

“Formation of Colonial Legal Subject/Citizen: A Study on Nineteenth and Twentieth Century British Orissa”

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for the Award of*

DOCTOR OF PHILOSOPHY IN HISTORY

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DECLARATION

I, **Sasmita Rani Shasini**, hereby declare that this thesis entitled *“Formation of Colonial Legal Subject/Citizen: A Study on Nineteenth and Twentieth Century British Orissa”* submitted by me under the supervision of **Prof. Anindita Mukhopadhyay** is a bonafide research work and is free from plagiarism. I also declare that it has not been submitted previously in part or in full to this University or any other University or Institution for the award of any degree or diploma. I hereby agree that my thesis can be deposited in Shodhganga/INFLIBNET.

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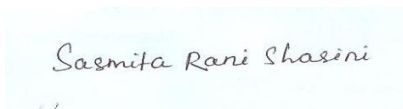
Writing a PhD was more difficult than I had anticipated. There were moments when I thought I would never be able to complete my work. And had it not been for the encouragement, concern and help from my supervisor my work would have remained unfinished. I owe the sincere thanks and gratitude to my Supervisor Prof. Anindita Mukhopadhyay for her invaluable guidance and support.

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A handwritten signature in cursive script, reading "Sasmita Rani Shasini", written in dark ink on a light blue background.

Sasmita Rani Shasini



CERTIFICATE

This is to certify that the thesis entitled ***“Formation of Colonial Legal Subject/Citizen: A Study on Nineteenth and Twentieth Century British Orissa”*** submitted by **Sasmita Rani Shasini** bearing **Regd.No.11SHPH02** in partial fulfilment of the requirements for the award of Doctor of Philosophy in History, is a bonafide work carried out by her under my supervision and guidance.

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Course Code	Name	Credits	Pass/Fail
Core Courses			
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OC 6	Education, Democracy and Human Rights	4	Pass
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Chapter-I

Introduction

The present study analyses the institutionalisation of a state-subject relationship in Colonial Orissa¹ through the colonial legal machinery introduced formally over Orissa by the Regulation 4 of 1804. The colonial rulers used various discursive methods and strategies to introduce control over the subject population. In their venture to protect the liberal capitalist economy, the colonial masters introduced a uniform legal system bypassing all the localised laws, rules and practices specific to social groups in India. Thus homogenization was central to the colonial empire building in India. The colonial officials skilfully designed the framework of governance by constantly referring to ideas of modernity and rationality developed after Renaissance and Enlightenment in Western society. This colonial project would be successful only after dismantling the existing social and political structure. Therefore the British officials studying Indian culture and civilization went on discovering the past by reconstructing the politics, economy and society of India. The historical narratives that they developed were to suit the colonial motives of establishing western superiority over the Indian society. Hence the colonial historiography argues that the understanding of the relation between state and society is highly problematic as they do not exist in India. Therefore Indian history is devoid of any form of governance. The Nationalist Historiography however came up with dominant myths and narratives to argue the existence of state and society since ancient period.

However, to deny the existence of state and society in India would be a scholarly bungle. The introduction of modern institutions of governance is attributed to the colonial rule. The concept of modernity and rationalism are abstract as they are understood in terms of European Enlightenment thinking. Further Modernity cannot build institutions in an empty space. It reworks the logic of the existing structures having their own peculiar understanding about institutions. This is what happened during the nineteenth century when the colonial

¹ On November 4, 2011, Orissa was officially renamed as Odisha and Oriya became Odia.

state put into place efficient and highly effective cultural technologies of governance that made a powerful combination of knowledge and power nexus. Through the deployment of the historiographical, observational, travel accounts, surveys, enumeration, museology and surveillance, the colonial power moved from a position of misrecognition of its position in the eyes of the Indian rulers in the sub-continent to a position of total acceptance of its all-pervasive presence². The institutional reconfiguration of indigenous systems of judiciary and the introduction of universally applicable contractual and documented legal forms of exchange aided the process of reconfiguration of Indian societies. We thus see that it was first the external and highly alien technologies of governance deployed by the colonial power that created new modern state, and the colonized societies changed under its multifarious pressures.

Area and the Period of Study

Orissa often referred as Kalinga in many ancient and medieval writings, possesses a history full of political instability and of confused dynastic changes. It had achieved progress as an unexplored maritime kingdom stretching from the mouth of the Ganges to the mouth of the Krishna. The first Aryan settlers from the north found Orissa buried under forests and tall grasses.³ The Aryan text described the original inhabitants of Orissa as black skinned people with impure language and rude habits. It is due to this Orissa was rendered detestable to Sanskrit writers and considered as an impure country. Its impurity passed into a proverb: “He who goes to Orissa must clean himself from the pollution”.⁴ Culturally it became a ground for propagation of different streams of religious thoughts like Buddhism, Jainism, Vaishnavism, Shaivism etc. The historical significance of Orissa became prominent with the discovery of Asokan inscriptions by Lt. M. Kittoe in the year 1837 at Dhauli. The XIII inscription described the Kalinga war fought on the bank of the river Daya between Asoka and the King of Kalinga which ended with the defeat of the King of Kalinga making it a part of Mauryan kingdom. Before British occupation, Orissa was ruled by Hindu rulers upto 1568, by Afghans from 1568-1592 and by Mughals from 1592-1751. The Marathas ruled over Orissa till 1803 before it was annexed by the British. The British ruled directly the three coastal districts of

² Bernard Cohn, “Colonialism and Its Forms of Knowledge: The British in India”, 1996, Princeton University Press, p-1-30

³ Brij Kishore Ghose, “History of Puri with an account of Jagannath and Description”, 1848, Orissa Mission Press, Cuttack, p-34

⁴ Jyotistatwadevala Bachanam quoted in *Tattwabodhini Patrika*, (1769) V-II, p-180

Puri, Cuttack and Balasore. The 26 Garjat or the tributary states were under the indirect rule of the British through their respective Rajas.⁵

The state of Orissa and Bihar were separated from the Bengal province in the year 1912. In the year 1936, Orissa became a separate province. In this thesis, I have mainly focussed on the areas of British Orissa. However I will occasionally refer to events from tributary states of Orissa and understand how the confrontation between the colonial legal system and the prevailing legal practices took place. It will examine how the colonial government interacted with the pre-existing State and Society in Orissa and reinforced the creation of a collective identity in the realm of colonial 'rule of law'. It will also look into the transformation of the regional Oriya identity into the national identity i.e. 'Indian' during the course of the national movement by the Oriya nationalists using the same legal machinery of the colonial government.

Studying the Pre-colonial State and Society in Orissa

Kaviraj has provided the illuminating insight that the 'state' can be legible in two ways. The first is the existence of any political rule or regime across all time zones, cultures or religions. The connections between such a state, and the populations living under its umbrella (consisting of infinite number of social groups) is a loose one. The 'State' therefore did not necessarily require establishing itself formally as a visible field of force within all the communities living under it. Relevant to my argument is Kaviraj's analysis of precolonial indigenous communities that coexisted as an infinite number of "circles", while zones of power and authority had limited reach, as the notion of a centralized state was nebulously present, but of far more immediate reach were smaller nodes of power which brought home control, punishment and authority to communities under it, as in a "circle of circles".⁶ The State, therefore had very little reach to the "conceptual language of acting 'on behalf' of the society" and remained fairly marginal to the everyday usages and exercise of power.⁷ Pre-colonial ruling institutions and practices belonged to this category.

⁵L.S.S.O.Malley, "Bengal, Bihar, Orissa, and Sikkim", 1979, Ess Publications, New Delhi (first published in 1927), p.19. There were 26 Garhjats in Orissa such as Athagarh, Athmalik, Bamra, Baramba, Baud, Bonai, Daspalla, Dhenkanal, Gangpur, Ghumsur, Hindol, Jeypore, Keonjhar, Khandapara, Mayurbhanj, Narsinghpur, Nayagarh, Nilgiri, Parlakhemindi, Patna-Kalahandi, Rairekhol, Ranpur, Sukinda, Sonepur, Talcher, and Tigria

⁶ Sudipta Kaviraj, "The Imaginary Institution of India: Politics and Ideas", 2010, Columbia University Press, New York, p-12

⁷ Ibid. p-13

‘Civil Society’ as a phrase, needs to be understood as a leitmotif weaving through the language of Roman Law, classical republicanism, down to the 16th century Renaissance intellectuals like Pufendorf who used ‘civil society’ in tandem with the classical and medieval natural law tradition. ‘Civil society’ was deployed by Enlightenment intellectuals like Locke, Montesquieu, the theorists of a commercial society, as individuated individuals pursuing ‘enlightened self interests’ and keenly interested in good governance and affairs of the state as the key parameters for economic prosperity, private property and the concomitant civil and political rights which secured these economic and political goods in perpetuity. Locke in particular positioned the commercial society as regulated through an inculcation of the penal concept of the self⁸ and by interdependence upon the state and through “need”. However, in these usages, there was no bifurcation between the ‘state’ and ‘society’⁹. It was Hegel who did so and he invoked the nineteenth century traditions of civil associations and guild socialism and thus brought into play an ideal ‘civil society’. Yet Hegel did not separate these two “distinct spheres” and they “functioned as redescrptions of one another.”¹⁰ In the German Society, civil society remained clearly aligned to the state theoretically, as classically explored by Tönnies. It was Marx who brought about a clear bifurcation between civil society and the state, but this angle will be explored later, as a critique of the colonial control in colonial Orissa.

This work argues that in colonial Orissa, it is the Anglophonic impact of a new legal consciousness, which underlined the all-pervasive external concept of the new colonial state and its legal and penal institutions, that would make “law and order” in the public space as a hegemonic discourse, and also as an all –pervasive, highly visible “peace’ upheld by force through the police, the criminal courts and the jails.

The Pre-colonial Legal System

Commenting on the traditional theories, practices, and epicentres of power in which notions of sovereignty were located, Foucault observed the primary link between the sovereign and the territory. The sovereign ruled all living within that territory and controlled its resources. He or she derives legitimacy through this “legitimate connection” to a realm. Foucault commented on this clear relationship between sovereignty and territory and

⁸ Sudipta Kaviraj & Sunil Khilnani (Eds), “Civil Society: History and Possibilities”, 2001, Columbia University Press, New York, , p-19

⁹ Ibid. p-20

¹⁰ Ibid. p- 17

emphasized on the relationship between sovereignty, the men, and their things as the concern of a well governed or in other words a “well-policed” state. The modern nation state in Europe emerged out of this understanding of the notions of sovereignty. These understandings of the concept of sovereignty drive the colonisers to the establishment of a more bureaucratic and centralizing institutional structure to implement the rule of law. This was antithetical to the indigenous institutional arrangement for delivering justice. When these notions of sovereignty marched its way out to the new lands due to the colonial adventure, it confronted a completely different notion of authority and sovereignty in the Indian landscape. The indigenous notions of authority was characterised by a very loosely defined sovereignty based on Dharma, rituals and customs of indigenous kingship which varied according to caste, race, religion, culture and geographies. The pre-colonial legal system’s strict adherence to Dharma is visible from this example. A person was once accused of theft and brought under confinement by the Zamindars of Dhi Bhogarai. As he insisted his innocence, a trial by ordeal was arranged in presence of a Panchayat in the following manner:

“The accused was brought to a place where the Thakur (God) was situated; an axe having weight of five seers was made red hot together with seven threads of silk were tied to it. The ironsmith took it up with his song and placed it on the hand of the accused; in front were drawn seven lines on the ground at the termination of which was placed a sheaf of grass. The accused then took the axe in his hand walked over the seven lines and threw it on the grass according to the instruction of some Brahmins. The ordeal of ghee was performed in the following way. Ghee was put to flame; when it was too hot, a ring was placed in it, which the accused was to take out in his hand. If his hand did not burn, he was declared not guilty. All the above ordeals were to be performed according to Sastra”. These also position the indigenous systems within the long-forgotten phase of European legal history, which had successfully evolved into a far more sophisticated “truth- producing system”.

The Colonial government’s most conspicuous critique of judicial arrangements of eighteenth century Indian states was the charge of venality. The judicial offices during the eighteenth century were mostly contracted contributing to the economy of the state. Thus it was difficult for the rulers to emphasize on the ideal of justice as an aspect of public welfare. Company officials frequently complained that heinous crimes being settled by the ‘purchase’ of pardon. The pre-colonial regimes resorted to the collection of huge fines for settling cases related to fornication and witchcraft. The amount of the fine was determined in relation to the

resources of the offender. The cost of approaching the Hakim was the fourth part of the disputed property. Orme declared that justice was determined by the value of bribe.

The judicial administration of the Indian states was directly related to their fiscal considerations. The British officials complained that the lower level power centres such as Zamindars and other feudal chiefs were protecting the bandit gangs and used to get a share of the plunder. They used to release them if their own revenues were not affected. British officials criticised this practice saying it encouraged such bands to thrive under state protection. Further by adopting such practice they abandoned their obligations to protect property right. Contemporary European scholars posed great faith on the effectiveness of fixed and immutable penalties as opposed to the ancient regimes discretionary practices in delivering justice. The arbitrary use of discretion and the ‘cruel practices in awarding punishment’ were modelled as a contrast between the Oriental state power and the due process of law under the Company. According to Jorg Fisch, the indigenous rulers displayed laxity rather than barbarity in exercising their punitive rights’. Thus in another double discursive move, which framed the barbaric pre-colonial laws of “Oriental Despotism” as inhuman and at the same time poured scorn over its ineffective law enforcement mechanisms that allowed the dangerous criminals to escape its legal drag-nets, the colonial power posited the necessity of a more “humane” but a far more stringent legal dragnet for its “Rule of Law”. How effective this double discursive move was can be seen in Indian historiography that addressed the themes of criminal judicial administration. A. Aspinall looked into the process of breakdown of the Nawabi system of police and justice. He argued that the old methods crumbled under the weight of corruption and inefficiency. Many British officials and administrators had criticised the pre-colonial system of judicial and punitive authority and regarded the Company’s judicial measures as the first step to establish a liberal progressive government based on natural justice. According to N.K. Sinha, the British by sweeping away the Islamic criminal system made their most prized contribution to Indian administration- “their system of criminal justice”. A process of systematic and critical analysis of the pre-colonial judicial arrangements followed by the introduction of a newly modified system of law laid the foundation of a new power structure in Orissa in the beginning of nineteenth century. This power structure was able to entail a new state-subject relationship marking a process of discontinuity from the earlier relationships.

An imperialistic analysis of the British rule in Orissa by O’ Malley glorifies the colonial rule when it says immediately after the occupation of Orissa by the British in 1803,

conflicts with external enemies resolved, wars and military attacks fade from the memory of the people and peace was established. Erik Stokes in his book “English Utilitarians and India” opined that “the Indian society was based on unwritten customs and the government was run by personal discretion”. The British was convinced that the only method of bringing standardisation was to introduce a system of legality through a body of formal law equally binding upon the state and its subjects.” Similarly Cohn also emphasised the clash of values and the system of authority between the pre-colonial and the colonial legal systems. Even after the introduction of the western notions of legality, the traditional forms of governance and the indigenous hierarchical power structures conspicuously retained their hold on society. The result of this collaboration between two sets of legal discourse was the constant modelling and remodelling of the indigenous understanding of the rule of law.

The New Springs of Power

The power to collect revenue and administer justice in Orissa passed into the hands of the British after the Battle of Buxar in 1764. Through the regulations of 1772, the East India Company asserted its rights over the legal administration. Warren Hastings and Lord Cornwallis argued that they were re-introducing the ‘ancient Indian constitution’ of justice with some changes to ensure the impartiality and effectiveness of justice. They justified their stand by pointing out the decaying Mughal agencies of justice caused by the laxity and venality of regional rulers. Further the judicial power of these regional rulers was usurped by the Zamindars and the revenue farmers who had become micro-centers of power with their private armies. According to the British, these micro-centers of power had to be rigidly controlled to establish their suzerainty by bringing them under the “Rule of Law”. This was defined not only as a law and order problem but also an obstacle to the collection of revenue. The colonial officials understood that the Islamic law was putting constraints on the State’s penal authority. Yet the elements of Islamic legal system were retained including its language and official hierarchies. It was the interpretation of the indigenous legal principles that changed according to the conveniences and dictates of colonial administration.

The Pre-colonial legal system prevailing in India was not suddenly abandoned. There was no outright substitution of indigenous laws for western legal system rather a flexible negotiation with authority and justice between the English and the indigenous elite took place. The colonial exercise of the rule of law was made visible after obtaining the huge

compendium of facts about the Indian social, economic and cultural sphere. It was also a result of the process of negotiation with the indigenous power structure by the establishment of colonial legal institutions- police stations, courts and jails. These legal institutions signified a particular public space where the criminals were introduced to the state as well as the society as offenders. Such a public identification of a criminal even more justified sovereignty and the legitimacy of the colonial rule. The colonial government then very carefully identified the suspected criminal categories, analysed their behaviours, and defined the types of crime. After codifying all such data, the institution of jail was introduced as the centre of detention and punishment for the transgressors of law.

With the consolidation of the colonial rule and the growing confidence of the ruling power, the new rule appropriated the language of authority completely and infuses it with different meanings. Even if it claimed to equality before law, it conceded privileged treatment to the local hierarchical elites. Through the gentle treatment accorded to the elite in court, the rulers elicited a degree of trust. The lower classes were given tougher punishment as they were considered used to it. Punishment will not be a personal disgrace to them as it will be to the elites. This distinction was absorbed at least in theory towards the beginning of the 19th century by a political and moral language which said that all classes were equal before the law that demolished the elite superiority. The egalitarian notions of law were questioned and the elite outrage became vocal when their general immunity from the legal and penal network gradually faded as they were equally brought under the legal net. I argue here that a two-fold protest marked its beginning from this juncture when the indigenous elite opposed to the egalitarian notions of law in order to distinguish themselves from the ordinary people and to be treated at par with the British.

The understanding of the relation between the sovereign and the people and the various aspects of their lives in the realm of the rule of law both during the pre-colonial and the colonial state period is the research endeavour here. Understanding the nature of the colonial state in India is central to this theoretical framework as the objective of the colonial state was to bring all aspects of the society under its control. The aim was primarily economical, that is to harness all the potential sources of economy but was not possible without bringing effective order in the society and curbing the power of the local elites. The stability and order in the society will not be possible without bringing the people and their things under the state authority. The instrument which would serve the purpose of bringing order is the 'Rule of Law', a concept with marked differences with the earlier system of

legality in India. A new political rationality was introduced in India. The centrality of this rationality is the concept of the states's power and its various dimensions. The art of government, the state's resources and its statistics are the major constituents of this new political rationality. This is exactly what the colonial state did towards the end of eighteenth and the beginning of the nineteenth century in India as well as in Orissa. However an elaborate discourse of governance had to be carefully put in place which addressed the system of indigenous administrative system and their official hierarchies, inept, ineffective and incapable of holding these administrative systems together. Against this, European officialdom and administrative skills that stemmed from the "Rule of Law" were posited as direct and sharp contrast.

The Initial Period of Colonial Control

This research will mainly focus on understanding the new structures of authority and legality that was enforced in Orissa after its invasion by the British in 1803. Immediately before the advent of the British, Orissa had been under the control of the Mughals and the Marathas. Under the Mughal administration, the office of the Kotwal policed the towns. In rural areas, the Faujdars were to march with army to subdue overgrown Zamindars. But the British took away the military functions of the Faujdars and reshaped the sphere of criminal jurisdiction in Bengal. Under Maratha administration in Orissa, the Amils were in charge of revenue collection and were looking after the general maintenance of law and order. The British transferred this power of maintaining law and order and the identification of crimes from the 'Amils'.

The Maratha power, through the treaty of Bassein in 1802, became weak and its grip over Orissa slackened. The British invaded Orissa in 1803 as a part of its expansionist policy. The British drew up a series of treaties with the Marathas in Orissa and other indigenous kings, Subahdars etc. which resulted in a gradual transfer of sovereignty to this alien power. The possession of Orissa was strategic: in one stroke, the British secured continuity in their territorial holdings and established uninterrupted communication with Madras by land. This was immediately reflected in the confidence with which the Paik rebellion of 1804-1817 and other rebellions were suppressed. The British crackdown on dacoity and smuggling, and the ruthless suppression of rebellions and indigenous rulers adhered to two basic principles or priorities which guided the Company's policy: extracting maximum revenue at minimum expense and enforcement of law and order as necessary for the public and financial security of the Company.

We see therefore the smooth collection of revenue and the maintenance of law and order were not independent of each other but were complementary in their everyday functioning. This need practically enabled the British government to institute a process of administration keeping in mind the imperial needs as well as strategically protecting the indigenous sensitivity. The urgency of instituting an effective law and order system was, as the British thought, not possible outside the western notions of legality. However, this was not to be done with the total overhauling of the native legal system but by superimposing some western legal principles. Radhika Singha has argued that the most important shift occurred in the state monopolisation of capital punishment. The imposition of death sentence ceased to be the right of all power holders down the line. This centralization of the power to punish by awarding the death sentence became a criminal offence in one stroke, criminalizing all levels of power holders who had hitherto exercised this power with impunity.

The Instrument of the Rule of Law

The principal ideological and organising instrument through which the East India Company colonised the Indian sub-continent was the *Rule of Law*. The colonial government established its authority over the indigenous communities with this ideological weapon. The rule of law based on liberal rational principles was mediated through the aspirations of the ideal political and individualistic legal subjects. Here lay the notion of a legal subject based on a reinterpreted indigenous ethical identity that combined politics and religion. The rule of law as introduced by the colonial government also had a cultural implication pertaining to civilizational superiority. The indigenous elite appropriated specific character in the 18th and 19th centuries because of their interaction with the rule of law which acted both as an expression of sovereignty and as a language of cultural superiority.¹¹

The ambiguities within the equal administration of law had changed with the new formulation of understanding of the colonial government by Raja Rammohan Roy towards the mid-nineteenth century. Roy emphasized on the dialogic interplay between a progressive government and a politically aware subject race within a new public sphere created by the print media. Such a space between the colonial state and the indigenous community would publicly monitor state authority and tutor the educated Indians in the art of governance.¹² With Roy's new understanding of the relation between the colonial government and the

¹¹A. Mukhopadhyay, "Behind the Mask: The Cultural Definition of the Legal Subject in Colonial Bengal (1715-1911)", 2006, Oxford University Press, New Delhi, p-20-21.

¹²Ibid.p-79

educated Indians, a new demarcation between the literate and the illiterate and undifferentiated was conditioned. Western education became the new weapon of hegemony for claiming privileges from the legal and penal institutions. On the other hand, it also enabled the educated indigenous communities to exercise their learnt lessons in liberal political thought to be critically appreciative of the new legal principles and the responsibility of keeping the colonial rulers turned to the subject's aspirations or discontentment.¹³ This led them to form a community of like-minded legal subjects through education. At this juncture, the educated Indians claimed to be the representatives of the common people who can speak and assist for their well-being in collaboration with the rulers although they were far away from social, economic and cultural world of the people.

A differentiation between the colonial government and the educated Indians in the interpretation of the rule of law began when the Indians sailed through a terrain of rising streams of nationalism and self-rule. The rising current of nationalism found its expression in the legal sphere by the nationalist construction of the category of '*political prisoner*' as opposed to the '*ordinary prisoner*'. The difference between political and ordinary imprisonment had begun in 1861.¹⁴ The dialogue with the state became sharper and argumentative; the legal subjects of the colonial rule began to turn away from an uncritical appreciation of the legal and penal systems. They instead began to question the usefulness of the colonial law enforcing institutions. The 1860s and the 1870s denoted a new spin on the Rule of law that was both a political statement and an inflexible weapon of the ruling race. As jail going was a foremost nationalist strategy to counter the colonial government, many considered a stint in colonial jails as necessary to be recognised as a freedom fighter to be treated with honour by the colonial government and enjoy privilege¹⁵. My concern here is to look into the process by which the definition of 'political' became a conflicting issue between the ruler and the ruled in colonial India. This would also bring out the dominant trends within the nationalist movement.

