CHAPTER V

THE PATNA CASE

In the previous chapters it has been stated that the English Court from the beginning sought to extend its jurisdiction over various affairs which had been outside the scope of the sa _ , and the judges of the court interpreted the clauses of the Act and the Charter in the manner which could best serve their interests. It has been seen earlier that with the establishment of this Court, two systems of law began to function in the provinces of Bengal, Bihar and Orissa — the existing century-old Muslim law administered by the Native Courts and the English law administered by the English Court. The cases, previously discussed in two chapters, clearly show how the Court soon attempted to make its influence felt in all matters — civil, revenue, and criminal — of this country. The most important and interesting civil case that arose at this time, was the case of Nadira Begum versus Gahadur Beg and the Muslim Judges, which is commonly known as the Patna case of 1777. The case which arose out of the property of a deceased Muslim revealed the most indecent and unconventional, if not strictly illegal, interference of the English law with the Muslim law. In this famous case, the Court reversed the decisions of the Provincial Council of Bihar, and made one Native (a Farmer) and the high Officers of Muslim law subject to its jurisdiction. The Court even went to the extent of inflicting severe punishment by way of fine and imprisonment upon those Muslim officers who
had been highly esteemed by the natives at this time. As a result of this, the judicial administration in the province of Bihar was about to be suspended, and a sense of dismay, disappointment and insecurity prevailed throughout the province. In this case also the Governor-General and Council as usual tried its best to protect the native court and the officers of Muslim law from the injustice and tyranny of the English Court. Thus this case ultimately paved the greater way for the conflict between the Supreme Executive and Supreme Judiciary which was brought to a close only by the intervention of the British Parliament in 1781.

During the time of the establishment of the supreme Court, two native laws - Hindu and Muslim - were in vogue in Bengal, Bihar and Orissa and these laws were recognised by the Governor-General and Council. Though the Hindu law was also prevalent in these provinces, yet the Constitution of India was Muhammadan in character and the British Government was legally authorised to recognise only the Muslim law. The Muslim law was much superior in quality to some other contemporary laws. Regarding the comparative merits of the Muslim and Hindu laws Mill is of opinion "that a much higher strain of intelligence runs through the whole of the Muhammadan law, than is to be found in the puerilities, and worse than puerilities of the Hindoos".

Of course this is an extremely exaggerated comment on the standard and quality of the Muslim law. It is certain that Muslim law was inferior in merit to the existing English and Roman laws, and was defective in some respects. But it may be admitted that in defining the Rights of the Individuals, the Muslim law was almost at par with the English system of law. "No one can study with attention a good treatise on the Mohammedan law, without having his reading faculties improved."

The system of English law, like the Muslim Code, was not free from defects. Many English men having political and legal wisdom made unfavourable comments on their own laws. They had no regular code of law and their law was based on various statutes, some of which were ambiguous and not understandable to persons. This English law, as it had no general principles, was found to be imperfect, and the process of legislation also seemed unjust. Besides this, the English Penal law was found to be unjust and inadequate. The law was criticised severely — "Its severity has become latterly the means of rendering it in many cases a dead letter. The feelings of the people are inimical to it; and the officers of the Crown have often failed, notwithstanding the clearest evidence, to get the constitutional tribunals to convict under it." Indian lawyers formed an unfavourable opinion of that penal law, as they failed to find a

3. Ibid, p. 293.
just standard and principle in it. The Jury system in English law was also condemned by many lawyers in India and even in England. The people of India at this time were not qualified enough to act as juror, and this was an impossible task for a man having no knowledge of the law. The question of the introduction of the English law into India was, therefore, a question of great significance. The administration of that foreign law in India by the English Court was discouraged by many eminent Englishmen. Even Lord Clive in his 'plans for the Government in India' remarked that 'the attempt to introduce the English laws throughout our possessions in India, would be absurd and impracticable'. Under the circumstances, the best thing at that time was not to overthrow the century-old Muslim law altogether by the introduction of the foreign law, but to introduce in India the Muslim system of law modified.

It will be useful to discuss, in brief, the nature of the provincial council at Patna for proper appreciation of the discussion that follows. The provincial council of Patna acted as a civil court in the province of Bihar and the court had the right to settle the cases between the Muslim inhabitants. The court had the jurisdiction over the disputes between Muslims regarding property and inheritance. The Kazi and Muftis were the officers of Muslim law and any matter concerning the abovementioned law was referred to those doctors of Muslim law by the provincial court for their decision. In matters of the
right of purchase the Kazi and the Muftis were authorised by that Court to settle the issue. According to the Muslim custom, the next neighbour had the preference at the time of selling the houses and lands; under the direction of the Provincial Court, the Kazi and Muftis had to make enquiries to find out the actual next neighbour. This was known as the 'Huq Shufee'. In matters of Inheritance also, this Provincial Court referred the issue to those officers of Muslim law who were to enquire and make a report on the same. But the case was then decided by the Provincial Council. Thus the report of the Kazi and Muftis was subject to the decision of the provincial Council. Again, in case of any objection made by the opposite party, it was the practice of the Court for the parties or the vakils to present themselves at the time of the hearing on these law officers' report. The parties had the right to challenge any fact given in the report submitted by the officers of law and in such a case of objection made to the report before mentioned, the Provincial Council would make further enquiry in this regard and settle the issue. If any one of the parties was not satisfied at the decision of the Council, he could prefer a petition to the Governor-General and Council. Thus the question of referring cases between a Muslim and a Muslim regarding property or inheritance to the newly established supreme court, was regarded at that time as absurd.4

