal Presidency it was the practice of the Courts to make no distinction between master and slave in criminal matters. Secondly according to the same Report, about half of the Judicial functionaries of the Lower Provinces of Bengal were of opinion "that they should make no distinction between the treatment of the slave and the free man." Thirdly the same Report contained the statement of the Madras Courts of Foujdarry Adawlut to the effect "that it is not the practice of the Courts in that Presidency to make any distinction whatever in cases that come before them, and that a Circular Order of the Foujdarry Adawlut recognises the right of a master to inflict correction in certain cases, but that in practice no such distinction is made."

Hence Lord Auckland concluded that, whatever might be the usage in particular districts, on the face of the evidence just quoted, Mr. Amos was not justified in stating that "the exceptions to the right of moderate correction were only the partial aberrations (misrepresentations) of a few Magistrates, who substituted their notions of humanity for the law of the land." He also called attention to the instructions, forwarded in 1838 by the Court of Directors to the Government of India, to lose no time in passing a law which was similar to the enactment which he had proposed. Hence nobody could object to a measure declaring that all men would be treated alike in British Courts.[2] He was most anxious to see the gradual extinction of slavery, even though such an extinction should be only in name; and he hoped that his enactment would achieve this end without exciting any alarm and opposition. On the contrary if they were to be guided by Mr. Amos' unfounded apprehensions and adverse criticism, they would seem to be encouraging slavery both in name and in deed.[3]

1-3. Minute by the Right Hon'ble the Governor-General dated January 16, 1842, No. 9, Imperial Record Department.

However, Mr. W. W. Bird did not endorse the views either of Mr. Prinsep or of the Governor-General ; for whilst they did not make any distinction between master and slave in Criminal Courts, they allowed Civil Courts to adjudge rights arising out of property of the nature in question as it existed. Thus they recognised slavery on the one hand, and denounced it on the other. Besides this, they frustrated their own plans. According to them, the Civil Courts would be bound as before to adjudge the person and services of one man to be the lawful property of another like any other goods and chattels. But in this case, the Criminal Courts could not refuse all aid for carrying such judgments into effect. Thus they might be called upon to punish those individuals in whose favour such judgments might have been passed for attempting to make use of what had been solemnly declared to belong to them.[1]

Mr. Bird, therefore, urged that a law should be passed which would effect the discontinuance of slavery in any form and shape. "Nothing in my opinion," he wrote, "will answer short of a declaration that the law no longer recognises any distinction between master and slave, and that the Courts, Civil or Criminal, are no longer competent to enforce any claim on the grounds of slavery."[2]

Nor were Lord Auckland's suggestion as regards the sale of children approved of by Mr. Prinsep. According to the Governor-General's proposal the sale of children as slaves should be in the nature of an apprenticeship and be made dependent on magisterial sanction. But in Mr. Prinsep's opinion such an enactment would prove of little use in preventing girls being purchased for prostitution. Those who were agents or principals in such bargains were too cunning to be caught by such a tour. Moreover the task entrusted to the Indian Government was to suppress slavery and not to check prostitution. Besides this, if the sale of children even under the name of apprenticeship was made dependent on magisterial sanction, the Government were to all appearances conniving at slavery. He also pointed out that it was a controverted point in Mahomedan Law whether magisterial sanction could make the sale of a slave a valid transaction. This was an additional reason why it was inexpedient to decree that the sale of children should take place in the presence of a Magistrate.[3]

Finally, Mr. Amos remarked on the observations passed on the amended Draft Act. He was opposed to Lord Auckland's

1-3. Minute by W. W. Bird, dated January 17, 1842, Consultation, 10, Imperial Record Department.

amendment "that any act which would be an offence if done to a slave or to any one in any condition of dependence on a master so that no rights arising out of an alleged state of slavery, shall be enforced by a Magistrate." By way of reply he was satisfied with quoting the joint opinion of the Madras Government and of the Madras Sudder Court. They had stated "that no practical good commensurate with the danger of evil can be expected from it, and that the Bombay authorities deem it uncalled for within their Presidency."[1]

Mr. Amos next dealt with Mr. Bird's amendment according to which Government should not sanction any form or state of slavery, and should protect the slave's person and his property. He gave his full support to the amendment, because it did away with an amount of legal inconsistency and would prove a considerable amelioration of the Civil Courts. This amelioration would not amount to a total change of legislative procedure, as long as the Government took care not to annul abruptly ancient usages and not to interfere in the domestic habits of the people. Any attempt in that direction was doomed altogether to end in failure and should be avoided, since the object aimed at could be attained speedily with the natural progress of society."[2]

Mr. Amos was however greatly in favour of the master being allowed to inflict moderate correction upon his slaves. Lord Auckland was of the contrary opinion and had taken the trouble of refuting Mr. Amos' statements. But Mr. Amos did not consider the Governor-General's arguments convincing. He admitted that the right of moderate correction was in itself undesirable. But the question under debate was, whether this right of moderate correction could be safely, justly and effectively prevented without compensation and transferring of power to the Courts, and if this be so, whether this transfer is eligible or not.

Apart from this, Mr. Amos pointed out that the Governor-General's contention that no distinction was made between master and slave in various parts of India by different judicial authorities was based on a mistaken representation of facts. He protested that the Governor-General's assertions "amounted if shifted to their origin to little more than ambiguous phrases extra-judicially delivered." For instance, the Madras Foujdarry in a letter to the Law Commissioners said that the celebrated Circular of 1820, which expressly authorised moderate correction, was

1-2. Minute by the Hon'ble A. Amos, dated January 19, 1842, Consultations No. 12, Imperial Record Department.

actually disregarded in practice. But in the same letter they admitted that the Circular in question was the legitimate guide to all the subordinate Courts and Magistrates of that Presidency. However in a letter of 1839 the Foujdarry asserted that it was not the practice of the Courts in the Madras Presidency to acknowledge the right of moderate correction, and this information was given to the Law Commissioners. But the practice mentioned in the Foujdarry letter of 1839 ran counter to the established usage. From the evidence of the Judge of Malabar and the Canara authorities, referred to in the Second Report of the Law Commissioners, it was clear that, according to the general custom of the country, slaves were moderately corrected; and therefore it was not desirable that they should complain to a Magistrate so long as the custom was followed. Consequently Lord Auckland's enactment, if made a law, was sure to meet with universal opposition, since it ignored and abolished "the Circular Order of 1820 which numerous recognitions sanction, and which is agreeable to the opinion of the Lower Sudder Court of Bengal. And Amos claimed to be right in asking: "Of what weight opposed to the reasoning is the inference drawn from the vague language of the Upper Bengal Sudder Court in a letter to the Law Commission?"

Finally Mr. Amos concluded by pointing out that Lord Auckland's enactment was ambiguous. Most people would interpret it to mean that correction without a cause and amounting to cruelty was made illegal. But this was already illegal, and no new law was required to forbid it. Very few persons would realise that the enactment aimed at suppressing moderate correction for good reasons. It might of course happen that in England people would approve of it; but here in India the suppression of the right of moderate correction was bound to remain a dead letter. But if the Government wanted to suppress the right of moderate correction, they should at least formulate a law to this effect in clear terms which could not possibly be misunderstood. But such a law would prove a great mistake.[1]

Mr. Amos greatly doubted the practical wisdom of the enactment, since it affected "the valuable rights and nearest interests of great masses of population." Hence he advised rather sardonically that this law "might as well like the decrees of a certain Roman Emperor be written very small and hung up so high as to be out of sight."

