Crime, law and order in colonial India (1765-1924) –

Note Readings not located in the library (DSA, and JNU) will provided through photostat copies (xx) or through pdf attachments (er). Please join the group mail. Fifty percent of the evaluation for two written assignments, and fifty percent for the end-semester examination. Readings assigned for classroom discussion are an INTEGRAL part of this course. Attendance at tutorial discussions is compulsory. Plagiarism will be heavily penalized.

Radhika Singha

This course will examine the institutions, practices and discourses of colonial criminal law in relation to the making and re-making of the colonial state. We will explore some of the historiographical trends which have shaped the writing on crime, criminal justice and policing. What are the archives and historical actors they have brought to view, the perspectives they offer on conceptions of law, justice, order and morality. What are the ways in which individuals and collectivities were defined as subjects of the law – victim, offender, plaintiff, defender, criminal tribe, dacoit gang?

Through the lens of criminal justice and policing we explore the ruptures and continuities which marked the consolidation of the East India Company as a territorially-based state, and the reconstitution of rule after the 1857 uprising. The EIC mined the Mughal past, and claimed it was ruling on the basis of ‘the laws and customs of the natives’. However in crucial ways its claim to legitimacy was also structured around the idea of ‘rule of law’. What underlay this claim was an expansion in the claims of the state at the expense of other jurisdictions of authority. Nevertheless colonial rule continued in many ways to rest upon a patchwork of legal jurisdictions.

We begin by examining the carving out of a sphere of civil authority from the domain of military governance. Bound up with this was an expansion of the claims of state over subject, forged through a sharper distinction between the realm of criminal justice, bound up with the claims of state over subject, and that of civil justice, bound up with definition of the line between the fiscal rights of the state and those of its subjects. Judicial authority had to be separated from fiscal rights, and concentrated in the agencies of the state. This was a slow and contested process, marked by a warring down of those who claimed a share in the prerogatives of kingship. We will examine the literature on ‘banditry’ for the insights it provides on the EIC’s drives to close down competitive state formation, tighten control over the military labour market, and to speed the victory of the agrarian frontier over peripatetic, pastoral and forest-based communities.

The next theme is the jurisdictional demarcation between public law in which the state claimed a right to intervene citing universal principles of justice, and the realm of personal law in which religious and customary law were supposed to have free reign. Contests around this boundary line impinged upon
the legal conceptualization of the household and the authority relations which marked it. We will examine colonial law as a constitutive element in the subordination of slaves, wives, servants and children. From this we move to a discussion of contractarian ideology as an aspect of world-wide movements to abolish slavery and its impact on labour regimes in India, in particular on provisions for criminal breach of contract.

We will examine the penal regime, its symbolic, ritual and institutional features as they were shaped by the reconstruction of sovereign right, and the re-drawing of the line between restitution and punishment. Here, as in the legal sphere, a variety of objectives, many of them contradicting each other were continuously in play. We will examine the complicated line between the ‘legitimate’ use of force and violence in the law, and that which was labelled ‘torture’.

The way in which colonial rule both reframed and negotiated with notions of order and hierarchy in society is examined through the role of law in the structuring of household authority, the regulation of free and unfree labour regimes, the provisions for criminal breach of contract, and the setting up of settlements for the restriction of criminal tribes. We will examine the laws and methods used to claim that ‘dangerous’ elements in urban and rural society had been identified and incapacitated.

Students will be introduced to some aspects of the trial procedure, to an understanding of how evidence was generated and reviewed, the emergence of a legal profession, controversy over the jury system and campaigns to demand the separation of executive from judicial power.

We conclude with a discussion about crimes against the state, the policing of ‘sedition’ and laws for ‘preventive detention’.

CHOOSE from the following. Essential readings are starred.

1 Approaches to the history of crime and criminal law

We begin with a survey of approaches to the social and cultural history of crime, criminal law, policing and prosecution. Some approaches stress the specificities of the legal process and multi-class use of the law. Others evaluate ‘law’ as a contradictory terrain, on which relations of domination and subordination are worked out, but legitimacy is also sought and power contested. We will assess some of the theoretical inputs which have enriched histories of the law in India: from anthropology, from searches for the ‘voice of the marginalised’, feminist enquiries into the gendered nature of the law, and post-structuralist explorations of discourses around crime and law.