4. Report from the Committee, H/C, 1781, p. 9. (Deposition of Mr. Young before the Supreme Court.)
Before we enter into the details of the famous Patna Case of 1777, it will be proper to give an outline of the background of the case. An influential Native Muslim died at Patna in the year 1192 of Muhammadan era. He left a considerable property; at that time his widow and nephew (who lived with the deceased for some time as his heir and adopted son) survived. Both the parties claimed the whole of the property of the deceased. The nephew claimed himself to be rightful heir to the deceased as an adopted son; the widow, on the otherhand claimed the inheritance on the basis of a Will and a Deed of Gift of her husband. The nephew challenged the Will along with the Deed of Gift on the suspicion of forgery.

The nephew then instituted a suit before the Provincial Council at Patna on 2nd January, 1777; the Council according to practice issued an order to a Kazi and two Muftis (Doctors of Muslim Law) to examine into the allegations and made a report. In their report they stated that the inheritance was to be divided into four shares; three-fourths of the Estate were to be given to the nephew and one-fourth to the widow. The provincial Council accepted this decision and ordered that this division of the Estate was to be executed.

The widow objected to all these proceedings and expressed her dissatisfaction at the decision of the Provincial Council. However, under the direction of this Council, the Kazi and Muftis actually divided the Effects of the deceased as suggested
in their report. The widow then went to Calcutta; she appealed to the supreme Court and brought write of trespass against the nephew and the abovementioned three officers of law. The supreme Court at-once took up the case and the persons against whom the complaint was made by the widow, were tried. The kazi and murtis justified their action on the ground that they acted in their judicial capacity under the order of the provincial Council at Patna. The nephew stated that he was not at all subject to the jurisdiction of the English Court in Calcutta on the ground that he had not been in the service of the company. The English Court afterwards declared its judgment in favour of the widow.

The Supreme Court at last declared the proceedings of the provincial Council illegal by using the phrase 'delegatus non potest delegare'. The judges of the Supreme Court stated that the officers of Muslim law could not act in the above case under the direction of the Patna Council which was itself a delegated authority. Thus "the Supreme Court thought proper to enter minutely and laboriously into the whole of the case, and after voluminous proceedings, gave judgment against the defendants, damages 300,000 rupees and costs 9,208, amounting to the sum of about 35,000. The future events proved to be more painful and unfortunate on the part of the Defendants. What followed next can thus be best known from the speech of General Smith in the House of Commons; "In consequence of this judgment the Provincial

Council of Patna gave up the parties. They were sent down prisoners to Calcutta, a distance of 400 miles. The Caizba sunk under the weight of his misfortune, and died on the road. The others were not so happy. They survived their journey, only to be sent to the common gaol, sentenced to the perpetual imprisonment, for in such light I must regard it, since from the excessive damages decreed, it is impossible they should be ever liberated, unless by the interposition of the British legislature7.

Now it will be proper to describe the background of the case in detail. Shaubaz Beg Cawn, a native of Kabul came to Bengal and took service in the English Army. Later on he occupied a high post in the army, earned some wealth and ultimately he secured the grant of an ‘ultumghaw’ (free lands) in the province of Bihar. After the end of the war with Kasim Ali he resigned his post and began to reside in Patna in the Province of Bihar. At this time Shaubaz Beg married Nadira Begum, but he had no child. He had a nephew named Bahadur Beg (son of his brother, Allum Beg) who came from Kabul to Patna to reside there with his family. Shaubaz Beg suddenly died in the month of November 1777 leaving behind his widow, Nadira Begum and nephew Bahadur Beg.

Now a dispute arose over the property of the deceased between the widow and the nephew; both of them claimed the whole of the property. Bahadur Beg claimed the inheritance of the estate on the ground that he had been the adopted son of the deceased.

But Nadira Begum claimed that she was the legal heir to her husband, and she began to carry away and secret the effects of the deceased. Bahadur Beg at once instituted a suit before the Chief and Council at Patna stating that he was very much favoured by his uncle who used to introduce him (Bahadur Beg) with others as his adopted son and heir. In his petition to the provincial Council of Patna he brought a severe charge of carrying away money and the effects against Nadira Begum. He also stated that the widow might at once be prevented from secreting the effects and the secreted things be brought back; above all, he prayed just treatment from the provincial Council.

The provincial Council at Patna immediately took up the issue and took steps upon the petition of Bahadur Beg. The Council issued a precept (an order) to one Kazi and two Muftis (Muhammadan Judges, Kazi being the Chief) by which they were directed to take an account of the effects of Shawabaz Beg, make an enquiry and finally prepare a report to be submitted before the provincial Council. The mentioned precept or perwannah was issued on 2nd December, 1777 to those Muslim Judges in the Persian language under the seal of the Provincial Council and signature of the Chief of the Council at Patna. The translation of the precept was as follows:

"May God preserve you the Cauzee and Muftees in safety."