1. *Ibid.*

After the various members of the Supreme Government had thus expressed their views, Lord Auckland by way of summary wrote a special Minute, dated January 19, 1842. The Governor-General agreed to Sections I and II of the amended Draft Act as proposed by Mr. Amos but with the modfications suggested by Mr. Prinsep.[1]

As regards Section III the Governor-General, though he was at first in favour of the clause, now felt that it would serve no useful purpose. For it would be a sudden break with the legislative procedure which yet prevailed in the Civil and Criminal Courts in India where Hindu Law and Mahomedan Law were strictly followed. Moreover the cases in which the property of slaves was at stake were so few that there seemed little necessity for passing a special law.[2]

As regards Section IV Lord Auckland fully agreed to Mr. Amos amended Draft Act.[3]

Finally Lord Auckland could not help insisting on the reasonableness of including his own enactment which suppressed the master's right of inflicting moderate punishment. He was convinced that only then the Courts were likely to extend their protection to a slave who complained of such punishment having been inflicted on him. He admitted that as a rule the slaves did not in such cases resort to the Magistrates. But their refraining from doing so did in no way support the view that the masters' right should not be suppressed. He strongly deprecated leaving it to time and the operation of judicial principles to deal with the right of moderate correction. Moreover he could never consent to an enactment legalising the right of moderate punishment; for this would be tantamount to legislating against the slaves. He once more called attention to the great danger that masters were likely to exceed the bounds of moderate correction, in fact "one can have no security against their occasional bad character and excited passions."[4]

IV. Appeal to the Court of Directors. As the members of the Council were hopelessly divided among themselves, it was finally agreed upon that all the papers relating to Mr. Amos' amended Draft Act should be forwarded to the Home Authorities. This was not perhaps an ideal course to follow; for the Home Authorities were the last men to be able to take into

1-4. Minute by the Right Hon'ble the Governor-General, dated January 19, 1842, Consultation No. 13, *Ibid*.

account the various circumstances of place, time and persons, which obtained in India. In this connection Mr. Amos' remarks on Lord Auckland's clause (which was meant to suppress the right of moderate correction) may be usefully quoted; for the views expressed on that occasion by Mr. Amos hold good in the case of any legislative Act having for its object the suppression of Indian Slavery. "I am of opinion," he writes, "that it is of far greater importance to agree upon the usages of the country on this subject than to settle what the existing law may in fact be. I would particularly request attention to the usages of the country in Malabar and in Canara. I think it chiefly depends upon the usages of the country whether the proposed clause is morally just or politically prudent. If it be not objectionable in either of these respects, I shall concur most warmly in all that the Governor-General has urged in its favour as prohibiting every individual especially in a country like India from punishing or confining under any pretext a rational being who is not himself perpetrating violence."[1]

It may be finally remarked that though the members of the Council did not agree among themselves as to the specific course to be pursued, all of them concurred in the opinion that some measures should be concerted to remove the evils incidental to slavery, but that this should be done "without prejudicing the interests or violating the habits and feelings of the Natives of India."

In their reply dated July 27, 1842, the Court of Directors wrote to the following effect. "Having taken into consideration the provisions of the Draft Act, we approve of the enactments which it contemplates: (*a*) for discontinuing the sale of slaves by Officers of Government in execution of Judicial decrees; (*b*) for prohibiting the direct interference of the magistracy in enforcing rights asserted to spring out of an alleged state of slavery; (*c*) for protecting property acquired by slaves to their own use; and lastly (*d*) for regulating transfers or a right to the persons and labours of children."

And in order to overcome the difficulty relating to the last mentioned subject, namely that the clause as it stood in the Draft Act would be constructed to give a legal validity, not otherwise attached to the sales of children made prior to the time when the

1. Minute by the Hon'ble A. Amos, dated January 30, 1842, Consultation No. 14, *Ibid.*

enactment would come into force, the Home Authorities directed the Government of India to remove the perplexity by the omission of the words "and void in law."[1]

The proposition of Lord Auckland which had been the occasion of a protracted interchange of conflicting opinions among the members of the Government of India, met with the entire approval of the Court of Directors, who accepted it without any additional comment.

At the same time the Court of Directors acted wisely in allowing a large amount of discretionary power to be used according to the need of varying circumstances. "As the subject of slavery," wrote the Hon'ble the Court of Directors in their despatch of July 27, 1842, "is one intimately connected with the customs and habits of the people of India, and requiring in certain localities a greater degree of caution and delicacy in dealing with it for its suppression than may be necessary in others, we desire to leave to your discretion the gradual or simultaneous introduction of these provisions and enactments in such districts, and at such times as you may consider most favourable to ensure their ultimate success in the immediate mitigation and final extinction of slavery in India."[2]

The reply of the Court of Directors reached India either towards the end of 1842, or in the beginning of 1843. Thereupon the members of the Supreme Legislative Council in India bearing in mind the remarks of the Court of Directors, decided (as we learn from a note prepared by Mr. Amos), to omit from the Slavery Act the clause relating to the sale of children. The members of the Council were hopelessly divided among themselves regarding the expediency of this clause. Some of them likewise doubted that the clause would prove effective in remedying the evil it was to suppress. Other members pointed out that the grievance to which this clause was to put an end, was already sufficiently remedied by the existing laws, which could be enforced with additional strictness after the passing of the Slavery Act. Finally, by omitting this clause the Government would not have the appearance of sanctioning and regulating a practice which was already illegal; and at the same time adequate penalties of previously sanctioned laws would effectually check the abuses to which the sale of children was bound to give rise.[3]

1. *From the Hon'ble the Court of Directors to the Governor-General of India in Council*, dated July 27, 1842, Home Department, Legislative Despatch from Court, No. 11 of 1842, Imperial Record Department

No. 6. ACT V OF 1843

SUMMARY : I. Proposing the Act. II. Passing the Act.

SOURCES : UNPUBLISHED : Law Proceedings, April-June, 1843.

