Chapter 6

The Penal System of the Indian Army

The greatest danger we have to apprehend is from our native army; our military force is the exclusive tenure by which we hold the government, and the fidelity of the troops... is necessarily precarious; they are foreigners and mercenaries...

Henry Russell

The British viewed the colonial Indian Army as a mercenary force. British officers like Major General S.F. Whittingham assumed that the sepoys were attached to the British by economic advantage. More than half a century later, MacMunn, another officer, argued that though the sepoys were mercenaries, they were also motivated by the leadership of white men. Most of the contemporary officers shared the view that discipline depended on the regimental commandants and underplayed the importance of institutions in inculcating loyalty among the Indian soldiers. Among the recent historians, at least one shares such a view. To ensure loyalty, the imperialists evolved a penal system based on force for disciplining the troops.

One of the main factor behind the Sepoy Army’s military success against the indisciplined princely forces was because the British introduced an institutional command

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mechanism designed like the Western armies' mechanics of command. Since the British replaced the part time mercenaries with full time soldiers, the permanent military bureaucratic infrastructure aided in the emergence of a clear cut chain of command with a hierarchy of subordinates. This disciplinary mechanism was superior to the chaotic and the arbitrary attempts by the landed magnates in the indigenous forces to discipline their retainers. In the princely militaries there was no distinction between the army officers and the civilian bureaucrats. The jagirdars, who were in charge of land revenue assignments, were ordered to raise troops during campaigns. And they remained in charge of the operational control of the army. As the Indian rulers never maintained permanent military establishments, a specialized administrative machinery for inculcating military discipline never emerged in the pre British Indian armies. Even the Marathas, who introduced a Western-styled infantry force, failed to evolve a stable command structure. The net result was friable indigenous militaries, which disintegrated while confronting the more cohesive British-Indian Army.

In the post Mutiny era, the military penal system of the Indian Army underwent a transformation. From being a personalized, and decentralized system based on the regimental officers, it became an impersonal centralized system centred on the army head quarter and run by the Adjutant Generals and the Commander-in-Chiefs. This transition was part of the wider process of the transformation of the army's command structure.


From a regiment-centric command apparatus, there emerged a centralized bureaucratic command culture. The penal structure and the command system were interrelated. In the regiment-centric command system, which centred on the regimental officers, the penal system depended on their discretionary power. But in the impersonal command cultivated by the army high command, the penal system functioned through the authority, based on rules and regulations, exercised by the distant military bureaucrats. This transition was a tortuous process. The vested interest of the regimental officers, the experiences of 1857, and the theoretical paradigm through which the imperialists viewed India, acted as brakes on the army head quarter’s attempt to inculcate an abstract impersonal loyalty among the soldiers in place of the troops’ personal loyalty towards their commanding officers. The consideration that Indians were ‘different’ encouraged many among the civilian and military elites to think that the local officers should have supreme power. However, the army head quarter’s policy of accelerating the transition towards a top down command system won, because of the improvement in communications, and the general trend towards building professional bureaucratic armies in Europe. As standing armies emerged in Europe, the military establishments created vast bureaucratic infrastructures for administering the armed forces from the top, and bringing all the personnel under unified regulations. After 1857, the colonial polity took up new responsibilities and became more bureaucratic. This also accelerated the centralizing trend in the army.

Centralization and bureaucratization were the two components of professionalism. Since in the second half of the 19th century, the colonial army’s disciplinary apparatus became more tight and bureaucratic, it became more professional. However the colonial

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scenario modulated this global process of modernization of the army in India, as the shift
towards professionalism was played out within the colonial context. This chapter surveys
the professionalization of the army’s disciplinary structure within the colonial context. The
first section shows the gradual reduction of the regimental commanding officers’ power.
The second section deals with the increasing role of impersonal institutions like the court
martial mechanism, articles of war and the oaths in controlling soldiers. The third section
focuses on the evolution of bureaucratic punishments, controlled by the impersonal
institutions, in place of punishments shaped by the regimental officers. The last section
refers to the army head quarter’s attempt to provide some legal immunities to the soldiers,
under the framework of the military law, as part of the high command’s attempt to
transform the arbitrary paternal despotism of the local officers into a sort of institutional
disciplinary structure. The focus is on the principal stages in the transition of the penal
system- under Bentinck, the immediate aftermath of the 1857 Mutiny, with the activation of
the army high command between 1861 and 1865, and finally from the 1890s till the
outbreak of the Great War.

I

The army authorities were divided on the issue of what constituted the bedrock of
disciplinary administration: regimental officers who were the immediate superiors of the
soldiers, or the distant army head quarter. One group of officers argued that the frontline
commanders must have the power to discipline the soldiers, as this would help them to
orient the troops’ loyalty towards the regiments. But the army head quarter wanted the
concentration of power in their own hands to construct extra-regimental loyalty bonds. The
head quarter was afraid that too much power in the hands of the regimental officers would result in the disintegration of the loyalty bonds. The army head quarter won, but only after a fierce debate about whether the commanding officers’ power to punish the soldiers should be increased or decreased. The debate was also partly shaped by the British perception of Indian character and pre colonial polities.

In 1827, Lord Combermere (Commander-in-Chief of the Indian Army, 1825-30) reduced the commanding officers’ power. They lost the authority to inflict corporal punishments and to dismiss the soldiers from service without the sanction of the superior officers. But in 1832, Edward Barnes (Commander-in-Chief of the Indian Army, 1832-33) gave back the commanding officers the power they previously enjoyed. They were authorized to summon courts, to carry out the proceedings and to exercise their judgement according to the nature of the cases. Moreover, they acquired the right to alter the intensity of the punishments by taking into consideration the previous character of the soldiers. Barnes disagreed that there were any cases of commanding officers misusing their power.7

The tussle between two lobbies within the army, one for the reduction and the other for the accretion of the commanding officers power, was going on when the Governor General Bentinck stepped in. He believed that, to strengthen the soldiers’ ties with the Company, it was necessary to reduce the commanding officers’ power. Bentinck accepted that the sahib-sepoy relationship was the human lynchpin which held the Indian Army together. He agreed that the soldiers’ loyalty was necessary to check the internal rebellions and foreign dangers. Ties like nationalism, which operated in case of soldiers in Western countries, were lacking since the population from which Indian soldiers were recruited had

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no natural affection towards the government. Bentinck believed that the Indian mentality being unique, they were attached only to the chiefs to whom they served, and their fidelity to their chiefs increased if the chiefs treated them with kindness. He further accepted the fact that the British officers were now in positions substituting those of Indian chiefs. So Bentinck concluded that the commanding officers’ power must be reduced, to prevent the abuse of power, and to ensure that the soldiers could not be treated with injustice and harshness by their officers. Bentinck pointed out a recent case where a commanding officer had misbehaved with some soldiers. Though the officer in charge of the division condemned the incident, he could do nothing due to Barnes’ ‘unfortunate’ order which concentrated all power in the hands of the regimental officers. The faulty behaviour of the commanding officer, according to Bentinck, sent a shock wave through the entire army. He deduced that such serious matters could not be left to the caprice of the individual officers but required high-level intervention. Bentinck’s response was to reduce the regimental officers’ power. They lost the authority to flog and dismiss the privates.\footnote{Nos. 802, 810, 16Feb. 1835, 10 March 1835, Bentinck Correspondence, pp.1427-29, 1431, 1448-49.}

In 1857, the Bengal Army rebelled and a reaction set in. Most of the British elite accepted that the loyalty mechanism disintegrated because of Bentinck’s intervention, which reduced the power of the soldiers’ immediate superiors (the commanding officers). So the assessment of the Mutiny strengthened the position of the advocates of the decentralized, regiment-centric penal apparatus. But these advocates differed on the quantum of authority to be delegated to the commanding officers.