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8. Revenue Department, Minutes of Consultation, April 13, Fort William, 1779, pp. 1495 - 1497.
"Whereas the two parties Behader Cawn the fraternal nephew of Shaubaz Beg Cawn deceased and his widow are disputing concerning the property, Effects and other things left by the said Cawn, it is therefore written that you the Cauzees and Muftees having sent people on your own part, together with persons the vakees of both parties, and having made a due and exact Inventory of all the Goods, Effects, ready money, Household Stuff, Dwelling houses, ultumagay Lands & the Estates left by the deceased Cawn and having enquired for the carefully collected such part of his money and Goods as may be dispersed and having locked them up in a place and having affixed your seals on them, do there station and place people to watch on your own part, and on that of the parties in order that no one may be able to embezzle them until the time of the Trial and Division, and also that according to ascertained facts and legal Justice you transmit to the Council a written Report on this cause under your seals, specifying how much is to be given to what person according to the Koran and the Decrees, written the 2d of the month of January, 1777 English stile answering to the 8th of the month of Poos 1184 Fossullone and the 21st of the month of Zekaide the 18th year of the King's Reign."

The Kazi and the Muftis, the recognised Law officers of Patna and to whom disputes between the two Muslim parties were usually referred, became ready to act upon the precept of the provincial Council. The Muhammadan Judges went to Shaubaz Beg's
house where they saw Coja Zekereah, the son of the sister of the deceased. They gave Zekereah who was the principal agent of Nasira Begum a copy of the perwannah issued by the Provincial Council; they also informed the widow that they had come to take an 'Inventory' of the property of the deceased. At first she hesitated to allow them to perform their duty, but when she was repeatedly informed of the order given to them by the Provincial Council, she allowed them to take an 'Inventory'. The Law officers then asked Zekereah to appoint a vakil on the widow's side who would present himself at the time of taking the 'Inventory' and accordingly Zekereah was appointed by the widow as her vakil. The Kazi and Muftis then visited the apartments of the house with Bahadur Beg, Zekereah, and also Zulifkar Ali, a member of Nadira Begum's family. They took the 'Inventory' of the Effects and a list of the articles was also prepared. They desired that the widow should be removed to another part of the house and she at last agreed to go to another part of the house. The articles were kept in a room under lock and key at night and the Kazi's seal was also affixed to the door of that room.

The Kazi and Muftis then proceeded to make an enquiry into the right of Inheritance claimed by the nephew and the widow to the Estate stated above. The nephew asserted himself to be the adopted son of the deceased; he stated before those Muhammadan Judges that his uncle very often would declare

9. Revenue Department, Minutes of Consultation, April 13, Fort William, 1779 pp. 1497-1500.
publicly that Bahadur Beg was his legal heir to the effects he had possessed. He also informed them that Nadira Begum, with the help of Coja Zakareah, Cazee Mauzum, Emayet Beg, and Mohamed Euria, produced a forged will and a Deed of Gift, and on the basis of the forged papers she had become one of the claimants to the effects. He alleged that had his uncle bequeathed something to her, that 'Bequat' should have been attested by the law officers. Moreover, Bahadur Beg suspected the Deed of Gift on the ground that it was not produced by Nadira Begum within three days after the death of Shawbeg Beg. Coja Zakareah on the side of the widow said that Shawbeg before his death presented the abovementioned will to Nadira Begum and then he gave her the Deed of Gift. He further stated that the widow's claim of succession depended on the papers. Zulficar Ally stated that after the death of Shawbag Beg, the will and the Deed of Gift were forged. Niauz Ali declared that Zakareah came to him with a draft of a will and asked him to make a copy of it on a sheet of paper without any seal. He did it, but he was ignorant of the fact that the draft was prepared in Shawbaz Beg's presence.

The Kazi and Muftis, after their enquiry and examination, seriously doubted the authenticity of the will and the Deed of Gift. They expressed their views in favour of Bahadur Beg, as his statement seemed to be clear. On the basis of this enquiry, the Kazi and Muftis recommended in their report

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that the whole of the property of Shaubaz Beg (excepting the Ultumghaw) should be divided into four shares - one share should be given to Nadira Begum and three to Bahadur Beg, the legal heir of Shaubaz Beg. The Vakils of both parties were present when the report was read out before the Council of Patna, and the two Vakils accepted the report. It was declared by the Council that one-fourth of the rent of the 'Ultumghaw' of the deceased also be given to the widow. The Council then issued another precept to the Kazi and Muftis to execute their decision given in the report immediately. It is to be noted that the steps to be taken by the Law Officers in this direction in obedience to the order of the Provincial Council, ultimately gave rise to the action, the Patna case.