Play of “Rule of Law” in Orissa

Introducing the colonial discourse of rule of law was considered absolutely necessary by some colonial officials in terms of its utility for the country. In the eighteenth and nineteenth centuries, the superior moral and political efficacy of the western rule of law was

¹³Ibid. p-79

¹⁴Ibid. p-79

¹⁵U.K. Singh, “Political Prisoners in India”, 1998, Oxford University Press, New Delhi, p-3

held out to the indigenous communities of India, as part of imperial agenda.¹⁶ The basic philosophy of the “*rule of law*” as was opined by the colonial authorities was the promise of good governance and enforcement of law and order. The prelude to this important task was the reinvention of the traditional structure of power and privileges within Oriya society sanctioned by Hindu Law and delineated a nexus of power fixed in a hierarchical order. This legal hierarchy was confronted in the nineteenth century by a different institutional legal form which upheld an idealized egalitarian order, which in turn was rewritten as sets of interrelationships among the diverse natives as equal legal subjects.¹⁷ The colonial legal and penal institutions wreaked a fundamental change within the indigenous perception of the justice and created the base of legend of legality of the “*rule of law*” within the minds of the educated.

The idea of colonial justice was not a simple phenomenon. The colonial rulers legal system was struggling to either adhere to the discourse of the ‘colonial’ or the discourse of the ‘imperial’¹⁸ throughout the nineteenth and twentieth century. The ‘colonial’ as Mithi Mukherjee has argued was based on the principles of conquest, domination and subjugation of the colonized where as the ‘imperial’ connoted a discourse of justice under natural law with restrictions on the arbitrary usage of power. The ideology of the “*rule of law*” unfolded as a complex dialectic of the colonial as a discourse of governance and the imperial as a critical discourse of justice. The base of these discourses hidden underneath the dialectic as to whether the “*English Common Law*” will be applied to the administration of its colonies or a supranational de-territorialized “*Natural Law*” will work efficiently¹⁹. The debate ensued

¹⁶A. Mukhopadhyay, “Behind the Mask: The Cultural Definition of the Legal Subject in Colonial Bengal (1715-1911), 2006, Oxford University Press, New Delhi, p-2

¹⁷Ibid, p-3

¹⁸ This argument I have borrowed from M. Mukharjee, “India in the Shadows of Empire: A Legal and Political History, 1774-1950” 2010, Oxford University Press, New Delhi, p-XV. She has used the argument to present a genealogy of the democratic polity in India by exploring the ways in which the twin discourses of imperial justice as equity and imperial justice as liberty came to determine the origin, nature, and evolution of representation politics in colonial India. But my approach is to examine the discourses of colonial and imperial justice and its implication in the realm of ‘Rule of Law’ in India.

¹⁹ The exponents of these two theories are Thomas Hobbes who has argued in favor of the English Common Law to be implemented that argues for a form of sovereignty based on absolutism. The power of the sovereign is to be unlimited and unquestioned and notions such as justice and liberty have no existence independent of the sovereign. Hobbes, T. (1651) “Leviathan”, p-185-86. In opposition to Hobbesian theory of absolute sovereignty, the political thinker John Locke had proposed that the state of nature, rather than discourse of sovereignty based on the ‘discourse of Natural Law’ being characterized by chaos and anarchy was a state in which people had property and rights. These rights were only conditionally surrendered to the monarch and the people had an obligation to obey only so long as the state worked for their good. Locke, J. “Second Treatise of Government”, p-101-24. This argument was further explicitly resorted to by Edmund Burke in his impeachment of

after a series of political events that questioned the very existence, stability and authority of the British Empire in its colonies, particularly the loss of colonies in America. As India was different from the American colonies in the sense that it was not a settler colony but acquired through “*conquest*”, it required governance and legitimacy of a different kind. The last part of the eighteenth century saw this highly volatile debate among political theorists, the House of Lords and the Company’s merchants. Edmund Burke employed the “*discourse of imperial justice*” in his impeachment of Warren Hastings for ‘high crimes and misdemeanours’ in the British House of Lords in 1788. In this trial Burke evoked the imperial discourse while defending the rights of a colonized population. The trial also created within Indian minds the moral and the ethical dimension of British “justice”. How far this western concept of “justice” tied up with variegated indigenous perceptions of core Indian values of “*Dharma*” and “*insaaf*” is also a part of my research.

The second important event when this debate again unfolded was the conflict between the power and authority of the Supreme Court established in 1774 by the Regulating Act and the power of the Governor General and his Council.²⁰ The Supreme Court functioned under the direct authority of the British parliament to check any arbitrary use of power by the East India Company. Under this Act the Supreme Court got jurisdiction over all persons in Bengal, Bihar and Orissa. It was also given the right to review and veto all laws passed by the Governor-General’s council.²¹ The Supreme Court became an effective institution for public critique of power in the name of justice. Thus the Supreme Court subjected the colonial to public scrutiny and forced the colonial government to answer to imperial justice. Thus it was able to give the popular imagination of the ‘rule of law’ as rational, uniform and utilitarian instrument of governance.

The years following the 1857 revolt witnessed the third moment. The vulnerabilities of the British government that were exposed during the revolt made the British government to think of a new strategy to establish sovereignty more firmly than earlier. The precondition of this task was to dismantle the existing sovereignty i.e. the Mughal Emperor. The power to

Warren Hastings. In claiming that the rights of the people of India were prior to the state, he was resorting to this political tradition in England that prioritized the liberty of the people against claims of absolute power of the sovereign. As the king was subordinate to the laws in India, so Burke argued, Hastings and the Company’s government in India had to necessarily be subordinate to Law. Burke, E “Speeches on the Impeachment Trial of Warren Hastings”, p- 58-95

²⁰M. Mukharjee, “India in the Shadows of Empire: A Legal and Political History, 1774-1950”, 2010, Oxford University Press, New Delhi, p-12-13.

²¹Ibid.p-13

rule India was transferred from the East India Company to the British Crown. The British monarch was presented as a universal ruler untouched by the narrow ideas of nationality and territoriality. This was done to mask the foreign and alien origin of the colonial state in order to legitimize its rule over the subject population thus taking the imperial discourse of justice into a new height. As Mithi Mukherjee has argued that it was under these historical circumstances that the British Empire came to invent the twin discourses of justice as equity and justice as liberty as the pillars of the British Empire in India. These two distinct but related discourses were never applied in the practical application of the “*rule of law*” in India i.e. the imperial discourse of justice remained only in theory and in practice, it was the colonial discourse of justice which was followed. They were both meant to turn out the foreign origin of the colonial state into a political advantage and to deny India its national unity and identity.

The ideas of justice, equity, liberty were translated through the figure of the Queen after 1857 and were offered to the natives. The relationship between the British monarchy and the subject population has to be understood through these imperial ideas. The figure of the Queen meshed with indigenous perceptions of a personalized iconography of divine kingship and sovereignty. It was within this historical-discursive context that the Indian National Congress was born. It anchored its anti-colonial discourse on the basis of the imperial discourse of justice as equity and liberty. The Congress discourse of freedom however was anchored in the figure of the monarch, not in the sovereignty of the people. With the emergence of Mahatma Gandhi a political breakthrough occurred in Indian politics. He was successful in launching a mass movement as opposed to the elite politics of pleading and petitioning and demanded complete national independence rather than imperial justice.

Objectives of my Research

[1] To study the colonial ‘rule of law’ and its implication to the social and political structure of Orissa.

[2] To explore the ideological construction of colonial legal subject and colonial legal citizen within the domain of colonial ‘rule of law’.

[3] To study the institutions (jails and courts) built to orchestrate the state-subject relationship with its instrument of knowledge and power.

[4] To study the shift in the language of the ‘rule of law’ during the course of the national movement.

[5] To locate the transformation of the colonial legal subject into colonial legal citizen.

Hypotheses

The research is based mainly on the following hypotheses. They are as follows:

- [1] Colonial legal reform was accentuated by the imperial necessities of obtaining legitimacy and justifying civilizational superiority over the Natives.
- [2] The rule of law was used as an instrument to understand the range of social transactions and discourses that helped the colonial state-formation.
- [3] The colonial construction of legal subject with guarantee to life and property was an ideological terrain to solemnise the natives to British system of rule and authority.
- [4] The image of colonial legal subject transformed into colonial legal citizen mainly due to the aspirations of the natives of India to share power and authority with the colonial government.
- [5] The self-perception of 'political prisoner' of the Indian nationalists was actually used for maintaining a status quo to their power and position which they afraid of being lowered by their jail going.

Research questions

- [1] What were the pre-colonial legal and penal structures and pre-colonial centres of power in Orissa?
- [2] What historical discontinuity did the colonial legal system bring in Orissa in the nineteenth century? Were there any elements of continuation?
- [3] How the colonial laws and regulations built up an entirely new state -subject relationship through its ideological instrument of the 'rule of law'?
- [4] How the Oriya natives responded to this new mechanism of power and legitimised their status and position within it?
- [5] How the new legal power facilitated the emergence of a regional colonial legal citizen in Orissa?

Sources of the Study

Since this area of research in the history of colonial Orissa has been least explored and the data regarding the legal interface between the Oriyas and the colonial rulers are very scanty, I have tried my best to build a theory from scratch. While highlighting this limitation of my research, I have basically used the literature of the contemporary period, contemporary travel accounts, inscriptions and official records as my sources. Mostly emphasis has been given on the Official records of the contemporary period. Judicial records in West Bengal State Archives, Orissa State Archives, National Archives of India, and National Library of India etc. have been studied and refereed for this work. Accounts and memoirs of contemporary European travellers such as accounts of T. Motte, A. Aspinall, O' Malley, John Beames, W. Bruton etc. through sufficient light on Orissa and its social, cultural and political system during colonisation. I have referred to journals like Bengal Past and Present, Orissa Historical Research Journal and Odia vernacular newspapers and magazines such as Utkal Dipika, Sambalpur Hitaisini, Asha, Samaj etc. for my research on colonial legal system.

Accounts and memoirs of Oriya nationalists like Madhusudan Das, Gopabandhu Das, Rama Devi, Godavarisha Mohapatra etc. have been studied to understand the political and imperial realm of legal power and the response of the Oriya nationalists during the course of the national movement. Some famous literature of the period like 'Shikar' the famous short story by Bhagabati Charan Panigrahy has been cited for understanding the common people's reaction to the colonial legal system as well as the manipulative power of the criminal elites to turn the rule of law in their favour.

Methodology

Research methodology have involved working at two levels; developing a theoretical framework and collecting data. As a researcher I must take care that the theoretical framework shall not limit the interpretation of my data. As part of my field work, I have visited to the National Library of India, the West Bengal State Archives, State Library of Orissa and the Orissa State Archives and the Collector's office of Balasore and Cuttack. I have collected a large number of sources pertaining to the establishment of colonial rule in Orissa and its mechanism of the rule of law to locate the relationship of the colonial state and its subjects. The study used both primary and secondary sources to validate the proposed theories with the data available. The primary sources include the official records, travel accounts, accounts and memoirs of nationalists, writings published in various Oriya newspapers and journals etc. to understand the process of colonial rule of law in Orissa and

its implications to the traditional centres of power. The secondary sources related to the study are very scanty. I have borrowed theoretical frameworks about the nature of the state and society both pre-colonial and colonial from authors such as Sudipta Kaviraj, Bernard Cohn, Radhika Singha, Michael Foucault, Anindita Mukhopadhyay etc. to analyse whatever data available in the primary sources to reconstruct the working of the colonial legal system in Orissa.

Design of the Thesis

My work is based on the following chapters.

In chapter-1, I have studied the historical context and the broader arguments underpinning my thesis. I have begun with the understanding of the nature of the pre-colonial state and the centres of power in Orissa before the advent of the colonial rule of law. Sudipta Kaviraj and Bernard Cohn's theory has been referred to understand the pre-colonial state and society and the dialogic relationship of the both. Michael Foucault's theory is a good reference in understanding the state, sovereignty and its relation with the people and the territories in accordance with the ideas of Renaissance and Enlightenment. The question of legitimacy of the rulers over the people and territory has been understood in the light of Foucault's understanding of traditional theories and practices and epicentres of power in which notions of sovereignty were located. The prevalent system of administration of justice under the pre-colonial rulers has been located in this understanding of authority and sovereignty of pre-colonial rulers. The second aspect of this chapter, will understand the nature of the initial period of control. After obtaining power over the newly acquired territory a system of administration was devised by the British to maintain control over this domain. The British administrative policy aimed basically at maximisation of revenue and maintenance of law and order. The precondition to the optimum collection of revenue was, as the British viewed, the establishment of a strong legal system for the public and financial security of the Company. This need practically enabled the British government to institute a process of administration keeping in mind the imperial needs as well as strategically protecting the indigenous sensitivity. The urgency of instituting an effective law and order system was, as the British thought, not possible outside the western notions of legality. However, this was not to be done with the total overhauling of the native legal system but by superimposing some western legal principle.

The second chapter “Experiencing the new Order: The Introduction of the Colonial Rule of Law in Orissa” deals with the administrative arrangements of the British legal system. To mark the points of difference between the indigenous systems of justice from the British legal system, the judicial system of their predecessors i.e. the Mughal and Marathas in Orissa has been understood in this chapter. The important shifts with which the chapter deals are the colonial critiques of the pre-colonial legal system in India, the prevailing condition of law and order on the onset of British rule, the British conquest of Orissa and the subsequent arrangements for civil and criminal administration. The construction of the ideology of the rule of law for the legitimisation of colonial authority, the impact of the new form of legality and authority on Oriya society and the displacement of natives are also part of this chapter.²²

The third chapter “Prisons and Penal measures in Colonial Orissa” studies the establishment of the institutions of colonial control i.e. the rule of law. These institutions include the colonial courts, colonial prison, hospitals, mental asylums etc. Prisons and the penal strategies served as two important instruments of the colonial rulers for establishing control over the indigenous society and their subjects. The evolution of Prison as an important form of punishment emerged in the eighteenth century England. The debate among English philosophers to think about an intermediate form of punishment between flogging and transportation suitable for minor felonies led to the emergence of the idea of imprisonment. This necessitated the construction of prison building in a way to exercise control over the body and mind of the prisoner. The crisis of 1750 also questioned the effectiveness of the capital penalties like death and transportation for petty crimes. Various sections of English society recommended finding an intermediate penalty, combining “correction of the body” with “correction of mind”.²³ This necessitates the building of the prison which was initially called in England “the house of Correction” with a strict code of prison discipline. In this light I have revisited Jeremy Bentham’s ‘panopticon’ and Michael Foucault’s criticism of Bentham through his ‘panopticism’. After the theoretical construction of prisons and penal strategies, I have looked into their application over Oriya society. The establishment of prisons, prison administration, prison discipline and penal strategies of the

²³M. Ignatieff, “A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850”, 1978, Pantheon Books, New York, USA. P-50

colonial rulers has been studied. Lastly, through the critical analysis of the prisons and penal strategies of the British, the notions of Subjecthood and subjectivity have been understood.

The prison system during the colonial period grew out of the fiscal necessity and general enforcement of law and order. Thus the prison was a material aid to a colonial state building. In India the birth of the prison also politically designed to differentiate the earlier Indian rule from the colonial rule. The British officials resorted to the concept of 'colonial othering' to prove their assertion of the prevalence of a savage and backward society in India by gathering knowledge and information about traditional and customary practices such as female infanticide, sati, and the self-immolation of pilgrims under the car of Lord Jagannath etc. The colonial narratives about the socio-cultural practices of the natives generated contempt towards India's religion, social practices and governance. This established the West's authorizations to control the body and the mind of the colonized. The prison became an important space for the acquisition of knowledge about the indigenous society as well as for the exercise of colonial power. The prison was an important institution through which knowledge about the natives was constructed and deployed.²⁴ Ashis Nandy identifies a form of colonialism which "colonizes minds in addition to bodies" and produces "cultural and psychological pathologies"...²⁵

Chapter-4 of my thesis titled "Formation of State-Subject relationship: The Question of Legal Subjectivity and Colonial Authority" discusses about the peculiar relationship that was formed between the colonial government and the Oriyas based on suppression, domination and subjugation of the locals. The motive to effectively introduce order from top to the bottom including all aspects of life (social, political, cultural and economic) made the society a political target and all aspects of the society were brought under strict state control with the objective of bringing complete order over its subjects.

If the above logic is the rationale behind the new political structure of the state, then the same logic also contributed to the formation of the subject. Here Foucault suggests three modes of objectification of the subject. The first model is called the "dividing practices". These dividing practices are nothing but techniques of domination. This inspired the construction of the nature of the pre-colonial state and its nature. The theories of "Oriental

²⁴D. Arnold, "The Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India" in D. Arnold & D. Hardiman (Eds) "Subaltern Studies VIII: Essays in honour of Ranajit Guha", 1994, Oxford University Press, New Delhi, p-158

²⁵A. Nandy, "The Intimate Enemy: Loss and Recovery of Self under Colonialism" 2009, 2nd Edition, Oxford University Press, New Delhi, p-XI

Despotism” the depiction of the people as “savage” and “uncivilised” and the culture as “barbaric” “inhuman” were all actually dividing and subjugating the “colonial other”. This “colonial other” is then decided to be brought under control and surveillance and reformed by the establishment of the institutions like “prisons”. Therefore this process of subjugation, stigmatization and reformation in a trilogy laid to the categorisation of desirable colonial subjects in nineteenth century Orissa. The second mode for turning human beings into objectified subjects according to Foucault is the “scientific classification”²⁶ in which the modes of inquiry and the knowledges gathered about the pre-colonial state and society was given the status of science to establish objectivity of that knowledge. Foucault’s ideas of discontinuity and historical breaks has been used to understand the colonial rule of law brought in India with the help of power and knowledge approach and which in turn contributed towards the construction of the category of ‘subjects’. Foucault’s third mode of objectification of subjects is the process of ‘subjectification’. It consists the “way a human being turns him-or herself into a subject”.²⁷ This denotes to the processes of self-formation in which the person is active. In this context, I have looked into the process of the self-formation of colonial legal subject within the framework of the colonial rule of law in Orissa. Here mention may be made of the nineteenth century Oriya middle class, the landed elites and other influential groups in society. Here I have basically looked into the techniques through which the person initiates an active self-formation into a colonial subject. This self-formation entail a process of self-understanding but one which mediated through an external authority.

The formation of a state-subject relationship requires institutions to translate this formation. Here the institution of control and discipline comes into existence. The legitimacy of the ‘rule of law’ was established through the institutions of control i.e. the jails and the colonial courts. The jail was a space that displayed the mechanisms of power which were deployed. It is in this legal space, the body became an object to be manipulated and controlled. The colonial court served the need for instituting the process of subjectification. In the light of these arguments, I have unfolded the dynamics of subjectivity within the framework of the Colonial rule of law in Orissa. The nineteenth century Orissa saw massive colonial exploitation in terms of power, authority, and displacement of natives by using the legal language which was completely alien to the natives. This new language brought subjection, domination and extracted a kind of Subjecthood that was submissive to the rulers,

²⁶M. Foucault, “The Subject and Power”, in Michael Foucault: Beyond Structuralism and Hermeneutics, H. Dreyfus & P. Rabinow (Ed.), 1982, University of Chicago Press, Chicago, p-208

²⁷Ibid.

unravelling and unspeaking and much eager to subjection to the colonial authority. The process of subject-hood is very clear from the letter that Bakshi Jagabandhu had written to the British before his rebellion in 1817. The letter refers to an 'earlier golden period' and "an ideal ruling structure" in pre-colonial Orissa which was broken down by the colonizers. Further it displays faith on the colonial rule by appealing its inherent justice and moral strength.²⁸ The trust in government's sense of righteousness was displayed to pressurize the prevailing government to allow the enjoyment of hereditary privileges uninterrupted. This faith symbolized his acceptance of the subjecthood under the colonial rulers and his right to claim justice from them.

Chapter-5 of my thesis titled "The Changing contours of State-Subject relationship: From Subject to Citizen" locates the changes in the state-subject relationship from one of domination and subjugation to that of assertion, confrontation and activism and protest against the colonial legal authority. Towards the middle of nineteenth century there was an indigenous resistance of the natives to the colonial prison system when the new emerging middle class took up the leadership in their fight against colonialism. They had painstakingly understood the legal language of the colonial rulers. This brought a change in the nature of subjects and their understanding of the colonial state and its rule. Educated in the modern and western system of education, they started to define their rights and garner the support of the people to mobilise a powerful public opinion in their demand for rights. For example in the early years of the twentieth century the Oriya nationalists were constantly demanding the status of political prisoner in order to differentiate themselves from the other ordinary prisoners. In 1922 the Oriya members in the Legislative Council demanded for proper treatment of the political prisoners in equal terms with the prisoners in England and grant of similar facilities as European prisoners enjoy. Apart from this, prison protests were frequent in 19th and 20th century consciously or unconsciously advocating the rights of prisoners. These demands and protests had a definite impact in the changing conception of law, the nature of prison and the penal strategies in subsequent phases of colonial rule in Orissa. In this context imprisonment became the major safeguard of the colonial states strategy to control the recalcitrant subjects. Thus prison became a space for exercising colonial power as

²⁸Y. Mubayi, "The Paik Rebellion of 1817: Status and Conflict in early Colonial Orissa", 1999, *Studies in History*, Vol-15, No-43, p-57

well as a space where the nationalists lost and found their freedom. This in turn contributed in the understanding of the nature of the colonial legal subject or citizen.

The last chapter has concluded my thesis, the broad arguments and the outcomes of the present research work. The questions which I have raised in different chapters and the scholarly framework tabled above, I have interpreted my data. After careful interpretation of the data I have found that how the centralising machinery of the rule of law was actually used by the colonial enterprises to dethrone the indigenous practices of legality thus enabling the British domination of India. Further this ideological weapon was used to homogenize the legal practices which were earlier divided along caste, creed, religion, ethnicity and geographic lines. I have here examined the case of colonial Orissa and found that through the extension of various rules and regulations Orissa was amalgamated into British India. It is through the ideological terrain of the rule of law that a state subject relationship unfolded which later transformed into a state citizen relationship during the active phase of freedom movement in Orissa.