D.) Dirks, N., ‘The crimes of colonialism, anthropology and the textualisation of India’, in Pels, P. and Salemik, O. (ed.) **Colonial subjects: essays on the political history of anthropology**, 1999, DSA Y7 N93; this is also a chapter in N. Dirks, **Castes of Mind**. DSA (critique of Orientalism)

*Foucault, Discipline and Punish, chapter one (*er*)

M. Perrot, ‘Delinquency and the penitentiary system in nineteenth century France’, in Forster and Ranum, **The deviant and abandoned in French Society**. JNU, DSA, xx. (Annales)


**II Criminal law and the making and re-making of the colonial state**

Criminal law and justice are examined as specific aspects of colonial state-making, both in their Orientalist and Utilitarian manifestations. The Company drew upon the cultural legitimacy of the Indian polities which it was pulling down, co-opted the Indian literati and re-shaped their norms of ‘service’ within a new institutional framework.

This section will also deal schematically with three conjunctures at which the systematisation of the criminal law was the focus of intense discussion.

A). The Hastings-Cornwallis epoch 1772-1793

B) T.B. Macaulay, the Law Commission and the Draft Penal Code 1837

C) the post-1857 re-structuring of colonial rule: the Indian Penal Code, 1860, the Police Act 1861 and the Code of Criminal Procedure, 1862

Good overviews

*Sandra den Otter “Law, Authority, and Colonial Rule” in N. Gooptu and D.M. Peers, India and the British empire, 2012. er


Fisch, J., **Cheap lives and dear limbs: the British transformation of the Bengal criminal law 1769-1817**, Wiesbaden, 1983. DSA, NMML, er
**III Crime and state making: predatory states, criminal bands, infanticidal communities**

In the process of colonial conquest and pacification, and the breaking down of the `inner frontier', certain political configurations were labelled as criminal and predatory. The process of settling populations to make it easier to police and tax them, tended to marginalise pastoralists, forest dwellers and various ambulatory professions. The imposition of colonial order gave a specific shape to forms of banditry and rebellion. Some dominant communities had to be conciliated along with being pacified. However their authority had to be re-constituted to make it conformable with `rule of law'. This section explores the legal and ideological changes related to such developments.

*Block, A., 'The peasant as brigand: social banditry reconsidered', CSSH, 14, 4, 1972, 494-503. er
*Hobsbawm, E.J. 'Social bandits: a reply', CSSH, 14, 1972, 530-5. er


A.Yang ed. Crime and criminality, 89-107. DSA

Singha, ADOL, Ch.5 or article on thuggee from MAS 1993 (er)

Kim Wagner, ‘Confessions of a skull’ History workshop Journal er

**V The penal regime: symbolic forms and disciplinary structures**

V a) Taking a trans-national perspective on penal changes over the eighteenth and nineteenth century, we will examine the colonial penal regime and changes introduced to it. We will discuss the issue of ‘torture’ in the investigation of a crime, the construction of a case and in debates about the appropriate form of punishment.


Garland, D., *Punishment and modern society*, Oxford, 1990, DSA, xx, 1321, X-621 ( or his article on Foucault, er)


Singha R, ADOL, Ch 6, DSA, JNU. Er chap “no needless pains’


Yang, A., 'Disciplining `natives': prisons and prisoners in early nineteenth century India', *South Asia*, x, 2 ( Dec 1987).


**V b) Violence and pain: the boundaries of legitimacy**

Law, policing and social order (VI, VII, VIII)

VI. Criminal law and ‘domestic’ authority: wives, slaves, servants and children

The colonial regime had to reframe the norms of patriarchal authority to conform with its own objectives. At the same time it had to show that it was responsive to norms about order and morality in society. The law drew a boundary between public and personal law, but one which was open to contest and negotiation. It also became a constitutive feature of the terms on which labour and services were exacted from wives, slaves, servants and children.

*Prakash, Gyan, 'Colonialism, capitalism and the discourse of freedom', in International review of social history, 41, 1996, DSA, xx (class discussion)

Chatterjee I., Gender, slavery and law in colonial India, Delhi, 1999. DSA, X-669 (chapter 5 er). (Radhika Singha ‘The slave as subaltern’ review essay in The Book Review, August 1999, Vol.XXIII, Number 8, academia.edu)


Barry Wright, ’Macaulay, the India Penal Code and Labour in the British Empire’ er

Singha, R. ’The magistrate and the domestic sphere’, ADOL, ch 4; pp.28-30. er

Gayle Rubin,” The traffic in women: notes on the political economy of sex’. er

Sen, Samita, ’Offences against marriage: negotiating custom in colonial Bengal’, in Mary E. John and Janaki Nair, A question of silence, the sexual economies of Modern India, 1998, pp.77-110. DSA