I. PROPOSING THE ACT. After the Report of the Law Commissioners and the amended Draft Act had been forwarded to the Home Authorities, the Supreme Government of India took a step which was as unexpected as it was effective and far-reaching. Up to that time the Supreme Government of India had followed a policy of procrastination and had time after time shirked to take a final decision on the plea of disturbances likely to follow in the wake of radical anti-slavery legislation. This policy of procrastination was suddenly abandoned, and on January 24, 1843, a Draft Act was published in the Government Gazette, the Governor-General reserving the reconsideration of the same to April 6, 1843. On February 11, 1843, Lord Ellenborough, the Governor-General of India, gave his assent to the proposed Act under Section 70, 3 and 4 Will. IV, C. 85 for declaring and amending the law regarding the condition of slavery within the territories of the East India Company.[1]

The provisions of the Draft Act were at once forwarded to Bombay, Madras, Allahabad and the North-West Frontier Provinces, and met everywhere with the approval of the Provincial authorities. The only Province, which ventured to oppose the newly proposed anti-slavery legislation, was Bengal.[2]

In the same month of February, 1843, as soon as the Draft Act had been printed, the landowners of Bengal were up in arms against it. Bengalee Zamindars, Mirasdars, Talookdars, Pottadars and Ijardars, amounting in all to about 580, and mainly belonging to the district of Sylhet, made a petition against the Draft Act. They expressed their fears that, if the proposed Act became a law, "it would tend to the ruin of all India, specially that of the respectable part of the population of Sylhet. From time immemorial slaves of both sexes were engaged in the services of respectable men and performed drudgeries of various descriptions. According to the Shastras and customs of the country, the slaves were alienable by sale, purchase and gift." These and similar reasons

1. *Enclosure in a letter from the Officiating Secretary to Government of India with the Governor-General, dated February 11, 1843, Law Proceedings, April-June, 1843,* Imperial Record Department.
2. Law Proceedings, April-June, 1843, Imperial Record Department.

were brought forward to dissuade Government from passing the new Act.[1]

In support of their claim the petitioners alluded to the non-interference policy of the former Governments and also referred to the Regulations passed in the year 1793 which provided that the Officers of Justice should act in consonance with the prevailing customs and usages. It was their opinion that, if slavery was allowed to be continued, it would not prove in any way injurious to the interest of the Government, but on the contrary would contribute towards their benefit in this respect and that, when matters relating to slavery were in litigation, large profits arising out of stamp duties would accrue to the Government as in ordinary cases arising out of real or personal property. Besides this, the petitioners of Sylhet represented that, unlike the landowners in other districts, they were "men of poverty," and had no means of employing paid servants to perform the duties which were ordinarily performed by slaves. They also dreaded that, if the proposed Act was passed into a law, the slaves would consider themselves as men of respectability, and would then refuse to perform the duties which were habitually assigned to them.[2]

It was likewise pointed out by them that this proposed new law ran counter to their rights. For according to Regulation 3 and other Regulations of 1793, it had become an acknowledged principle that decrees passed by Courts of Justice could never afterwards be altered. In this manner the fate of thousands of slaves had thus been settled once for all. But if this proposed law were enforced, all those legal decisions would simply be set aside to the great disadvantage of the landowners. It was obvious that no man would willingly continue to serve another in the capacity of a slave. Nor could any man be forced to do so; for in case a master would have recourse to violence, the Courts would make him liable to punishment like any other offender. They therefore considered the enactment of such a law an act of unparalleled harshness on the part of the Government towards them, and they begged Government to take into consideration the contents of their petition and to safeguard their long-standing rights in slaves, allowing these rights to be enforced by the Courts.[3]

1, Abstract Translation of a Bengalee Petition from Zamindars &ca, of Sylhet appealing against the Slavery Act, dated February 23, 1843, Law Proceedings, April-June 1843, Imperial Record Department.

2-3. *Ibid*.

There was likewise a petition forwarded by the Mahomedan inhabitants of Sylhet district bearing about 700 signatures. The petition was practically the same as that of Hindu Zamindars of Sylhet. The only additional argument used in this petition was that the slaves, being descendants of men of the same class of bondage and servitude, did not consider themselves as placed in a degraded situation.[1]

A few days later, on March 10, 1843, the landowners of the discrict of Backergunge also forwarded a petition to the Government of Bombay. Their main objection was against the 2nd and 4th sections of the Draft Act. Unless the whole of these two sections were modified, they would not only tend to the ruin of the character of men of rank and honour, but would also deprive them of their livelihood. Under these circumstances the petitioners humbly requested the aforesaid sections of the Draft Act be amended.[2]

II. PASSING THE ACT. But these petitions were not listened to by Government. On April 7, 1843, the following Act was passed by the Hon'ble the President of the Council of India in Council with the assent of the Right Hon'ble the Governor-General of India.

An Act for declaring and amending the law regarding the condition of slavery within the territories of the East India Company.

First. **"It is hereby enacted and declared that no public officer shall in execution of any decree or order of Court or for the enforcement of any demand of rent or revenue sell or cause to be sold any person on the ground that such person is in a state of slavery.**

Second. **"And it is hereby declared and enacted that no rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.**

Third. **"And it is hereby declared and enacted that any person, who may have acquired property by his own industry, or by the exercise of any art calling or profession or by inheritance assignment gift or request shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave.**

1-2. *Ibid.*

Fourth. "**And it is hereby enacted that any act which would be a penal offence if done to a free man shall be equally an offence if done to any free person on the pretext of his being in a condition of slavery.**"[1]

In this manner slavery was put an end to by Act V of 1843.

CONCLUSION

Thus was the curtain finally rung down on the last scene of the tragedy of slavery, which was staged in British India from 1772 to 1843. It was a tragedy consisting of more acts and scenes than warranted by the rules of dramatical composition in the fairy land of the theatre. But then it was not an imaginary story based on a legendary background. For the stage was the fair land of Hind, the actors were India's own inhabitants, and the peripeties extended over 71 years, from 1772 to 1843. It lies not with us that in this 71 years' tragedy there were acts and scenes which redound little to the honour of mankind; for we of the present day are not responsible for the past. Well may we thank God that the denouement put an end to what had been for centuries a curse upon the land and a disgrace to humanity.

1. Act V of 1843, Law Proceedings, April-June, 1843, Imperial Record Department.

INDEX.

A

Abu Hanifah, 230.
Abu Yusuf, 231, 238.
Abyssinians, 73, 76.
Abyssinian slaves, 74.
Act V of 1843, 124-126, 128, 130, 305, 332, 335, 401, 404.
Adami, 82.
Adam J., 300.
Adam William, 18, 21, 23, 27, 37, 38, 41, 74, 219, 266, 276, 295-297.
Aden, 36.
Adima, 82.
Afghanistan, 203.
Africa, 36, 73, 74, 190-192, 286, 288-291, 317.
African boys, 3, 6, 186, 190, 191, 192.
African children, 4, 159.
African coast, 148.
African ladies, 5.
African slaves, 6, 8, 73-75, 187, 190, 191, 293, 298, 299.
African slave-trade, 171, 288, 302.
Agra, 56, 68, 297, 340.
Agrestic slaves, 383.
Ahmedabad, 200, 318, 326, 327.
Alexander, 33, 35.
Aligarh, 298.
Allahabad, 401.
Allepi, 61.
Alwa, 298.
America, 20, 202, 283.
Amherst Lord, 266.
Amos. A., 26, 121, 282, 341, 347-350, 382-384, 389-391, 393, 394, 396, 397, 399, 400.
Amratala, 74.
Anand Rao, 327.
Anderson, 320, 321.
Anjerakandy, 61, 110, 126.
Ansthuther, A, 172.
Arabia, 6, 74, 148, 155, 164, 201, 302, 303.
Arabs, 5, 152, 157, 170, 201, 301.
Arab Ships, 6, 73, 162, 164, 182, 298, 299.
Arab vessel, 170, 176, 179.
Arbuthnot, R. K., 328-330.
Arcot, 18.
Armenian, 74.
Arnot Landford, 5, 6.
Arrian, 33.
Arthur, G. 330.
Arya Brahmans, 40.
Ashburton, Lord, 181.
Asia, 191, 192.
Asiatic Journal, 34, 84, 92, 183.
Asoka, 35.
Assam, 77, 132, 134, 136, 137-140, 142-144, 198, 199, 272-280, 284, 285, 310-313, 370, 371.
Assamese Committee, 141, 279, 312.
Assr, 75.
Auckland, 349, 350, 369, 371, 372, 389, 390, 396-398, 400.
Augunah, 55, 77.
Aurangzeb, 226.
Ayen Akbaree, 340.