Chapter-II

Experiencing the new Order: Introduction of the Colonial Rule of Law in Orissa

India on the eve of British occupation

Fall of Mughal Empire in India resulted in the decline of centralised politics and emergence of new regional political powers. It brought revolutionary impact in almost all facets of life. Political unity enjoyed by India till the death of Mughal emperor Aurangzeb could not be protected by successive Mughal emperors. The *Mansabdari* and the *Jagirdari* system had enabled the Mughal emperors in building a massive political structure that sustained the Mughal rule for two centuries. This massive administrative structure broke down with the death of Aurangzeb in 1707. With the fall of the centralised figure, the Mughal bureaucracy quickly usurped power leading to the disintegration of the central administrative system. This created apt condition for the growth of regional autonomous politics. The feudal economic and political elements now declared their separation from the Mughal Empire. Awadh, Hyderabad, Bengal, Mysore became independent autonomous states. The Mughal Empire was also exposed to external attacks. The most prominent among them was the attack of Nadir Saha in 1739. Marathas led by the Peshwas could dare to attack the Mughal territories and levy taxes on them. The Peshwa of Poona brought the provinces of Gujrat and Malwa under his administration. By 1738 Marathas were in a position to challenge the Mughal supremacy when the Maratha Peshwa defeated Niazam-ul-Mulk, a feudal functionary of the Mughal state. Before 1750 it seemed that the Marathas were the real political ruler rather than the Mughal ruler of India. Thus the feudal system was a barrier to the development of unitary administrative system in India. The feudal lords in India were always at war with each other. They also sided with European powers to fulfil their selfish interest. These indigenous systems, including the centralized Mughal power fitted Kaviraj's analytical frame which stated that zones of power and authority had limited reach, as the

notion of a centralized state was nebulously present, but of far more immediate reach were smaller nodes of power which brought home control, punishment and authority to communities under it, as in a “circle of circles”.²⁹ The State, therefore had very little reach to the “conceptual language of acting ‘on behalf’ of the society” and remained fairly marginal to the everyday usages and exercise of power.³⁰

This insight allows us to examine a culturally and economically advanced pre-colonial India which had sustained trade relations with Europe since ancient times, but without any major change in the manner in which decentralized state power functioned – even the centralized Mughal empire did not develop a deeply penetrative state apparatus. Portent of a change in the nature of power, authority and control came when direct trading activities with European merchant companies within Indian territories began after the discovery of sea route to India in 1498 by the Portuguese navigator Vasco Da Gama. The Portuguese colonial settlements, on the Western coast, did not break the pattern of Indigeneous ruling systems. This encounter took place as early as 1500. Later, other European countries began trading activities along the coasts of India. By the beginning of 17th century, India had become a hot ground of trading competition among European trading companies such as the English, French, Dutch and Portuguese. However, there was a major difference. The British (as indeed all the European merchant companies) brought their contractual legal systems guaranteeing payments from defaulters, protection for fraudsters and for determining the legal validity of documents. These were the harbingers of change, as in the Presidency towns, indigeneous inhabitants increasingly began to approach these courts for redress. These were the first legal outposts of the trading might of the Europeans, and East India Company deployed these outposts highly strategically. This faith on the British jurisprudence was due to the deficiencies in the indigenous legal system both in theory and practice. It exposed the relatively marginal presence of the state in the life of the natives.

The intensification of commercial competitions among the Europeans gradually led to the growth of political ambition to control India. Basically, the English and the French were at loggerheads to capture political power. The second half of the 18th century witnessed intense political clash between the British and the French. The Battle of Wandiwasha in 1760 wiped out the French from the Indian political scene. The Battle of Buxar in 1764 followed by the

²⁹ Sudipta Kaviraj, “The Imaginary Institution of India: Politics and Ideas”, 2010, Columbia University Press, New York, , p-12

³⁰ Ibid. p-13

Treaty of Allahabad handed over the political power of Bengal to the British. The Dual administrative system virtually removed the Bengal Nawab from the Indian political scenario. After emerging victorious in Bengal rivalry, the British could dream of conquering the entire Indian sub-continent. By the beginning of the 19th century barring a few states, the entire sub-continent was under the control of the British directly or indirectly. The British was successful in its mission partly due to the absence of any challenge from the indigenous rulers. The indigenous rulers did not anticipate any challenge from a commercial enterprise to the prevailing political order. The nature of the pre-colonial state was such that throughout history they were concerned about rent seeking and preventing the growth of any alliance of political antagonism. They conceptually misunderstood the nature of colonial economy which was capitalist in nature. Its success depends on the presence of a strong and fairly thick state represented by a strong bureaucracy along with the right to interfere in every forms and patterns of authority. Thus their inability to comprehend the capitalist economy and its challenge to the pre-colonial political power paved the way for the gradual development of the colonial state in India. What we must keep in mind is that the British were already reconfiguring their legal, economic and political transactions in their own lexicon, and not through the indigenous. After achieving political power, the British moved to develop an administrative system that will sustain British rule over India and establish its legitimacy. This drive to institute its own ideological system resulted in a direct clash between two groups of power (the British and indigenous autonomous rulers) with marked differences in the nature of politics, legality and economy.³¹

Socio-political and economic condition of Orissa before British invasion

Orissa is famous as *Kalinga* and *Utkal* in ancient and medieval times. The historical records mention about different names of Orissa.³² Orissa was a major maritime power having trade links with many South and South-East Asian countries. Buddhist sources refer to the rule of a king Brahmadutta over Kalinga at the time of Buddha's death. In the 4th century B.C. Mahapadmananda conquered Kalinga. The famous Kalinga war fought in the year 261 B.C. to establish Magadha suzerainty over Kalinga established its historical importance. From the Hatigumpha inscription of king Kharavela, the social, political, economic and the administrative picture of Orissa becomes clear to an extent.

³¹V.P.S. Raghuvansi "Indian Society in the Eighteenth Century", 1969, Association Publishing House, New Delhi, p- 2.

³²Orissa also known as 'Odra Desa' from which the name Orissa originated. Her other names are Toshali, Odra, Kosala. Kongoda, Trikalanga, etc.

During the medieval period, Orissa was able to sustain its independence despite the surge in Islamic rule over India. Her independence was kept intact for centuries by many powerful rulers. It had achieved progress in various cultural activities such as art, architecture, literature etc. During the rule of Kapilendradeva³³, Orissa was successful in establishing political supremacy in neighbouring regions and in far south. His successors namely Purushottamdeva and Prataprudradeva also retained their hold over extensive territories till 1541 A.D. Orissa came under the lense of the Afghans after 1451 A.D. Following the death of Mukunda Deva, Orissa was annexed by Suleiman Karrani in 1568 A.D. and was integrated with Bengal marking a phase of political subjugation.³⁴ Again, this work stresses that these changes at the helm of the regional state power did not change the character of authority and control: these remained decentralized and relatively marginal to the inhabitants of these regions. The British had a different set of modalities for securing power, authority and control which the indigeneous ruling houses could not map cognitively, as these rationalities were not part of the indigeneous processes of legitimation of governance.

Foundation of Islamic Rule in Orissa

The Afghans recognised the suzerainty of the Mughal Emperor Akbar. The Afghan rule was not effective in Orissa as the local chiefs of inaccessible areas declared their independence soon. The Afghan administrative system over Orissa was very loose and perhaps was limited to collection of revenue. Many historians of Orissa have argued that the Afghans were not able to collect revenues from all the occupied parts of Orissa.³⁵ Thus Afghan supremacy over Orissa was short lived and its legitimacy was not recognised. Orissa described as a “chronically rebellious province”³⁶ in colonial literature became a province of Akbar’s empire in 1578³⁷. However, the Afghans were frequently asserting their authority which continued till 1595. In 1595 Orissa in truest sense became a part of Mughal Empire and was governed under the administrative control of the Bengal Subah. As Kaviraj has observed, the centralized Mughal administration retained the “circle within circle” state model, particularly so when it came to exercise power in marginally located Orissa.

³³ The ruler of Solar dynasty of Orissa who ruled from 1435 to 1466.

³⁴ W.F.B. Lauries, “Orissa, the garden of superstition and idolatry etc,” 2000, R.N. Bhattacharya, Calcutta, p-21

³⁵ B.C. Ray, “Orissa under the Mughal”, 1981, Panti Pustak, Calcutta, p- 182.

³⁶ W.W. Hunter, “Orissa”, 1872 Vol-VI, Smith, Elder & Co. 15 Waterloo Place, London, Thacker, Spink & Co, Calcutta, p-29

³⁷ Ibid. p-15

Akbar's Orissa consisted of five Sarkars Viz- Jaleswar, Bhadrak, Cuttack, Kalinga Dandapet and Raj Mahendri which stretched from Tamluk and Midnapore in the north to the fort of Raj Mahendri in the South. However, according to W.W. Hunter, Akbar's control over Orissa extended over Jaleswar, Bhadrak and Cuttack. Puri remained with the Raja of Khurda and the priests of Jagannath. The hill countries stretching from Bishenpur to Kerronde, Bastar and Jajpur were classified under a separate head in the revenue accounts of the empire. These countries were left to the management of the native chiefs who either rendered military service to the Mughal governors or paid a rent. During or soon after the settlement of Akbar, the Sarkar of Raj Mahendri and that part of Kalinga Dandapet detached from Orissa owing to the encroachment of the Qutbshahi kings of Golkunda. It was during the reign of Shahjahan that the English merchants arrived in Orissa and established their factories at Peepli, Balasore and Harrihar pura. It is here that their alternative power structures in accordance with European institutional traditions, began to quietly appear, unchallenged by indigeneous rulers, as their lexicon did not contain these parameters of administrative authority and strategies of governance.

The disorder and the political confusion caused by the war of succession following the death of Shahjahan temporarily loosened imperial authority over Orissa. The *Raja* of Khurda assumed independence. The Raja of Mayurbhanj plundered the country from Midnapore to Bhadrak and the local chief did what they liked. The country had to be reconquered by Khan-i-Dauran whose difficulties were increased by the oppressive administration of the Diwan. He reported that the villages had been turned into a wilderness by the actions of this official. It was impossible to describe the distresses of the cultivators "who had to sell their wives and children and barely succeeded in keeping body and soul together".³⁸ This was due to the economic exploitation of the existing power structure. Rather than restructuring the economy, they relied on revenue extracting machineries to enrich their treasury. Along the sea coast of Orissa and also in the hilly hinterland, the Hindu chiefs still held their sway. The interior remained practically untouched except occasional raids. Aurangzeb was victorious in the war of succession. The rule of Aurangzeb tightened the imperial control over Orissa when he ordered the destruction of temples although his order for the destruction of the Jagannath temple in 1692 was not carried out.³⁹ Why this is important is because Aurungazeb's reign suddenly brought the power of the state to the fore,

³⁸L.S.S.O. Malley, "History of Bengal, Bihar and Orissa under British Rule", 1925, Bengal Secretariat Book Depot, Calcutta, p-65

³⁹Ibid. p- 9.

through its ideological position on the plank of religion, which had been fairly absent as a continuous everyday feature of a consciously driven Islam as a field of power allied to the state. Even then, it must be noted that the marginal position of the region made evasion of the order to destroy the Jagannath temple possible. Aurungzeb's authority was therefore still not of a penetrative order that typically characterized the colonial power.

The Mughal Empire experienced swift decay after the death of Aurangzeb in 1707 and received heavy blow from the invasion of Nadir Shah and his sack of Delhi in 1739. In 1706-07, Hijli and Tamruk with some other paraganas were taken away from Orissa and added to Bengal. A further change took place in the political geography of Orissa when Murshid Quli Khan separated Midnapore from Orissa and annexed it to Bengal for the sake of financial convenience. Later on, the rising Hyderabad state established by Nizam-ul-Mulk Asaf Jah gradually managed to absorb whole of the territory south of Chilika Lake in Orissa. Though the Mughal Empire declined, Orissa enjoyed a strong and stable government under Murshid Quli Khan, the Nawab of Bengal. The Maratha trouble had begun for Orissa during the reign of Alivardi Khan. In 1751, Alivardi Khan came to terms with the Marathas and assigned the revenues of Orissa. In 1756, Orissa became a Maratha province under a Maratha Governor. What is really interesting is that the superficial administrative connections remained just the same as that of the other ruling denominations that had governed Orissa for the last 400 years. At the end of the second half of 18th century, Orissa was bounded by the river Subarnarekha and paragona Pataspur and some other paraganas on the north, the Chilika Lake in the south, sea in the East and the Barmal pass in the West.⁴⁰ To form an idea about the exact area of Orissa, Charles Grant's analyses gives a fair knowledge. He says "Orissa which was ceded by Alivardi Khan to the Marathas included an area of 8000 Sq.miles and an extent of 200 miles sea coast from Pipli in Subarnarekha to Malud on the frontier of Ganjam."⁴¹ Thus the frequent geographical reconfiguration of Orissa prevented the growth of a stable administrative structure to make the presence of the state visible.

When Bengal, Bihar and Orissa were annexed to the Mughal Empire, they were placed under a single Governor but after a few years a separate Governor was appointed for Bihar. Orissa was under independent governors for some time but mostly it was administered by Governors subordinate to the Governor of Bengal. Therefore Orissa was marginalized.

⁴⁰B.C. Roy, "Orissa under Marathas, 1751-1803", 1960, Kitab Mahal, Allahabad, p-3.

⁴¹Fifth Report from the select Committee on the affairs of East India Company, 1812, West Bengal State Archives, p-245.

This historicity of the regional marginalization of Orissa resulted in the growth of Bengali hegemony and dominance over Oriyas. This marginalization culminated in a cultural protest in the late 19th and early 20th century both in Bengal and Orissa. While the Oriyas voiced their right to have a distinct linguistic identity of their own, the Bengalis on the other hand went on to justify their dominance by denying Oriya as a separate language. The system of administration was based on the dual control of two officers called the Nazim and the Diwan whose presence was less felt in Orissa. The Nazim was the executive and military head of the administration responsible for the maintenance of law and order, the prevention of insurrection and the defence of the frontiers as well as for the administration of justice except in cases related to land. The Diwan was a Finance Minister. He was responsible for the collection of revenue and the provision of funds for the public services. He also administered justice in cases related to the rights of the land. Nominally at least, he was directly subordinate to the Emperor, not to the Nazim. Thus there were parallel power structures contending to establish their own dominance. The two were instructed to consult with one another on all important matters and to cooperate in emergencies in accordance with the imperial regulations. With the Mughal conquest of Orissa, the power and position of the old nobles at the court of the Raja of Orissa declined. In many cases the people who were appointed as Governors of Orissa were recruited from the officers at the Court of Bengal. A number of their friends and followers were also employed replacing the natives of Orissa from the administrative structure. This led to the formation of a new class of nobility.⁴² During the rule of Murshid Quli Khan, many officer's Jagirs in Bengal being turned into Khalisha they were sent to enjoy Jagirs in exchange in Orissa.⁴³ This was an addition to the already complex social structure in Orissa. Thus the structure of the social relationships in Orissa was disturbed by the introduction of new elements in Oriya society not through any rules and regulations but by whimsical decisions of the horizontal power holders.

Maratha Rule

In 1751, Orissa became a Suba of the Maratha Government under the Bhonsle chief of Nagpur. A. Stirling, a British historian highlighted the detrimental nature of the Maratha rule over the people of Orissa. However B.C. Roy did not agree with him. He argued that during Maratha rule Orissa witnessed administrative, economic and cultural progress. Sadasiva Rao, the Maratha Subedar of Orissa from 1793 to 1803 was friendly with British

⁴²B.C. Roy, "Orissa under Marathas, 1751-1803", 1960, Kitab Mahal, Allahabad, p-5

⁴³J. Sarkar, (Ed), "History of Bengal" Vol-II, 2004, B.R. Publishing Corporation, Calcutta, p-409

and allowed the territory of Orissa to be utilised by the British for the march of British troops from Bengal to Madras. He also supported the British in suppressing the hostile activities of some border Rajas of Orissa. It proves the point that Kaviraj made in his argument that the Indian ruling elites did not perceive the British as their political contenders. He permitted the British to use Barbati area in Balasore for the purpose of their factory since he considered the British as merely a commercial enterprise.⁴⁴ Though he was friendly with the British, he did not allow such activities of the British that would hamper the legitimate interests of the Maratha State.⁴⁵

The Marathas divided Orissa into two political units. The Mughalbandhi area was comprised of the coastal districts and was divided into 150 Paraganas and placed under 32 Revenue Commissioners or Amils. Parganas were further divided into several Mahalas. Hereditary revenue collectors such as Talukdars, Kanungos and Chaudhuris were appointed for the collection of revenue. In some areas revenue was also collected directly from the Raiyats or through the village headmen. The Gadjat part was ruled by a number of local chiefs who recognised the Maratha suzerainty by paying tribute to the Maratha Peshwa in return of their right to rule. The Marathas avoided interfering in the internal administration of the Gadjat areas. There were 24 tributary chiefs who paid tributes to the Maratha Government. The Marathas maintained a big force at Cuttack against any possible rebellions. Contemporary English writers described the Marathas as unscrupulous mercenaries as Orissa was for them a place of military assault and plunder. The Maratha- British conflict over Orissa begun due to the strategic interests of the British. Geographically Orissa was crucial for the British to establish communication with the southern part of India basically with the Madras province. Further the Orissa coast provided ample opportunities for profitable trading activities. These reasons drew the attention of the British to occupy Orissa and expel the Marathas. R. D. Bannerjee opined that the British conquest of Orissa in 1803 was a premeditated event. The strategic positioning of Orissa in between the provinces of Bengal and Madras encouraged the British to attack Orissa.

Thus the state of Orissa witnessed many political commotions since 15th-16th century A. D. The Hindu rule over Orissa collapsed in 16th century when it passed into the hands of the Afghan chiefs. The Mughals ended the Afghan rule over Orissa and ruled till 1751. The Mughals were expelled by the Marathas who conquered Orissa and ruled till 1803. In 1803, a

⁴⁴Ibid. 21

⁴⁵Ibid. 21-22

new epoch began in the political history of Orissa with the establishment of colonial rule. The frequent changes in political regime did not augur well for Orissa. All these power structure were not penetrative of the society rather they remained marginally present. These political instabilities had serious repercussions on various spheres of Oriya society. The constant invasions and plunders ravaged the socio-economic life Orissa. The constant transfer of power from one ruler to another led to the introduction of new administrative systems, thus creating confusions as far as the common people were concerned.

The Oriya society was highly heterogenous comprising various social groups. The four dominant castes of Brahmins, Kshatriyas, Vaisya and Sudras were further divided into sub castes. Brahmins of Smarthasect alone in south India were organized into about two thousand classes.⁴⁶ As a result of Hinduisation, many tribal groups came within its orbit. The Khandayat and Karana were two other important social groups in Orissa enjoying many privileges. There were a large number of occupational groups such as agriculturists, artisans and traders. Due to the establishment of the Muslim and Maratha administration new population groups like the Muslims, Marathas and Europeans entered into the Oriya society. The Muslim society manifested a two fold division such as the foreign origin and the Indian origin. The Muslims of foreign origin known as Ashrafs claimed superiority over the Muslims of Indian origin because of their link with Arabia, Persia, Turkestan etc. They seemed to be the most privileged caste in the society.

On the other hand the European community established themselves in the coastal regions used to marry women from lower sections of the society, thus creating social imbalance of the *Varnashrama Dharama*. In 1784 it was estimated that 700 Eurasian were annually born in Madras and on the Coromondal coast alone.⁴⁷ In 1794 it was estimated that number of Europeans in the company's army in India was about 13500.⁴⁸ Apart from that due to the missionary activity, people from lower castes and classes converted to Christianity. The discourse of rationality as well as the the weapon of western education was used by the British to drive the loyalty of these sections towards the colonial state. This asymmetrical and dispersed hierarchical structure was challenged by the British through the discourse of rationalist modernity. However Sudipta Kaviraj describes Indian

⁴⁶P.V.S Raghuvamsi, "Indian Society in the Eighteenth Century", 1969, Associate Publishing House, New Delhi, p-31

⁴⁷J.A. Duboise, "Letters on the State of Christianity", 1995, Asian Education Service, New Delhi, p-175-76

⁴⁸P.V.S. Raghuvamsi, "Indian Society in the Eighteenth Century", 1969, Associate Publishing House, New Delhi, p-35

society was asymmetrically hierarchical in opposition to symmetrical hierarchy in western society. If we take three parameters such as economic power, political control and status into consideration then these elements were horizontally distributed rather than flowing vertically in pre-colonial India.

This period of political anarchy for Orissa also led to the decline of economic condition of Orissa. However an alternative economic system was gradually developing in the coastal regions of Orissa due to the trading activities of European merchant companies. During this period Harriharpura, Peepli, Balasore, Cuttack developed into important commercial centres. Bruton gives information about the English and French factories at Baleswara.⁴⁹ Baleswar, a coastal district and port town of Orissa played important role in Orissan economy. Pipil, Putom, Sartha, Chhanua, Laichanpur, Churamani, Dhamra and Chandbali were other major ports involved in trading activities of Orissa.⁵⁰ Commercial contacts were established with places like Hooghly, Patna, Masulipatnam, Vizagpatam, Pulicat, Madras, Kerala and North India. Foreign trade relation was established with Persia, Maldives, Malaysia, Burma, Ceylon, Java, Sumatra, Indonesia, Bali, China and England in Europe.⁵¹ The fertile land and the abundant rain supported agricultural activity and naturally it remained the primary occupation of the people.

Judicial administration of the Mughals

Both Warren Hastings and Cornwallis argued to have introduced the ancient legal system with some changes which would ensure its impartial and effective application.⁵² They had contended that the judicial system of the Mughals had perished. On the other hand the powers of the regional rulers had been usurped by Zamindars and farmers of revenue. Hastings characterised the Mughal criminal justice system as a centralised system structured around the figure of the Faujdar. According to him, people looked for justice and protection from the Faujdar, the representative of the Nazim, not the local Raja or Zamindar. This

⁴⁹W. Bruton, "Account of Cuttack and Puri", 1961, *Orissa Historical Research Journal*, vol-X, No. 3 p- 48. & R. D. Banarjee, "History of Orissa", vol-II, 1931, Calcutta p-154.

⁵⁰H.C. Ponda, "Baleswar Port in the Nineteenth Century", *Orissa Historical Research Journal*, 1991, Vol. XXVIII, No. I & II, p-30

⁵¹P.K. Pattnaik, "A Forgotten Chapter of Orissan History: with special reference to the Raja of Khurda and Puri (1568-1828)" 1979, Pusti Pustak, Calcutta, p- 101 & D.C. Mohapatra, "Utkala Itihasa Eka Agyanta Adhyaya", 1969, Cuttack, p-187.

⁵²Warren Hastings to J. Dupre, 8 October 1772, in R. Singha, "A Despotism of Law: Crime and Justice in Early Colonial India", 1998, Oxford University Press, New Delhi, p-2

argument is not applicable in practice as the Zamindars were very much enjoying magisterial authority.

The Mughal system of judicial administration was built on the twin pillars of the Faujdar and the Zamindari. But the direct imperial supervision was relatively light in Orissa. Moreover, although theoretically each Sarkar was supposed to have had a Faujdar⁵³ in practice the number of Faujdars was always small.⁵⁴ All these meant that the Zamindar was the real face of judicial administration in the countryside. Viewed from above the Zamindar might have represented “the bottom level in a hierarchy of centralised authorities”⁵⁵ but to the subjects below, he was the visible locus of power and authority. The medieval Oriya literature describes the Zamindar as a Raja irrespective of their realm of authority. It was their responsibility to maintain law and order, administer justice, and collect land revenue in the rural areas.⁵⁶ In urban centres the Kazi’s Kachcheri⁵⁷ was the place for seeking justice where the Shariat law was followed in the trial and punishment of offences. But the Kazi as the representative of the Empire was an abridge between the Sharia and the exigencies of administration.⁵⁸ Zameeruddin Siddiqi argues that the Nazim was the head of the administration. He was to choose the cases which were to be transferred to the Kazi and the Kazi was expected to obey the orders of the Nazim.⁵⁹ The Kotwali Chabutra⁶⁰ was the place where people were bringing complaints of theft, assault and homicide.⁶¹ The Kotwal exercised the primary judicial function and decides the cases which will be tried by him and which will be sent to the Kazi. Under the Mughal administration, maintenance of public order generally meant to contain its officials from ambitious forays outside their jurisdiction. It was designed to keep the various power centres within their limits. However this control over the multiple structures of power was enforced to protect the weak against Zulm⁶² of the mighty.

⁵³A military officer responsible for law and order.

⁵⁴B. Chattopadhyay, “Crime and Control in Early Colonial Bengal, 1770-1860”, 2000, K.P. Bagchi & Company, Calcutta, p- 19

⁵⁵ T.K. Raychaudhuri, “Bengal under Akbar and Jahangir”, 1990, Munshiram Manoharlal Publishers, New Delhi, p-38

⁵⁶Ibid.

⁵⁷Kachcheri: a place for public business, a court, an office

⁵⁸Z. Siddiqi, “The Institution of the Qazi under the Mughals”, *Medieval India, A Miscellany*, 1969, Vol-1, , Aligarh Muslim University p-240-59

⁵⁹Ibid.