The Kazi and Muftis then went to Shaubaz Beg's house to divide the Estate and they requested Nadira Begum through the messenger to go to another part of the house. She unwillingly quitted the room and finally leaving the house, she went to the place of the Fakirs (the Durgah). The Law officers asked Coja Zekereah, the Vakil of the widow, to be present at the time of dividing the Estate. Both the parties appointed appraisers to fix the value of the articles. In presence of them, the Estate of the deceased was divided into four shares and Zekereah took the Widow's share; the remaining three shares were taken by Bahadur Beg. But Nadira Begum resided in the beforementioned

11. Ibid, Appendix, No. 2.
place for a few months and she took with her valuable papers and female slaves who were, according to Muslim law, considered as part of the inheritance. The widow was asked to deliver them up losing no time; but she refused to do it and argued that she was the possessor of the whole of her husband's property on the basis of the Will and the Deed of Gift given to her. The Kazi and Muftis then adopted strong measures against her; men were stationed round her residence to watch upon her, they went into her room and took an 'Inventory' of all the articles which she had brought with her and these were sealed up. The Kazi asked the woman to appoint Zekereah her Vakil and hand her seal over to him. She refused to do the first thing, but she sent her seal to him. The Kazi then appointed Zekereah the vakil of the woman. The Law officers demanded the production of the widow's original will and the Deed of Gift, but she disobeyed their demand. The Kazi and Muftis at once informed the Council of Patna that the Will and the Deed of Gift in possession of the Widow were forged. By the order of the Provincial council, Zekereah and other witnesses to the Will and the Deed of Gift of the Widow were put into confinement immediately on the charge of forgery. The law Officers then went to the woman's residence and asked her to leave it, but she and the female slaves took shelter in the Burchah. To make her amenable to the Kazi, guards and sepoys were placed so that she might not be able to receive sustenance. Ultimately, the widow left the place and came to Calcutta; there she instituted a suit for trespass against Sahadur Beg and the Law officers
before the Supreme Court of Judicature. The Supreme Court took up the issue – Nadira Begum’s plaint against Bahadur Beg, Kazi Saddiq, Mufti Guloom Muckdo and Mufti Barrkaut Ullah. Thus Bahadur Beg, the Plaintiff before the Provincial Council of Patna and also the three Muhammadan Judges, became the Defendants in the present case or Action before the Supreme Court. It seemed that there were five sides in the Plaint of Nadira Begum against the persons above-stated, and these were: battery, Imprisonment, breaking the house, turning her out of the house, taking and carrying away her Goods, and the Damages are laid at six Lacs of Rupees. The witnesses on the side of the plaintiff (Nadira Begum) and those of the Defendants were examined and they gave their evidence. For a clear understanding of the evidence given by the witnesses, it is necessary to divide the present case into the following parts – to take an Inventory of the Estate, to seal those up, to appoint Coja Zekereah as Vakil, to turn the plaintiff out of the house, to divide the Estate, the oppressions at the Dargah, and the Will and the Deed of Gift given to the plaintiff. The Evidence given by them was as follows.

As regards the first two parts of the case, Coja Zekereah, Anandaram, Kurrum Ullah, and Meer Cawn were examined. Zekereah,


13. Revenue Department, Minutes of Consultation, April 13, Fort William, 1779, pp. 1516 – 1552.
the witness for the Plaintiff stated that the Defendants came to the house of Shawbaz Beg to take an Inventory of the Effects and it took two days; on the second day they finished this job, but being turned out he did not find them taking the Inventory. Still he admitted that he was present all the time with the Kazi there while taking the Inventory. Anandaram, a witness in support of the Defendants was cross-examined and he deposed that Zekereah wanted that Nowal Singh should receive an Inventory on behalf of the plaintiff and Nowal Singh received it accordingly. Kurrum Ulhaq, a witness for the Defendant deposed that on the second day the Kazi took an Inventory and this was then received by Nadira Begum's servants. Meer Cawn, a witness on the side of the plaintiff and Anandaram, the witness of the Defendant deposed and their statements confirmed the material circumstances leading to the sealing up. Zekereah gave evidence that after receiving the consent of Nadira Begum, the Kazi sealed up the apartments at the request of Bahadur Beg; the plaintiff had to go from one room to another as they sealed them up and at last she had to take shelter in a place of the 'Out Houses'. He further stated that one of the Muftis then put the seal of Nadira Begum on the door.

On the third head mentioned earlier, Zekereah by a cross-examination deposed that the Defendants at first did not send any man to the plaintiff asking her to appoint one Vakil or attorney on her behalf. They desired her to appoint such a man when a large
part of the Inventory had already been made. We went on saying that the plaintiff refused to appoint her attorney; but being asked by the Defendants repeatedly, she sent them her seal saying that they (Defendants) might appoint any one as her attorney. He added that the defendants wrote something and appointed him (Zekereah) as her attorney which he refused. He also denied the fact that as an attorney he appointed an appraiser on behalf of the plaintiff. Then Meer Cawn stated by a cross-examination that the plaintiff did not appoint any Vakil before the taking of the Inventory. When the Defendants insisted her on her appointing a vakil, she sent her seal saying that they might choose any one. Afterwards they said that Zekereah had been appointed as her Vakil and Zekereah refused to act as her Vakil. But Anandaram, another witness being examined, gave the opposite statement; he said that Zekereah did not protest at the time of making the Inventory.