B

Baber, T. H, 14, 17, 18, 29, 39, 61, 72, 83, 85-88, 92, 98, 102-108, 199, 200, 202, 241, 267-274, 276-279, 283, 285, 308-310, 314, 334.
Babington, 317.
Backergunge, 10, 11, 17.
Baillie Neil, 226, 228.
Balasore, 198.
Barda-faroshes, 78.
Bareilly, 31, 48, 55, 77, 197, 298.
Bareilly Court of Circuit, 77.
Baroda, 203, 316, 319, 320, 322-327.
Bassein, 75.
Beevan H., 105.
Behar, 42, 48, 69, 197, 346, 347.
Bell A., 306.
Benares, 42, 48, 69.
Benares College, 34.
Bengal, 1, 16-18, 23, 42, 48, 52-56, 59, 67, 69, 73, 76, 77, 91, 139, 140, 144, 196, 198, 199, 203, 219, 220, 242, 254, 267, 283, 285, 293, 298-300, 313, 321, 337, 338, 343, 344, 373, 385-387, 394, 397, 401.
Bengal Chronicle, 9.
Bengal Civil Service, 219.
Bengal Code, 304, 340.
Bengal Harkaru, 73.
Bengal Law Commission, 10, 26.
Bengal Regulation III of 1832, 300.
Best William, 175.
Bhalchundre Sastree, 214.
Bhaugalpore, 199.
Bhojpoor, 38.
Bhopal, 203.
Bhugwant Roy, 38.
Bhuj, 154.
Bhurtpore, 63.
Bird W. W., 121, 122, 349, 350, 372-375, 391, 395.
Bishen, 250.
Bishnath, 139.
Bittington, 302.
Blackstone, 13.
Blair, H. M., 2, 4.
Blane, D. A., 185.
Board of Revenue, 87, 96, 104, 105, 107, 109-111, 272, 273, 275, 276.
Bodam, 60.
Bogle A., 142, 312.
Bombay, 1, 3, 4, 17, 42, 52, 53, 56-60, 71, 73-75, 78, 118, 132, 151, 154, 156, 158, 160-164, 166, 168, 169, 172, 173, 175, 176, 178-186, 188, 191, 194, 196, 199, 201, 203, 267, 277, 278, 285, 290-292, 296, 301, 303-307, 313, 315-320, 323-328, 330, 338, 344, 349-353, 370, 373, 374, 396, 401, 403,

Bombay Code, 178, 325, 351.
Bombay Gazetteer, 163, 184.
Bombay Proclamation of 1805, 301.
Bombay Proclamation of 1807. 302.
Bombay Proclamation of 1837, 163, 168.
Bombay Regulation I of 1813, 304.
Bombay Regulation XIV of 1827, 306.
Bombay Regulation, 164, 351.
Bombay Sudder Adawlut, 191, 302, 326, 351.
Bond, 69.
Bondage, 42, 70, 81, 151, 198, 232, 239, 242, 255-257, 261, 311, 321.
Bondsmen, 36, 132-135, 141-143, 269, 309, 359.
Bond-servants, 71.
Borah, 78.
Borraidaille, 360.
Bourbon, 59.
Brahamans, 39, 40, 42, 51, 85, 86, 92, 157, 208, 212, 214.
Brinjaries, 55, 57, 63, 64.
British Cruizers, 192.
British Parliament, 28, 171, 173, 181, 190.
British Protected States, 203.
Broach Court of Adawlut, 57.
Brodle T., 137, 143.
Brooke T., 48, 55, 77.
Brougham Lord, 181.
Brown, 60, 61, 88, 103, 105, 110, 126, 269, 270, 273.
Bucca, 3, 148.
Buchanan, 17, 18, 48, 77, 85, 86, 92, 95, 101 ,120, 272, 348.
Bugrah, 347.
Bundelkhand, 2, 49, 203, 242.
Burdwan, 347.
Busteed Dr., 7.
Bushby, 293.
Buxton, 18, 37, 334.
Byakara, 10.

C

Cacher, 144.
Calcutta, 3, 5-9, 17, 31, 45, 47, 49, 54, 55, 66, 73, 78, 132, 162, 163, 165, 171, 172, 196, 197, 198, 201, 224, 242, 243, 292, 294, 297, 298, 299, 301, 313, 347, 385, 386.
Calcutta Christian Advocate, 54.
Calcutta Journal, 5, 73, 299.
Calcutta Market, 73, 299.
Calcutta Proclamation, 163.
Calica Purana, 210, 211.
Calicut, 59, 86, 87, 125, 126.
Cameron, C. H. 26, 341-344, 347, 360.
Campbell, A. D. 17, 18, 49, 50, 62, 72, 92, 273, 274, 276, 279, 284, 285, 292, 307, 314, 334.
Canacums, 82.
Canara, 8, 11, 18, 24, 80, 82, 83, 89, 93, 95, 96, 99, 100, 103, 106, 123, 201, 271, 272, 348, 373, 385, 386, 397, 399.
Cape Comorin, 66, 202.
Cape Delgado, 75, 160.
Casseepore, 78.
Caste-tyranny, 85, 86.
Cawnpore, 298, 346.
Cawnpore Examiner, 49.
Ceded & Conquered Provinces, 48, 69, 77.
Central India, 293.
Ceylon, 171.
Chambers, Sir R. 172.
Chandernagore, 171, 172.
Chaplin William, 4, 20, 25, 67, 71, 78, 200, 201,
Charter Act of 1832, 334.
Cheap, 10.
Cheraman Perumal, 81.
Cheranad, 81.
Cherumars, 80, 81, 84, 87, 90, 91, 92, 96, 98, 100, 101, 109, 110, 119, 121, 123-125, 127-131, 297, 384.
Chief of Mangrol, 151.
Chief of Wadi, 160, 161.
China, 203.
Chittagong, 77, 199, 221, 222.
Chota Nagpur, 71.
Christians, 38.
Christian Missionaries, 138.
Christianity, 280.
Circular Order, No. 111, 111, 113, 114.
Circular Order of Madras Foujdarry Adawlut, 361.
Circular Order of 1820, 377, 384-386, 394, 396.
Civil Court, 112, 142, 258, 326, 358, 367, 371, 373, 374 376, 391, 395, 396, 398.
Civil Hindu Law, 340.
Civil Law, 107, 265.
Clarkson Thomas, 286, 334.
Clementson, F. 108, 109, 110, 202.
Coast of Africa, 174, 181, 183.
Cochin, 61, 62.
Coffrees, 6, 7.
Colebrooke H. T., 16-18, 28, 37, 41, 45-47, 49, 66, 72, 73, 76, 209, 211, 213, 214. 216, 295-299.
Colombo, 294,
Conolly H. V., 92, 124-131.
Cooch Behar, 77.
Coorchers, 268.
Coorg, 22, 23, 37, 61, 80, 82, 93-95, 97, 106.
Corar, 102.
Corawars, 101.
Cotton, 90.
Court of Admiralty, 288, 360.
Court of Circuit, 255, 258, 263, 264, 293, 309,310.
Court of Criminal Judicature, 223, 345.
Court of Directors, 26, 53, 58, 60, 77, 118, 120, 130, 138, 139, 183, 189, 193, 283, 292, 294, 298, 311, 315, 316 318, 327, 334, 336, 337, 344, 348-350, 353-355, 365-369, 372, 389, 394, 398-400.
Court of Foujdarry Adawlut, 50-53, 58, 59, 62, 112, 113, 118, 122, 123, 321.
Court of Sudder Dewany & Nizamut Adawlut, 70, 242, 259, 263, 265.
Court of Nizamut Adawlut, 16, 17, 21, 28, 254, 257, 260, 338.
Criminal Courts, 106, 258, 263, 296, 358, 369, 373, 375, 376, 384, 391, 393, 395, 398.
Criminal Law, 348, 370.
Cutch, 3, 24, 75, 147, 148, 151, 153, 155, 164, 303, 330.
Cuttack, 66, 197, 199, 339, 347.