⁶⁰Kotwali Chabutra: Police Pavilion

⁶¹J. N. Sarkar, ‘Manual of the Duties of Officers’ in “Mughal Administration”, 1921, p-95, quoted in R. Singha, “A Despotism of Law: Crime and Justice in Early Colonial India”, 1998, Oxford University Press, New Delhi, p-8

⁶²Zulm: Oppression

This argument has been extended by the medieval historians working under the state patronage where as in reality it was fulfilling the imperial interests of crushing political ambitions among aspiring political adversaries.

However the Mughal agencies did adopt a punitive approach. Capital punishment was not awarded in cases of personal injury if the victim and the offender sign a Razinamah⁶³. Capital punishment as Benjamin Rush echoed in 1787 that “were the natural offspring of monarchical governments”. In monarchical governments the kings believe to have possessed divine right to take away life”. Considering their subjects as their property, they shed their blood “with as little emotion as men shed the blood of sheep or cattle”. Republican governments, he said, “speak a very different language. They appreciate human life and increase public life and private obligations to preserve it”.⁶⁴European travellers have argued that the death penalty was rarely awarded to individual case of homicide by Indian rulers and chiefs. But cases like highway robbery or banditry were considered as challenges to the sovereignty and used to receive death penalty⁶⁵. Robbery without organized violence could be settled if the plaintiff and the accused came to an agreement about the restitution of stolen property or compensation for it.

Administrative abuses under the Mughals

The foreign travellers during the 17th century have noted the various administrative abuses that the Mughal provincial governors were exercising. On the onset of the political anarchy and disintegration of Mughal sovereignty, the Mughal provincial governors attained autonomy and exercised their unregulated power. Peter Mundy’s account of his journey and stay at Patna in 1632 is eloquent of the disturbed condition of the country. He says “the country swarms with rebels and thieves”.⁶⁶ One such governor called Abdullah Khan (1632-1643) whose practice was to behead the rebels and imbed their heads in masonry pillars (to create fear) called Minars, which were set up by the roadside.⁶⁷The same work also mentions the treatment of a Rajput Raja, an ancestor of the Dumraon family in Shahbad. The Raja rebelled against the Mughals. His fort was sacked and he was brought before Abdullah

⁶³Razinamah: deed of agreement

⁶⁴ Benjamin Rush, “An Enquiry into the Effects of Public Punishment and upon Society”, 1787, Printed by Joseph James, in Chesnut-Street, Philadelphia, p-13, National Library, Calcutta

⁶⁵Highway robbery was often the signal for disaffection; it implied a danger to the flow of tribute and a potential accumulation of wealth for rebellious independence.

⁶⁶O Malley, “History of Bengal, Bihar and Orissa under British Rule”, 1925, Bengal Secretariat Book Depot, Calcutta, p-45

⁶⁷Ibid.

Khan dressed only in a *Lungi* (waist cloth) along with his wife. Abdullah Khan referred his case to the Emperor who ordered him to put the scoundrel to death and take possession of his wife and property. His estate was divided among Abdullah Khan's followers; his widow was made a Muhammadan and married to his grandson.⁶⁸

The account of Bengal written in Spanish by Manrique, a Portuguese missionary who visited India in 1636 and 1640-41 exhibits on the one hand a fertile country with rich trade and on the other a people possessed and cowed. The abuses of administration are apparent from his remarks "in order to keep the people better under their sway and tyranny; the Nababos enhance the rents. They collect it five or six months in advance as their tenure was limited and at the mercy of the Padshah. If the poor natives were unable to pay, they take their wives and sons as slaves and sell them at public auction".⁶⁹ Bowrey (1669-79) mentions similar case from Orissa. He reported in 1679, from Balasore how a newly appointed Nawab proceeded to bleed the traders for no other reason but that he wanted a great sum of money to welcome him to the palace. He mentions how the chief merchant Khemchand was kept as a prisoner by the Faujdar of Cuttack till the Nawab's demand of 30,000 was satisfied.⁷⁰

Maratha Administration in Orissa

During the Maratha rule the state was divided into Jagirs and the holder of the Jagirs were called Jagirdars. Therefore the same old system continued without any new innovation. The holders of the Jagirs were bound by the terms of their Jagir to perform certain services. They were required to pay rent. A very numerous and important class of the Jagirdars, who were of course the hereditary chiefs of the military of Orissa were Dalabeheras. Subordinate to them were Dalais. The Paiks held lands from the Jagirdars on lowest term. In the tributary states more or less similar type of feudal government continued. However they were liable to variation in accordance to the existing local peculiarities. These tributary chiefs were intermediaries between the Maratha government and the tenants of the soil.

The internal administration was taken care of by the great landholders or Zamindars. They used to collect the revenue of the tracts under them and deposit it in the Maratha Subedar's office. They were kept in check and the authority of the Maratha Peshwa was enforced by officers called Faujdars or military commandments who had detachments of

⁶⁸Ibid. p-46,

⁶⁹Ibid. p-48

⁷⁰Ibid. p-53

troops under them and were responsible for the maintenance of the public peace and suppression of any Zamindars who withheld his revenue. Practically the only civil officers in the districts were the Daroghas who tried any murderers, dacoits and other criminals who might be arrested by the Zamindar. They had no authority over the Zamindars who discharged most of the functions of civil administration. The adjudication of small criminal and civil cases was left to them along with the police duties. The police and often the Zamindars were themselves the patrons of dacoits who preyed on the people.⁷¹

Mughalbandi comprised the plain part of Orissa which extended from the Subarnarekha to the border of Khurda and was actually in possession of the government as the royal domain.⁷² Amils were in charge of the judicial and police administration of Orissa during the Maratha regime but they were primarily occupied with revenue matters.⁷³ The 'Amils' were in turn governed by the Subedar of the Province. Minor disputes at the village level were settled by the village Panchayats. The proceedings of both the civil and criminal courts were oral without any written disposition. Each Paragana was generally sub-divided into two, three, and four or of more Mahals.⁷⁴ The Subedar of the province was the head of both civil and military administration with his headquarters at Cuttack. Under him was a Qiladar in the charge of the fort of Barbati. Under the control of the Subedar, were a number of military stations each under the charge of a Faujdar. There were some Chauki's under him; each of them consisted of a Thanadar with some men.⁷⁵ The Faujdar enjoyed both military and civil authority. He looked to the general order and discipline of his division, watched movement of the foreigners, supervised trade and collection of duties on grains and other commodities in the way.⁷⁶ Particularly the Faujdar of Balasore exercised his power over a large area, collected revenue from the tributary states of Nilgiri and Mayurbhanj and remitted

⁷¹O Malley, "History of Bengal, Bihar and Orissa under British Rule", 1925, Bengal Secretariat Book Depot, Calcutta, p-86

⁷²Bengal Secret and Political Consultations, 12 April, 1804, No-13, West Bengal State Archives.

⁷³K.M Patra, "Orissa under the East India Company", 1971, Munshiram Manohar, New Delhi, p-74

⁷⁴Bengal Revenue Consultations, 1 August, 1822, No-5, 5th October, 1821, Letter of A. Stirling to Government of Bengal, West Bengal State Archives. (A. Stirling was an assistant to the commissioner for affairs at Cuttack, soon after its conquest by the British. He later on served as Secretary to the Commissioners at Cuttack till the year 1822, when he left the province to take charge of the Persian department at the Presidency. He had access to all state papers delivered to the British by Gopal Pandit and Narayan Rao Mahashay, two Maratha officers: he ably helped the Commissioner who submitted the first report on the Maratha administration to the authority of Bengal. He submitted the minutes to the government which was published A. Stirling's Minutes in 1882.)

⁷⁵Early European Travellers in the Nagpur Territories, 1930, Reprinted from old Records, Government Press, Nagpur, p-3-4, <https://archive.org/details/in.ernet.dli.2015.62005/page/n7/mode/2up>

⁷⁶B.C. Roy, "Orissa under Marathas, 1751-1803", 1960, Kitab Mahal, Allahabad, p-140

it to Cuttack.⁷⁷ He checked the disturbances in the frontier and also suppressed rebellion in the neighbouring feudatory states. They were given lands as their remuneration. The Amil was empowered to investigate and try both civil and criminal cases. Minor cases were settled by the Zamindar in his revenue jurisdiction. The popular mode of disposing of cases was to refer them to arbitration. Harcourt, the British commissioner of Cuttack observed, “*Even in felonies as in civil disputes all was arranged by compromise*”. The Panchayat generally consisted of five members. They were either chosen by the parties or by the officer to whom the matter was referred. More heinous crimes were brought before the Subahdar of Cuttack.⁷⁸

Distinction between civil and criminal cases was generally absent. Ewer wrote “all proceedings were summary, no written disposition taken and no form of trial observed”. He was of opinion that the Oriya could “make his complaint heard without a prospect of incurring a loss neither of time and money.”⁷⁹ The Zamindar or other revenue officers exercised police powers under the Amils. The Khandaits were responsible for maintaining law and order under the Zamindars. One of their chief duties was to seize offenders and produce them before the Zamindars. Under the Khandait, were a number of Chaukidars.⁸⁰ Thus a hierarchical administrative apparatus existed with Amil on the top of the judicial administration and Chaukidars at below.

The Colonial Critique of the Maratha Administration in Orissa

According to Stirling’s account of Orissa, the Maratha rule was detrimental to the welfare of the people of Orissa. It was characterised by misrule, anarchy, weakness, rapacity and violence...⁸¹ Motte, who travelled through Orissa, in 1766 on his way to Sambalpur to purchase diamonds for Robert Clive, gives a dismal account of the state of Orissa. He says:

In my journey it will be unnecessary to say that any place I came to was once considerable. Since all the place which were not so are now depopulated by the Marathas and such alone remain as an account of their bulk are longer in decaying. It is the custom of

⁷⁷Early European Travellers in the Nagpur Territories, 1930, Reprinted from old Records, Government Press, Nagpur, p-52, <https://archive.org/details/in.ernet.dli.2015.62005/page/n7/mode/2up>.

⁷⁸Bengal Criminal Judicial Consultations, 28th April, 1818, No-37, 27 February 1818, Ewer to Government and 22 March, 1805 Harcourt to Shawe, WBSA, Calcutta

⁷⁹Bengal Criminal Judicial Consultations, 28th April, 1818, No-37 and 27 February 1818, Ewer to Government, WBSA, Calcutta

⁸⁰Bengal revenue Consultations, August, 1822, 15 October, 1821, A. Stirling to Government, WBSA, Calcutta

⁸¹A. Stirling, “Orissa- An Account of Geographical, Statistical and Historical of Orissa Proper or Cuttack”, 1904, Calcutta, p-82

*Maratha troops to plunder as much in the Zamindaries tributary to them as in any enemy's country.*⁸²

According to W.W. Hunter, the Maratha prince had his capital at Nagpur in central India and ruled Orissa through his deputies. The deputies were constantly exploiting Orissa to supply the military necessities of their master.⁸³ Further the offices connected with raising revenue were often sold to the highest bidder. Thus officials in charge of the judicial administration concentrated more on maximising revenue collection rather than delivering justice efficiently. The Marathas were only concerned in extracting as much revenue as possible. The Raja of Khurda was the most powerful of all the chiefs. He continued to exercise the regal privilege of conferring titles on the inhabitants of Mughalbandi and Gadjat countries which was never objected to by the Marathas though it was a direct encroachment on their sovereignty. It is said that no title granted by the Maratha government was considered to confer any distinction in Orissa until confirmed by the Raja of Khurda.⁸⁴

The Marathas acted as an empire in case of boundary disputes between chieftains. In 1775 A.D., Padmanava Deva Birbar Mangaraj Mahapatra, ruler of Baramba was invaded by the Raja of Narsinghpur. The Raja of Baramba appealed to the Maratha government which settled the boundary disputes and restored the forts of Kharad and Ratapat to the Raja of Baramba. Similarly a dispute took place between the Raja of Angul and the Raja of Dashapalla for the possession of Jormuha. Raghuji Bhonsla settled the dispute by granting a Sanad for the contested place in favour of the Raja of Dashapalla.⁸⁵ The Marathas did not interfere in the internal administration of the tributary chieftains. They were only a revenue extracting agency. The government of the Marathas was in effect '*an organization of licensed plunder*'.⁸⁶ As a result of general disorganization of government the British had to face great difficulties in their first efforts to introduce settled administration.⁸⁷

⁸²T. Motte "A narrative of journey to diamond mines at Sambalpur", 1952, *Orissa Historical Research Journal*, vol-1, No-III, p-1-49.

⁸³W.W.Hunter, "Orissa", Vol-VI, 1872, Smith, Elder & Co. 15 Waterloo Place, London, Thacker, Spink & Co, Calcutta, p-32

⁸⁴B.C. Roy, "Orissa under Marathas, 1751-1803", 1960, Kitab Mahal, Allahabad, p-125

⁸⁵Orissa Tributary States, Bengal Gazetteer, p-159 and 129-30, WBSA, Calcutta

⁸⁶O. Malley, "History of Bengal, Bihar and Orissa under British Rule", 1925, Bengal Secretariat Book Depot, Calcutta, p-321

⁸⁷Ibid.

British Occupation of Orissa

The treaty of Bassein had in 1802 crippled the Maratha power and the British invaded Orissa in 1803 as a part of its expansionist policy in the beginning of 19th century. The province had sunk into such absolute desolation under the Maratha rule, that except at the two capitals, Puri and Cuttack, there was *'not another place sufficient to furnish even a single battalion with provisions.'*⁸⁸ Through a round of treaties that the British made with the Marathas in Orissa and other indigenous kings and Subahdars power was transferred from Marathas to the British. The possession of Orissa enabled the British to secure continuity in their territories and uninterrupted communication by land with Madras. It also put an end to the raids made from time to time into the British district of Midnapore by the Marathas. A despatch from Lord Wellesley says that *"the inhabitants afforded every assistance to the British troops on their march and expressed satisfaction in the prospect of being speedily relieved from oppression...of being placed under the protection of the British power"*.⁸⁹ The Paik rebellion of 1804-1817 and other rebellions, numerous instances of dacoity and smuggling impinged on the two basic principles or priorities which guided the Company's policy: extraction of maximum amount of revenue at minimum administrative expense and maintenance of law and order to the extent necessary for the public safety of the Company.

Much before the formal annexation of Orissa, the British had instituted a system of administration in their trading stations such as Hariharpura where they held their courts, heard cases and gave criminals the benefit of a legal trial.⁹⁰ False swearing seems to have been an essential part in every case.⁹¹ The judicial records did not talk about the cross examination of the witnesses. One prisoner on trial for murder declared that his accuser had been induced by a bribe of thirty six hundred weight of unhusked rice; to prove his innocence the accused *'put his hand in boiling oil'*.⁹² The chief revenue officer of the Marathas was caught red handed by the British in enticing the English soldiers to desert and betray our counsels. He was hanged forthwith and thereby the British created a sense of general security among all those who had owed anything to our predecessors.⁹³

⁸⁸ J. Greenwell to the Hon'ble Warren Hastings, Governor-in-general, 30th November, 1780, WBSA, Calcutta.

⁸⁹ M. Martin, "History, Antiquities, Topography and Statistics of Eastern India", 1838, Calcutta, p-17

⁹⁰ W.W. Hunter, "Orissa", Vol-VI, 1872, Smith, Elder & Co. 15 Waterloo Place, London, Thacker, Spink & Co, Calcutta, p-53

⁹¹ Ibid.

⁹² Bengal Judicial criminal Proceedings, June 25, 1790, WBSA, Calcutta

⁹³ Ibid. p-61

Introducing the colonial discourse of rule of law was considered absolutely necessary in terms of its utility both for the colonial state as well as the subjugated natives. In the 19th century the superior moral and political philosophy of the western rule of law was held out to the indigenous communities of India, as part of imperial agenda.⁹⁴ The basic ideology of ‘the rule of law’ as was opined by the colonial authorities was the promise of good governance with protection of life and property of the subjects. The prelude to this important task was the reinvention of the traditional structure of power and privileges within Oriya society sanctioned by Hindu Law and delineated a nexus of power between the different castes fixed in a hierarchical order. This legal hierarchy was confronted in the nineteenth century by a different institutional legal form which upheld an idealized egalitarian order, which in turn was rewritten as sets of interrelationships between a series of individuals as equal legal subjects.⁹⁵ The colonial legal and penal institutions wreaked a fundamental change within the indigenous perception of the justice and created the legend of the legitimacy- ‘the rule of law’.

Administrative arrangements for the introduction of the Colonial Rule of law

The colonial discourse of ‘the rule of law’ brought with it a new language of the social and the institutional. The new institutional form of law and its form of legal discourse remained deeply entrenched within a wide variety highly visible organizational and socio-linguistic insignia of hierarchy, status, power and wealth, blatantly apparent within a colonial context of governance.⁹⁶ Earlier there were multiple units with coercive power and moral authority to solve dacoity and other crimes. Lawlessness was not a major yardstick to measure the efficiency of the central rule. In contrast the British strived to launch centralized anti-dacoit police forces and viewed their inefficiency as a measure of the Raj’s impotence.⁹⁷ Thus the failure of the law and order was directly connected to the inefficiency of the State control unlike the earlier practice. There was the necessity to evolve a new kind of state control, i.e. the prisons and penal measures and courts as the institutions of colonial control.

⁹⁴A. Mukhopadhyay, “Behind the Mask: The Cultural Definition of the Legal Subject in Colonial Bengal (1715-1911)”, 2006, Oxford University Press, New Delhi, p-2

⁹⁵Ibid. p-3

⁹⁶Ibid. p-3

⁹⁷ S. Freitag, “Collective Crime and Authority in Northern India”, in A. Yang (Ed), Crime and Criminality, Passages to Social History of British India, 1985, University of Arizona Press, p-140-63

In his Minute Cornwallis wrote: “The multitude of criminals with which the jails in every district are now crowded, the numerous murders, robberies and burglaries daily committed and the general security of person and property which prevails in the interior parts of the country, are melancholy proofs of their having long and too generally existed. Having experience, therefore, the inefficacy resulting from all the criminal courts and their proceedings being left dependent on....we, ought not, I think, to leave the future control of so important branch of government to the sole discretion of any native, or indeed any single person whomsoever”.⁹⁸

On 7 December 1792, Cornwallis passed the “Regulations for the Police of the Collectorship in Bengal, Bihar and Orissa”. The judicial relations of Orissa with the British almost begun from this Regulation though the formal authority of the British was established in 1803. The powers relating to the police were to be vested in the government who was to exercise it through the Magistrates. The Magistrates divided the districts into police jurisdictions comprising an extent of country not exceeding ten coss square. Each jurisdiction was guarded by a Darogah along with a Jamadar, a Bakshy and a few Barkandazes to be paid by the government. All Paiks, Chaukidars and the village watchmen were declared subject to the orders of the Darogah. Interestingly, however, the power of appointment and removal of village watchmen were left to the Zamindars. It is perhaps the government did not want suddenly to move away from indigenous system to cause elite dissatisfaction. Another reason must not be ruled out was that the alien colonial government still lacked local knowledge of who was trustworthy. They relied on Zamindars as a class to advise them on appointments. Thus the formal demilitarisation of the Zamindars happened. Cornwallis found it necessary to provide for an adequate structure of authority which would help the Company to maintain ‘order’ to the extent necessary for the public safety of the Company.

Even at this early stage, that disarming of the Zamindars was not as complete as it might appear from the police Regulations of 1793. Although legitimate instruments of coercion were monopolized by the government, the Zamindars were left with two very crucial powers. One of these related to the village watch men who was organised and paid for by villagers of the Zamindar before 1793.⁹⁹ In 1793 the service lands were resumed and consolidated in the estates brought under the Permanent Settlement. The government allowed

⁹⁸Cornwallis Minute has been extensively reproduced in W.R.Gourlay “A Contribution towards a History of the Police in Bengal”, 1916, Bengal Secretariat Press, National Library, Calcutta, p-20

⁹⁹Foot soldiers Service or *Chakran* service by way of land grant or monthly wages.

the old system and remitted revenue of these lands. The landlords were directed to maintain the village watch system.¹⁰⁰ The Zamindars were supervising their work and filling up vacancies. As a result they were following their traditional practice. They would keep a village watch clothed and fed, only to do their personal work.¹⁰¹

Tapan Rayachaudhuri says “Cornwallis had disbanded the *Zamindars* police force, but they effectively retained some of their judicial functions outside the system of organized British law. They also retained the de-facto power of punishments and little could be done to check this extra-legal authority.....¹⁰² Orissa was divided into two political units i.e. the regulating areas under the direct administration of the British and the non-regulating areas under the tributary chiefs. The East India Company adopted the pattern of policing outlined in regulation no. XXII of 1792 entitled “Regulations for the Police of the Collectorship of Bengal, Bihar and Orissa”. Under the regulation each district was divided into Police Jurisdictions of about 400 square miles and placed under a Darogah assisted by some other police officials. The Zamindars were divested of the Police functions and all village watchmen were placed under the Darogah. The Judge-magistrate remained in overall charge of police work of each district. The districts were thus divided into Police stations in accordance to the Regulation IV of 1804 and Regulation XIII of 1805. Sixteen police stations were established in Orissa on 1.5.1806, four in Balasore district, five in Cuttack district and seven in Puri district.¹⁰³

The regulation 4 of 1804 extended some of the criminal laws and rules of Bengal to Orissa excluding the Tributary Mahals. The British Orissa was divided into two administrative divisions with the river Mahanadi as the line of demarcation. Each division was headed by Magistrate. The Magistrates acted as the Superintendence of the police under the general control of the Board of Commissioners at Cuttack. All existing police regulations of Bengal were extended to Orissa. The Court of Circuit at Cuttack followed the criminal justice system enforced in Bengal. The regulation 4 of 1804 directed the Magistrates and the court of circuit not to take cognizance of crimes committed before to October 1, 1803. The

¹⁰⁰C. Palit, “Tensions in Bengal Rural Society :Landlords, Planters and Colonial Rule (1830-1860)”,1975, Sangam Books Ltd., Calcutta, p-68

¹⁰¹ Ibid.

¹⁰²T. Rayachaudhuri, ‘Permanent Settlement in Operation: Bakarganj District, East Bengal’ in R.E. Frykenberg, (Ed), “Land Control and Social structure in Indian History”,1978, New Delhi, p-172

¹⁰³ S.C. Mishra, “Administration of Police in Orissa during the British Rule” in P.K. Mishra & J.K. Samal (Ed) Comprehensive History and Culture of Orissa, 1997, Vol-2, Kaveri Books, New Delhi, p- 25-51

regulation 4 of 1804 continued till September, 1805.¹⁰⁴ The two administrative divisions created by the Regulation 4 of 1804 were amalgamated and placed under a Judge-cum-Magistrate. It abolished the Board of Commissioners and laid provisions for the establishment of Thanas¹⁰⁵ under the Darogahs or the native officers. It also recommended for the preservation of the old system under which the Paiks¹⁰⁶ were granted lands for performing certain police duties under the Zamindars. Under the new regulation, these Paiks were brought under the legal control and were liable to forfeit their lands for disobedience or misconduct. The Darogahs were responsible to form a register of all such 'Paiks'. The Court of Sadar Nizamat Adalat acted as the highest court of appeal for the dispensation of criminal justice and it supervised the police administration under the guidance of the Governor-General in Council.¹⁰⁷ William Blunt, the then Commissioner in Cuttack calculated the area of British Orissa as 6400 square miles and said there were 16 police jurisdictions. Each Thana got an area less than 400 square miles on an average the maximum area prescribed by the regulation 22 of 1793 for the police Thanas. These 16 police Thanas controlled a total of 11057 villages. Each Thana thus contained 614 villages on an average.¹⁰⁸ According to the number of villages, the largest Thana was Bhadrak (1248 villages) and the smallest Thana was Cuttack (319). The regulation 6 of 1810 prescribed the penalties to be meted out to Zamindars and landholders for neglecting their duties in providing timely information regarding crime within the limit of their estates¹⁰⁹. Thus the authority of the landholders over the civil and criminal matters was thwarted and they became only messengers under the British.