Regarding the forth point or part, in course of the examination Coja Zekereah stated that the Defendants locked up all the rooms having the articles and as a result of this, the plaintiff had to go to a part of the 'Out House'. Meer Cawn supported his evidence and said that the Kazi sent a messenger to the widow asking her to quit the house and go elsewhere. Thus the plaintiff was forced to leave the house and go to the Durgah. On the fifth point viz., the division of the Estate, Zekereah gave evidence that he was brought from the prison (where he was
confined by the order of the provincial Council of Patna) to the place to see the division of the Effects. He said that he saw the Defendants dividing the Effects into four shares - three of these were given to Behadur Beg and one was kept for the widow. But Zekereah said that he did not see the widow receiving her share. Ananderam, a witness on the side of the Defendants gave his statement by saying that in his presence Zekereah as an attorney of the plaintiff appointed Hatim as appraiser and when the Effects were divided into four shares, Zekereah received one share on behalf of Nadira Begum. He further stated that he found Zekereah keeping her share in a room. Hatim, the appraiser appointed by Zekereah almost made the same statement on the division of the Estate. On the oppressions at the Durgah (the sixth part of the case), it was stated by the witnesses for the plaintiff that Nadira Begum was compelled by the Kazi to quit the house and take shelter in the Durgah, where guards were placed to prevent her from taking any sustenance. It was believed by them that the guards were placed there by the Defendants. It appears from their evidence that at the Durgah, the widow was oppressed by the men stationed there by the Defendants. The Kazi's opinion was, however, somewhat different on this issue.

Now we shall take up the last part of the case, viz. the Deed of Gift and the Ekrar granted by Shawbaz Beg to the widow. At the time of the Trial or Examination by the Court, the witness for the plaintiff gave the following account on this point. About
six weeks before his death, Shauj baz Beg handed over to Nadira Begum two papers - the Deed of Gift and the Ekrar (General Declaration). The former was executed by the deceased on the 10th of the month of Ramzan and the latter on the following day. On the strength of these two papers, the widow possessed the whole of the property, moveable and immovable, of the deceased. But the witnesses on the part of the Defendants challenged the validity of the two papers stated above. They stated that Coja Zekereah made a draft of the Deed of Gift a few days after the death of Shauj baz Beg and hence all such papers produced by the plaintiff were forged.

The most vital issue centering round the present case was, whether Bahadur Beg, the Defendant was subject to the jurisdiction of the Supreme Court. The Defendant pleaded that as he had not been employed by the Company, he was not amenable to the jurisdiction of the King’s Court. On 13th November, 1778, Meer Cawn on the part of the plaintiff gave the following evidence on this issue. Bahadur Beg was the Faujdar of Gidore in Bihar and he held that place of Faujdar under the Company. After the death of Shauj baz Khan he collected the revenue of the Company from Gidore and Amortoo and paid it to the Company. He further stated that Bahadur Beg acted as the Faujdar under Mr. Law (Chief of the Provincial Council at Patna), made collections and paid the amount to the Treasury. By a Cross-examination, Meer Cawn, the witness for the plaintiff said that it was the duty of the Faujdar to collect the revenues of the
Company; and that Bahadur Beg collected the revenues of the Company was sufficient to prove that he was a Faujdar. He added that Bahadur Beg issued orders in connection with the revenue collections and appointed a Naib who, under Bahadur Beg, had to make collections.

William Young, a witness for the Defendants was also examined by the Court on the same day mentioned previously. Young, a member of the Provincial Council at Patna gave his evidence in the following manner. He said that he was ignorant of the fact as to whether Bahadur Beg was an employee of the provincial Council at Patna or of the Company; and beyond his knowledge, the Defendant could not hold any such post. He was of opinion that Faujdar was an officer having criminal jurisdiction; but this word was often applied to a farmer or any servant entrusted with the duty of making collections. He did not consider him as a Faujdar. Zulficar Ali was the farmer and the written engagements for the farm were made with him. Bahadur Beg was merely Zulficar Ali's security, and the security often became the principal in the collections. By a cross-examination Young said that the Defendant, as the security, was not directly connected with the revenue collections; but he considered Bahadur Beg as the real farmer. Being examined by the Court he further stated that the security for a farmer even might, in aid of the revenue collection, exercise the powers of the Government. He then, in his evidence gave the definition of the terms - the Farmer and the Collector - by saying, "By a Farmer, we understand a person who

enters into a Specific Engagement to pay a certain sum for the Revenue of the country, and the Government has no other claim on him. — By a Collector we understand a person who, for a fixed salary, is to be employed in collecting the Revenue of the Government, which is fixed at a certain sum. 15.

After the evidence had been taken, the Chief Justice and other two judges of the Supreme Court expressed their views on the question of the Court's jurisdiction over Bahadur Beg, the Defendant. The Chief Justice at the outset of his judgment declared, "The person authorised by Government to collect the Revenue of Government, whether he is employed by the Name of Collector, who is answerable to Government for the sum he receives over and above the stipulated sum he is ordered to raise, and receives a Monthly Salary as a compensation for his Trouble; or by the Name of Farmer who rents the Revenues of Government for a stipulated price, which he is to pay to Government, and upon whom the Government have no other claim after the Payment of that Price, and who expects to indemnify himself for his Trouble by the surplus which he may collect; is within the Act of Parliament and the Charter, a Subject of the Jurisdiction of this Court, as being a person employed by, or directly or indirectly in the Service of, the East India Company. 16. He

15. Ibid, Patna Appendix, No. 8.
16. Revenue Department, Minutes of Consultation, January, 5, 1776.
opined that the oppression of the officers of the collection one of the cardinal reasons for the erection of the English Court. The Chief Justice considered Bahadur Beg to be the subject of the Court's jurisdiction and he delivered his judgment on Young's definition of the term 'farmer'.