The Punjab School, Bartle Frere and Brigadier J. Christie were for a regiment-oriented command culture, in which the penal system was pivoted around the regimental officers’ authority. They assumed that the reduction of the commanding officers’ power had
resulted in the disintegration of the command structure in 1857. They wanted more power in the hands of the commanding officers instead of in the hands of the distant army headquarter. This, they argued, was necessary because of the 'Oriental' character and the nature of the precolonial governments.9

The Punjab School and Frere pointed to the 'Indian mentality', which liked the immediate exercise of authority by the officers directly above them. The Punjab School believed that the Indian respected power in their immediate superiors, and not impersonal power thousands of miles away. So the 'Orientals' were not accustomed to constitutional checks and balances. The best policy would be to make the commanding officers supreme. The soldiers should look up to them for everything. Frere corroborated the Punjab School's view by arguing that divided responsibilities, in which power was shared by the Commander-in-Chief, Adjutant-General and the Brigadier, confused the soldiers and created suspicions and discontents in their minds. Owing to their very nature, they liked 'individual despotism' by their officers, whom they knew and trusted. They preferred serving men with an arbitrary will, to obeying a charter of rights. Frere warned that the Indians had no faith in the laws written on paper by men whom they did not know. So, in his view, discretion and judgement on the part of the commanding officers were better than laws embodied in manuals.10

Such officers also assumed that a sort of 'Oriental Despotism' by their commanding officers was favoured by the Indians because of the nature of the precolonial regimes. Frere assumed a linkage between the despotic nature of the pre British governments and the

9 Supplementary report, pp.20, 58, 311.

peculiar' mentality of the Indians, which liked despotic rule. His view was that the British soldiers came from races accustomed to self-government, and were hence conscious about their rights and obligations. But the Indian did not have respect for any other form of government except the despotic one, because he was accustomed to absolute despotic polities, with only one master. The Punjab School also joined the fray by saying that, for the above reasons, the Indians were not suited for enjoying constitutional liberty.11

Besides this ideological obsession, there was also another pragmatic dimension in the debate. Christie argued that before the power of the commandants was reduced just before 1857, the soldiers did everything to please their commandants. But after the commandants’ authority was reduced, the soldiers did not care much for the orders of their superiors. As a result, discipline declined.12

The Punjab lobby pointed out that the power of the commanding officers had decreased due to constant interference by the army head quarter in matters of the internal discipline of the regiments. This centralization of power in the hands of the Adjutant General and the Commander-in-Chief proved dangerous, as rewards and punishments were the sources of the commanding officers’ power over their men. And these two were being taken away from them. The Punjab School argued in favour of promotions controlled by the regimental officers, as they forced the soldiers to do their best for remaining in their officers’ good books. But Charles Napier (Commander-in-Chief of the Indian Army, 1849-50) was afraid that promotion by merit, which was assessed by the commanding officers, put too much power in their hands. So he replaced it with promotion based on seniority.

11 Ibid., pp.33, 58.

12 Ibid., p.311.
And this was criticized by the Punjab School, which pointed out that whenever regimental commandants tired to supersede inefficient soldiers, the latter obstructed this move by appealing directly to the military head quarter about the ‘injustice’ done to them. In such cases, the soldiers got promotions and the Colonels were humiliated among their subordinates. Again, article 112 reduced the quantum of punishment which the commandants could inflict on their men. The commandants could neither give extra duties to the soldiers, nor refuse them furlough. Christie also agreed with the Punjab School that, in the ultimate analysis, the discipline of the soldiers depended on the officers on the spot. To increase their authority was therefore the only solution.\textsuperscript{13}

Bentinck and the Punjab School, along with Frere, agreed that the Indians were different, but they reached opposite conclusions about how to retain their loyalty. Bentinck wanted to reduce the commandant’s authority to ensure humane treatment for the soldiers, but Frere and the Punjab School demanded an increase of power, to create an awe inspiring environment.

The Punjab School also came out with a formula to transform the commandant into a type of ‘Oriental Despot’, by increasing his power in the following spheres: (i) the authority to dismiss privates (ii) the power to flog the soldiers for insubordination or theft (iii) the authority to fine the soldiers (iv) the power to reduce the non-commissioned officers at least one rank and (v) the authority to imprison privates and non-commissioned officers.\textsuperscript{14}

As a result, after 1859, the regimental officers’ power increased. However not

\textsuperscript{13} Ibid, pp.38-39, 311; Menezes, Fidelity and Honour, p.533.

\textsuperscript{14} Supplementary report, pp.33-34.
everybody, and certainly not the Adjutant General (who lost authority due to the shift of power towards the regimental officers), accepted the post Mutiny scenario without demur. Colonel E. Haythorne, the Adjutant General, kept a 'hawk-eyed watch' over the commanding officers' activities. He attacked summary trials and the other powers of the commanding officers.

Summary trials were the trump card in the commandants' hands. In such trials, the officers could deploy their authority unchecked, away from the supervision and counselling of their superiors. This came under sustained criticism from the Adjutant General. An officer punished several men of his regiment because they disobeyed orders on parade and used bad language. To punish them, the officer resorted to a summary trial. The Adjutant General pointed out that there was nothing wrong in punishing the soldiers, but the method used for punishing them was faulty. Summary trials could be used only when applications to a superior authority and the response to it were time consuming. But in this case the officer commanding the brigade was on the spot. The Adjutant General admonished the officer commanding the regiment and felt that he should have taken recourse to a general court martial.15 Haythorne pointed out that according to the 81st article of war, the proceedings of summary trials must be held in the presence of 2 commissioned officers, but in one recent case the rule had not been followed. He warned that, if the commanding officers broke the law, then they would be divested of their power of holding summary trials. To check further misuse of authority by the commanding officers in the summary courts martial, the Adjutant General introduced an institutional safeguard. He communicated to all the officers (from the commandants of the regiments to the officers commanding districts and divisions) that

summary trials could be conducted by the commanding officers only in the presence of 2 or more European officers.\textsuperscript{16}

The final attack came from the highest authority, General William Rose Mansfield, the Commander-in-Chief of the Indian Army from 1861 to 1865. His view was that the high handed behaviour by the commanding officers had brought the summary trials into disrepute. He cited a case where the commanding officer had acted on impulse and abused the power granted to him by the new articles of war. A sepoy went to his regimental officer for the redressal of some grievance but the officer instead of hearing it, called him \textit{haramzada} (a term of abuse). When the sepoy reacted sharply, he was flogged.\textsuperscript{17}

The army higher administration again acted in 1895, to curtail the commanding officers' power. The action was headed by the Adjutant General, G. Dec. Morton. He decreed that summary courts martial could not try offences by the soldiers against their commanding officers, unless the permission of the staff officers of the divisions, districts and brigades was obtained. When their sanctions were not recorded then the commanding officers had to state the reasons for proceeding on their own authority. In 1895, it was further ordered that, though the commanding officers who held the summary courts martial alone constituted the courts, in order to check or at least to reduce the gross misuse of power, each summary court martial was to be attended by an interpreter. The army administration demanded evidence to ensure that the summary courts martial procedures

\textsuperscript{16} Circular to officers commanding divisions, districts, brigades, regiments of Indian cavalry and infantry, summary trials, Adjutant General’s office, E. Haythorne, Circular no. 26/N, 15 March 1864, Adjutant General’s circular, vol. 4.

\textsuperscript{17} Menezes, \textit{Fidelity and Honour}, p. 534; Confidential circular, to officers commanding Indian regiments of cavalry and infantry, courts martial, 16 May 1865, Adjutant General’s circular, vol. 5.
were in accordance with law. The commandants had to record their findings and sentences. The proceedings were to be signed by the commanding officers and all those officers in whose presence the trials were held.\textsuperscript{18}

From 1859 onwards the Adjutant General’s department reduced the regimental officers’ power in other spheres beside the summary courts martial, by issuing new directives. In many cases the commanding officers’ powers to be the sole judge of their men were taken away, and they were awarded joint responsibility for punishing their men. Fights between the soldiers and the Indian police were common. The Adjutant General pointed out one case: when the soldiers were marching through the Grand Trunk Road in the winter of 1862; they misbehaved with the police personnel. To prevent the recurrence of such affairs, the commanding officers of the regiments and detachments were ordered that, if such cases occurred in future, then they should report to the nearest military stations and enquiries should start under the officers in charge of the stations.\textsuperscript{19} For serious offences committed by the soldiers in detached employments, the regimental commandants could not award them punishments without accommodating, the views of concerned departmental officials.\textsuperscript{20} The regimental officers were further directed to obtain the sanction of the Commander-in-Chief before giving to the soldiers who had broken discipline, the

\textsuperscript{18} Rules for summary court martial held under the Indian articles of war, no. 374, 15 April 1895, G.O. N.A.I.

\textsuperscript{19} Circular to divisions, districts and stations, Adjutant General’s office, H.Q., Simla, by order of Haythorne, Adjutant General, Circular no. 80/G, 19 Aug. 1863, Adjutant General’s circular, vol. 3.

options of resigning from the service or of standing before the courts martial.  