The Magistrate was the head of the police establishment of the province. The regulation 13 of 1805 provided only one Magistrate for Orissa which made the situation difficult to regulate the police and the criminal justice system. In 1813, a joint Magistrate was stationed at Puri and was given the charge of the Thanas of Pipli, Gope, Hariharapura and Tiran. In 1815, a Joint Magistrate appointed at Balasore to manage the Thanas of Balasore

¹⁰⁴ K.M. Patra, "Orissa under the East India Company", 1971, Munshiram Manohar, New Delhi, p-75

¹⁰⁵ Thanas are police stations

¹⁰⁶ Paik's were the local militia who enjoyed revenue free land in return for military service to the ruler. During the normal times they were looking into the maintenance of law and order in their area.

¹⁰⁷ Bengal Judicial Criminal Procedure, No-33 sep. 1805 and Regulation 13 of 1805, WBSA, Calcutta

¹⁰⁸ Ibid, No-18 of Dec, 17, 1821, Commissioner of Cuttack to Government, September, 7, 1821, WBSA, Calcutta

¹⁰⁹ Ibid, no.66. Feb.9, 1810, WBSA, Calcutta

and Soro.¹¹⁰ By the Regulation 10 of 1808 the post of Superintendent of Police was created¹¹¹ under the general authority of the Court of Nizamat Adalat in all matters concerning the police.¹¹² He was responsible for collecting information regarding various crimes from different parts of the province. The Regulation 17 of 1816 further clarified his power and functions. The Zillah and city magistrates were directed to furnish information regarding the legal establishments of their jurisdictions to the Superintendent of police. He enjoyed the power to suspend any Darogah or other subordinate officer for misconduct, negligence of duty, for failure to furnish information to his superior and for not obeying orders issued to him.¹¹³ Though the post of superintendent of police was created in 1808, no superintendent of police visited Orissa before the Paik Rebellion of 1817. Hence the Magistrate and the police Darogahs were in sole charge of the criminal Justice and police affairs in Orissa.¹¹⁴ A regulation passed in 1821 authorized the collectors of land revenue to exercise some of the powers of a Magistrate or a Joint magistrate and vice-versa with the objective to vest the revenue and judicial powers in a single officer for the sake of convenience.¹¹⁵ The Governor General in Council divided the province into three separate divisions. The northern divisions or Balasore district was divided into 6 Thanas and the Collector acted as the Magistrate. The central division or Cuttack district was divided into 9 Thanas and the Civil Judge functioned as the Magistrate. The southern division of Puri district was divided into 6 Thanas and the Magistracy was vested with the collectors of the land revenue.¹¹⁶

Under the regulation 1 of 1829, the Courts of Circuit was abolished. The Commissioners of Revenue were given the power of Circuit Judges and thus came to be known as the Commissioners of Revenue and Circuit. The regulation empowered these officers to act as the superintendent of police in their respective divisions. In a later development, the office of Sessions Judge in each division of the province was established by the regulation 7 of 1831. The Sessions Judge was empowered to try every case that might be

¹¹⁰ Bengal Judicial Criminal Procedure, No-10 of January 12, 1815, Judge and Magistrate of Cuttack to Chief Secretary to Government, November.21, 1814, WBSA, Calcutta

¹¹¹ J.H.Harrington, "An Analysis of the Laws and Regulations", 1805, Calcutta, Vol-1, p-545

¹¹² Ibid, 546

¹¹³ Ibid, 548-49

¹¹⁴ Bengal Judicial Criminal Procedure Code, No.18 of December,17 1821, Commissioner of Cuttack to Government, September 7, 1821, WBSA, Calcutta

¹¹⁵ Bengal Judicial Criminal Procedure Code, No-26, January 19, 1821, Regulation 4 of 1821, West Bengal State Archives, Calcutta

¹¹⁶ Ibid, no-1, of November 27, 1828, Extract from Proceeding of Governor General in Council, October 23, 1828, West Bengal State Archives, Calcutta

brought under the Nizamat Adalat. The commissioners were directed to furnish reports on jail and police. All appeals from the magistrates were required to be made to the Commissioners only.¹¹⁷ In Orissa the office of the judge-cum-magistrate was bifurcated. On March 1 1832, the Collector of Cuttack became the Magistrate and the Civil Judge became the Sessions Judge.¹¹⁸ By 1841, the entire criminal justice system was transferred from the commissioner of the division to the session's judge.¹¹⁹ Gradually the number of courts to enforce criminal justice in the province increased and the Sessions Judge was overloaded with heavy works. The district of Balasore had three courts of criminal justice. The district of Puri also had three criminal courts. The district of Cuttack had five criminal courts such as the courts of magistrate, the joint magistrate, the deputy magistrate and the law officer and the executive officer of works department.¹²⁰

The Revolt of 1857 forced the British to give a fresh look to the legal system of the State. A separate organisation was created at this period to deal with *Thuggi* and dacoity which had become rampant. The Army came in more intimately in Police work after the revolt of 1857. A Police Commission was appointed by the Government of India in 1860 to inquire to the entire gamut of Police Administration and on the basis of their recommendation; the Indian Police Act was framed. Under this Act, the administration of Police was placed in charge of a European Superintendent under the general control and direction of the District Magistrate. The Criminal administration was reorganised in the post 1857 era. The various criminal laws including the Criminal Procedure Code (1882), Indian Penal Code (1860), Indian Evidence Act (1872) and the Indian Arms Act (1878) were promulgated. The Calcutta High Court and Sadar Dewani Adalat were established at Calcutta with jurisdiction over Orissa. A small Circuit Court was established at Cuttack to try petty crimes¹²¹. These Acts codified the relationship between the people and the colonial authority more clearly.

¹¹⁷ Ibid, no-25 of November 8, 1831, Regulation 7 of 1831, West Bengal State Archives, Calcutta

¹¹⁸ Ibid, no-26 of January 17, 1832, Government to Commissioner at Cuttack, January 17, 1832, West Bengal State Archives, Calcutta

¹¹⁹ Ibid, no-16 of January 11, 1842, Resolution of the Government of Bengal, West Bengal State Archives, Calcutta

¹²⁰ Bengal judicial criminal procedure, no-172 of April 20, 1854, Extract from Report of Henry Ricketts, December 8, 1853, West Bengal State Archives, Calcutta

¹²¹ Ibid, p-78

The Rural Police

The self-perception of a civilized government involved the question of authority, which needed to be reinforced by effective means of control. Such a step appeared to be more necessary because the steady growth of 'crime' and the breakdown of 'law and order' directly interrupted the collection of revenue. An essential component of this emerging structure of control was the colonial police. After establishing complete governmental monopoly over legitimate instruments of coercion, the colonial government established Thanas (police stations) headed by Darogahs. While this constituted the formal apparatus of control, other informal instruments were pressed into service as well. Although the Zamindars had already been di-militarised, they were still considered compellingly relevant to the needs of rural control. The government sought to use them in order to ensure smooth collection of revenue at minimum administrative cost and maintenance of law and order to the extent necessary for the public safety of the Company.

Through the setting up of the Thanas, directly controlled by the authority, the countryside was linked up with the apex of the administration in a single chain of command. This was a decisive step towards the penetration of colonial authority in the interior.¹²² In exercising their authority within their jurisdiction, Darogahs had to take cognizance the authority of Zamindars. Before the setting up of the Thanas, the Zamindars were the real local units of police administration in the countryside. But successive phases of demilitarisation, culminating in Cornwallis's Police Regulations, divested Zamindars of their military and police duties. Zamindars did not like these encroachments on their privileges and tried to reassert their authority in different ways. In the post Permanent Settlement Period, the Zamindars regained to a significant extent some of the coercive powers which they perceived were essential for the collection of rent. The government preoccupied with the problem of ensuring full and punctual collection of revenue had to concede the Zamindars the statutory powers over their tenants.¹²³ The Regulation VIII of 1799 popularly known as Haftam, conferred on the landlords of the right to occupy (both of property and person) and of summary eviction of the ryot. It has been emphasised that after the transformation of the 'old' Zamindars into 'new' ones, the Company's government provided the 'new' Zamindars with

¹²² B. Chattopadhyay, "The Penetration of Authority in the Interior: A Case Study of the *Zamindari* of Nakashipara", 1985, *Peasant Studies*, Vol-12, No-2, p-151-169

¹²³ S. Islam, "The Permanent Settlement in Bengal: A Study of its operations, 1790-1819", 1979, Dacca, p-48

full support in their relation with the ryots. The enactment of the Regulation VIII of 1799 (Haftam) was the most effective measure in this regard¹²⁴.

By Section XIII of Regulation XXII of 1799, village watchmen called the Chowkidars were declared subject to the orders of police Darogahs. But upon the death or removal of any of them, the landholders were entrusted with the task of filling up of subsequent vacancies. The landholders were required to communicate the names of the persons whom they may appoint as Chowkidars to the Darogah of the jurisdiction. Evidently, therefore, the Chowkidars were under dual control. On the one hand, section XIV of the aforesaid regulation spelt out the functions which they were required to perform as subordinate officers of police under the direction and control of the Darogahs. On the other hand the Zamindars made them perform many unwritten services. Such services included helping the Zamindars in the collection of rent, disciplining refractory subjects, guarding the crop when gathered and stored, and carrying letters and so on¹²⁵. Consequently the authority which the Darogahs invested over them became secondary and almost trivial. Statutory power over the tenants and vestigial authority over the Chaukidars gave the Zamindars some means of coercive control in the rural society.

The colonial reports refer to numerous 'Saori khandayats' or local chiefs in colonial Orissa. These autonomous chiefs in 17th and 18th centuries were gradually replaced by the 'chiefs of the fort areas'- called Bisoi/Dalabehera. They were appointed by the King. They were also enjoying certain penal power under the pre-colonial rulers. Their judicial power was erased by the aggressive intrusion of the British into Oriya society through the extension of colonial law. The abolition of traditional legal institutions such as caste courts and village councils put an end to their traditional judicial powers. These traditional institutions helped the knowledge gathering machinery of the British Raj about the actions deemed to be criminal by the new legal structure. When the new impersonal colonial law framed and superseded them, there emerged new definitions of crime and criminality significantly different from Indian notions.

There was no uniformity in the system of rural policing in Orissa, as rural police differed in nature of duty, method of remuneration, exercise of administrative control and

¹²⁴B. Chattopadhyay, "Crime and Control in Early Colonial Bengal, 1770-1860", 2000, K.P. Bagchi & Company, Calcutta, p-103

¹²⁵B. Chatterji, "The Darogah and the Countryside", 1981, *Indian Economic and Social History Review*, Vol-18, No-1, p-36

nomenclature from area to area. In the coastal districts of Cuttack, Puri and Balasore, they were called Chowkidars and their duties were supervised by another set of rural policemen called Dafadars. These Chowkidars were illiterate. They assisted the police in discharge of police duties, worked as link between the rural people and the police. They were hereditary in character, recruited from the lowest strata of society and were remunerated by grant of jagir land which was changed to cash payment in 1897. A new tax called Chowkidari tax was introduced to remunerate them.

The village officers in Ganjam district styled as Taliyaris and Vettis were primarily revenue officials performing police duties in addition. In the Agency areas of Koraput and Kandhamal, the Muthaheads who assisted the police in rural areas were neither paid by cash nor were granted land. They were allowed to collect their customary dues and the mamuls from the tribals without any interference from the state. They worked as link and interpreter between the government officials including the police and Tribals. The Bariklis who primarily collected revenue for the Zamindarin Koraput district also assisted the police. In Sambalpur district, the functions of village policeman and the worshipper of village deity were dovetailed in to one. The Jhankar who discharged this function unlike the village policemen of other areas belonged to the upper class and used to enjoy generous grant of land. He was assisted by the Chowkidar, who was usually from the lower class. In Nawapara sub-division, the village policemen were called Kotwars. Thus, though some coordination and uniformity in pattern of policing was achieved in the twentieth century, no such uniformity could be attained with regard to rural policing.¹²⁶

The Thanas were institutions of abuses and the causes of these abuses were inbuilt in the system. In the first sixty years, the work of the Thana was virtually not controlled and supervised and the Thanedar received no professional guidance. The Darogahs were ill-paid officials, who were supposed to build Police Stations from their salary and to deposit a sum equivalent to nearly twenty months of salary as deposit to get the job. He used to quickly recover the amount from the people. He was also supposed to feed the army units passing through his area. The system of collection of Rasad from the villagers was invented by him. These Darogahs were mainly non-Oriyas and the local elites resented them. The East India Company established Criminal Courts in the latter part of 19th century. The Police with its primitive methods, unreliability of witnesses, lack of professional training and guidance,

¹²⁶Ibid.p-81

adopted the only method of investigation known to them, i.e. the method of torture and extraction of confession.

A Critical appraisal of the new system

The principle of judicial administration which Hastings desired to follow was ‘*to found the authority of the British government in Bengal on its ancient laws*’¹²⁷ and with this object he set about a codification of Hindu and Muhammadan law which was ‘*to rule this people according to their own ideas, manners and prejudices*’.¹²⁸ But the modern system of law failed to familiarise the people into the British administrative system. Rather it acted as an instrument of oppression and exploitation of the natives by the British officials and other rural functionaries of the Raj. The Darogah figures prominently in Oriya novels, satires, memoirs, autobiographies and even in newspapers and periodicals of the 19th century Orissa. The Oriya Bhadraklok perceived the post of Darogah to be lucrative but almost never respectable. In fact the literary stereotypes of the rural Darogah offers three clearly recognizable traits: corruption, venality and rusticity, the last emanating from low social origin.

The modern system of law was applied strictly into the life of the people of Orissa. William Tower, the collector of Cuttack, in his report to the Board of Revenue on May 23, 1817 expressed his views thus: “I believe I am the first and only officer of the government that has hitherto visited the interior of the District.....A regular system of oppression and speculation appears to exist throughout and.....”.¹²⁹ He explained the illegal and corrupt practices of the police Darogahs in the following words “we all know what the salary of a police Darogah is and we also know generally speaking from what class of natives they are selected and it is therefore impossible to account for the sudden rise of these people to riches and consequence unless by giving credit to their unwarrantable exactions”.¹³⁰ He referred to the case of Mirza Mehendi, the police Darogah of Khurda who lost property to the value of 40,000 to 50,000 during the Paik revolt of 1817.

¹²⁷O Malley, “History of Bengal, Bihar and Orissa under British Rule”, 1925, Bengal Secretariat Book Depot, Calcutta, p-203

¹²⁸ Ibid.

¹²⁹ W. Tower, Collector of Cuttack to J.P. Ward, Acting Secretary to the Board of Revenue, May 23, 1817, *Orissa Records*, Vol-II, Odisha State Archives

¹³⁰ Ibid.

Walter Ewer came to Orissa to enquire into the causes of the rebellion of 1817. He provides a very poor picture of the administration of criminal justice and police. He describes how the police Darogahs and native officers of judicial department amassed wealth by illegal practices. One such officer called Salim Munshi was prosecuted in the civil court for embezzling money, smuggling salt and selling an appointment. But as the prosecution was conducted in a 'careless manner' nothing was proved.¹³¹ In such corrupt system complaints of common people against the Darogahs or other native officers were ignored by the superior authorities. Thus as Ewer says, it generated an impression in the minds of the people that the Darogahs are under the direct protection of the government. The consequences were "the total destruction of that confidence in the justice of our laws and the impartiality of our courtsThe natives looked on the regulations and the Adalat not as the sources of redress for the injured and of punishment for the oppressor, but as the means of introducing into Cuttack a herd of needy and rapacious strangers and of enabling them to make rapid and large fortunes and acquire possession of great portion of the district".¹³² According to Ewer, "the ignorance of the rules and practices of the Adalats by the natives of Orissa" was the cause behind their exploitation by the police Darogahs and Amalas of the judicial courts. It is because the natives of Orissa did not understand the British laws and regulations since it was not translated into Oriya. The British administrators did not realize that it was their duty to make their laws and regulations known to the people whom they are to guide and control. As this principle was utterly neglected in Orissa, the people had no chance of being acquainted with the British system.¹³³

Thus the ignorance of the people was exploited by the police Darogahs and '*Amalas*'. In the words of the Court of Directors, "the judicial system in Cuttack was by no means adopted either to promote the efficient administration of justice or to protect them from frauds and exaction.....that it thus acted not only to the withdrawing of right but to the fruitful production of wrong."¹³⁴ Robert Ker, the first Commissioner tried his best to make the people respect and understand the laws by which they were governed and to teach them to look to the Court of Justice for protection and redress of their grievances. Not only the native

¹³¹K.M. Patra, "Orissa under the East India Company", 1971, Munshiram Manohar, New Delhi, p-81

¹³² Bengal Judicial Criminal Procedure Code, No-1 of March 3. 1818, Ewer to Government, Feb 17, 1818, West Bengal State Archives

¹³³ Bengal Judicial Criminal Procedure Code, No-37, April 28, 1818, Ewer to Government, February 27, 1818, West Bengal State Archives

¹³⁴ Letters from the Court, Judicial Department, Vol-8, Court of Directors to Governor General in Council, July 19, 1820, West Bengal State Archives

Darogahs were charged of corruption, even serious allegations were brought against a British Judge and Magistrate, Edward Imphey. He was serving in Cuttack since 1814 and was suspended in 1819 and finally dismissed in 1822.

The loose arrangement of the judicial administration during the pre-colonial period was found unusable with the radical change of the historical conditions. The Company sought to establish a complete monopoly over the legitimate instruments of coercion. The essential pre-requisite of such a policy was what John McLane Calls "*demilitarization of the Zamindars*".¹³⁵ The British consciously worked towards the reduction of the number of the Paiks (local militia) and household troops attached to the Zamindars. They cancelled the land grants given to the Paiks in return of their military and judicial services and turned them as company agents. They were now placed under the Darogah thus shifting the authority from the local elite to the British paramountcy.

Thus Orissa was fully brought under the British paramountcy through the instrument of the 'rule of law'. The traditional institutions were made powerless and in its place new institutions of coercion were established. Orissa was integrated both politically and administratively with the large territorial landscape called 'India' through the introduction and implementation of a uniform, impartial, impersonal legal system transcending caste, class, social groups, religion etc. By this the colonial government fulfilled its ambition of enforcing British imperialism over India as well as subjugating and exploiting the Indians.

¹³⁵J.R. McLane, "Revenue Farming and the Zamindari System in 18th century Bengal" in R.E. Frykenberg (Ed) "Land Tenure and Peasant in South Asia", 1977, Orient Longman, New Delhi, p-20

Chapter-III

Prisons and Penal measures under the British in Colonial Orissa

The changing language of penal regime

The socio-economic transformation of eighteenth century Europe brought a new understanding of the penal regime. It brought an end to physical capital punishment.¹³⁶ The prison was designed to reach beyond the body to reclaim the soul. Foucault quotes a contemporary as saying, punishment ‘should strike the soul rather than the body’.¹³⁷ The new penology found its expression in Jeremy Bentham’s ‘panopticon’ of 1791. Imprisonment as a form of punishment took shape in 1750s in England. The new ideas of imprisonment, the prisoner’s resistance, the reforms of the philosophers and political radicals revolutionized the field of legal administration in eighteenth century England. This transformed the strategy of punishment and introduced a new language of authority within the walls of the prison. It replaced the earlier forms of punishment that was ‘directed at the body’ (whipping, branding, public hanging etc.). Instead it employed imprisonment as a form of punishment ‘directed at the mind’. This transformation in the system of punishment has been linked to the class relations and the social tactics that the capitalist transformation brought in England¹³⁸. There emerged the idea of imprisonment with due attention to the construction of prison building in a way to exercise overall control over the body and mind of the prisoner. The crisis of 1750 also questioned the effectiveness of the capital penalties like death and transportation for petty crimes. Various sections of English society recommended finding an intermediate penalty, combining “correction of the body” with “correction of mind”.¹³⁹ This necessitates the building of the prison which was initially called in England ‘*the House of Correction*, with a strict code of prison discipline. Nothing crucial happened in these recommendations until the advance of John Howard who became the father of penitentiary. He aimed towards the reformatory regimentation of criminals.

¹³⁶ Michel Foucault, “Discipline and Punish: The Birth of the Prison” 1979, Random House, New York, p-14

¹³⁷ Ibid. p-10, 16

¹³⁸ M. Ignatieff, “A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850”, 1978, Pantheon Books, New York, USA., P-50

¹³⁹ Ibid., P-50

In his task of reforming the prison institution he first looked at those practices and the abuses which had destroyed the effectiveness of the '*House of Correction*'. There was the contestation between eighteenth century English reformers regarding the effective form of punishment to reform a criminal. Whether subjecting to coercive physical torture can reform the criminal or there was a need to bring reformation of the soul of the criminal was the discussion going on in the intellectual domain. The latter was argued to be effective through solitary confinement as was delineated by John Howard in his '*The State of Prisons*'.¹⁴⁰ Howard understood that the process of reformation of the convict will be like the spiritual awakening of a believer. According to him the inner conscience and the God's love will reform the convict's mind. In addition it was also necessary to make punishment self-evidently rational. Howard's idea of spiritual awakening of the culprit through punishment of solitary confinement was questioned by some.

In opposition to John Howard, Jeremy Bentham argued that punishment is a science. There should be an objective use of pain for the regulation of the criminal tendencies of the individuals. It is the chief instrument available to the state to discipline its subjects to lawful ends. It should be used rationally reconciling the imperatives of '*humanity, terror, and benevolence*'. This reconciliation of opposite necessities would be possible by framing a set of rules and inspections allowing no discretionary use of authority. The state would supervise the infliction of punishment under the authority of rules. '*Inspection*' and '*total discipline*', was to be the maxim of the new authority. He published a book called '*Panopticon*' in 1791 where he detailed out the procedures and the strategy the state should follow in controlling criminal behaviour in society. He said the state should place both the guard and the prisoner under constant surveillance.¹⁴¹ Through this arrangement Bentham brought a solution to the old problem '*by ensuring inspection of everyone by everyone*'. Bentham's theory was subjected to much critical analysis. The authoritarian school accused him as the mastermind of authoritarian state control.¹⁴² The liberal school contends that Bentham was safeguarding the rule of law and protecting civil and political rights.¹⁴³

¹⁴⁰The State of prison published in 1777 presented the various dimensions of Howard's idea of prison which was highly appreciated and lauded by contemporary English intellectuals.

¹⁴¹J. Bentham, "Panopticon", 1791, London, .p-39

¹⁴²See, N. Rosenblum, "Bentham's Theory of the Modern State", 1978, Harvard University Press, and L.J. Hume, "Bentham and Bureaucracy", 1981, Cambridge University Press,.

¹⁴³S.G. Engelmann, "Indirect Legislation: Bentham's Liberal Government", 2003, *Polity*, Vol-35, No-3, p-369. Also see, H.L. Hart, "Essays on Bentham: studies in Jurisprudence and Political Theory", 2001, Oxford University Press.

In 1975, the French philosopher Foucault coined the term '*panopticism*'. It theorised the surveillance society as described by Bentham in his project of prison with an all seeing inspector. According to him, the '*panopticon*' denotes the multiple discourses of power. The 19th century western societies relied on this concept to efficiently reinforce state power. '*Panopticism*' on the other hand describes power relation which manifested as supervision, control and correction. '*Panopticon*' cannot be confined to the workshop of prison alone. As an instrument of power '*panopticon*' is the prison branch of Bentham's penal reform. Other branches include the rationale of punishment and the¹⁴⁴ rationale of judicial evidence. The last branch raises the issue of how to determine the truth which is so central to the justice system.