Justice Chambers also supported the judgment of the Chief Justice on this issue. According to him, a farmer acting as a collector of revenues must be considered as a subject of the jurisdiction of the Supreme Court. Bahadur Beg was the security for Zulficar Ali and he collected the revenues of the Company from the Rajas in Gidore and Amertee. While giving his views on this subject, he cited the definition of the term 'farmer' given by Young, a witness for the Defendant. Justice Hyde also held the same opinion and he stated in his Minute that it was confirmed from the evidence of the witness of the Plaintiff that Bahadur Beg was the revenue collector; moreover, Young, he said, had described him as the real farmer under the name of Security who would exercise the powers of the Government. Finally, he said that as Bahadur Beg was the real farmer and collected money, he must be considered as a servant of the Company; and hence, he was subject to the jurisdiction of the Supreme Court.

The Zamindars and Farmers of the Province of Bihar wrote a petition to the Provincial Council of Patna on Feb. 11, 1779 regarding the decision of the Supreme Court. They expressed their grave concern about the news of the extension of the English

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17. Ibid., Minutes of Consultation, January 5, 1776.
Court's jurisdiction over the Farmers. The Court recently decided in the case of Bahadur Beg vs. Nadira Begum, that persons holding lands in farm of the Government along with their securities would be subject to its jurisdiction. They stated that it would be impossible for them to perform duties if they were prosecuted by that court in Calcutta on the basis of a petition against them by any humble person.

In their petition the Farmers and Zamindars said that they were not familiar with the English Court in Calcutta and also with the laws which it administered. The Naib Nazim administered justice at the time of taking possession of the Diwani of the country, after which two courts, one for civil matter and another for criminal, were established. These courts administered laws known to them and to these courts they all were amenable, and they pleaded their cases in their known processes. The Zamindars and Farmers were not usually summoned by the Native courts and at the time of harvesting they were never called. But notwithstanding this practice, they would be, on a complaint, sent forcibly to Calcutta at any time by the Supreme Court. Thus many of them would be thrown into the prison in that distant place and afterwards returning to their own places, they were likely to see their farms destroyed or possessed by other persons. Under the circumstances, they would lose everything or fall into arrears of the revenue and none would be there to compensate them for their losses.
They also stated in their petition that they heard of the
British-born subjects or servants of the Company being subject to
the jurisdiction of the new Court; but it was beyond their
knowledge that a person could be considered as amenable to the
new Court only for holding a farm. They wrote, "We do not know
whether this order of the Court is conformable to the Regulation
from Europe, or not; but in rendering us miserable it obliges us
to call for your protection against it; and if that cannot be
afforded us, that we may be allowed to relinquish our farms that
we may retire with our families to some other country."18

The Farmers and Zamindars stated that they were guided
by the rules and regulations of the Company's Courts and they
paid their allegiance to those courts, the decisions of which
were never disobeyed by them. But now if those courts failed to
protect them from the tyranny of the English Court, there would
be hardly any reason to obey the decision of these on their part.
They found no justification in allowing their own country's
court to continue in case of their inability to redress the
grievances. Thus the recent decision given by the Supreme Court
in the Patna case regarding their extended jurisdiction over the
Farmers and their securities, created great alarm and terror in
the minds of those who had farmed lands under the Company's
administration.

18. Ibid, Minutes of Consultation, Feb. 19, Fort William,
They in the concluding paragraph of the above-stated petition appealed to the Patna Council to forward it to the Governor-General and Council for their consideration. They appealed this in expectation that the Supreme Executive in Calcutta would either dissolve their leases or free them from the jurisdiction of the Supreme Court in Calcutta.

The Trial of the case of Nadira Begum lasted for ten days and the supreme Court finally gave judgment in favour of the plaintiff, Nadira Begum. The Judges of the court declared the proceedings of the patna Council illegal and they made this declaration by pointing out a maxim - *Delegatus nonpotest delegare* - of the English law. This phrase meant that a delegated authority could not delegate its authority to others; the Patna Council being such an authority was not competent to do so. The Judges of the Court condemned the Defendants to pay three lakhs of rupees besides other costs of the suit. But the monthly salaries of the Kazi and Muftis were very low and in their lives they never saw so much amount of money. Bahadur Beg had also no such amount of money to pay and he only received the share of the Estate of his deceased uncle on behalf of his father. Ultimately by a warrant issued by this Court Bahadur Beg, the Kazi and the Muftis were arrested and were dragged down to Calcutta. But on the way to Calcutta the old Kazi who was the first civil Magistrate of Patna died, and others were brought to Calcutta and thrown into the common gaol there.