Not content with directly reducing the regimental officers' authority, the Adjutant General increased the power of the senior officers. He informed them that they were empowered by article 141 to use their discretionary power during the courts martial of which they were the confirming officers.

Just before the onset of the Great War, though the commanding officers' power was decreased in some areas, the army head quarter increased their authority in many other spheres. This was probably because the top echelons of the army accepted the fact that, to a large extent, the discipline of the soldiers depended on the commanding officers, who could not be dispensed with. The high command probably grasped that the Indian Army was always scattered in small units performing police operations against the tribals and peasant insurgents. For conducting such small scale peace keeping operations, devolution of power to the regimental officers was necessary. Even in the 20th century the European armies gave much autonomy to the junior officers for coming up with innovative minor tactics. Thus the imperative of mission command (Auftragstaktik) probably forced the top echelon of the military bureaucracy not to eliminate the regimental officers' authority completely. The Indian Army had many similarities with the late 19th century American Army. Both were composed of volunteers and were principally engaged in low intensity operations. And the


22 Circular to officers commanding divisions, districts and brigades holding warrants for convening district courts martial, prisoners, Adjutant General's office, Circular no. 27/E, 16 Feb. 1865, Adjutant General's circular, vol. 5.
regimental officers also played a dominant role in the American Army. Thus the structural and functional necessities of the Indian Army prevented complete centralization.

The extent of the reduction of the commanding officers' power becomes clear when we compare the power they enjoyed in 1913 with the programme of the Punjab lobby. The commanding officers lost the power to flog the soldiers. The power to award rigorous or simple imprisonment with or without solitary confinement was reduced from 75 days to only 28 days. The officers could imprison the privates for only 7 days, and lost the authority to arrest the non-commissioned officers. For misconduct, negligence and inefficiency, the non-commissioned officers and the privates could be deprived, by their commanding officers, of the whole or part of the pay of the day on which the offence was committed. But previously the commanding officers had the power to fine not only the privates and the non-commissioned officers, but also the commissioned officers, upto 1 month's pay per year. The senior officers received the power to remit punishments awarded by the regimental officers. A procedure came into existence to check the abuse of authority by the officers, and also to prevent them from exacting personal revenge from their men. Whatever punishments the regimental officers awarded to their men, had to be recorded in the conduct sheets.

The commanding officers' power as regards the summary courts martial remained unchanged. In such courts martial, much depended on the discretion of the commanding

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24 *Army Regulations*, pp.1-3; *Supplementary report*, pp.31, 33.
officers who were allowed by law to pass judgements which depended on their perceptions of the soldiers' character. Again, they retained the authority to deprive the soldiers of their rank.  

The spheres in which the commanding officers' authority registered a quantum jump were as follows: the power to issue reprimands to the officers and the authority to confine soldiers to the lines. However, for increasing confinement to the lines beyond 15 days, the commanding officers had to take the Adjutant's permission. During the short-term imprisonments, the commanding officers retained control over the prisoners. For minor breaches of prison discipline by the prisoner, which were enquired into by the commanding officers, the latter could award the following punishments (a) reduction of their diet (b) additional hard labour and punishment drill. 

From 1895 onwards, enough space was provided to the commanding officers to allow them to award either minor or heavy forms of punishment for the same type of crime. If the commanding officers wanted, they could make life hell for the soldiers. So the latter had good reason to keep the officers in good humour. At the discretion of the commanding officers, prisoners serving sentences of hard labour were awarded the following tasks (i) digging and carrying earth (ii) filling up shelter trenches etc. The details regarding the apportioning of the hours for hard labour and drill, for raising the prisoners and locking them at night, were left to the will of the commanding officers.

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25 Army Regulations, pp.2-3, 5; Proceedings of the summary court martial, no.374, 15 April 1895, G.O.

26 Army Regulations, pp.3-4, 6-8.

27 No. 53, 1 Sept. 1896, G.O.
Most of these punishments were regimental in nature, as they were carried out inside the regiments and under the supervision of the regimental officers. All these increased the leverage of the regimental officers vis-à-vis their soldiers, which would have been impossible in case the punishments were conducted by the extra-regimental authorities. Why did the Adjutant General's department encourage regimental punishment? This was because, even for the high command, the colonial army remained regiment oriented. Again, regimental punishments were probably preferred because, if the accused were humiliated in front of their comrades, the fear of being shamed deterred others from breaking the law.

So the tussle about where the real locus of power should lie—whether with the regimental officers or with the Adjutant General's department—was shaped, not merely by the struggle between the front line commanders and the military bureaucrats at Simla and Calcutta, but also by the civilian-military elite's conception of the Indian society and the structure of the army.

II

The impersonal institutions at the disposal of the army head quarter for disciplining the soldiers, were the court martial mechanism, articles of war and the oaths. Just after 1857, those who favoured the decentralized regimental disciplinary structure stressed the inefficiency of such impersonal institutions and demanded more discretionary power in the hands of the commanding officers. Against their wishes, the army high command encouraged greater use of bureaucratic institutions for inculcating extra-regimental discipline.

The army possessed various types of courts martial, whose scope of jurisdiction
and composition varied. For the Indian Army, the British introduced, with slight modifications, the various types of courts martial which were operational in the late 18th century British Army. The cases brought before the various types of courts martial depended on the gravity of the crimes and the ranks of the persons to be tried. At the top were the general courts martial. Then came the district or garrison courts martial and below them were the regimental courts martial. At the bottom were the summary courts martial which were controlled by the commanding officers under the loose supervision of the army head quarter.

The courts had a wide variety of punishments to discipline the soldiers. The quantum of punishment that could be awarded decreased as one moved down the hierarchy of the courts martial. General courts martial could award death sentences, imprisonments for life, or very long-term imprisonments. District courts martial had the power to impose fines, to demote and suspend the army personnel, and could award penal servitudes for limited periods. Summary courts martial could inflict purely physical punishments like lashing, or purely financial punishments. The latter could be temporary (like stoppages) or permanent (like forfeitures of additional pay and pension). Such courts could also award a


29 Major Gorham, *A Short Course of Military Law as Applicable to Persons Subject to Mutiny Act to Which is Added Military Law as Applicable to Persons Subject to the Indian Articles of War* (Calcutta, 1887), pp.10, 14, 16, 167.

30 Ibid., pp. 23, 147, 176, Appendix B; Field Marshal Earl Roberts, *Forty One Years in India: From Subaltern to Commander-in-Chief* (London, 1897, reprint, 1898), p.44.
mixture of monetary and non-monetary punishments like imprisonments which involved loss of pay, as well as physical and mental discomforts.\textsuperscript{31}

The higher the courts were, the greater was their power to try higher ranks and serious offences. As one goes down the hierarchy of the courts martial, the ranks and number of officers sitting in them declined. The general courts martial had power to try any ranks and only such courts had the authority to judge the commissioned ranks. They tried serious crimes like mutinies and insubordination. Each general court martial was composed of 9 officers.\textsuperscript{32} The presidents of such courts were very high ranking officers like Brigadier Generals or Lieutenant Generals.\textsuperscript{33} Each district court martial was composed of 7 to 5 officers. The regimental courts martial tried minor offences and the officers commanding the regiments or the corps could summon these courts. Each such court had 3 to 5 officers.\textsuperscript{34} The summary courts martial were held for such minor offences as receiving stolen goods. Even European non-commissioned officers summoned such courts.\textsuperscript{35}

The army high command was itself confused about the degree of centralization it should pursue. The greater the centralization, the greater would be the quantum of power in the hands of the higher courts martial and the senior officers. The jurisdiction of the

\textsuperscript{31} No. 374, 15 April 1895, G.O.

\textsuperscript{32} Gorham, \textit{A Short Course}, p.170, Appendix D.

\textsuperscript{33} Nos. 118, 469, 628, 9 Jan 1901, 17 June 1901, 12 Aug.1901, G.O.

\textsuperscript{34} Gorham, \textit{A Short Course}, pp. 25, 169, 176, 178.

\textsuperscript{35} Ibid., pp.169-70; No. 374, 15 April 1895, G.O.
various types of courts martial varied with time, as the army high command dilly-dallied about the quantum of power to be devolved to the various courts, for the greatest efficiency in distributing ‘justice’, so as to maintain the disciplinary structure.