Prison: The institution of power and authority

The prison served as one of the diverse mechanisms for multiple discourses of power that the British introduced in Orissa in the beginning of nineteenth century. The prison has been perceived as an institution of class coercion and repressive state power. This description simplifies the discourse of power as the colonial ruler exercised over the colonised. Power is not anybody's prerogative. It had acquired an ideological basis within the colonial legal framework to decide how to reform the colonized subjects and transform them into obedient colonial legal subjects. There was the presence of a state whose mission is to bring under control of the people who were regarded as subjects and the government as '*mai-baap*'. Foucault perceived a capillary form of existence of power in prison which reaches into the very grain of individuals, touches their bodies and their actions, attitudes and discourses.....¹⁴⁵

The prison in colonial India worked as a wonderful space for the acquisition of knowledge about the colony and its population. Further the institution supplemented the colonial authority and helped in negotiating colonial power. It helped in constructing and deploying colonial knowledge.¹⁴⁶ Foucault argues that the knowledge and power is not only the operations of the state or the aspirations of a single class rather it is all pervasive

¹⁴⁵Michel Foucault, "Discipline and Punish: The Birth of the Prison", 1979, Random House, New York, p-98

¹⁴⁶D. Arnold, "The Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India" in D. Arnold, & D. Hardiman, (Eds) Subaltern Studies VIII: Essays in honour of Ranajit Guha, 1994, Oxford University Press, New Delhi, p-158

permeating the society as a whole. AshisNandy claims to have identified a colonialism which ‘colonizes minds in addition to bodies’ and...¹⁴⁷

David Arnold described three elements that facilitated the “Colonization of the bodies’. The first was the process of physical incorporation. Under this element, the colonial government brought the colonized under control through various rules and regulations. This physical incorporation found its expression in the prisons, the army, the police, hospitals, schools etc. The second element was the ideological incorporation. This was facilitated through the vast collection of texts, discourses and institutional rules about the colonized. Third, it used various yardsticks for the material, social and cultural needs of the colonized in contrast to indigenous practices.¹⁴⁸

Prison: The institution of correction or the institution for legitimation.

The most important challenge before the colonial government in India was to hold together the vast and heterogenous population and to rule them without representation. It generated a debate of how to establish state sovereignty with legitimacy.¹⁴⁹ In this context, the idea of a rule of law and the specific relationship between state power and legal authority assumed importance. The institution through which the British gave expression to its discourse of rule of law in India is the ‘*prison*’. This institution served as a symbol of colonial superordination and native subordination. This is the institution which served the imperial needs of policing the body of natives to bring moral and civilised correction, though superficial. Instead this is the institution that was designed and redesigned time and again for the demonstration of colonial power and authority and to leave an impression in the minds of the natives of its coerciveness if its authority is challenged upon.

The prison system that developed in the late eighteenth and early nineteenth centuries in India was mainly preoccupied with the idea of efficient revenue collection with least concern for law and order problem. Thus the prison reinforced economic exploitation of the natives and enabled political control. The colonial authority was successful in its task of

¹⁴⁷A. Nandy, “The Intimate Enemy: Loss and Recovery of Self Under Colonialism”, 2009 (paperback), Oxford University Press, New Delhi, , p-XI,

¹⁴⁸ D. Arnold, “ The Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India” in D. Arnold, & D. Hardiman, (Eds) Subaltern Studies VIII: Essays in honour of Ranajit Guha, 1994, Oxford University Press, New Delhi, p-159

¹⁴⁹Ujjwal Kumar Singh, “Penal Strategies and Political Resistance in Colonial and Independent India” , p-44, <https://ideas.repec.org/p/ess/wpaper/id614.html#biblio-body>,

portraying the native society as uncivilised and barbaric. The cruel traditional and superstitious practices prevailing in India was cited to strengthen its stand about the indigenous society. On the other hand it was also successful in eliciting popular support of Indians (at least the educated Indians) about the rational, humane and civilised nature of the colonial government. Through this careful construction of theories, a discourse of civilisational superiority was made over Indian civilization. It strengthened the claims of European humanity and reason and established strongly the West's credentials to speak for the body of the colonized.

Prisons and Prison Regulations in Colonial Orissa

The prison needs a code of rules and regulations for its smooth functioning as a large number of people of varied categories lived and shared a common space. The implementation of these rules and regulations was termed as '*prison discipline*'. In 1811, the Sadar Nizamat Adalat promulgated a set of rules for jail administration in Bengal but had little impact due to lack of seriousness on the part of the colonial officials. In fact it can be argued that the colonial officials did not feel the need of a code of rules and regulations. It might be due to its military obsession to extend its frontier or there was no challenge to the British authority from the prisoners inside the jail. During its formative period, the prison was more a place of exercising and demonstrating terror towards the natives. The need of prison discipline became essential with the passing of time when the colonial state faced the complexities of Indian social life. There was frequent uproar from the prison regarding the abhorrence of people belonging to higher castes to share the space with the lower castes. This social reality created furore inside the prison and destroyed the sanctity of the institution which was created with the moral objective of correcting and disciplining the natives. Moreover it was a threat to the institution of the rule of law. At a later stage, the prison space was politicized with the coming of the nationalists who were convicted of crimes against the state. This political addition further added to the already existing complicacies inside the prison. The colonial government had to rethink its strategy and revitalize itself to face the challenge of bringing strict codes of rules and regulations in the prison.

The crucial need of enforcing '*prison discipline*' materialised with the formation of the prison Discipline Committee of 1838. The 1850s had seen regularization of the penal institutions. F. J. Mouat established a common mess system and regularised the basis of

labour in Bengal¹⁵⁰. This system combined both discipline and economy together. Prisons were made more favourable to discipline and punitive labour. The jail officials were organised hierarchically. Following this a number of committees were appointed to regularize different aspects of prison management. Throughout the nineteenth century, the prison network in Orissa was shaped and reshaped according to the evolving needs of the colonial state. The idea of effecting a moral reformation of the delinquent proved to be a failure because that will leave no space to demonstrate its sufficient force to terrorize the natives and exercise absolute control over the native body. The colonial state never applied the metropolitan concept of prison reform as was followed in Europe. They relied more on deterrence than on reform, deterrence through punishment and coercion. Throughout the period of their rule the prison served as an instrument of coercion.¹⁵¹

The prison system was not regular in the early years. The Barbati fort of Cuttack served the purpose for the confinement of the prisoners. The ordinary civil and criminal prisoners were kept in the huts at Lalbagh. The Cuttack jail was established in 1811 and subsequently the Balasore jail came into existence in 1816. Jails at Puri, Khurda also functioned around 1840s and 1850s. The internal administration and management of the jails was in the hands of the District magistrate. All the prisoners were subjected to hard labour which was divided into public and private. The prisoners sentenced to public labour worked on public roads and the prisoners of private labour performed the works inside the jails. This division of labour was decided by the court based on the nature of punishment.

The strengthening of prison rules, strict confinement and discipline gradually developed by the then British officials, among whom Henry Rickett, member of the Board of revenue was the most important figure. He observed the deficiencies in the prison administration such as the absence of separate prison ward for women prisoners, hospital facilities, strengthening of prison buildings etc. J. Mouat the Inspector General of jails inspected the Cuttack Jail in 1859. He reported that the prisoners were divided into labouring, non-labouring, hajut, state prisoners and lunatics. Caste statistics of the prisoners was strictly maintained. The conditions of the jails in the princely states were also not satisfactory. W.W. Hunter visited the jail of Dhenkanal in 1868 and reported that the prisoners were divided into

¹⁵¹M. Sen, , 'Prisons in Colonial Bengal 1838-1919', 2007, Thema, Kolkata, , P-30

two gangs on the basis of class and caste and received differential treatment from the jail authorities. The jail administration in Orissa was not satisfactory and the prisoners lived in insanitary conditions.

Another effective instrument that again strengthened the colonial state and its power within the jail regime was the maintenance of statistics. The statistical records helped the colonial government to keep detailed information about the criminals. The categorization of crimes, caste and class backgrounds, educational level, the age of the prisoners and its correlation with crime enabled the state to understand the society it was ruling over. It also empowered the jail administration to control the subject race better. The annual jail report of 1854-55, devised further the rules and strategies to discipline the prison population. The rules were framed to muster the prisoners at sunrise and sunset to extract penal labour and to condition their behaviour in jails¹⁵².

Towards the middle of the nineteenth century there was an indigenous resistance to the colonial prison system when the new emerging middle class took up the leadership in their fight against colonialism. They had painstakingly understood the legal language of the colonial rulers. Educated in the modern and western system of education, they started to define their rights and garner the support of the people to mobilise a powerful public opinion. For example in the early years of the twentieth century the Oriya nationalists were constantly demanding the status of political prisoners in order to differentiate themselves from the ordinary prisoners. In 1922 the Oriya members in the Legislative Council demanded for proper treatment of the political prisoners in equal terms with the prisoners in England and grant of similar facilities as European prisoners enjoy. Apart from this, the prison protests were frequent in 19th and 20th century. The demands and protests had a definite impact in the changing conception of law, the nature of prison and in the penal strategies in subsequent phases of colonial rule in Orissa. In this context imprisonment was the major colonial strategy to get hold of recalcitrant subjects. At the confluence between the two, prisons became a space for the colonial state to demonstrate its power and a space to articulate the voice of the colonized. This in turn contributed in the understanding of the nature of the colonial legal subject or citizen. Jawaharlal Nehru while narrating his jail experiences remarked: “the

¹⁵²D. Arnold, “ The Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India” in D. Arnold, & D. Hardiman, (Eds) *Subaltern Studies VIII: Essays in honour of Ranajit Guha*, 1994, Oxford University Press, New Delhi, ,p-177-78

general policy of the prison administration in the United Provinces (and probably in other provinces) had absolutely nothing to do with the reform of the prisoner..... He was to be frightened and broken into blind submission, the idea was that he should carry away from prison a fear and a horror of it so that he might avoid crime and a return to prison in future”.¹⁵³

Prison in Popular Memory

Colonial rule systematised an exploitative system based on a host of features that saw the superimposition of a centralised legal structure on a feudal and a multi centred society. Structures of power/control that were incorporated had serious implication. The Prison remained as the most effective weapon to control the indigenous society and its exclusion from state power would have made the colonial state totally ineffective. The colonial prison became a site for an understanding of the popular memory of the contemporary period and enabled the colonial government to understand the society it was ruling over. The popular memory of the period can be analysed from two perspectives. One perspective harboured by the colonial state. The colonial state's understanding of the role of the prison changed time to time depending upon the time and space. The understanding of the prisoners, their socio-cultural background etc. patterned the rules and strategies of the colonial state. Correlation was established between crime and the criminal's gender, caste, education and the degree of criminality. These provided substantial data to the colonial authorities to model and remodel the jails role and its functioning from time to time. Along with the role of the jails, the institution of punishment also underwent a change. The jails were earlier considered as institutions of discipline, correction and reclamation of the prisoners through punishments like imprisonment and incarceration for life in prisons. Later the colonial government devised strategies to counter the '*professional criminals, dacoits, thugs*' from contaminating the rest of the jail population. The professional criminals who could never be debarred from crime were served permanent banishment.

The official discourse was concerned with the establishment of the rule of law. To this end, the criminal courts and the jails provided the government with public sites for the identification and categorization of criminals. These public institutions also brought the indigenous society before the visible official gaze. The official construction of the prison also helped the government to differentiate between the law breakers and the law abiding subjects.

¹⁵³Jawaherlal Nehru, "Discovery of India: An Autobiography", Allied Publishers, New Delhi, 1984, p-92-96

The scientific governance of the prison system impressed the educated indigenous elite. They were able to position themselves as the law abiding class and differentiate themselves from the lawless elements. While this differentiation supplied the colonial state the familiar markers to identify the lawbreakers, it also provided them a class of loyal followers i.e. the '*law abiding subject*'. The educated middle class became enamoured by this new, rationale and efficient form of governance especially the law enforcement machinery.

However, the indigenous understanding of the prison varies across social groups. The educated middle classes and other respectable classes perceived jail with great contempt. Jail going was considered as a loss of self-respect and identity. Even to man the colonial courts and jails was a sin. This can be proved by analysing the social status of the Darogahs in countryside who were recruited from lower castes as persons from higher castes and classes were abhorrent to hold these posts. The jails and the element of disgrace were gradually built into the legal subjectivity of the upper class. Due to their privileged status they were unused to such unprivileged degradation. Jail was seen as a reformatory necessary for the healthiness of the society where the mischief-makers could be set back in the right path. For the middle class, the prison represented their unquestioned faith on western liberalism and a sense of conscious superiority springing from the social hierarchy.

Prisons and their role in the society have also been represented in the contemporary fiction writing. Written in the second half of twentieth century, the well acclaimed novel "Paraja" by Dr. Gopinath Mohanty reflects upon the Kandh society of Orissa. The novel basically explores the indigenous understanding of the state and its accessories. It describes the mechanisms of exploitation of the ignorant tribal people by the colonial state machinery in the name of rules and regulations. For the Kandh, the jail represented as the "*Shiksha*" or teaching, the teaching not to repeat things for which he is being punished. It also represented as a place of terror and fear to the authority. It also served as a medium of exploitation of innocent tribals and a weapon to erase their traditional forest rights. The criminal charge that was frequently levied on them was basically the clearance and cultivation of the forest lands and collection of forest produce. The colonial government's policy to bring the management of forests and the forest produce under the state control deprived many Kandhs of their livelihood. The middleman, the moneylenders and local authorities basically the non tribals had migrated to these areas by the extension of the colonial laws. Their aim was to explore the new means of gathering wealth, exploiting the tribals and snatching away their traditional and hereditary belongings. When opposed, these local authorities often demonstrated the

power and authority of the colonial state by threatening them to send to jails. The criminalization of popular activities, the processes of documentation, maintenance of jail records, jails and the various colonial laws were beyond the reach of the illiterate and ignorant Kandhs. These state machineries in turn helped the local authorities (the kandhas used the term 'Sahukar' to represent these categories of people) not only to thrive on the pain and sufferings of the tribals but also to build the colonial state authority in the areas that were hitherto outside of the colonial state clutch.

The world of the tribals located the colonial health establishment in different ways, oscillating between an acceptance of its power as well as its questioning. The development of the colonial irrigation system in the coastal tract also posed problems – 'stealing' water became a crime and was punished by the legal system.¹⁵⁴ The structure of exploitation had various complexities. The tribal folk of the erstwhile JeypurZamindari remember the one rupee fine they paid around the early 1940s, along with a fowl, in case they were caught 'stealing' wood from the forest. Similarly, the existence of bonded labourers under the 'Goti' system today makes them remember the past related to this practice quite coherently.

Nationalist representation of prisons

The beginning of national movement in India hitherto in Orissa placed the jail discourse in a completely different terrain. The nationalists embarked upon a culture of jail going in the 1920s and 1930s as a strategy to fight against the colonial government. Jail going has been glorified in the writings of Gopabandhu Das. His "*BandiraAtmakatha*" and "*Kara Kabita*" brings out the nationalist understanding of the space of jail during the period. Jail, was earlier viewed as a space for criminals and uncivilised. Jail going was indicted by the society. The upper class and also the middle class always maintained the distance from jail in the capacity of law binding good legal subjects¹⁵⁵. A new attitude developed towards the jail during the nationalist period of Indian history. The growth of national consciousness among the upper and middle class brought this change. These classes earlier expressed their loyalty towards the British government for protecting their life and property. The '*Rule of Law*' was the most appreciated aspect of British rule in India. However they changed their stand and vigorously criticised the colonial government and condemned its legal apparatus and justice system towards the end of nineteenth century. The Gandhian politics glorified and

¹⁵⁴Biswamoy Pati, "Between 'Then' and 'Now': Popular Memory in Orissa" *Economic and Political Weekly*, Vol. 32, No. 24 (Jun. 14-20, 1997), p- 1391-1394

¹⁵⁵Ibid. introduction

immortalised jail going, thus politicising the space of jail. Imprisonment was treated as a medium to get the status of ‘nationalists’ or ‘freedom fighter’ and such imprisonments were treated as ‘honourable imprisonment’¹⁵⁶. Gopabandhu Das, a Gandhian freedom fighter from Orissa described jail as ‘national abode and a holy place’¹⁵⁷. By doing this, he mobilised people to court voluntary imprisonment. This was followed by the nationalists to challenge the British legal sovereignty in India. Gopabandhu Das hyped the prison as the entrance to the ‘dreamland of national independence’.¹⁵⁸

Penal practices

The penal practices of the colonial state can be well understood by differentiating it from the pre-colonial penal practices in India. *Sukraniti*, a medieval Sanskrit work on politics, talks about various methods of punishment such as *censure, insult, starvation, imprisonment, oppression, destruction of goods*.....¹⁵⁹ The administration of justice was both political as well as judicial. Justice was delivered through exemplary display of power and rage. Most of the offences were decided through negotiation and intercession. Justice was not independent of the economy of the state as it was an important source of income. The power and resources of the parties used to influence the judicial process¹⁶⁰. Beating and abuse was used to extract confession. Penal practices were arranged according to punishment rather than crime. Harcourt, the British commissioner of Cuttack observed, “*Even in felonies as in civil disputes all was arranged by compromise*”.¹⁶¹

Generally old customs were followed in determining the nature of punishment. A person committing a petty offence like stealing firewood was often punished with a small

¹⁵⁶Ibid. p-120

¹⁵⁷“*Mile jadi kaha bhagye karabasa*

Kara nuhai se pabitra prabhas” Ibid. Stanza- 3 (he appealed the people to court mass imprisonment without any fear. He strengthened the moral of the people by defining the jail as a ‘holy place’). Gopabandhu Das, “Bandira Atmakatha”. <https://www.odiaportal.in/2017/05/Bandira-Atmakatha-Gopabandhu-Das-Download-Odia-eBook-pdf.html>.

¹⁵⁸“*Srihari chandan bharat kardam*

Karagar amor swaraj ashram”, Ibid. Stanza- 20 (in this stanza, he tried to politicize the space of Jail by defining it as a ‘swarajya ashram’) See Shasini, S.R. “Popular Construction of Self-government: The Literary Representation of ‘National’ in Bandira Atmakatha by Gopabandhu Das”, 2015, International Journal of Multidisciplinary research and Development, Vol-2, Issue-3, p-697-702.

¹⁵⁹B. K. Sarkar (ed. and trans.) “The Sukraniti”, 1975, (reprinted. Delhi.), p. 130

¹⁶⁰This is immediately evident if we look at administrative accounts

¹⁶¹Bengal Criminal Judicial Consultations, 28th April, 1818, No-37, 27 February 1818, Ewer to Government and 22 March, 1805 Hacourt to Shawe. West Bengal State Archives, Kolkata.

fine.¹⁶² For serious offences the offender was generally imprisoned or mutilated.¹⁶³ In default of human evidence, the Panchayat sometimes resorted to trial by ordeal like holding a red hot iron or putting a hand in boiling ghee.¹⁶⁴ Ritual expiation in case of some specific sins like incest, killing of a cow or a Brahmin, one's wound getting gangrenous and infested with maggots¹⁶⁵. Company officials complained about using the method of compromises to buy pardon.¹⁶⁶ There were four types of punishments such as fines, imprisonment, mutilation and death. The most common form of punishment was imposing fines. The amount of fine was decided on the basis of the nature of offence as well as on the livelihood of the accused. Robert Orme declared that the value of the bribe determined the justice of the cause.¹⁶⁷

Imprisonment as a form of punishment was also used by the pre-colonial regime. However, it is not much discussed in law books as it is costly and adds to the economic burden of the state. So, except for a few crimes like challenge to the political authority, revolt against the state, hostages, some tax defaulter, etc., detention was unusual in pre-colonial regime. Fines, beatings, mutilation and death were the main weapons in the penal arsenal. In the pre-colonial economy where resources were scanty spending so much on imprisoning the convicts and locking them up in a state of idleness was contrary to the economic advantage of the state.¹⁶⁸ At the same time, social status like the caste and class of the person also affected the conditions of imprisonment. Mutilation was an important form of punishment of the penal authority as it can have a lasting impression on the culprit rather than wasting time or resources in the judicial process. To lose the nose and ears was a proverbial metaphor for dishonour in pre-colonial Orissa. Death sentence was the final form of punishment. It was executed publicly to instill fear among people. A political challenge to the authority of the state or the king attracted this punishment.

It is not that brutal punishment did not prevail in the West. We should not rule out the economic and capitalists need of imprisonment. The British that used '*barbarity*' to define native societies in India itself followed the practices like branding, mutilation and whipping.

¹⁶²Bengal Revenue Consultations, January-April, 1791,p-626-27, Resolution of Government. WBSA, Kolkata.

¹⁶³B.C.Roy, "Orissa under Marathas, 1751-1803",1960, Kitab Mahal, Allahabad,-142

¹⁶⁴Bengal Revenue Consultations, January-April, 1791 , p-626-27, Resolution of Government.WBSA, Kolkata.

¹⁶⁵K.B. Das, &, L.K. Mahapatra, "Folklore of Orissa",1979, National Book Trust, India, New Delhi, p-26

¹⁶⁶Ibid,p-74

¹⁶⁷ R.Orme,"Historical Fragments of the Mughal Empire, of the Morattoes, and of the English concerns in Indostan", 1782, (Reprint, 1972) ,New Delhi, p-31.

¹⁶⁸Sumit Guha, "An Indian Penal Régime: Maharashtra in the Eighteenth Century", *Past & Present*, No. 147 (May, 1995), p- 101-126, Published by: Oxford University Press on behalf of The Past and Present

But a shift in administrative thinking took place by the late eighteenth century and these practices were considered as inhuman and ineffective. Thus mutilation was abolished in 1790 and Lord Cornwallis substituted this with seven and fourteen years of sentences with hard labour depending upon the nature of the crime.¹⁶⁹ T.B. Macaulay in December 1835 recommended the use of imprisonment as a punishment in maximum cases.¹⁷⁰

In pre-colonial Orissa, penal power was widely diffused among a variety of institutions and shared by many different persons. In this way, it differed from the practice of contemporary western absolutisms. As Lawrence Stone has noted that the pre-colonial government tolerated the use of violence by many social groups within its territory.¹⁷¹ Class and caste of the accused often used to manipulate the elasticity of jurisdiction. Each social group in Orissa, whether of the individual castes or tribal communities, had its own standards of morality and conduct. Under the broad category of castes, a number of sub-castes also functioned as effective social units. The caste elders, called as the caste Panchayats had the right to supervise the social interactions. The Panchayat had to sit to give judgements on transgressions of caste regulations, marriage regulations, and adultery and in cases of partition in a family. It could also prescribe ritual expiation in case of some specific sins¹⁷². Though the king was the highest court of appeal, the caste Panchayat functioned as semi-autonomous and self-regulatory units. The peculiar customs and traditions had the force of common law in respect of the concerned community.

Each tribal community like the caste Panchayat had a village council to look after the rituals, and all socio-economic and political affairs of the village. They functioned as autonomous units and the superior authority of the king was resisted. The peasants and other villagers in Orissa had long been subject to the native king's law court than to the laws under the Afghan and Mughal rulers. Later the British courts brought their elaborate process of judging the crimes. This new system brought with it new forms of criminality and punishments. Ostracizing a person because of caste offences became illegal under colonial laws. A tribesman was considered a criminal for brewing his own liquor which he had been

¹⁶⁹ T.K. Banerjee, "*Background to Indian Criminal Law*", 1990, Calcutta, p- 68-71, 129

¹⁷⁰ Cited in Banerjee, *Background*, p- 360. The phrase 'shocking to humanity' echoes Sir William Jones's comment of 1788 on the 'cruel mutilations practised by the native powers' of India: James Mill, "*History of British India*", 1817, Vol-I, London: Baldwin, Cradock and Jo, p-176.