D

Dacca, 10, 47, 48, 54, 197.
Dacca Court, 223.
Dacca Jelalpore, 199.
Daman, 3, 74, 45, 180-182, 184, 186, 194.
Dancing-girls, 51, 63, 67, 201.
Dancing women, 112, 113.
Dattaca Mimansa, 210, 211.
Davidson J. 71.
Day, 48.
Deccan, 4, 20, 67, 71, 78, 200, 201, 291, 317.
Delhi, 31, 52, 55, 56, 299, 300, 344-347, 374.
Delhi Gazette, 55.
Desh-Ajary, 102.
Devadasis, 66, 197.
Dharwar, 199, 277, 278.
Dholpoor, 56, 297.
Dhulia, 57.
Dhurampore, 328.
Dinajepoor, 48.
Diu, 3, 74, 75, 160, 180-186.
Domestic Slavery, 34, 321.
Domestic Slaves, 35, 81, 304.
Don Francisco De Mello, 182, 183.
Dooab, 300.
Draft Act of, 1839, 335, 342, 348-351, 353.
Draft Acts of 1841, 388.
Dubois l'Abb, 84.
Duncan Jonathan, 60, 102.
Durmastalla, 83.
Durrang, 135, 140.
Dutch, 171.
Dutt, R. C., 35.

E

East Indies, 61, 298.
Eastern Africa, 192.
Eastern Colonial Empire, 298.
Eastern Islands, 288, 298.
Eastern Seas, 161, 173.
Ellenborough, Lord, 401.
Elliot, 341.
Elphinstone M. S. 35, 290, 315.
Emancipation, 20, 90, 108, 142, 215, 237, 238, 250, 252, 255, 263, 264, 317, 358, 365, 366.
Emperor of Malbar, 81.
England, 120, 131, 180, 181, 187-189, 192, 260, 265, 274, 276, 283, 286, 288, 308, 317, 334, 335, 354, 387, 388.
English Court, 175.
English Laws, 291, 352.
Equity, 158.
Erilays, 82.
Ernad, 81.
Erskine James, 182, 183, 319.
Etawa, 298.
Ethiopia, 245.
Eunuchs, 6, 74, 299.
Europe, 25, 294, 295.
Exportation, 144, 168, 178, 288, 294, 296, 298, 301, 303-306, 367.

F

Falkland Lord Viscount, 189, 192.
Farish James, 320.
Farmer Captain, 59.
Farquhar Governor, 31.
Felony Act of 1811, 172, 173, 286, 313.
Fenn Joseph, 105.
First Report of 1839, 353.
Fort. St. George, 122, 308.
Fort William, 242, 264, 294, 297, 298, 301
Fortnightly Review, 202, 292.
Fraser Colonel, 14, 94.
French, 84.
French Islands, 295.
French King, 172.
Frere H. B. E. 194, 202. 292, 322.
Friend of India, 128.
Furrackabad, 258, 298.
Futwa of 1841, 370, 371, 383, 384, 386, 3
Futwa Alumgiri, 226.

G

Gaekwar, 316, 319, 320, 326, 327.
Gautama, 208.
5 Geo. III C. 113, 178.
47 Geo. III C. 36, 288.
51 Geo. III C. 23, 73, 162, 164, 165, 172, 173, 180, 264, 285, 286, 287-293, 298, 307-309, 312-316, 318.
5 Geo. IV C. 113, 165, 166, 171-173, 175, 177, 189, 192, 360, 367, 372, 375.
Ghazees, 244.
Gholamkhana, 74.
Giberne G., 306.
Glenby Lord, 182.
Goa, 3, 74, 75, 180-182, 184-187, 192-194.
Gokarnum, 40.
Gomes, 129.
Goorkha, 77.
Gorakpur, 70, 72.
Government Gazette, 175, 401.
Government Resolution of 1829, 310.
Governor-General of Goa, 191.
Graeme Commissioner, 17, 18, 41, 85, 87, 88, 89, 92-94, 111, 272, 276.
Grant Robert, 163, 176, 320, 321, 352.
Grant, Sir William, 174.
Great Britain, 196, 202.
Greeks, 35.
Greek historians, 34.
Greek writers, 33, 78.
Greenhill David, 57.
Griffith, Ralph T. H., 34.
Gujerat, 154, 57, 58, 318, 319, 322, 328.
Gulf of Cambay, 160.
Gulph of Cutch, 167.
Gurney, 334.
Gwalior, 56, 203.

H

Hall *vs.* Ward, 159.
Hamilton Alexander, 69.
Hamilton Charles, 43, 227, 229, 232.
Hammerton Askins, 303
Hardinge, C. 338.
Hardy, C. F. Le, 22.

Harington, J. H., 14, 29, 241, 254, 258-266, 271, 283-285, 296, 297, 314.
Harris, T., 96, 201.
Havannah, 174.
Hebrew lawgiver, 35.
Hedaya, 43, 226, 227, 229, 230, 231, 240.
Helena, St. 294.
Hickey's Gazette, 6.
Himalayas, 66.
Hind, 1, 196.
Hindu Law, 1, 40, 41, 48, 79, 122, 139, 207, 209, 211, 213, 216, 219, 221, 223, 225, 240, 250, 253, 254, 260, 263-265, 268, 289, 317, 322, 339-341, 375, 385, 398.
Hindu Pundits, 220, 221, 243, 248, 249, 251.
Hindu slavery, 37.
Hindustan, 32, 33, 140, 251, 347.
Home, Sir James, 86.
Hooghly, 292, 347.
Hopewood, Captain, 301.
Horrebow Peter, 171, 172, 296.
House of Commons, 61, 269.
House of Lords, 40, 83, 107, 181, 182, 202, 334.
Hubshees, 303.
Hunifah, 231.
Hyderabad, 76.