In 1827 Combermere ordered that the courts martial apparatus could award corporal punishments only when the crimes involved stealing, marauding and insubordination.\(^{36}\) In 1859, the Punjab lobby demanded that those crimes which involved imprisonment of more than 6 months were to be tried by the district courts martial under the generals commanding divisions. They should have the power to order imprisonments upto 14 years with transportation, but punishments beyond this should require the Commander-in-Chief’s intervention.\(^{37}\) For the time being, the district courts martial acquired such power. But in 1861, the army head quarter, in pursuing the centralization policy, reduced the district courts martial’s power, and increased that of the general courts martial. It was necessary to implement prompt punishments if the disciplinary mechanism was to remain intact. But assembling the general courts martial did not allow this. Due to communication and transportation difficulties, assembling such courts martial was time consuming. It took about 3 months. So in 1865 the power of the district courts martial was again increased. They acquired the power to inflict imprisonment (not exceeding 2 years) with hard labour and solitary confinement. They could also dismiss anybody.\(^{38}\)

In some cases, senior officers enjoyed wide discretionary power vis-a-vis the court

\(^{36}\) No.802, 16 Feb. 1835, Bentinck Correspondence, p.1427.

\(^{37}\) Supplementary report, p.33.

\(^{38}\) Confidential circular, to officers commanding divisions and districts, Adjutant General’s office, 17 Feb.1865, Adjutant General’s circular, vol. 5.
martial. But how much power would be wielded by the officers, and at what level, was decided by the army head quarter’s centralization scheme. Privates and non-commissioned officers who lost their arms were generally tried by the district courts martial. But in 1913, the general officers commanding the divisions acquired authority to order trials. Again, the Commander-in-Chief could annul proceedings of such trials.\(^3^9\)

The articles of war shaped the punishments. The army also made use of the oaths to run the court martial mechanism and to influence the soldiers’ conscience, so that they obeyed the code of conduct prescribed by the articles of war. After 1857, the army was a divided house as regards the efficacy of the oaths and the articles of war. Christie was against imposing the rule of the articles of war on the soldiers. He pointed out that, before 1857, the articles of war were read out and explained to the men 4 times a year to acquaint the troopers of the Bengal Irregular Cavalry with the military code under which they were governed. But the discipline of the Bengal Irregular Cavalry deteriorated when they were brought under the articles of war. In his opinion the small zamindars, who joined the irregular cavalry, disliked rigid disciplines and parades.\(^4^0\)

The members of the Punjab School agreed with Christie about the inefficiency of reading out the articles of war during public parades. But, unlike him, they believed that the articles of war were necessary for the army’s discipline. So the Punjab School came up with another solution. They demanded separate articles of war for the brown soldiers, because they were convinced that the character of the Indians was different from that of the British. The Punjab School cautioned against the amalgamation of the rules of the British Army

\(^{39}\) Army Regulations, pp.4, 20.

\(^{40}\) Supplementary report, p. 310.
with those of the Sepoy Army.\footnote{Ibid., pp.21, 34.}

Both Bentinck and the Punjab School accepted that the Indians were different from the Europeans, and hence it was necessary to change the articles of war. But they suggested changes in opposite directions. While Bentinck wanted ‘enlightened’ principles like the abolition of flogging, to change the articles of war, the Punjab School was for retention of flogging etc.\footnote{Ibid., p.33; No.802, 16 Feb. 1835, Bentinck Correspondence, pp.1427, 1429, 1432.}

Distribution of the articles of war among the soldiers was not considered effective because of their low level of literacy. We have some figures about the literacy rate among the soldiers during 1857, and this rate more or less remained stagnant in the post 1859 period. No drivers of the artillery could read the articles of war in the vernacular, and only 10% of the golundazes understood them. About 15% of the troopers of the Punjab Irregular Cavalry were able to read and comprehend the articles of war in their own vernaculars. Only 5% of the Indians in the Punjab Irregular Force were able to read the articles of war in their own vernaculars. Overall, 10% of the soldiers were able to read the articles of war in their own vernaculars. An idea about the literacy among the late 19th century soldiers could be gleaned from analyzing the literacy rates among the groups who joined the army. Only 4% among the Marathas, 10% among the Deccani Muslims and 11% among the Jat Sikhs were literate.\footnote{Major R.M. Betham, Handbooks for the Indian Army: Marathas and Dekhani Musulmans (Calcutta, 1908), pp. 73, 115; Major A.H. Bingley, Handbooks for the Indian Army: Sikhs (Simla, 1899), p. 125; Supplementary report, pp.15, 21, 34.}
Though the civilian-military elite just after 1857 was not enthusiastic about the
efficacy of the articles of war in acting as a deterrent, the army head quarter put its faith on
the public readings of the articles of war. To make the personnel know about the serious
punishment they would suffer for breaching discipline, the Commander-in-Chief issued
orders that the prisoners should also attend the parades, when the articles of war were read
out. Even the wounded and the sick were not left out of their orbit. It was ordered that the
articles of war were to be read in the hospitals once in 3 months.44

The spokesmen of the regiment-centric penal system displayed a casual attitude
towards the oath and did not take it seriously. Christie bluntly told the men in the higher
echelons that he did not remember the words of the oath which was administered to the
recruits who joined the Bengal Army’s Irregular Cavalry.45 The Punjab lobby was skeptical
of the policy of using the oath in strengthening the loyalty of the soldiers. No oath was
administered initially in the Punjab Frontier Force. But in 1857, due to pressure from the
army head quarter, it became obligatory for the men to take oaths. However, the authorities
found it prudent not to humiliate old soldiers by ordering them to take an oath, as they had
already served loyally for so long. However, all the new recruits had to take oath. After the
1857 bloodbath, the Punjab lobby argued that oaths were useless in practice, as the
unconscientious soldiers would always disregard them. The Punjab lobby concluded that
every solemn arrangement had its limitations and the soldiers willing to rebel could find
loopholes in the oath. Still, the army head quarter took the oath seriously, and imposed it on
the soldiers. The oath was introduced in 1840 for the recruits. The oath remained

44 Circular to officers commanding divisions, districts and regiments, articles of war, Circular no.28/E, 16

45 Supplementary report, p.309.
unchanged even after the Mutiny.\textsuperscript{46} The oath was simplified to the fewest possible words, as most of the soldiers were uneducated. The oath as follows: I inhabitant of ......village, .....parganah, .....district, .....province; do swear before Almighty God, that I will be a faithful soldier, and servant of the British government, that I will march wherever I am directed and will obey the orders of any European officers. The oath contained information about the soldiers' geographical origin so that they could be traced easily in case of desertion. The oath contained an obligation for general service, though it was not implemented till 1856. Its implementation after that period caused grievances among the Purbiyas, which in turn accelerated the 1857 catastrophe.\textsuperscript{47}

Unlike the recruits' oath, the court martial proceedings' oath was characterized by the appropriation of the religiosity of the different groups. This was probably because the army took courts martial more seriously. So the oaths were designed to reach the religious belief of the soldiers to extract the 'truth' out of them. Each religious group's belief was invoked. For the Hindus, Parmeshwar Bhagwan, for the Muslims was Khuda, and for the Sikhs the Guru Granth Sahib was invoked. The emphasis on conscience for each religious group differed. For the Hindus, the emphasis was on dharma, which for the Muslims was iman and for the Sikhs, the wrath of the Guru Granth Sahib was invoked. The vernacular oath can roughly be translated as: 'I swear in the name of God that I will only tell the truth and I will not lie. If I lie then I will be punished'.\textsuperscript{48}

\textsuperscript{46} Ibid., p.30.


\textsuperscript{48} Oaths to be taken, no.374, 15 April 1895, G.O.
The punishment apparatus was initially personalized, as it was under the control of the regimental commanding officers. It gradually became impersonal, as control passed into the hands of distant military bureaucrats, who functioned from Simla and Calcutta. Under their bureaucratic supervision a series of modalities which involved lots of paperwork came into existence for regulating punishment. Gradually the nature of punishment was transformed. From being deterrent and public, it became reformative and private. This change was not due to parliamentary or public pressure through newspapers but due to internal bickering within the army about how best to construct the disciplinary apparatus over the soldiers.