¹⁷¹ This impression is shaped by Gatrell et al. (eds.), *Crime and the Law*; Hay et al. (eds.), *Albion's Fatal Tree*; D. Parker, "Sovereignty, Absolutism and the Function of the Law in Seventeenth-Century France", *Past and Present*, no. 122 (Feb. 1989); the reference is to L. Stone, *The Past and the Present* (Boston, Mass., 1981), pp. 193-4.

¹⁷² K.B. Das & L.K. Mahapatra, "*Folklore of Orissa*", 1979, National Book Trust, India, New Delhi, p-26

doing since time immemorial. The colonial law paid scanty attention to understand the customary laws and traditional rights. This has been portrayed candidly in the novel '*Paraja*' by Gopinath Mohanty.

Colonial penal practices

The regulatory power of the colonial rule of law aimed at taming and disciplining the colonial subjects and tackling the evil cultural practices. Crime and criminality became sites for defining a culture through disciplinary techniques that targeted the body. The discourse of *Rule of law* was orchestrated through the relationship of violence and its sites of production and legitimation i.e. law, police, jail and mental asylum and others. These were the sites through which the colonial bodies were available for colonial disciplining. In this process the body of the colonized was a critical site both for maintaining colonial alterity and enacting colonial governance¹⁷³. The primitive savagery which colonialism claimed to replace was very close to the corporeal techniques used by the colonial government. The legal discourse of crime and punishment guided the colonial rule through 'stigmatization' of culture (sometimes despotic or barbaric) and 'native otherness'. However, the colonial characterization of 'native otherness' was not a uniform construct but varied across social groups and segments of colonial society.

According to Foucault, the eighteenth century saw the development of a form of government that ruled through control over things – populations, commodities – rather than territories.....¹⁷⁴ The rule of '*colonial difference*'¹⁷⁵ did not see natives as subjectified. Instead, colonialism relied upon denouncing tradition and corporeal regimes that reconfigured native bodies as legitimately susceptible to the exercise of violence in the interests of good governance.¹⁷⁶ Colonial corporeality was the means to achieve sovereignty in the early modern period. Colonial bodies were available for the infliction of pain as torture was

¹⁷³Anupama Rao & Steven Pierce, "Discipline and the other body: Correction, Corporeality, and Colonial Rule", 2001, *interventions* Vol. 3(2), p-161

¹⁷⁴M. Foucault "The Subject and Power", in Michael Foucault: "Beyond Structuralism and Hermeneutics", 1982, H. Dreyfus & P. Rabinow (Ed.), University of Chicago Press, Chicago, p-213.

¹⁷⁵B. Chatterjee "The Darogah and the Countryside", 1981, *Indian Economic and Social History Review*, Vol-18, No-1, p-36

¹⁷⁶Mamdani Mahmood, "Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism", 1996, Princeton University Press, New York

integral to pre-colonial punitive practices.¹⁷⁷ A significant body of literature maintains that cultures of terror were essential to the task of colonial governance.¹⁷⁸ Excessive violence and torture was central to the penal practices which were openly practiced in every steps of judicial enquiry. However torture was seen as a remnant of oppressive ‘native’ practices of punishment. This was an attempt of colonial law to distance itself from excessive violence to fashion colonial rule as a liberal ‘rule of law’.

Colonial officials in the mid-19th century in Bombay and London advised to use the field of medical jurisprudence in detecting excessive use of force by the police in extracting confessions. They argued for more rational and objective means to discover truth. It has been argued that the British imposed a rule of law in colonial India by maintaining that pre-colonial regimes lacked a properly autonomous domain of law. They instead relied on law like structures and modalities of caste and community based adjudication.¹⁷⁹ The officials realised that the natives should be taught to do away with differences such as caste, gender and religion in judicial practice even though the colonial state enforced such distinctions through their penal administration.¹⁸⁰

The enforcement of the new legal system required a cadre of police who would pursuit criminals, extract confessions and produce testimony. But the colonial officials mistrusted the native police.¹⁸¹ The problems of judicial administration were linked to native inefficiency rather than the failures of colonial governance. The native police were viewed as irrational, corrupt and prone to excess. This was done to mark a racial superiority. The native police officers were considered the main factor behind the ineffectiveness of the colonial rule of law. Equalizing the native police officers (thought to be prone to irrationalism, excess and inhumanity and barbarism) with the pre-colonial rulers, the colonial administrators were trying to shield its inherent weakness and strengthen the ideal of ‘subjecthood’ of the natives who were to be governed by the beneficent authority of colonial ‘Rule of Law’. It exposed the contradictions of colonial rule of law that acknowledged

¹⁷⁷ Anupama Rao & Steven Pierce, “Discipline and the other body: Correction, Corporeality, and Colonial Rule”, 2001, *interventions* Vol. 3(2), p-165-66

¹⁷⁸ There is limited distinction between this and the ‘liberal’ governance of the British colonial state in India which sought to rule through tradition, while maintaining a rhetorical commitment to criminal law’s ‘equal’ application. See Radhika Singha.

¹⁷⁹ See V.T. Gune, “The Judicial System of the Marathas”, 1953, Yeravada, Poona: Deccan College. See also, R. Singha, “A Despotism of Law”, 1998, Oxford University Press, New Delhi.

¹⁸⁰ See R. Singha, “A Despotism of Law”, 1998, Oxford University Press, New Delhi.

¹⁸¹ A. Rao, “Problems of Violence, States of Terror: Torture in Colonial India”, , 2001, *Intervention: International Journal of Post-Colonial Studies*, vol-3, no-2, p-192

customary practices (due to political necessity of relying on natives), yet stigmatized them through the rhetoric's of modernization and improvement. This raised the spectre of colonial power as merely theatrical and self-confirming.

The colonial state often claimed as struggling to institute a rational '*rule of law*' over the racially inferior and culturally backward for which it resorted to physical and symbolic violence.¹⁸² A colonial power is never free from the exercise of violence to establish its authority whether it violates the body or mind of the natives. Through this symbolic exercise of violence as an instrument for soliciting loyalty the colonial state established the state and subject relationship. Colonial governmentality had much to do with instituting a new practice of power that could be clearly distinguished from its pre-colonial predecessors.¹⁸³ These in turn led to introduction and rationalization of new practices of power. The contradiction of exercising violence to reinforce its authority on the one hand and symbolising itself as the beneficent government on the other exposes the fundamental nature of colonial state. While at ideological level, the British contested the use of violence to extract confession, at practical level it perpetuated violence and torture in order to criminalize and accused the native police¹⁸⁴ to demonstrate its civilizing mission. The prison served the purpose of the colonial state to get control over the native bodies and mentalities thus enforcing silent and undemanding '*Subjecthood*'.

Penal settlement

Another unpopular practice of the colonial government for disciplining the native subjects was the establishment of penal settlements. Macaulay who drafted the Indian Penal Code viewed transportation as a more painful and deterrent punishment for Indians. It served dual purpose. While on one hand it served the commercial interest on the other hand it generated terror among the natives. Penal settlements were established in far off areas to exploit the natural resources for the empire. The labour requirement in such areas was fulfilled through transportation of convicted Indians. However, since 1858 Andaman Islands were used as penal settlements for Indian convicts. The revolt of 1857 resulted in the imprisonment of many Indians and the mainland jails were not adequate to accommodate

¹⁸²Ibid. p-193.

¹⁸³H.K. Fukazawa, "The Medieval Deccan: Peasants, Social Systems and States, Sixteenth to Eighteenth Century", 1991, Oxford University Press, New Delhi. S.Guha, "An Indian Penal Regime: Maharashtra in the Eighteenth Century", 1995, *Past and Present*, no.147, p-101-126.

¹⁸⁴Whom they thought singularly exercise violence as they are not different from their predecessors, thus needs to be civilised and refuted of their association with the regime of violence.

them.¹⁸⁵ Due to this necessity the penal settlement was established at Port Blair. The Government of India began constructing a cellular jail in 1896 which was completed in 1910¹⁸⁶. The growth of nationalist movement in the early years of the twentieth century created a new situation for the colonial government who now felt the need to transport the nationalists in order to contain the spread of their '*dangerous ideas*'. The arrival of so many nationalists in one place provided an opportunity to fight against the colonial prison administration. They used hunger strikes, not performing the assigned works etc. to express their dissent to the colonial authority and used them as the techniques of protest.

In theory the penal settlement was abandoned in 1921 by the transportation policy announced by Sir William Vincent on 11th March 1921. However, it was reopened in November 1921 owing to the overcrowding of jails in India. In 1932 the Government of Bengal proposed to transfer about 100 terror (Militant Nationalist) convicts to maintain discipline in jails and deter terrorism. The Government of India supported the proposal and said the prisoners serving sentences for terrorist outrages and rigorous imprisonment were to be transported. The transported prisoners were subjected to hard labour and severe punishments for indiscipline. One example of hard labour was the practice of 'Ghana'. Under it the prisoners were tied into the rope instead of bullocks to grind 30 pounds of oil everyday. Choir pounding, solitary confinement, standing position for several hours with handcuffed hands were various types of punishment that were inflicted on the prisoner.

The colonial 'rule of law' found its expression through various institutions established by the British in India. Prisons, courts, medicals, mental asylums etc. served the colonial purpose of empire building and taming the colonial people. Colonial prisons served as institutions of control and centres of power. The penal practices served the medium to bring prisoners under submission. These institutions manifested in itself the centralised language of administration and governance. Within this centralised tendency of these institutions, the physical distances between territories were reduced and identities were subsumed. Like this, colonial Orissa was integrated into colonial India during the nineteenth century. This legal system not only blurred the physical distances of different territories but also among different socio, economic and cultural groups. Its universal language brought uniformity of the legal

¹⁸⁶ P.K. Srivastava, "Resistance and Repression in India: The Hunger Strike in Andaman Cellular Jail in 1933", *Crime, Historia and Societies*, Vol-7, No-2, 2003, p. 81-102

system in India and subsumed all earlier geographical, social, economic, cultural, political identities into an all Indian identity.

Chapter-IV

Formation of state-subject relationship: The Question of legal subjectivity and colonial authority in British Orissa.

Michael Foucault argued that a new form of political power developed from 16th century called State.¹⁸⁷ The breakdown of the feudal order with multiple centres of power and authority and with the subsequent rise of the modern state brought fresh links between the state and the individual. The end of sixteenth century witnessed the compilation of a number of treatises questioning and debating on the best form of government that broadened the scope of the state and came to include all human activities. This changing nature of the state got reflected upon the state's concern on how effectively to introduce order from the top to down through all aspects of social life. It then brought a change in the nature of the society which now became a political target. All the social activities now needed to be under strict state control with the aim of bringing complete control over its subjects. This changing nature and objective of the state contributed to the formation and objectification of the 'subject'. The state continuously harboured on defining the nature, the role as well as the function of the 'subject' under the new state system. It framed many yardsticks and procedures for the 'subject' in order to be a 'good and obedient' subject. The 'rule of law' was one such yardstick. It proved to be more successful in colonies to subordinate the colonised.

The rule of law as a political model of the colonial state in colonial settings like British India played an essential role in the formation of the colonial state as well as indispensable for the formation of state subject relationship. Here Foucault suggests three models for the formation of state subject relationship. The first model is the "dividing practices". These dividing practices are nothing but techniques of domination. The most famous example of this technique in India is the construction of the nature of the pre-colonial state and its nature. The theories of "Oriental Despotism", the depiction of the people as "savage" and "uncivilised" and the culture as "barbaric" "inhuman" were all actually dividing practices. It was done with the aim of subjugating the "colonial other" and establishing racial and cultural superiority over the colonized. This "colonial other" is then

¹⁸⁷M. Foucault, "The Subject and Power", in Michael Foucault: Beyond Structuralism and Hermeneutics, by H. Dreyfus, and P. Rabinow, 1982, University of Chicago Press, Chicago, p-213.

decided to be brought under control and surveillance within the universal framework of the 'rule of law'. This framework was then translated into action by the establishment of institutions like "prisons". Therefore this process of subjugation, stigmatization and reformation in a trilogy laid to the establishment of state-subject relationship. This relationship later helped the colonial state to accomplish its objectives. The second classification according to Foucault's understanding is the "scientific classification". It arises from "the modes of inquiry which try to give themselves the status of sciences; for example, the objectivising of the speaking subject in *gramaire generale*, philology and linguistics..."¹⁸⁸ Foucault's third mode of objectification of subjects is the process of 'subjectification'. It consists the "way human beings turns him-or herself into a subject".¹⁸⁹ This refers to the rituals and the patterns of relationship as well as the ways and mediums through which the colonized perceived them as good legal subjects of the colonial state in India. In this context, I have looked into the processes of the self -formation of colonial legal subject within the framework of the colonial rule of law in Orissa. Here mention may be made of the nineteenth century Oriya middle class, the landed elites and other influential groups in society. This self-formation entails a process of self-understanding mediated by an external authority.

Under the universal framework of the 'rule of law', the British in India got absolute control over its population, resources and space that further reinforced its power. The socio, economic, political and cultural life of the people of India were subjected to colonial power. The British in India formulated various policies and applied various measures to regulate the state subject relationship in nineteenth century. A new political economy and order was imposed on India by pensioning off regional powers, abolition of titles and possessions etc. The new order transformed loyal ones into Zamindars and the hostile ones were made powerless. After 1803, a revenue system was introduced in Orissa with high political and military control. Arrangements were made to displace the old regime and their power and authority. In its place a new order was introduced based on different principles of rule.

The objectification of the colonial legal subject and the formation of a state-subject relationship require the institutions to translate this formation. Here the institution of control and discipline comes into existence. The legitimacy of the 'rule of law' was

¹⁸⁸M. Foucault, "The Subject and Power", in Michael Foucault: Beyond Structuralism and Hermeneutics, by H. Dreyfus and P. Rabinow, 1982, University of Chicago Press, Chicago, p-208

¹⁸⁹Ibid.

established through the institutions of control i.e. the jails and the colonial courts. The jail is a space that displays the mechanisms of power which are being deployed. It is in this legal space, the body became an object to be manipulated and controlled. A new set of operations those linking of knowledge and power come together around the objectification and disciplining of the body. The colonial courts and prisons served the need for instituting the process of subjectification.

The formation of state-subject relationship: Orissa under the British during the nineteenth century.

The formation of state subject relationship through the system of the ‘rule of law’ took place at two levels i.e. at the level of creation and maintenance of institutions and entering into the psyche of the people. The third chapter of my research gives a subtle understanding of the institutions of rule of law i.e. the prisons, courts etc. It helps in understanding how the state –subject relationship was formed by the creation of institutions of colonial law. In this chapter, I am going to look into the second process that deals with the penetration of the law into the psyche of the people. Here, I will deal with two experiments of the colonial state that helped in its evolution and sustenance in Orissa as well as cleared the way for the integration of Orissa as a regional unit into an all Indian identity. The first occasion that helped accentuation of the colonial authority was the Paik Rebellion, particularly the standoff between the British and Baxi Jagabandhu Vidyadhar, the leader of the Paik rebellion of 1817.

The 1803 victory of the British over Orissa remained superficial as far as the elements of the establishment of superiority and legitimacy of the British was concerned. I argue that it was not yet a state till 1817 when the first major uprising i.e. the Paik Rebellion in 1817 shook the very existence of the British in Orissa. The British had acquired power from the Marathas. The Marathas were not part of the indigenous society and culture and were outside invaders. When the British occupied Orissa in 1803 and tried to bring structural changes at various levels, it was retaliated by the indigenous people. The local grievances arising out of the British efforts and policies in Orissa resulted in the confrontation in 1817. The suppression of the Paik rebellion of 1817 laid the foundation of the colonial state in Orissa as well as started the process of state-subject relationships.

Paik Rebellion: The first phase of state-subject relationship

The term Paik has its origin in the Sanskrit word '*Padatika*' (foot soldier). It referred to a particular category of militia serving the Raja of Khurda. Since their antiquity is shrouded in mystery, it is very difficult to understand their origin; lineage and subsequently placing them in the pre-colonial social and political order. They were enjoying hereditary rent free land in return of their service to the Rajas at the battle.¹⁹⁰ Andrew Stirling commented that 'the Paiks or landed militia of the Rajwara combined profound barbarism and the blindest devotion to the will of their chiefs...'¹⁹¹ Stirling's impression and understanding depicts the crystallization of the official view about India and its people. Their chiefs, the Khandaits were seen as 'grossly stupid, barbarous.....'¹⁹² This depiction of the indigenous people by the British shows the obsession of the British in claiming and condoning their racial superiority. This was also an attack on the nature of the indigenous state bringing into theory the 'Oriental despotism'. This theory was used to describe the backward looking and uncivilised nature of the state i.e. India. This view and depiction bring into the whole question of the state and its governmentality in the official sphere and partly contributed to the formation of the colonial state in Orissa.

Under the new land tenure policies, these Paiks lost their revenue free land and were dissatisfied over the colonial government. In 1804, the Raja of Khurda, Gajapati Mukundadeva was disposed. His territory was brought under the colonial government and the hitherto rent free lands were assessed for the collection of revenue. The Paiks of Khurda joined by the Paiks of Kujang, Harispur and the Kondhs of Ghumsur rose in rebellion against the Company government in March 1817. The uprising was led by Bakshi Jagabandhu Vidydhara who led the Paiks towards Puri due to its social and political significance owing to the presence of the Lord Jagannath as well as the Gajapati. The rebels challenged the British authority in those areas by burning government offices and looting treasury. The British government quickly swung into action by reinforcing its troops and imposing martial law in those areas. Captain Lefevre occupied Khurda and Puri and took the Raja as captive. The Paiks retreated to jungles and made sporadic disturbances. The Raja of Kujang surrendered in 1817. But Madhusudan Mangaraj, Zamindar of Harispur, successfully evaded the authorities.

¹⁹⁰Y. Mubayi, "The Paik rebellion of 1817: Status and Conflict in early Colonial Orissa", *Studies in History*, 1999, Vol-15, No-43, , p-48

¹⁹¹A. Stirling, "Orissa: Its Geography, History, Religion and Antiquities", 1846, London, p 49-50.

¹⁹²Ibid.

In February 1818, martial law was lifted from Khurda and W. Forrester became the Joint Magistrate of Puri and Khurda. He brought the policy of surrender to secure loyalty of the rebels in exchange of restoration of the estates to the former landowners. Bakshi Jagabandhu evaded the authorities till 1825 when he finally surrendered. He and his followers were pardoned and their lands were also restored. The instrument of negotiation was used to extract his submission. This negotiation revolved around the legal system. The Baxi was promised not to be punished under the colonial law in response of his acts against the British. Here the legal instrument was used to serve the purpose of the British to bring a recalcitrant subject under control. The uprising showed, surrender as a mechanism for submission and acceptance of authority of the colonial state. It was also used as a technique by the colonial state to get its recalcitrant subjects under its governmentality.

While the Baxi and some of his loyal followers were pardoned displaying the liberal governmentality, others were treated stringently by the colonial law. Around fifty-five persons were accorded various terms of imprisonment in March 1819. Two prominent leaders such as Sachidananda Patnaik and Parasuram Routray were sentenced to death in April 1819. The colonial law aimed at establishing a just and equitable legal system in opposition to the traditional and multi centred legal system of India. But from this case, it is evident that, the institution of rule of law was established for the purpose of empire building in India. The law was relaxed for the upper section but the lower strata of the society were punished. It was perhaps to set a precedent not to challenge British authority in future. Another inference could be drawn here. Perhaps the British understood that it is worthless to punish the leaders as their real strength was the innocent people who followed them. Therefore the British tried to strike the real strength behind the uprising. As a result the British could twist the rule of law to materialise its imperialistic designs rather to have a law for the welfare and development of its subjects. By punishing the people severely, it created the terror and was able to bring the people under the colonial state system. Under this new state system, where terror and punishment ruled, the British represented the state system and the people became its subject. The British got the right to punish. This started the beginning of the colonial state-subject relationship.

The uprising laid the foundation of the colonial state in Orissa in a firm footing. The clash between the indigenous power structures and the British decided the future course of history in Orissa. Orissa was colonized in a real sense. Unlike the 1803 victory, this victory was more crucial to the British. In 1803, the conflict was between the British and the

Marathas who were the outsiders. But in this battle, the British fought with the insiders who somehow were claiming to be regional representatives. In this regard, the 1817 rebellion helped the British to establish its legitimate authority over Orissa, its people and territory. The rebellion was also instrumental in the organization of the colonial state machinery with a strong bureaucracy to have stringent control over its subjects that it sought to rule. The failure of the rebellion was a testimony of the weaknesses of the pre-colonial centres of power and authority. Pre-colonial state structures proved to be incapable of defending itself in face of colonial assertions of authority. The defeat of the indigenous power structures and the subsequent events that unfolded in the history of Orissa laid to the formation of a relationship between an all-powerful state and its subordinate subjects. This relationship was systematised by the elaborate legal procedures that the British used to bring the rebellious subjects under its control.

The process of subject-hood is very clear from the letter that Bakshi Jagabandhu had written to the British before his rebellion. The letter unfolds another dimension to the understanding of the state subject relationship. The letter speaks about the petitioner's concerns where he refers to pre-colonial ideal ruling structure. He defined that period as a 'golden period'. He also appeals to the justice and moral strength of the prevailing government. The reference to the previous regime's qualities as an idealized moral order and the protest against current injustice was meant to pressurize the government to address their concerns.¹⁹³ At another level, the Bakshi's appeal was meant to display his trust in the government's sense of righteousness and morality. This faith reinforced the rebel's link with the government and their right in claiming justice from them in the status of a subject. It is clear that the rebels recognised the British as their ruler even before the rebellion. Their faith on the legal system of the British is quite discernible from this letter.

The letter states:

Jugbundo Bowerber Rae Bakshee of Orissa and dewan Kishe Chunder Bowenberrae offer their salutations to the English gentlemen and beg to represent as follows.

It is now 14 years since the Province of Cuttack was conquered by the British arms. At that period Maharaja Mukoonddeo who was then a youth urged on the evil council of

¹⁹³, Y. Mubayi, "The paik rebellion of 1817: Status and Conflict in early Colonial Orissa", *Studies in History*, 1999, Vol-15, No-43, p-57

JeyRayeGooroo, contrary to our earnest advice and remonstrances to oppose the establishment of the British authority... if they would but give possession of our lands we would agree to pay revenue for them as it might be thought equitable to fix....

The Letter went on appealing the inherent justice and liberalism of the British government by arguing in following words:

*Under the British government convicted felons even are allowed food and clothing; what had we done that we should be so degraded and impoverished? Under the same government also many Zemindars and Rajahs who have offended have been pardoned and restored to their country and estates? But raja MukoondDeo for an offense against the state committed in his youth at the sole instigation of a wicked and designing Minister was for nearly 14 years kept out of Khoorda....*¹⁹⁴

This letter explores many angles of understanding the indigenous perception of the pre-colonial state and the colonial state. It displays trust in the British concept of legality and morality. It possesses faith that the British will do justice to the people as a state's duty is to protect its people. I argue that this relationship is understood as a monarchical relationship between the sovereign British Raja (king) and the Indian Praja (subject). Understood in this way, the relationship between the Raja and Praja is limited to that of regal paternalistic management of the subject population. This letter certifies that the rebels had already recognised the British as their ruler and were appealing to its conscience to get their demands fulfilled. They argued that the British in the capacity of ruler needs to protect its people from untoward condition. It should look into the welfare of its subjects. They had strong faith in the British judicial system which they thought was fair, judicious and egalitarian in nature. As a just ruler, the British should take care of its subjects as they are loyal to the British authority. The letter even blamed Minister Jai Rajaguru who fought against the British in 1803 and was brutally killed. The leader of the revolt who fought fiercely resisting British authority was suddenly made a traitor and a wicked minister who instigated the Raja Mukunda Deva. This letter of the Baxi shows how he submitted himself to the British authority for fulfilment of his personal interest and explained the problems faced by him and his associates as a dutiful and law bound British legal subject. Hence this letter shows the

¹⁹⁴ "An Ooria Chittao was delivered to Mr. Melville....professing to come from the Bukshee and Dewan...." A. Stirling, Secretary to Commissioner to W.B.Bayley, Chief Secretary to Governor, Fort Williams, 21 July 1817.