I

Ill-treatment 86.
Imam of Muscaat, 43, 75, 76, 148, 155, 160, 179, 243, 244, 303.
Imperial Parliament, 364.
Importation 73-77, 79, 168, 178, 185, 186, 191, 193, 201, 265, 288, 289, 291, 297-299, 303, 304, 316, 326, 367.
India Bill of 1833, 14.
Indian Gazette, 73.
Indian Law Commission, 78, 89, 90, 91, 105, 111, 122-123, 131, 179, 186, 196, 212, 282, 307, 311, 332, 334, 336-341, 345-347, 349, 353, 354, 360-362, 364-366, 369-375, 384-388, 394, 396, 397, 401.
Indian Penal Code, 232, 332, 335, 357, 359, 360, 362.
Indo-Portuguese, 194.
Ironside, 165, 166.
Islam, 226, 229, 244.
Island of Cuba, 174.
Island of Socotra, 75.

J

Jackson, J. H. 318.
Jackson William, 296.
Jafferabad, 155.
Jagannath, 37, 72, 210, 211.
Jagannath Shrine, 66.
Jaintia, 54.
Jalam, 49.
Jallapur, 97.
Jam of Navanagar, 150.
Java, 173, 197.
Jelalpore, 10.
Jenkins, F., 132, 134, 136, 139, 144, 311, 370, 371.
Jews, 34.
Jeypore (Jaipur), 55.
Jones, Sir William, 9, 30, 214.
Journal of the Asiatic Society of Bengal, 69.
Judda, 3, 148, 167, 292.
Judges of Circuit, 273.
Jus Civile, 37, 42.
Jus Gentium, 36, 37, 42.
Justinian, 36, 37, 42.

K

Kajpool Chief, 156.
Kaikar, 54
Kaira, 57.
Kampti Chiefs, 312.
Kamroop, 136, 142.
Karachi, 74, 75.
Karokoram, 202.
Kassiah, 144.
Kathiawar, 3, 147-150, 152-155, 160, 161, 164, 167, 180, 182-185, 203, 303, 319.
Kathiawar Market, 148.
Katyayana, 208, 212, 213, 216.
Kerr Robert, 347.
Kidnapping, 79, 171, 201, 262, 269, 270, 296, 309, 373.
King of Great Britain, 172.
King of Oudh, 73, 74, 293.
Kings Bench, 174, 175.
Kishen, 75, 76.
Keshenpoore, 70.
Kolahpur, 200.
Konkan, 317.
Kooleen Brahmins, 11.
Koran, 43, 226, 227, 238.
Kotah State, 52, 55.
Kritima, 210.
Kshatriya, 208.
Kubar, 42.
Kuddalore, 98.
Kudima, 82.
Kufa, 230.
Kumaon, 78.
Kuranee, 42.
Kurruckdeea, 70.
Kyburt Caste, 197.

L

Lang, W., 151, 152, 153, 330.
Lascelles F. 51.
Law of Piety, 35.
Laws of Manu, 34.
Levitical Law, 34.
Leycester, W., 14, 16, 21, 29, 31, 241, 257, 258, 265, 283, 285, 314.
Lunier, 149.
Lindsay, 47.
Liston, 69, 73.
Local Courts, 118, 123.
Logan, W. 80, 131.
London Times. 62, 181.
Lucknow, 49, 74, 292.
De Lugo, 13.
Lumsden, 200.
Lushington, C. M., 272.

M

Macaulay, 336.
Macedonians, 33.
Macklin, H. G. 289-291, 315.
Macnaghten, W. H. 14, 16, 17, 22, 28, 29, 44, 48, 219, 220, 240.
Maculla, 3, 148, 151.
Madagascar, 36, 288, 294, 298.
Maddock, T. H. 184.
Madras, 1, 3, 11, 17, 18, 42, 49, 50-53, 59, 62, 63, 72, 80, 81, 89, 91, 97, 104, 105, 108, 111, 113, 118, 121, 122, 124, 129, 132, 172, 196, 201-203, 268-274, 276, 277, 279, 285, 291, 293, 307-310, 313, 338, 344, 348-350, 352, 353, 360, 362, 373, 383, 384, 385, 387, 389, 394, 396, 397, 401.
Madras Board of Revenue, 29, 118, 308.
Madras Board of Revenue Order, 307.
Madras Foujdarry Adawlut, 370, 384.
Madras Futwa, 386.
Madras Regulation II of 1812, 307, 308.
Madras Regulation II of 1826, 308.
Madras Sudder Court, 396.
Mahe, 59.
Mahomed, 231, 237, 240.
Mahomedan Female slaves, 27.
Mahomedan Law, 2, 26, 43, 44, 46, 47, 113, 114, 122, 123, 139, 226-229, 232, 233, 235, 239, 240, 245, 251, 253-255, 259, 263-265, 268, 270, 289, 317, 322, 339, 340, 341, 371, 375, 384-387, 395, 398.
Mahomet, 6.
Malabar, 17, 18, 39, 40, 59, 60, 62 80-86, 89, 90, 92, 94-96, 99, 100, 102, 103, 105, 106, 108, 109, 111, 118-121, 123, 124, 128, 130-132, 201, 202, 270, 272-274, 294, 301, 307, 308, 348, 362, 366, 373, 382, 384, 386, 387, 392, 397, 399.
Malabar Coast, 59, 81, 82, 84, 302, 362.
Malaca, 3.
Malcolm, Sir Charles, 117, 170.
Manava Dherma Shastra, 34.
Mandvi, 75, 147, 151.
Mangles, R. D. 139.
Mangalore, 271.
Mansel, 340.
Mansfield, Lord, 286.
Manu, 37, 208, 212-214, 223, 249, 250.
Mapla, 59, 61, 362.
Marwar, 55,
Marriott, S. 306.
Martin C. R., 338.
Matthie, Lieutenant James, 132, 135, 136, 140, 141.
Mauritius, 59, 171, 294.
Maurya Empire, 35.
McCosh, Dr., 198.
McLeod, 275.
Mecca, 167.
Meerut, 77.
Megpunnaism, 63.
Meriton Henry, 169.
Metcalfe, Charles T., 31, 299, 300, 313, 344-346, 374.
Midnapore, 53,
Millet, 341, 360.
Mills, 63-65.
Minto, Lord, 31.
Misra, 216.
Mitakshara, 208, 313, 214, 250.
Moghul Government, 69.
Moghul Merchant, 73, 74.
Moghul Period, 56.
Moghul's Seraglio, 56.
Molvis, 231.
Mombasa, 75.
Monthly Review, 62.
Mookestans, 87.
Mooloorhaad, 87.
Moorshedabad, 74.
Moradabad, 77, 78, 197, 199, 298.
Moresby Captain, 75, 160.
Mosaic Law, 13, 280.
Mozambique, 3, 187, 189, 190, 193, 194.
Mozambique ships, 182.
Muftis, 43, 44, 46, 47, 70, 230, 240, 243, 245, 250, 252, 253, 261, 339.
Munro, Sir Thomas, 102, 275.
Muscat, 3, 74, 292, 301.
Musicanus, 33.
Myers, G. 69.
Mymensingh, 10, 199, 221.
Mysore, 61, 83, 106, 203, 348.
Mytton, 10.