Bentinck wanted to change the nature of punishment because of the changing material conditions and mentality of the Indian. His view was that the system of punishment had not changed since 1797, but, due to the Pax Britannica, education was spreading. To his mind, this had improved the Indians’ character and made them more sensible of their rights. Consequently, degrading punishments could not be inflicted upon the soldiers any more. According to him, Indians were by nature attached to a government which treated them kindly. And they were very sensitive to disrespect. So if the state wanted allegiance from them, then corporal punishment must be abandoned. He then linked up this issue with recruitment. Those who joined the Bengal Army were obedient and faithful by nature. So there was no need to flog them: and if they were flogged, then it depressed them so much that they had to be discharged. Bentinck further claimed that high castes that could make ‘good soldiers’ avoided the army for fear of corporal punishment. Bentinck believed that

49 The same argument, that flogging prevented good men from entering the army, and depressed the spirit of those who were lashed, was also put forward by a radical minority in Britain to abolish lashing in late 18th and early 19th centuries. E.E. Steiner, ‘Separating the Soldier from the Citizen: Ideology and Criticism of Corporal Punishment in the British Armies, 1790-1815’, Social History, vol.8, no.1 (1983), p.25. Nos. 802, 810, 16 Feb. 1835, 13 March 1835, Bentinck Correspondence, pp.1426-28, 1430-32, 1454.
any attempt to check crimes through terror tactics was wrong. He pointed out that even in
the British Army corporal punishment was gradually replaced from 1793 onwards because
it was believed that lashing was both cruel and impolitic.50

The Bombay officers wanted corporal punishment to maintain discipline.51 Major
General Whittingham argued that, by abolishing corporal punishment, the colonial army
would indeed derive a lot of advantages. But this should not be done unless flogging was
abolished in the European army also. Otherwise the effect on the European troops would
be to ‘...produce a dangerous feeling in the mind of the European soldier serving in the
same brigade with black battalions, to find that he is still subject to a vile degradation from
which his black comrade in arms has been so lately exempted’.52

Bentinck overruled such opinions and replaced corporal punishment with solitary
confinement. He wanted fines to be imposed on the prisoners during their confinement. He
wanted corporal punishment to be replaced by the threat of dismissal from service. He
assumed that the termination of service was the greatest deterrent and punishment for the
Indian soldier. Bentinck viewed dismissal from service both as an economic loss and a

50 From the late 18th century onwards, imprisonments and fines gradually replaced flogging in the British
Army. The reformists like Bentinck faced severe challenges from the conservatives like Wellington, who
wanted to retain the discipline of the lash. See the following essays: David Gates, ‘The Transformation of
the Army, 1783-1815’, and Peter Burroughs, ‘An Unreformed Army? 1615-1868’, in David Chandler and
Also see No.802, 16 Feb.1835, Bentinck Correspondence, p.1429.

51 No.802, 16 Feb. 1835, Bentinck Correspondence, p.1430.

52 Whittingham to Bentinck, no.740, 24 June 1834, Bentinck Correspondence, pp.1310-11 (The quotation is
from p.1311).
social stigma for the soldier. He wrote that discharge deprived the soldiers of the chance of acquiring honour, as well as the pay which went to support their families.  

Lord Hardinge (Governor General, 1844-48) reintroduced corporal punishment in 1845, against the opposition of the Adjutant General. Unlike Bentinck, Hardinge was unsure, in the context of the rising crime rate within the Bengal Army, about the deterrent value of dismissal as a punishment. The premium placed on flogging as a deterrent was based on a particular British view of Indian society which was quite different from Bentinck's. The former view painted a picture of the high caste soldiers with a sense of strict honour, so that flogging in public humiliated them. Fear of this made them behave very well. Also, the army did not like civilian interaction with its personnel even when the latter were punished. The army wanted to keep the civilian and military punishments separate, because it believed that if the civilian and military prisoners interacted while undergoing punishment, the company of civilians would ruin the soldiers. Under Bentinck, flogging was replaced by hard labour, which involved the soldiers working with civilian prisoners in constructing roads. So as to avoid the contact with civilians, the army wanted flogging restored. Another factor was that the British believed that, by implementing flogging, they were just following the age old Indian tradition. They were convinced that flogging existed in the Indian armies long before the British intervention. Further, there was pressure from 'below' from the soldiers themselves. Many high caste soldiers demanded flogging instead of hard labour, as repairing roads resulted in a loss of caste for them, as it involved digging and working with the low castes. Many soldiers demanded discharge for this reason. Finally, the army wanted to stop the continuous haemorrhage of manpower, as

\[53\] No.802, 16 Feb.1835, Bentinck Correspondence, pp.1429, 1432.
those soldiers who were awarded hard labour on the roads never rejoined their units.\(^5\) So, the oscillation between the abolition and the introduction of lashing was a complex problem, which cannot be reduced to humane liberalism versus reactionary conservatism.

After the Mutiny, the Punjab School proposed the following forms of punishment:
(i) imprisonment and solitary confinement  
(ii) fines for the soldiers  
(iii) reduction in rank  
(iv) flogging up to 30 lashes for theft or insubordination. (Those who were flogged three times were to be dismissed)  
(v) dismissal of the soldiers.\(^5\)

Frere supported Bentinck's proposal that dismissal from service was the greatest punishment for the soldiers. While Bentinck emphasized both the monetary and non-monetary aspects (honour and prestige) of the service, Frere harped only on the economic aspect. Both believed that the European soldiers were paid very little in the context of the wages prevalent in their societies. So they were unwilling to join the armies, and had to be conscripted and retained by fear, generated through various forms of punishment against desertions. They believed that the sepoys and the sowars were paid quite highly in relation to other occupations in their society, so they joined voluntarily for long periods. Expulsion from service, which also involved loss of pension, was a great loss for them.\(^5\)

By 1913, the following forms of punishment were in vogue-
(i) imprisonment, rigorous or simple, long or short-term, with or without solitary confinement. Generally


\(^5\) Supplementary report, p.33.

\(^5\) No.802, 16 Feb.1835, *Bentinck Correspondence*, p.1432; Ibid., p.58.

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imprisonment was reserved for serious and repeated offences; the guilty soldiers were confined to the lines before imprisonment (ii) confinement to the lines, not exceeding 28 days. An award of more than 14 days carried with it punishment drill. For minor offences, extra guard or fatigue duties were awarded (iii) non-commissioned officers and privates were admonished. Reprimands were for the commissioned officers (iv) deprivation of ranks.  

Though some aspects of punishment, like dismissal, remained unchanged for over half a century, many transformations occurred in the nature of punishment. The shift was from flogging (public physical punishment) towards imprisonments under the extra-regimental authorities. This process started long before 1857. The number of lashes which could be inflicted on the soldiers, and the incidence of lashing, decreased with time. In 1806, 2 soldiers of the 2nd Battalion of the 4th Madras Infantry Regiment got 900 lashes each. Flogging was resorted to very rarely, even after Hardinge’s introduction of corporal punishment. In 1859 one officer, who had commanded a sepoy battalion for 7 years, claimed to have implemented corporal punishment not even twice during his career. After the Mutiny, as part of British reaction to it, flogging remained, but the maximum number of lashes which could be awarded was limited to 50. After 1859 flogging became increasingly rare. We have only 1 recorded case between 1860 and 1865, when in 1865, a sepoy was

57 Army Regulations, pp.2-3.


59 Peel committee, p.10.
flogged for misbehaving with his officer. The real value of flogging lay in its threat and not in its actual implementation. By 1913, flogging had vanished from the army.

How did this shift occur, and what were the factors which influenced the changes in the punishment awarded? In the post Mutiny era, in the absence of an all-powerful Governor General like Bentinck, the mantle for shaping the contours of the punishment system went by default to the Adjutant General’s department.

Imprisonment with hard labour, and solitary confinement, came into existence under the Adjutant General’s orders. Solitary confinement in military custody was carried out in the following way. The prisoners were confined separately in the regimental cells or in the guards rooms and 2 prisoners were never put in a single cell. In case of rigorous punishment in military custody, the prisoners were employed on hard labour like spade work, and they had to undergo punishment drills. The Adjutant General further ordered that short imprisonment terms should be implemented in the barrack cells, and long imprisonment terms should be served in the state prisons.

The army did not want to lose to control over the soldiers even when they were punished. So the army’s surveillance scheme influenced the punishment structure.

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60 Confidential circular, to officers commanding Indian regiments of cavalry and infantry, courts martial, 16 May 1865, Adjutant General’s circular, vol. 5.

61 Confidential circular, to officers commanding divisions and districts, 17 Feb. 1865, Adjutant General’s circular, vol. 5.