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G. Bogle, the Commissioner of Lay suite reported to the Hon'ble Board on Feb. 4, 1779, the judgment given by the Supreme Court recently in case of Nadira Begum versus Bahadur Beg and others. He informed that the Court had given decision in favour of Nadira Begum with damages for three lakhs of rupees. The Provincial Council of Patna were immediately informed of the Court's judgment, so that the persons of Defendants might be secured and the Company might be 'Bail' for the Defendants in the sum of four lakhs of rupees. The Commissioner appealed to the Hon'ble Board to consider the case favourably. He expressed his dissatisfaction at the decision of the Court; he liked to postpone the full account of the trial till the evidence of the trial could be known. He then informed that "It were improper to give a partial state of a cause of such Magnitude, the Decision in which, whether the Damages of three Lakhs of Rupees shall be paid by the Company, or whether the Defendant, Bahadur Beg, who sued for an Inheritance before the Council at Patna, and the Muhammad Doctors, who examined and reported on the Right to this Inheritance, and in consequence of the orders of the Chief and Council at Patna divided and delivered possession of Shahbaz Beg Cauyn's Estate, and on whom in the course of this Trial even the shadow of corruption has not been attempted to be thrown, whether these persons shall be doomed to perpetual imprisonment, is likely to put an entire stop to the proceedings of all the Provincial
Adawults and courts of Justice in this country.\textsuperscript{20}

The Provincial Council of Revenue at Patna wrote a letter to the Governor-General and Council on Feb. 11, 1779 in connection with the arrest and imprisonment of Bahadur Bag and the Muslim Judges by the order of the Supreme Court. They inform that the administration of justice had been suspended in the mofussil areas due to the alarming situation caused by the decision of the English Court — persons holding lands in farm under the Company and their securities would be amenable to the Supreme Court. They stated that they had received the petition of the Renters of the province of Bihar complaining against the above-stated recent declaration of the English Court. According to them, the alarming situation of the province described in the petition of the Renters addressed to them, was not at all exaggerated. They wrote when these farmers held the Government lands at first, they were under the jurisdiction of the Native Courts, subject to appeal to the Governor-General and Council. Under the circumstances, the decision of the Supreme Court would really create unrest and terror in the minds of the Renters of the province of Bihar.\textsuperscript{21}

It appears from a record that the Governor-General and Council informed the Hon'ble Court of Directors that they had received from the Provincial Council at Patna a letter. The

\begin{footnotes}
\item [20] Revenue Department, Minutes of Consultation, Fort William Feb. 5, 1779.
\item [21] Revenue Department, Minutes of Consultation, Fort William Feb. 19, 1779.
\end{footnotes}
Governor-General and Council wrote that this letter informed them that "Behader Beg, who had sued and obtained a Decree in his favor in the Provincial Court at Patna, had been seized, together with the Cauzee, or first Civil Magistrate under the Government of the Province of Behar, and other Mahomedan Judges who gave a Judgment in his cause, by a warrant from the Supreme Court of Judicature at the suit of Nadarah Begum, the Defendant in the Provincial Court, and were on the point of being carried prisoners to Calcutta. That the Chief and Council of Patna, in order to prevent the alarm and Terror which the sudden seizure and removal of the Cauzy must have introduced into the Courts of Justice and Civil Government of the Distant Province of Behar, had been under the necessity of giving Bail for the appearance of the Defendants in the sum of Four Lacs of Rupees".

It is to be mentioned in this connection that the Defendants of this case had to remain in the prison till the intervention of the British parliament in 1781. According to the decision of that Authority, the losses of the Muslim Judges were compensated and they were promoted to the post of Mahomedan Counsellors of the Patna Council.

In the record we find a petition of Barkatullah and Ghulam Makdum, the two Muftis and Defendants of the case while they had been in the prison of Calcutta. Seven months after

22. Revenue Department, Letters to the Court of Directors, Fort William, May 27, 1778. (Paragraph 29.)
their confinement in Calcutta, they petitioned the Court of Directors and in their petition they prayed that they might be released from their confinement and exempted from the fine imposed on them by the English Court. The muftis stated in the petition that the late decision given by the English Court against them might be just according to the English law, but they were ignorant of that law to which they were not amenable. They had been guided by the laws of the country and protected by the Governor-General and council so long; it was beyond their imagination that they would be subjected to an unknown law administered by the English Court in Calcutta. It was in obedience to the order given by the proper authority that they enquired into the dispute between two Muslims regarding the property of another Muslim, and they finally gave judgment. They stated that they had only performed their duties as Law officers under the direction of their rightful authority; they had delivered their decision and acted according to the recognised Muhammadan law, and not a single charge of corruption could be brought against them. They saw on their part no crime for which they had been fined and imprisoned in Calcutta.

The Muslim Judges appealed to the Court of Directors to protect them from the rigorous punishment that had been inflicted upon them. They stated that the English Court had declared that it was beyond the power of the Muslim Judges to act in the said case by the order of the patna Council. They
informed that they only knew the Governor-General and Council as their supreme Authority. The Muftis, therefore, prayed justice and desired the Court of Directors to discharge of fine imposed on them for their obedience to the Government 23.