N

Nagpur, 203.
Nairs, 80, 85, 86, 92.
Nana Farnavis, 290, 315-317.
Narada, 37, 72, 207, 208, 210, 213, 216, 221, 223.
Nasik, 320, 321.
Native States, 3.
Nautch Girls, 297.
Nawab of Moorshedabad, 74.
Negroes, 245.
Negro Slave, 342.
Negro Somerset, 287.
Nepal, 52, 55, 76, 203, 265.
Nepalese, Governors, 77.
Nesbitt, Mrs. 317, 318.
Neufville J. B., 278, 279, 284, 285, 311.
Newbolt, Sir John, 172.
Niadees, 84.
Nizam, 201.
Nizamut Adawlut, 385, 387.
North-East Frontier, 137.
North-Eastern India, 132,
North-East Rungpore, 144.
North-Western Provinces, 293, 337, 341, 401.
Nowgong, 136, 137.
Nubia, 245.
Nudgeebabad, 55, 77.

O

Ogilvy, T. 328.
Order of 1836, 312.
Order of August 1834, 311.
Order of September 1834, 312.
Oudh, 49, 74, 203,

P

Pachete, 42.
Padshah Begum, 74, 293.
Page, 60.
Palamoo, 38, 70.
Palghat, 82.
Palunpur, 58.
Parian, 92.
Paris, 276.
Parliament, 188, 285, 286, 288, 289, 293, 309, 354, 355, 360.
Parriars, 82.
Patna, 42, 199.
Peregrine Praetor, 37.
Peria Pass, 98, 268.
Persia, 203.
Persian Gulf, 36, 74, 148, 153, 155, 160, 167, 170, 179, 292, 313.
Peshwa, 316.
Pitt William, 286.
Poleyan, 85.
Polian, 92.
Ponnani, 81.
Pooliars, 42, 61, 88, 99, 101, 310.
Poona, 57, 290, 315, 316, 320, 322, 324-326.
Porbandar, 3, 147, 148, 149, 151-153, 156, 157, 160, 161.
Portugal, 181, 187-189, 192.
Portuguese, 74, 154, 181, 182, 184, 187, 189-192.
Portuguese brigs, 183, 184, 187.
Portuguese Empire, 180.
Portuguese Governor-General, 189, 192, 193, 194.
Portuguese Padri, 7.
Portuguese Ships, 183, 186.
Portuguese vessels, 192.
Pottinger Henry, 75, 330.
Prakasa Parijata, 216.
Praedial slavery, 11, 34, 36, 362.
Praedial slaves, 81, 346.
Princep Augustus, 38, 39.
Prinsep H. T., 375-377, 392, 393, 395, 398.
Proclamation, 125, 138, 144, 155, 164-166, 175, 176, 179, 254, 255, 279, 295, 300, 311-313, 345, 347, 383.
Proclamation of 1789, 286.
Proclamation of 1793, 61.
Proclamation of 1798, 264.
Proclamation of 1811, 346.
Proclamation of 1812, 299, 300.
Proclamation of 1833, 311.
Prohibition Act of 1811, 78.
Prostitutes, 30, 47, 54, 64, 67, 77.
Prostitution, 27, 52, 247, 302, 356.
Protected States, 303.
Provincial Court of Circuit, 103, 113, 269.
Punchroke, 197.
Pundits, 219, 222-225, 250, 340, 385.
Pundit Vydia Nath Misra, 212.
Punjab, 203.
Punnah Slaves, 22-23.
Punwah-Shadee, 10.
Puranic Period, 35.
Purnea, 10, 199.
Puri, 66.
Pykes, 133, 134.

Q.

Quasi-slavery, 133.

R.

Raffles, Sir Stanford, 31.
Rajahs, 40, 214.
Rajah of Coorg, 97.
Rajah of Dhurampore, 329.
Rajah of Kolahpur, 200.
Rajkot, 3, 147, 149, 330.
Rajpoots, 38.
Rajputana, 203.
Rajshahi, 10, 42, 67, 199.
Ramgurh, 38, 70, 197, 259.
Rampore, 78, 197.
Rana of Porbandar, 151, 153, 156, 157.
Rangpur, 68.
Ranibidnoor, 277.
Rao of Cutch, 154, 167.
Ratnakara, 208.
Ravenshaw, J. G., 8, 201.
Ratnagiri, 200, 352.
Raynal, l'Abbe, 84, 85.
Red Sea, 74, 160, 167, 170, 179, 292, 313.
Reid, 151-153, 185.
Remington, 327.
Repton, Edward, 198.
Revenue Officers, 103-105.
Rewa, 203.
Regulations, 106, 112, 113, 122, 169, 170, 177, 179, 242, 250, 257, 259, 262, 265, 266, 271, 296, 311, 317, 323, 339-341, 344, 346, 349, 352, 364, 370, 402.
Regulation of 1772, 259.
Regulation of 1774, 294.
Regulation IV of 1793, 340, 341, 402.
Regulation VIII of 1799, 263.
Regulation III of 1802, 112.
Regulation I of 1803, 250.
Regulation VIII of 1803, 263.
Regulation III of 1804, 256.
Regulation X of 1811, 73, 77, 264, 265, 297, 301, 304, 344.
Regulation II of 1812, 309.
Regulation I of 1813, 75, 180.
Regulation X of 1816, 114.
Regulation of 1820, 169, 170, 176, 177.
Regulation of 1826, 309.
Regulation XIV of 1827, 305, 307, 326, 329.
Regulation VII of 1829, 310.
Regulation III of 1832, 301.
Regulation IV of 1832, 180, 344.
Rhotas, 38.
Richards Colonel, 312.
Richardson, J. 2, 12-14, 18, 19, 23, 26, 27, 29, 241, 241, 243, 250-252, 254, 256, 257, 259, 263, 265, 267, 271, 283, 284, 314.
Rig Veda, 34.
Robertson Archibald, 57.
Robertson H. D., 57.
Robertson, Lieutenant Colonel, 74.

Robertson Commissioner, 141.
Robertson, 348, 350.
Rodapore, 77.
Roman, 37.
Roman Emperor, 397.
Roopal Thakoor, 326.
Roper, 157, 159.
Rungpoor, 99.