63 Circular to officers commanding divisions, districts and brigades and holding warrants for convening district courts martial, prisoner’s memo, Circular no. 27/E, Adjutant General’s circular, vol. 5.
Imprisonment with hard labour exceeding 3 months had to be undergone in the civil jails. And this resulted in mixing up the soldiers with the convicts. The army believed that interaction with such characters ruined the soldiers. So, in 1895, the Commander-in-Chief intervened, and ruled that those soldiers who were sentenced to imprisonment with hard labour exceeding 3 months were to be dismissed.\(^\text{64}\)

The need for the combat effectiveness of the units, also shaped the type of punishment. Long periods of simple imprisonment, which were carried out in regimental custody, were discouraged in the army.\(^\text{65}\) This was because such imprisonment reduced the combat efficiency of the units, as extra men had to be detached for guarding the prisoners. Moreover, finding a suitable place for imprisonment was problematic, especially when the regiments were on the move.

Some regimental British officers were cynical about the way in which punishments became less brutal. This was because the army head quarter took away their power of punishing the soldiers. As a result, the commanding officers ceased to be paternal despots. Just before the First World War, one officer commented that, under the new regulation, soldiers got 2 months solitary confinement in the regimental cell for desertion. The officer argued that this meant that the convicts had a better deal than their more faithful colleagues, who had to parade under the hot sun daily, while the prisoners enjoyed the coolness of the cells.\(^\text{66}\)

\(^{64}\) No. 374, 15April 1895, G.O.  

\(^{65}\) Ibid.  

When the courts martial ordered solitary confinement, the army administration had problems in implementing it. In 1865, when a court martial sentenced a sepoy of a regiment stationed in the Dooars, solitary confinement in the Rungpoore jail, the Bengal government pointed out that the jails in Bengal were unsuitable for such a purpose.\textsuperscript{67}

Practical difficulties in carrying out sentences influenced the army's response. By the first decade of the 20\textsuperscript{th} century, imprisonment became the most common form of punishment. So the government started constructing detention barracks for short imprisonments and military prisons for long-term imprisonment. To man the detention barracks and the prisons, an elaborate staff network was also laid down. The Lucknow detention barrack had 2 drill instructors and 4 assistants. The military prison cum detention barrack at Poona had 2 drill instructors and 8 assistants. This was necessary as short-term imprisonments were occasionally accompanied by extra drills to be performed under the drill inspectors' eyes.\textsuperscript{68}

The army administration had a penchant for book-keeping. This was meant to check the abuse of authority by the officers, i.e. to prevent personal revenge against soldiers, and also to create written precedents, for the incoming officers to learn about how to punish certain crimes. Another reason for an enormous machinery was to keep a tab on the activities of all the soldiers. Such reports were used while judging their crimes and awarding punishments. Service records shaped the nature of punishments to be inflicted. So the army kept the following forms of documents. Registers were kept by the Adjutants in which the numbers and names of the prisoners, their crimes and periods of sentence, dates

\textsuperscript{67} Circular to officers commanding divisions, districts and Indian regiments, prisoners memo, Simla, Circular no. 127/N, 9 Sept. 1865, Adjutant General's circular, vol. 5.

\textsuperscript{68} Army Regulations, p.7.
of admission and discharge, were all recorded. The Adjutants also maintained the prisoners' punishment books which recorded all the offences committed by the prisoners, the punishments awarded, and sentences they had served previously (if any). Breach of discipline by the non-commissioned officers and men were entered in the defaulters' sheets. The records of the commissioned officers remained with the Deputy Adjutant General. These records aided in the assessment of the personnel by the army's disciplinary mechanism as these sheets contained convictions by courts martial, cases of summary reductions, and cases involving imprisonments and confinements. The army also kept character sheets of the soldiers because, while passing sentences against the convicts, their previous character was taken into account. Each character sheet contained the designation of the unit in which the soldier was employed, the date and the occurrence of the crime, the opinion of the officer and the rank and the name of the soldier.

The Indian Army's punishment system was much better than some colonial armies like the African colonial armies and even some European armies like the Rumanian Army. Both these armies retained brutal lashing till World War II. Some aspects of the punishment system of the Sepoy Army were harsher than those of the British Army. For example, from 1868 onwards, no British soldier was awarded corporal punishment during peacetime, but in the Indian Army, the regimental court martial could award 50 lashes to

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69 No.53, 1 Sept.1896, G.O.

70 Army Regulations, p.130; Adjutant General's office, Simla, 3 Feb. 1896, G.O.

the soldiers till 1877 even during peacetime. On the other hand many facets of the colonial army’s punishment mechanism were more humane than those of the British Army. The humiliating practice of branding the British Army deserters was absent in the colonial army.

IV

The advocates of a personalized regimental command structure demanded that the privates and the Indian officers’ right to challenge their commanding officers, should be reduced to the maximum possible extent. But the army head quarter tried to increase the quantum of rights enjoyed by the soldiers within the army’s legal framework. This tussle centred around three issues: the share of the Indian officers in the running of the disciplinary mechanism, how the law was ‘perverted’ to deny certain legal rights to the soldiers, and the advantages the soldiers derived from the military law.

After the Mutiny, the army witnessed a debate about the role of the Indian officers in manning the disciplinary mechanism. The supporters of the decentralized regimental disciplinary culture, in pursuing their formula of making the regimental officers arbitrary despots, wanted the Indian officers to be mere cyphers. But the army head quarter obstructed this scheme. The discussion revolved round the question of the professional expertise of the Indian officers, and their loyalty during 1857.

Even after the questionable role of the Indian officers during the Mutiny, the imperialists vetoed the proposal of replacing them with the non-commissioned British

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officers. The Punjab lobby wanted the Indian officers to continue, as they were seen as a vital link in man-management. European corporals and sergeants could not replace the Indian officers, as the former had no influence over the soldiers, nor did they know what the latter desired. The Punjab lobby concluded that if the Indian officers were selected on the basis of merit, then they could perform better than the European sergeants. Finally, Frere commented that the Indian commissioned officers were superior in professional intelligence to the European non-commissioned officers. So there could not be any question of their replacement with European non-commissioned officers.74

Christie argued that, during the Mutiny, the Indian officers failed to show absolute fidelity. They neither gave information in advance about the uprising, nor did they actively aid in quelling it. He calculated that about that 50% of the Bengal Army’s officers supported the mutineers. The Punjab lobby, unlike Christie, concluded that most of the Indian officers would remain loyal during a crisis. The Sikh officers had remained loyal: there was no mutiny in the Punjab Irregular Force in 1857. Prior to 1857, the Indian officer corps was more or less loyal, and during the Mutiny the Indian officers were carried away by the storm, rather than leading it. Frere, unlike others, emphasized the Indian officers’ loyalty during the Mutiny. They passed information about the disaffection of their men, and tried to keep them under control. During the emergency, they showed intelligence and fidelity. So in his view the Indian officers should be given responsibility.75 In the ultimate analysis, the Indian officers were necessary. The question, then, was how much power they should exercise.

74 Supplementary report, pp. 23, 26, 35, 56.

75 Ibid, pp. 15, 35, 38, 55, 310.
The supporters of the personalized command structure challenged the practice of promotion on the basis of seniority, arguing that it led to dull Indians entering in the officer cadre. Interestingly, none of them supported impersonal tests like examinations, to choose the Indians for officer ranks. Rather, they wanted discretionary power to appoint Indian officers to remain in the hands of the British officers. This, they believed, would make the personal loyalty bonds between the British officers and Indian officers stronger, as the latter group would be dependent on the sahib’s favour for continuation in their posts and for promotions. A subservient Indian officer corps would pose no challenge to the sahibs. Hence the high command’s programme to inculcate professionalism among the Indian officers by conducting written tests for their promotions was obstructed by the self-interested regimental commanders. For sustaining the patronage network, many officers of the late 19th and early 20th century American Army also opposed promotion, to officer rank, on the basis of merit.