From another record it appears that one petition of Bahadur Beg was referred to John Day, the Advocate General for his opinion. The Advocate-General upon that petition was of opinion that it was beyond the jurisdiction of the Supreme Board to interfere with the affairs of the English Court in Calcutta; hence the Board was unable to protect the petitioner as well as the Muslim Judges convicted by the Supreme Court 24. It has already been mentioned that Bahadur Beg and the officers of Muslim Law had to suffer confinement in the common gaol of Calcutta till they were rescued in 1781 by the British Parliament.

The present case shows undoubtedly the most irregular and undeserving interference of the Supreme Court with the jurisdiction of the Native Courts. The English Court's jurisdiction was confined only to British subject and persons directly or indirectly in the service of the Company. The vast population of India were amenable to their country courts. In the similar way, Bahadur Beg, the Defendant of the case was under the jurisdiction of the provincial Council at Patna since

23. Revenue Department, Minutes of Consultation, July 20, Fort William, 1779.
24. Revenue Department, Minutes of Consultation Sept. 21, Fort William, 1779.
he held no employment under the Company. But the English Court in Calcutta extended its jurisdiction over him by declaring all farmers and their securities to be amenable to the same. It has been that the whimsical decision taken by that court in the Patna case created a sense of disappointment and terror in the minds of all farmers and zamindars in the province of Bihar. It has also been stated previously that the court declared all proceedings of the provincial Council of Patna in this case illegal. But it should be remembered that such Native or Provincial Courts were no less recognised than the English Court in Calcutta by the British Parliament; and strictly speaking, the supreme Court had no right to acknowledge or take notice of these establishments unless they be pleaded. 25.

The Supreme Court while dealing with this Patna case, declared the proceedings of the Patna Council illegal by showing an established maxim of the English law - Delegatus non potest delegare. The Court argued, as has been stated earlier, that the Provincial Council at Patna being a delegated authority could not delegate it to the kazi and two muftis. But this reference to the abovementioned maxim of the English law was unjustified. If this principle or phrase of the English law would have been strictly maintained, then the Governor-General and Council should have no power to entrust to the Patna Council the duty of administering justice in the province of Bihar. This

25. Revenue Department, Minutes of Consultation, April 13, Fort William, 1779.
is because of the fact that the Governor-General and Council had also a delegated authority only. From this point of view, the Patna Council was competent enough to delegate its authority to the officers of Muslim law. Moreover, this maxim of the English law was not applicable to India and the Native Law officers were also totally ignorant of it. This maxim was suited in England where there were various types of courts and a large number of officers. But in this country the Chief officers even frequently used to exercise the right of delegating their authority and sub-ordinate officers too acted likewise according to the practice of the country.

Again the charge of "Trespass" brought against the Defendants in this case (case of Patna) can also hardly be justified. Before the establishment of the Supreme Court in Bengal, it was the custom that cases between Muslims concerning the property and inheritance should be referred by the Provincial Council to the officers of Muslim law, viz. the Kazi and the Muftis. It was also the universal practice in this country that expounders of Muslim law were to act upon the report issued by the provincial Council. Similarly, when Bahadur Beg instituted a suit against Nadira Begum before the Provincial Council of Patna, the Council referred the case to the Kazi and Muftis, the recognised officers of Muslim law by issuing a precept. They examined the case fully and finally submitted a report containing

26. Ibid. Minutes of Consultation, April 13 Fort William, 1779.
their judgment before the Patna Council. The Council then issued another precept to the officers for the distribution of the share of the estate; and in obedience to the order of the council the officers went to the house of the deceased and divided the property according to the decision given in their report. This was the act of 'Trespass' on their part. Those officers -- the Kazi and the Muftis -- were perfectly justified in the discharge of their duties. It can well rather be said, "that the Trespasses complained of were not Trespasses but acts done by the Cauzea and Muftese in the Execution of their Duty" 27.

Even if we suppose that the action of the Defendants in the present case was not legal according to the strict principle of the law of England, then they may be defended, above all, on humanitarian considerations. According to Edward Golding, Mr. Law and Major Rannell, the Muslim Lawyers and especially the Kazi and Muftis were free from any charge of corruption and ignorance and they were highly esteemed by the Natives. It is known from Bogle's Report that such a Muslim case could be judged by the Kazi and Muftis more efficiently than by a set of English lawyers 28. That is why, the issue was referred to the Expounders of Muslim law by the Patna Council. The people of the country at this time had confidence in the judgment of these

27. Ibid. Minutes of Consultation, April 13, Fort William, 1779.
officers of Muslim law and they preferred to plead their cases in their own country courts. Here the Kazi and Muftis were not acquainted with the law administered by the Supreme Court; they were completely ignorant of the nature and functions of the Patna Council and also of the exact rights possessed by themselves. They only knew the Provincial Council at Patna to be the Supreme Authority in the province of Bihar and so they thought it their legal duty to obey the orders of that Authority as subordinate servants of the Government. The officers were, therefore, not law-breakers; rather they innocently performed their official duty. Previously they had frequently enquired into various such complaints by the order of the Provincial Council, 'without the most distant idea that what they looked upon as a point of Duty would be imputed to them as a crime, and expose them thus to perpetual imprisonment.'

29. Revenue Department, Minutes of Consultation, April 13, Fort William, 1779.