Saru, 10.
Sarun, 199.
Sawantwadi, 184, 185.
Sawuks, 70.
Sawuknamahs, 71.
Scott, D. 137, 138, 311, 312.
Seaton, 346.
Seinee, 24.
Seringapatam, 37, 98, 268.
Servitude, 72, 73.
Shafi, 230, 233, 236.
Shahabad, 38, 197, 199.
Sharanpur, 77, 298.
Shaster, 224, 225.
Shastras, 401.
Sheruad, 83.
Shewuk Puttra, 70.
Shikarpur, 33.
Shore, Sir John, 13, 23, 282.
Shurhi Vijaya, 240.
Siam, 203.
Sidi, Chief of Miguessa, 155.
Sierra Leone, 290.
Sind, 3, 24, 33, 148, 173, 203.
Sindhians, 76, 319.
Sirhind, 203.
Sirkar, 79.
Slave-dancing Girls, 47.
Slavery Act, 400.
Sleeman William, 63, 64.
Smith Charles, 54.
Smith, V. A. 195.
Soane, 38.
Socotra, 160.
Sohal, 3, 148.
Sources, 37, 43, 45, 52, 66, 68, 78-80, 133, 226, 299.
South Africa, 21.
South Malabar, 61.
Spain, 175, 181, 182.
Spanish, 174, 182.
Spanish Brig, 174.
Spanish Merchant, 174, 175.
Stanforth, 11.
Stark, H. 1, 27.
Steele Arthur, 215.
Stevenson J. A. R. 277.
Strabo, 33.
Straits, 360.
Strange, 126, 127, 130, 131.
Strange, Sir Thoms, 210, 211, 216.
Sudder Adawlut, 303.
Sudder Court, 386.
Sudder Dewanny Adawlut, 196, 197, 212, 230, 358.
Sudder Dewanny and Nizamut Adawlut, 43, 45, 210, 215, 243, 250, 251, 266.
Sudder Foujydarry Adawlut, 305, 306, 352.
Sudras, 35, 41, 214.
Surat, 71, 75, 155, 184, 185, 200, 302, 328, 352.
Surat Court of Adawlut, 78.
Suresur, 197.
Sutherland J. C. C. 211, 214, 227, 230, 231, 319, 322, 323.
Suttee, 374.
Sylhet, 10, 18, 53, 54, 69, 77, 198, 199, 223, 224, 280, 401, 402, 403.

T

Tamil, 82, 96.
Tanjore, 18, 273, 370.
Tellichery, 60, 98, 268, 293.
Tennasserim, 69.
Thackeray William, 31.
Thackeray, 123.
Thackur of Bhavnagar, 151.
Thakoor of Roopal, 318, 319.
Thana, 72, 290, 315, 317.
Thomas E. B. 90-92, 105, 109, 118-123, 202.
Thorpe, 290.
Thugs, 53, 63, 64.
Tinnevelly, 51, 112.
Tippera, 10, 42, 77, 196, 199.
Tippoo Sultan, 37.
Tirhut, 197, 199.
Tories, 181.
Townsend, 159.
Travancore, 60-62, 203.
Treaties, 180, 184, 190.
Treaty of 1805, 327.
Treaty of 1815, 181.
Treaty of 1817, 181.
Treaty of 1820, 182.
Treaty of 1822, 75.
Treaty of 1835, 182.
Treaty of 1842, 187, 192.
Treaty of Yandaboo, 142.
Trichinopoly, 42, 51, 63, 113.
Tulava, 101.
Tyer, 85, 86.

U

Udappy, 24.
United Kingdom, 259, 260, 286.
United States, 196.
Upper Sudder Court, 397.

V

Vaisya, 208.
Valuvanad, 81.
Varuna, 40.
Vaughen J. 86, 88, 89, 102-107, 272, 308.
Vaush, 166.
Vedic, 34.
Veria Mitra Daya, 212.
Vetutnad, 83.
Vijnaneshwara, 216.
Vishnu, 212.
Vivada Chintamani, 212, 214, 216, 249.

Vizigapatam, 50, 112.
Vullams, 82.

W.

Walee, 92, 94, 272.
Walker, Major, 40.
Warren Hastings, 68.
Warden, 30, 107, 201, 271, 272, 334.
Warwick *vs.* Bruce, 159.
Watson, Captain, 100.
Welsh, Colonel James, 84.
Wellington, Duke of, 15.
West Indian Islands, 95-299.
West Indian Slavery, 84, 92.
West Indies, 21, 36, 181, 258, 261, 271, 287, 294, 364.
Western Coast, 62, 73, 74, 82, 90, 274, 303.
Western Coast of Africa, 188, 299.
Western India, 132.
Whigs, 181.
Whish, C. M. 293.
White A., 136, 137, 139, 140.
Wilberforce, 334.
Williams, 57.
4 Will. IV C., 85. 401.
Willes, 174.
Williamson, 71.
Willoughby, J. P., 4, 147, 149, 150, 151, 153, 154, 161, 162, 184, 306.
Wilson, H. H., 39.
Wynaad, 87, 98, 201, 267.

Y.

Yajnawalkya, 216.
Yardley, Sir W., 186, 189.
Yijnyaneshwara, 210.
Young, 341.

Z.

Zanzibar, 24, 25, 75, 148, 245.
Zunani Tewaif, 246.

ERRATA

p. 4, l. 1 from foot.	*Should be* ".
p. 19, l. 10.	*Should be* ".
p. 55, l. 13.	*For* 1911 *read* 1811.
p. 74, l. 17.	*Should be* ".
p. 196, l. 2 from foot.	*For* Dewany *read* Dewanny.
p. 199, l. 15.	*For* Rajeshage *read* Rajeshaye.
p. 208, l. 16.	*For* Katyana *read* Kâtyayána.
p. 224, l. 18 from foot.	*For* Pandits *read* Pundits.
p. 228, l. 12.	*Should read* Or *for* On.
p. 228, l. 19.	*For* Desciption *read* Description.
p. 228, l. 7 and 10.	*Should be* Mudabbar.
p. 240, l. 10.	*For* Brithish *read* British.
p. 251, l. 19 and 27.	*Should be* ".
p. 254, l. 11 from foot.	*For* Marraige *read* Marriage.
p. 263, l. 6 from foot.	*For* Kissas *read* Kisas.
p. 266, l. 9 from foot.	*For* Adams *read* Adam.
p. 268, l. 10 from foot.	*Should read* Served.
p. 272, l. 3 from foot.	*For* Dimunitive *read* Diminutive.
p. 276, l. 10 from foot.	*For* Structures *read* Strictures.
p. 279, l. 9 from foot.	*For* Represents *read* Presents.
p. 296, l. 15.	*Should be* ".
p. 364, l. 3 from foot.	*For* The *read* To.
p. 367, l. 3 from foot.	*Should be* ".
p. 375, l. 12 from foot.	*Should read* Recommendations.
p. 390, l. 10 from foot.	*For* To *read* Of.

लाल बहादुर शास्त्री राष्ट्रीय प्रशासन अकादमी, पुस्तकालय
Lal Bahadur Shastri National Academy of Administration, Library
म सु री
MUSSOORIE. 103235

यह पुस्तक निम्नांकित तारीख तक वापिस करनी है।
This book is to be returned on the date last stamped.

दिनांक Date	उधारकर्ता की संख्या Borrower's No.	दिनांक Date	उधारकर्ता की संख्या Borrower's No.

GL 305.56
BAN

103235

अवाप्ति संख्या
Acc No. 2958

वर्ग संख्या 305'56
Class No. Bam

पुस्तक संख्या
Book No. _____

लेखक
Author D.P. Barnaji

शीर्षक
Title Slavery in British India

LIBRARY 2958
305 56
Bam
LAL BAHADUR SHASTRI
National Academy of Administration
MUSSOORIE

Accession No. 103235

1. Books are issued for 15 days only but may have to be recalled earlier if urgently required.
5. An overdue charge of 25 Paise per day per volume will be charged.
3. Books may be renewed on request at the discretion of the Librarian.
5. Periodicals, Rare and Reference books may not be issued and may be consulted only in the library.
5. Books lost, defaced or injured in any way shall have to be replaced or its double price shall be paid