In the Bengal Irregular Cavalry, promotion was on the basis of a combination of merit as assessed by the regimental officers, and seniority. Christie wanted promotions on the basis of selection by the British officers, which he felt would provide intelligent Indian officers. There were no tests or examinations required for promotions in the Sepoy Army. Instead of impersonal assessments for assessing the Indian officers’ professional expertise, Christie wanted to continue the personalized sahib-sepoy relationship, in which the sahibs enjoyed the power to make Indians officers. So he declared that there was no need for any

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76 For the view that examinations in the officer corps gave birth to professionalism see William C. Fuller, Civil-Military Conflict in Imperial Russia, 1881-1914 (Princeton, 1985), pp. 4, 8-11.

examinations to be conducted by the army bureaucracy.\textsuperscript{78}

The Punjab lobby argued that in the Bengal Army, as well as in the Punjab Irregular Force, for promotions, preference was given to seniority rather than merit. The privates regarded the officers’ ranks as rewards for long service. But due to their extreme age, when they reached the officers’ ranks, they became inefficient. The Punjab lobby concluded that the Indian officers could be intelligent and useful, if only their British officers selected them on the basis of merit.\textsuperscript{79}

Frere pointed out that promotion by seniority did not occur in the Bombay Army. It was instead on the basis of assessment of the Indian soldiers’ characters by the British officers. He wanted this pattern in all the armies, as it would allow the British officers to choose ‘useful’ Indians as officers.\textsuperscript{80}

Christie argued that the Indian officers were unfit to conduct the courts martial. For the Punjab lobby, the Indian officers were unfit to sit in courts martial, not because of any intrinsic defect of Indians, but for because Indian officers had been promoted on the basis of seniority. The Punjab lobby probably believed that promotion by seniority encouraged the Indian officers to be independent. But their argument was couched in ideological terms. The Punjab lobby claimed that the Indian officers lacked ‘moral resolution’. They proposed that if the Indian officers had to sit in the courts martial, they needed to be mentally very capable, and for that their selection on the basis of merit by the regimental officers was

\textsuperscript{78} Supplementary report, pp. 38, 54-55, 309-310.

\textsuperscript{79} Ibid., pp.34, 37.

\textsuperscript{80} Ibid., pp.54-55.
necessary. If this scheme was accepted, then it would have given the commanding officers total control over the Indian officers, which was the plan of the Punjab School. The Punjab lobby's plan was to disallow the Indian officers entry in the regimental courts martial.\textsuperscript{81} This was because the Punjab lobby wanted to give the regimental commanding officers full authority over their soldiers. But the army head quarter did not accept this programme of the Punjab lobby. Indian officers were included in the regimental courts martial.\textsuperscript{82}

Frere wanted the Indian officers in the courts martial to be subordinated to the commanding officers. So he agreed with the Punjab School that, if the Indian officers were selected on merit assessed by the white officers instead of seniority, then they would manage the courts martial better.\textsuperscript{83}

The regimental officers were especially unhappy about sharing power with the Indian officers. Casserly, a regimental commandant of a Gurkha battalion, argued in the first decade of the 20\textsuperscript{th} century, that Indian soldiers disliked to be judged by Indian officers, because the latter were swayed by considerations of race and caste, and village and family feuds. So they showed favouritism towards some and dislike towards others. Occasionally, personal equations also operated, as most of the Indian officers were promoted from the ranks. When the soldiers committed crimes, they were allowed the option of whether to be judged by courts martial composed of Indian officers or British officers. Casserly asserted that during his long service, he never saw even one case when a sepoy demanded to be

\textsuperscript{81} Ibid., pp. 33, 36, 38, 312.

\textsuperscript{82} Gorham, \textit{A Short Course}, p.171.

\textsuperscript{83} Supplementary report, pp.56, 58.
judged by the Indian officers.  

The army high command turned a deaf ear to such reactionary regimental officers and inducted the Indian officers in all types of courts martial. Indian officers were included in the regimental, district and detachment courts martial by 1877. In 1895, the Adjutant General, alarmed at the commanding officers abusing their authority in the summary courts martial, tried to check the abuse by giving observer status to Indian officers in such courts. He ordered that 2 commissioned Indian officers should attend each summary court martial. From that date onwards, Indian commissioned officers also occasionally acted as presidents of the general courts martial, the apex body. Though the Indian officers enjoyed limited power, it showed an increase over time.

The high command left the petty private affairs of the soldiers outside its domain, as such minor matters did not pose a threat to the war machine. But such autonomy to the soldiers somewhat eroded the regimental officers’ authority. An autonomous locus of power for the soldiers was their own regimental court or panchayat where they settled their disputes without any interference by the British officers and Western military laws. The panchayati system was a unique case of Indian Army bowing to indigenous tradition to conciliate the soldiers. Indians were given limited power to sort out matters not directly related with the army. And this reflected the limitations of the army’s reach over the private domains of the soldiers. Panchayats were held, with the consent of the parties concerned,


85 Gorham, A Short Course, p.171.

86 Army H.Q., Simla, Nos. 94, 374, 3 Jan.1895, 15 April 1895, G.O.
for the settlement of private disputes. The disputants appointed the arbitrators themselves, and their decision was final. The commanding officers had no power to challenge the panchayats' verdicts. The British officers merely coordinated the process by recording the names of the arbitrators and the subjects of the disputes. However, the power of the panchayats to award punishment was limited. The president (an Indian) of the panchayat could only stop the pay and allowances upto 6 months.  

After the Mutiny, the Punjab School demanded the abolition of the panchayats, to bring the soldiers within the orbit of direct military legal administration, for closer supervision. But Christie supported the opposite view when he argued that the court martial mechanism did not suit the soldiers. He was for its replacement by the panchayats. Christie was for 'Orientalizing' the army by introducing the indigenous panchayati system in place of the alien articles of war etc. He seemed to imply that 'Europeanizing' the Sepoy Army caused the Mutiny. To some extent, the post Mutiny army high command accepted Christie’s view, as a limited panchayati system was introduced.

Just after 1857, there was a reaction among the British officers. They wanted to tighten up the military judicial system, as they believed that the lax penal system had encouraged the soldiers to rebel. As part of this reaction, the Punjab lobby tried to address the defective technicalities of the court martial mechanism, which allowed the 'guilty' soldiers to escape the law. The Punjab lobby pointed out that errors in procedures or sentences should not be allowed to quash the proceedings, thereby allowing the guilty soldiers to escape punishment. They further argued that when courts sentenced prisoners to

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87 Army Regulations, p.6.

88 Supplementary report, pp. 33, 309.
punishment in excess of that prescribed by the articles, the confirming authority, instead of releasing the prisoners, should only reduce the punishment. Again, those prisoners who were erroneously tried and convicted by the lower courts for serious crimes should, instead of being released, be remanded for trial by the higher courts.  

Just after the 1857 bloodbath, the Punjab lobby, in an attempt to increase the British officers' power, demanded the revocation of the soldiers' right to appeal against the punishment given by the Brigadiers. In the irregular units, there existed elements of arbitrariness. No attempt was made to stick to the book, and the commanding officers enjoyed wide discretionary power over their men. When the nature of the proofs against the offenders was insufficient to convict them according to the requirements of the articles of war, but the criminal's 'guilt' was evident to the British officers, then such soldiers were dismissed without trial.  

Some articles of war strengthened the commanding officers' power over the soldiers. Article 70 gave them the power to punish the soldiers for unspecified offences. To leave no aspect of the soldiers' activity uncovered, the offences included under this article were deliberately left unspecified. To back it up, there was article 25, which gave blanket power to the commanding officers for controlling the soldiers. Under it, the soldiers could be punished for 'unbecoming behaviour' (and the right to define it lay with the sahibs). Another article which reduced the soldiers' power of protest was article 167. This punished those soldiers who made complaints against officers, if such complaints appeared as

89 Ibid., p.33.

90 Ibid., pp.33-34.
frivolous or groundless to the commanding officers.\textsuperscript{91} This certainly discouraged the soldiers from lodging complaints against their officers, as the alien officer cadre always acted as a body against the soldiers. So even genuine complaints could be interpreted as groundless and frivolous.

Though in many ways the colonial military law curbed the troops’ right to challenge the British officers, the soldiers enjoyed some protection regarding the quantum of punishment to be inflicted on them. This was meant to prevent permanent damage to their bodies and minds. It was not due to any humanitarian reasons, but because the army wanted to prevent permanent physical damage to its personnel, as it took a lot of time and money to convert the peasants into soldiers. The limit on the amount of physical cum mental punishment to be inflicted, arose in order to safeguard the army’s own combat effectiveness. The army needed the human material back, in a condition of total fitness, after the prescribed period of punishment.

For the mental stability of the soldiers, solitary confinement was limited to 14 days at a time, and could not exceed 84 days in a year.\textsuperscript{92} The soldiers could not be flogged twice in 1 month.\textsuperscript{93} The total amount of hard labour and drill combined, to be exacted from the prisoners daily, was limited to 6 hours in hot weather and 7 hours in cold weather. Extra periods of hard labour and drill were awarded for offences committed by the prisoners subsequent to their initial crimes. But in no circumstances was drill to exceed 2 hours a day.