---------- ’Unsettling the household: Act VI (of 1901) and the regulation of women migrants in colonial Bengal', International Review of Social History, 41, 1996, 135-56. DSA


D R Banaji Slavery in British India, 1933.
VII ‘free’ labour and the penal and policed end of the labour spectrum

We will examine the way in which combinations of criminal law as well as local statutes were used institute a set of labour regimes which buttressed the commercial and institutional needs of colonial rule. Master and servant law, based on the presumption of a structured legal difference between the position of employer and workman, took on a new life in the colony. Provisions for criminal breach of contract law would remain in force in India for a full half century longer than in England. Prisoner work gangs were used extensively for the built infrastructure of rule. The law relating to criminal tribes provided a framework for excluding certain communities from access to common resources, and turning them into bodies of docile labour for agricultural and forest work or to expand the mining and industrial sector.


VIII the terms of urban order

*Anderson, M.R., 'Public nuisance and private purpose: policed environments in British India, 1860-1947', paper, Dept. of law, SOAS, er ( class discussion

*Chandavarkar, R., Imperial power and popular politics, class, resistance and the state in India,c 1850-1950 , 1998. DSA 2994; NMML V2’N50; ch 3,5,6,7


Joshi, Chitra *Lost worlds, Indian Labour and its forgotten histories*, 33-90 and ch.5

Gooptu, N., *The politics of the poor in early twentieth century India*, 2001, intro, ch. 4. DSA, 6985, X-684; NMMLY33:434.252’N4 P1


**Vid.) 'Preventive policing': hereditary criminals, habitual offenders, and goondas**

a.) Criminal tribes


Nigam, S., ‘Disciplining and policing the ‘criminals by birth', and ‘The development of a disciplinary system, 1871-1900' *IESHR*, 1990, xxvii, 2-3, JNU.,

Hinchy, Jessica – on eunuchs – their inclusion in CrTA

M. Radhakrishna, *Dishonoured by history:‘criminal tribes' and British colonial policy*, 2001.DSA ( see Singha, ‘Joining the mainstream’ review essay)


Pandian, Anand, “ Securing the rural citizen, the anti-Kallar movement of 1898’ er

*Rachel Tolen,’Colonising and transforming the criminal tribesman’ *American Ethnologist*, er

b.) the badmaash/goonda

Raj Chandavarkar, DSA


Singha, R. ’ Settle, mobilise, verify: identification practices in colonial India’, *SIH*, 16,2,July-Dec 2000. DSA, er also *‘Punished by surveillance’MAS 2013.*, er

IX Race, class and gender in criminal law

Race distinctions in the law underpinned colonial rule, but could also pose complications for the maintenance of legitimacy and order. ‘Unruly’ poor whites, the European prostitute, or the violence of the rank and file British soldier posed ‘class issues’ which could complicate the race divide.


Hirschmann, E., White mutiny, 1980.DSA bound (on the Ilbert Bill)


Sinha, Mrinalini, Colonial masculinity: the 'manly Englishman' and the 'effeminate Bengali' in the late nineteenth century, Manchester, 1995, DSA 2124. (for Ilbert Bill)

X. The contested line – Politics versus crime and sedition

We conclude with a discussion of contests over the definition of ‘the political’, as nationalist public life began to take shape in India. ‘Respectable’ society accepted the need for special police powers to deal with ‘criminal tribes and goondas It was more resistant to somewhat similar provisions against political ‘sedition’. Legal measures were introduced to censor political critiques of colonial rule and to control militant nationalist activity. There was a struggle in colonial jails to secure recognition for the category of ‘political prisoner’. (class workshop on prison memoirs)

or Taylor Sherman ‘State practice, nationalist politics and the hunger strikes of the Lahore Conspiracy Case prisoners, 1929-193 er

Kevin Grant –“The trans-colonial world of hunger strikes “


*Ujjwal Kumar Singh, Political prisoners in India, Delhi, 1998, Ch.2, DSA,X-685.

**Readings at leisure**

Cox, E., *Police and crime in India,* 1911.
Henry, E., *Classification and uses of fingerprints,* London, 1900. NAI
Rajagopalachari, C. *Jail diary,* Madras, 1922. NAI.
Savarkar, V.D., *Letters from Andamans er*
Sleeman, W. H. *Ramase eana,* 1836. NAI.
Urmila Shastri, *Karagar* (Delhi, 1980, 2nd edn.).

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