\textsuperscript{91} Captain G.F.W. Macmohan, \textit{A Guide to the Correct Framing of Charges under the Indian Articles of War Suitable to All Occasions} (Bombay, 1887), pp. 12, 27-28.

\textsuperscript{92} Gorham, \textit{A Short Course}, p. 182.

\textsuperscript{93} Supplementary report, p. 33.
(1 hour at a time) and hard labour was not to exceed 5 hours each day. Extra periods of hard labour or drill could be awarded only up to 7 days. During hot weather, and at high noon, hard labour was confined to indoor work.\textsuperscript{94}

The army showed concern to ensure that the punishments were awarded properly and not in an arbitrary manner. It was the responsibility of superintending non-commissioned officers to see that hard labour was not to exceed the prescribed limit, and in the hot season it was performed in shade.\textsuperscript{95} When prisoners underwent imprisonment, non-commissioned officers took care of them. It was their duty to see that the prisoners got meals at regular hours. After locking up the prisoners at night, the keys were given to the officers of the guards who were responsible for the safe custody of the prisoners. Their duty was to take the prisoners to hospital if they fell ill.\textsuperscript{96}

No detention rooms were occupied without the recorded sanction of the general officers. They gave their sanctions after the reports came from the boards, which consisted of Assistant Directors of Medical Service, or the staff officers of the divisions or brigades. The boards had to certify that the rooms were well-ventilated, warm and fitted in accordance with the sanitary requirements and standard plans. On the arrival of the prisoners, the commanding officers had to ascertain whether the rooms were fit for their detention.\textsuperscript{97} Seniors officers were informed by the army high command that, when the

\textsuperscript{94} No.53, 1 Sept 1896, G.O.

\textsuperscript{95} Army Regulations, p.8.

\textsuperscript{96} No.53, 1 Sept. 1896, G.O.

\textsuperscript{97} Army Regulations, p.7.
prisoners had to undergo long-term imprisonment at the state prisons, over crowding must be prevented, as this was injurious to the prisoners’ health. Before sending the prisoners, the officers were to ascertain whether there was enough space in the prisons.98

During imprisonment, the prisoners were visited daily by the medical officers or hospital subordinates to ensure that their health was not deteriorating. Even while punishing them, the army took extra care of unfit or sick soldiers. On the morning of each day before the courts sat, medical officers examined accused persons awaiting trial. And the commanding officers were responsible for ensuring that if the accused soldiers were declared by the medical officers as unfit to undergo trial, then such criminals should not be brought before the courts.99 During summary courts martial also, the commanding officers had to attach the medical certificates of the accused to prove that they were all right.100 To ensure that the officers were keeping an eye on the health of the soldiers, even when they were undergoing punishment, visitors books were kept, in which were recorded the date and hour of visits by the medical officers. The army regulated their diets. For misbehaviour, the prisoners’ diet could only be reduced up to 3 days at a time.101 In 1863, the Commander-in-Chief declared that those prisoners who were on a bread and water diet

98 Circular to officers commanding divisions, districts and brigadiers holding warrants for convening district courts martial, prisoner’s memo, Adjutant General’s office, Calcutta, Circular no.27/E, 16 Feb.1865, Adjutant General’s Circular, vol. 5.

99 Army Regulations, pp. 8, 50.

100 Army H.Q., Simla, no. 374, 15 April 1895, G.O.

101 No.53, 19 Sept. 1896, G.O.
should not be subjected to hard labour.  

The soldiers also enjoyed various other legal rights. Article 40 gave the soldiers the right to challenge those commanding officers who struck or ill treated them. For matters of a purely personal nature, the soldiers could appeal directly to the divisional commanders. So channels to the higher authorities existed for the soldiers to show their grievances against their immediate superiors. When accusations were made against the British officers, then the commanding officer called a court of inquiry. In case of injury to the soldier, the proceedings of the court of inquiry was confirmed, not by the regimental officer, but by the brigade commanders. If the soldiers were dissatisfied, then they could apply for the general courts martial.

The soldiers enjoyed certain legal rights during the summary courts martial proceedings. Though the commanding officers had the final say, the soldiers were given the chance to argue their case during their defence and partly also during the prosecution and their reply. The prisoners were given the option to cross-examine each witness after the officers examined them, and this cross-examination was recorded. To avoid manipulation by the commanding officers, it was ordered that if the prisoners refused the right of cross-examination, then this was to be recorded.

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103 No.357, 1 April 1895, G.O.

104 Army Regulations, p.10.

105 Rules for the summary courts martial held under the Indian articles of war, proceedings of the summary courts martial, Simla, no.374, 15 April 1895, G.O.
The higher army administration did not always tolerate the soldiers’ right to challenge their commanding officers. This was borne out in the case of Sheikh Torab, a Jemadar who petitioned to the high command in 1861 saying that he had been discharged without any charge being brought against him. The petitioner was subsequently informed that his appeal could not be entertained, as the army held that the commanding officer’s decision was final in this regard.\textsuperscript{106}

At times, the army showed more generosity. In the same year, Sheikh Ghulam Husain, a Havildar, appealed to the army head quarter, that he had been dismissed from service and prayed for readmission, or at least pension for his long and faithful service. In this case, his petition was not rejected. The soldier was informed that the Adjutant General had passed the petition on to the Commander-in-Chief.\textsuperscript{107}

From these two cases, we can deduce that at least some soldiers were not satisfied with their commanding officers’ high-handed behaviour. So they appealed to the high command for justice. But the response of the top echelons of the army varied, because they were confused. On the one hand, they were ready to prevent the commanding officers from becoming too powerful, but on the other hand, they were afraid that if the soldiers were backed to the full, then it would jeopardize the power structure.

Conclusion

In the second half of the 19\textsuperscript{th} century, the regiment-oriented personalized penal structure transformed itself into an impersonal bureaucratic disciplinary system. This transition was

\textsuperscript{106} Progs. nos. 27-28, 2 March 1861, M.D.P. N.A.I.

\textsuperscript{107} Progs. nos. 56-57, 4 March 1861, M.D.P.
an ongoing process which had started long before 1857. In many ways, this transition was uniquely colonial. As far as the operative philosophy of the army was concerned, the intellectual paradigm through which the sahibs viewed the sepoys and sowars, and the relation between caste and corporal punishment, were specificities of the colonial scenario. In the organizational apparatus of the army, the panchayati system and the courts martial oaths (adapted for religions) were distinctly Indian.

The continuous tension between two lobbies— one wishing to make local commanders supreme and another wishing to reduce the local bosses’ power and to centralize power in the hands of the distant military bureaucrats, was the principal feature of the transition process. The spokesmen of the regiment-centric command culture wanted total repression of the soldiers, and tried to monopolize the hold over the punishment apparatus by the British regimental officers. But the army high command’s policy was aimed to thwart the paternal despotism of the regimental sahibs by giving some legal protection to the Indians.

While most of the contemporary civilian-military elite emphasized the importance of the personality of the British regimental officer, the military high command widened the scope of the impersonal institutional disciplinary mechanism. There was a gradual shift from patriarchal despotism towards bureaucratic discipline. The transition was from the personalized response of the officer to the crimes of his men, towards an impersonal evaluation based on bureaucratic assessment by the Adjutant General’s department. A British historian, Ian F.W. Beckett, claims that in the Victorian era, the armies of the British empire were governed by personalized command structures. However, our analysis shows that at least in the Indian case, there was a transition from personalized command

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system towards an impersonal control system. However this shift was incomplete and occurred in fits and starts.

While Bentinck the ‘liberal’ challenged Combermere before 1857, in the post 1859 period, the Adjutant General’s department upheld Bentinck’s line against the ‘reactionaries’ who were for increasing the regimental ‘satraps’ power and favoured harsh punishment. This tussle, as regards centralization versus decentralization of power for disciplining the mercenaries continued till the First World War. Complete centralization and bureaucratization of the command system was not possible due to the British view about the Indians, tactical cum administrative organization of the army and illiteracy among the Indian troops. Incomplete transformation partly explains the low combat performance of the colonial army in the First World War but some attempts towards an impersonal command system also prevented the privates and the Indian officers from becoming rebellious and politicized before 1914.