British as the legitimate ruler and the people as its obedient subjects who have undisputed faith on British Justice and authority.

One of the peculiar features of the state subject relationship in Orissa was the formation of Paik Companies who had extended their complete loyalty towards the British. The 'Paiks' were later absorbed into British administration and made paid soldiers to divert their loyalty to the colonial state. They formed into companies or segments and fought along with British soldiers in the battle against the local rebels. The colonial policy accentuated the process of empire building by transforming the rebels into loyal colonial subjects. With the end of the Paik rebellion, the first phase of the formation of state-subject relationship unfolded in pre-nationalist period of colonial Orissa. This was the rebellion that transformed the British into the legitimate ruler of Orissa and its people. The suppression of the rebellion by the British witnessed the initiation of a legal process through which the subjects were transformed into law binding legal subjects.

Trial of Veer Surendra Sai: Second phase of state-subject relationship

The next phase of legal subjectivity of the Oriyas can be demonstrated from the trial of Veer Surendra Sai. Sambalpur was ceded by the Bhonsle Raja of Nagpur in the year 1826. It was an important tributary Mahal of Orissa which the British government wanted to take under its control. In 1827, Maharaja Sai, the ruler of Sambalpur died without a successor. Veer Surendra Sai was aspiring for the throne in the capacity of a direct descendant of the Maharaja. But the Political Agent of Sambalpur surpassed the claim of Surendra Sai and handed over the throne to Rani Mohan Kumari, widow of the late Raja. The British had a strong grip over the administration and decided all revenue and administrative policies on behalf of the queen. The interference of the British and their repressive policies created a strong resentment among people. The resentment of the people contributed to frequent protests by the Gonds and Bhinjals who were joined by discontented peasants. These protests contributed to the enforcement of British legal system in the state leading to the hanging and imprisonment of the prisoners.

In the year 1833, the British deposed the queen and made Narayan Singh the ruler of Sambalpur which caused a wave of protest throughout the state.¹⁹⁵ The Zamindars and the

¹⁹⁵The Bengal and Agra Annual Guide and Gazetteer, 1841, vol-II, p-313, WBSA, Calcutta

Guntias¹⁹⁶ considered Surendra Sai, the rightful heir to the throne and paid allegiance to him. The shifting loyalty of these powerful elements of the state caused frequent disturbances and drew the British to this scenario. In 1840, Surendra Sai and his brother Udwanta Sai and their uncle Balaram Singh were implicated in the murder of one Duriayo Singh's father and son (a supporter of Narayan Singh) and were sentenced to imprisonment for life. They were sent to Hazaribagh Jail.

Narayan Singh died in the year 1849 and the state lapsed to the government. The revolt of 1857 provided the opportunity and played a decisive role in the formation of state-subject relationship. The colonial state gradually shaped itself and the colonial subject was christened to the state system. The Hazaribagh mutineers broke open the Hazaribagh jail and set Surendra Sai and other prisoners free.¹⁹⁷ The news of the release of Surendra Sai spread like wild fire. The government declared Surendra Sai to be a rebel. Most of the prominent Zamindars and Guntias joined Surendra Sai and took part in the movement against the British government. The insurgency spread in the region of Bamra, Redhakhol and Sambalpur.¹⁹⁸ The rebels cut off the Dak routes from Sambalpur to Cuttack and Calcutta. The Paiks¹⁹⁹ and Sebundis²⁰⁰ were recruited to fight with the rebels. The Rajas of the Tributary Mahals extended full cooperation to the British. The British Government established a 'reign of terror' by indiscriminate arrests and trial. The jail of Sambalpur was filled beyond its capacity. Around 300 persons were kept in jail while the sanctioned strength was 80 to 90. Forster sent a hundred of them to Cuttack jail. 40 of those prisoners were further sentenced to flogging of 50 strokes. The Magistrate of Cuttack was not 'aware by what law it was pronounced'.²⁰¹ Cockburn referred the matter to Colonel Forster, expressing his opinion that 'flogging cannot be and should not be carried out'.²⁰²

¹⁹⁶The Zamindars and Guntias held lands under a kind of military tenure in perpetuity by prescription not liable to enhancement.

¹⁹⁷Colonel Forster to Lt. B.V. Ashe, Deputy Commissioner, Raipur, 14th October, 1858, WBSA, Calcutta

¹⁹⁸G.F.Cockburn to the secretary, Government of Bengal, 2nd December, 1857, WBSA, Calcutta

¹⁹⁹ The British constituted the Paik Company. The Paiks formed a local civil corps. Detachments of the paik Company were stationed at Cuttack, angul, Puri and Khurda. In 1857, the Orissa Paik Company consisted of 1 commander, 1 Sergeant major, 5 Subahdars, 5 jamadars, 25 Havlidars, 25 Naiks, 5 Buglers, 1 native doctor and 400 sepoys. About one hundred and fifty paiks were recruited during the Mutiny and sent to Samalpur. It is said that after the mutiny, the Paik Company was absorbed in the Cuttack Divisional Police Battalion. Secretary, Government of Bengal, to the Commander, Cuttak, Paik Company, 4th December, 1858, OSA, BBSR

²⁰⁰ They were recruited from Khond Mahals peculiarly suited for jungle warfare.

²⁰¹ Magistrate , Cuttack to Commisioner, Cuttack, 8th May, 1858, OSA, BBSR

²⁰² Colonel Forster to G.F. Cockburn, 13th June, 1858, OSA, BBSR

Surendra Sai left the district of Sambalpur and spent some months at Jashpur.²⁰³ The military operations against Surendra Sai continued. He was no more a threat to the British as he had been completely weakened by the British and by the surrender of his followers. Still the British pursued the military operation to capture him as the intention of the government was to reclaim the recalcitrant subjects. When the policy of 'reign of terror' could not capture Surendra Sai, Major Imphey did not retreat from employing the policy of conciliation. He offered pardon to the rebels at large and promised to restore the confiscated estates. He was of the opinion that such conciliatory measures would induce the outstanding rebels to surrender which he thought 'the best measure for restoring order in that long disturbed province'.²⁰⁴ Major Imphey's policy of conciliation brought marked success for the British government. Many of the prominent followers of Surendra Sai surrendered with the promise of pardon which Imphey reiterated that 'good faith and policy' necessary to restore confidence in the government.²⁰⁵ The policy of surrender and pardon was employed to won over the recalcitrant subjects and stopped military operations. Pensions (a govt. Initiative) became a symbolic expression for state-subject relations. R. N. Shore praised Major Imphey for having discovered the true remedy for pacifications of the country. He concluded that leniency accorded to the rebels was not due to any weakness on the part of the govt. but was actuated by a genuine motive to establish permanent peace in the district.²⁰⁶

At the same time, other strategies were also employed by the British government to end the insurgency and made the people the permanent subjects of the British Govt. Lokanath Panda of Rampela was made Gauntia of some villages for his efforts 'in procuring the surrender of the rebels'. Mritunjaya Panigrahi of Arda likewise received villages 'in consideration of his assistance to secure the surrender of rebels in 1862'.²⁰⁷ Therefore the state-subject relationship unfolded in two different ways viz. the policy of conciliation and the policy of reward.

On 16th may 1862, Surendra Sai surrendered on a guarantee of 'life, liberty and free pardon'.²⁰⁸ He was guaranteed a pension of 1200 rupees per annum. But Surendra Sai's

²⁰³Colonel Forster to Lt. B.V.Ashe, Deputy Commissioner, Raipur, OSA, BBSR

²⁰⁴ Major Impey to R.N.Shore, Commissioner, 8th June, 1861 and Commissioner, Orissa to Secretary , Govt of Bengal, 18th June 1861, WBSA, Calcutta

²⁰⁵ R.N. Shore to Secretary, Govt. of Bengal, 1st June, 1862,WBSA, Calcutta

²⁰⁶R.N.Shore, to the Secretary, Government of Bengal, 25th Feb. 1862,WBSA, Calcutta

²⁰⁷ Major Cumberlege to the Commissioner Chhattisgarh, 24th Feb. 1864,WBSA, Calcutta

²⁰⁸Impey to Secretary to Chief Commissioner, 16th May 1862,WBSA, Calcutta

surrender did not restore tranquillity in the state. The rebels now rallied under the leadership of Kamal Singh committed dacoities.²⁰⁹ However, it is said that Surendra Sai was in secret compliance with the rebels and was still aspiring for the throne of Sambalpur. The three letters discovered from the house of Surendra Sai after his final arrest stands testimony to it. The letter dated 3rd December, 1863 written by Kamal Singh to Surendra Sai unfolds the instructions given by Sai to the rebels to continue the rebellion. The letter written by Kamal Singh and Kunjal Singh to Roop Rai dated 29th December 1863 speaks about the request of Sai to collect 1000 or 1800 men... the third letter written by Kamal and Kunjal Singh to Surendra Sai, he was asked to come to Manikgarh on the poosurnima day (January 4, 1864)²¹⁰. The recovery of these letters discloses the real intention of Surendra. It led to the trial of Surendra Sai. Under section 25 of the Code of Criminal Procedure, the case was transferred from the Court of Deputy Commissioner Sambalpur to the Court of the Deputy Commissioner, Raipur

The charges that were levied against Surendra Sai and some of his companions were 'plot to wage war' against the Queen and concealing the existence of a design of war. The Deputy Commissioner, Raipur found Surendra Sai in the first charge i.e. waging a war against the Queen and therefore the state. He challenged the authority of the state which was unchallengeable on the pretext that it was supreme and the only legitimate authority over the people. Henceforth, it had absolute control over the subjects and could not be challenged. Found guilty Surendra Sai was sentenced for transportation for life with forfeiture of his property. Udwanta Sai and Khageswar Deo also held guilty of challenging the authority of the state. Dhruva Sai, Medhnu Sai, Lokanath Gauntia, Mrityunjaya Panigrahi and Jagabandhu Hota were found guilty of the second and third charges and were sentenced to transportation for life with forfeiture of all their property. Minaketan, Mohan Deo, Dharani Misra and Padmanabha Guru were found guilty of the third charge and sentenced to transportation for 7 years. The judgement was delivered on 24th June 1864.²¹¹ Therefore the colonial legal system not only awarded punishment for challenging its authority. It also snatched away their capability or capacity to challenge the authority again. It struck at the root and wiped out any risk of a rise again by the rebels against the state. By forfeiting their property, it made them completely dependent upon the colonial state. It silenced them and made them to accept the Subjecthood of the colonial state. It also demonstrated its power and authority by awarding

²⁰⁹Report of Captain G.F. Stewart, 24th September 1863, WBSA, Calcutta

²¹⁰Letters of Major Cumberlege to the Commissioner, Chhatisgarh, 24th February 1864, WBSA, Calcutta

²¹¹ibid

stringent punishment to rebels so that in future this exemplary punishment will deduce others even of thinking against the state.

The third charge levied against the rebels carries even a more symbolic meaning i.e. concealing the existence of a design to wage war against the queen. The rule of law penetrated also into the subconscious state of mind not to hide any risks and challenges going on against the state. Being loyal, obedient and disciplined subjects, it was the responsibility of the subjects to protect and preserve the integrity and the authority of the state. This charge reminded the people of their duty towards the state particularly when the state is in danger. Therefore the colonial legal system penetrated both into the mind and the body of the subjects to make them obedient and disciplined colonial legal subjects.

However this judgement did not go unchallenged. The accused persons sent a petition of appeal to the Judicial Commissioner of Central Province. He expressed doubt on the genuineness of the letters that the Session Court claimed to have been written by the accused to the rebels and to their leader Kamal Singh who were committing dacoities across Sambalpur. He dismissed that the accused had any intention of waging a war against the state. In August 1864, John Scarlett Campbell, Judicial Commissioner, Central Provinces repealed the judgement of the Sessions Court and acquitted all the persons.²¹² By a critical analysis and decoding of the letters; the Judge opined that those three documents were 'gross forgeries' produced weeks after the arrest of the prisoners, 'to bolster up a case which was palpably weak'.²¹³ The above judgement and acquittal of the prisoners shows the desperation of the colonial authority to get hold of people by any means even if they had to distort the noble aim of the 'rule of law'. The above judgements of both the Court discerned two aspects of the colonial legal system. At once, the former judgement uses the 'rule of law' to establish its authority over people forcibly with a complete disregard for its impartial, utilitarian and civilising mission. It was the biggest ideological deceit by retreating from the once proclaimed ideals of rationalism, the rule of law and the equal and impartial administration of the law. The second judgement demonstrated the impartiality, the honesty of the colonial legal system to woo over the subject to become their legitimate authority. Thus a continuous interface between these two opposite diametric of the 'rule of law' legitimised the colonial rule as well as formalised the state-subject relationship in Orissa.

²¹² J.S. Campbell, Judicial Commissioner, Central Provinces to Charles E. Bernard, Secretary to the Chief Commissioner, Central Provinces, 23rd August, 1864, WBSA, Calcutta

²¹³ *ibid*

Though the Judicial Commissioner acquitted the prisoners, all of them were not released. Surendra Sai and six other prisoners²¹⁴ and Medhnu Sai²¹⁵ were detained under Regulation III of 1818 by the order of the Chief Commissioner.²¹⁶ The Governor General-in-Council approved of the recommendation of the Chief Commissioner that Surendra Sai and other prisoners be confined under above the Regulation, ‘until the pleasure of the British Government; and that there place of detention be Nagpore.’²¹⁷ By this order and the detention of the prisoners including Surendra Sai, perhaps the second phase of state subject relationship completed. The next phase of state-subject relationship started with the rise of tides of nationalism that perhaps carried a different language and orientation of state-subject relationship.

The British officials were not very convinced about the acquittal of the prisoners. They attributed it to the lack of evidence rather than their honesty. The oral evidence to the charges against the prisoners was brought out by Major Imphey in a letter to the Commissioner dated 12th November 1863. He pointed to an overheard conversation of a spy with Khageswar Deo about a sudden insurrection. But looking into the absence of any movement by the rebels he thought it to be a concocted story by the spy and translated by Mohan Singh taking advantage of the ignorance of the Oriya language by European officers. The Chief Commissioner admitted that the oral evidence was unsatisfactory. He concluded that they were making an agitation ‘strictly of a peaceful character’ and petition to the Supreme Government for restoring peace by ‘establishing a Native dynasty in tracts where British rule was proved in its result to be unsuccessful’. The prisoners always alleged the proved inability of the Government to establish peace in the country. If this admission of Chief Commissioner taken to be true, it demonstrates another fact about the rebels. They were convinced about their inability to carry an armed struggle against the mighty British government and recourse to the method of petitioning their grievances and aspirations before their government to grant their wishes. The political intensity of the struggle and the acumen of Surendra Sai are discernible if the Chief Commissioner are to be believed while

²¹⁴ They were Surendra’s brothers Udwantha Sai, Dhruva Sai, Medhnu Sai, Surendra’s son Mitrabhanu, Khageswar Deo and Lokanath Panda.

²¹⁵ Shore’s letter to Government of Bengal, 28th February, 1862, WBSA, Calcutta. The letter confesses that Medhnu Sai never rebelled but was made a prisoner because he was a brother of Surendra Sai.

²¹⁶ Secretary to Chief Commissioner, Central Provinces to Secretary, Foreign Department, Government of India, 23rd January, 1865, WBSA, Calcutta

²¹⁷ Secretary, Foreign Department, Government of India, to Secretary to Chief Commissioner, Central Provinces, 28th March 1863, WBSA, Calcutta

encouraging the outlawed elements in the frontier area to cause disturbances and then come up with the instances about the inability of the British government to establish peace and order. By doing this, Surendra Sai was perhaps justifying his claim over the throne. Therefore the existence of Surendra Sai in Sambalpur was regarded by the followers as a possible opportunity to keep up the disturbances and henceforth had to be detained. He found them guilty from a 'moral and political point of view' taking advantage of the mutinies to raise rebellion in Samablpur with a view of making himself chief.²¹⁸ R. Temple, the chief Commissioner stated that there were no more outrages after their arrest.²¹⁹

Surendra Sai only made constitutional agitation to get the Guddee of Sambalpur on the grounds of his claim and of the proved inability of the British authorities to establish peace in the district. The publication of the Report on Criminal administration in 1864 was a strong embarrassment to the government of Central Provinces. The Raipur trial discredited the police administration in the Sambalpur district. On 19th Novemeber, 1864 Surendra Sai and others were sent to Nagpur.²²⁰ The Inspector General of Police recommended that the prisoners be confined in the Asirgarh fort because 'at such a distance from their own country they would probably never entertain any idea of escape'. The prisoners were sent to Asirgarh in 1866.²²¹ The Chief Commissioner held that the pensions granted to them when they surrendered should be stopped because of their conduct against the colonial state. He also directed that enquiries should be made into the status of the females and other helpless persons belonging to the families of Surendra Sai, Lokanath Panda and Khageswar Deo.²²² Here the colonial state justified its role of protecting its subjects when it took recourse to measures to inquiry the status of females and other helpless persons who were dependents upon the prisoners. Whether the state had taken any tangible measure over its concern for these dependents is not known but at least theoretically it justifies its role as a state and the legitimate authority over the subjects. In a letter, the Deputy Commissioner said that 'ample provisions' had been made for the family.²²³

²¹⁸Ibid p-60

²¹⁹Letter of the Inspector general of Police which showed that since the 15th of Novemebr 1863, there had not occurred a single major case of dacoity in the Samabalpur district. OSA, BBSR

²²⁰Commissioner Chhatisgarh to the Secretary to the Chief Commissioner, 22nd November 1864, OSA, BBSR

²²¹Ibid, p-68

²²²Secretary to the Chief Commissioner, to the Secretary, Government of India, 17th January, 1865, OSA, BBSR

²²³ From Deputy Commissioner, Sambalpur to Commissioner Chhatisgarh, 11th February, 1865, OSA, BBSR

The detention of Surendra Sai and others even after their trial and acquittal did not go unquestioned. In 1866, Surendra and other prisoners sent petition to the Governor General-in-Council to release them from custody or to inform them the grounds of their detention.²²⁴ In a letter from the Secretary to the Chief Commissioner of Central Provinces to the Secretary to the Government of India, Foreign department, 26th June 1866, said that the petitioners were confined under specific law. But in the detailed note nowhere the specific grounds for detention had been mentioned. The charges against the prisoners seem to be that they were considered to be ‘dangerous characters’ and their indefinite detention was considered necessary for the tranquillity of Sambalpur.²²⁵ In 1871, the Chief Commissioner enquired whether the prisoners could be released. Major Cumberlege, the then Commissioner of Chhatisgarh pointed out that Surendra Sai and Udwanta Sai ‘had been desperate characters’ and ‘deserve no mercy’ and their release would disturb the peace of the country²²⁶.

The question of the release of the prisoners was taken up again in 1876. Colonel Cumberlege recommended that Dhruva Sai and Mitrabhanu be released provided they would give an undertaking for good conduct and that they would not enter Sambalpur district.²²⁷ The Chief Commissioner sanctioned their release. The Deputy Commissioner of Sambalpur wrote to the Commissioner of Chhotanagpur to ask the Raja of Bonai to furnish a security to the amount of Rs.5000 for the future good conduct of Mitrabhanu.²²⁸ They were released from jail on 1st January 1877 on the occasion of Queen Victoria’s assumption of the title of the Empress of India. There are no records regarding the last days of Surendra Sai. He suffered incarceration for about 32 years and died in the fort of Asirgarh.

The Cult of Jagannath and the Colonial legal interference

The combination of politics and religion was a dominant feature in Orissa since the origin of the Jagannath cult. The King as the representative of Lord Jagannath on the earth is seen as the moving Vishnu (incarnation of Lord Jagannath). The socio-cultural milieu created by the Jagannath cult in Orissa had actually facilitated regional integration and social solidarity among people. In 1230 AD, Anangabhimadeva III declared Jagannath as the sole

²²⁴M.N.Pearson (prisoners attorney) to the Assistant Secretary, Government of India, Foreign Department, 23rd January 1866, OSA, BBSR

²²⁵Major Cumberlege’s letter to Commissioner, Chhatisgarh, 18th March, 1865, OSA, BBSR

²²⁶Colonel Cumberlege, Commissioner, Chhatisgarh to the Secretary to the Chief Commissioner of Chhatisgarh, 20th May 1871, OSA, BBSR

²²⁷Colonel Cumberlege to the Secretary to the Chief Commissioner, 1st May 1876, OSA, BBSR

²²⁸Deputy Commissioner, Sambalpur to the Commissioner, Chhotanagpur, 11th August 1876, OSA, BBSR

state deity of Orissa and he is ruling under his over lordship thus getting religious sanction for his political power. Frias Odoric, an European traveller reported about the association of the Gajapati kings of Orissa with the Car festival of Jagannath in the year 1321. Later on, the Suryavamsi kings like Kapilendradeva and Purussottamdeva sought legitimization of their rule as both of them were usurper of the throne. They claimed legitimacy achieved by maintaining an intimate linkage with the Jagannath cult of Puri. Even Kapilendradeva was not reluctant to call himself a servitor and described attacks on him as attacks on Lord Jagannath.

This relationship between the Gajapati kings of Orissa and the Jagannath cult of Puri culminated under the Rajas of Khurda. The Raja of Khurda declared himself as the local successors to the imperial Gajapatis after the defeat of King Mukunda Deva in 1568. The Rajas of Khurda after suffering defeats in the hands of the Mughal armies turned their attention to Puri and enlarged their influence over the Jagannath cult. Thus an intricate and ambiguous relationship developed between the temple and the palace. By maintaining their control over the temple and its rituals, the Rajas of Khurda claimed to be successors of imperial Gajapatis and granted certain privileges to the feudatory kings in order to get their loyalty and political support. The political power of the Rajas of Khurda declined after their defeat in the hands of the Marathas in 1751. Though the Marathas took over the administration of the Jagannath Temple in 1760, the Rajas of Khurda were able to maintain the ritual sanctity of their position and all the feudatory kings of Orissa looked at them with veneration. The temple played an important political role in the sense that it granted legitimacy and recognised the authority of the king over Orissa and its people.

The relationship that the Jagannath Temple had with the colonial state should be understood in the light of colonial state's adventure to control and govern a religious space with political connotation so that it can legitimately control the subject population through the colonial governance and its machinery. This was done within the broad framework of colonial legality and governmentality. After occupying Orissa in 1803, the British purportedly went on to control the Jagannath temple of Puri as it was the religious as well as the political nerve centre of Orissa. The British arrested the Raja of Khurda and imprisoned him in the fort of Midnapore. The British made detailed plan and administrative arrangements to govern the affairs of the temple and its resources as well as the pilgrims, thus exercising colonial governmentality over the Oriyas. The nascent colonial state in early 19th century used various techniques of surveillance to control the temple and the pilgrims. The British resorted to enormous documentation detailing out all the information about the pilgrims. The

legal machinery such as the police was used to control the pilgrims. Charles Grome, in 1805 submitted a report to the Company and prescribed the mechanism to govern the temple. In this way the sacred entity of the pilgrim was transformed into a subject category under the rudimentary colonial state. It used the Dak and the legal machinery and brought surveillance over people through rigorous documentation, registration of pilgrims and other bureaucratic arrangements. The colonial government's obsession in controlling and ruling a religious space invited criticisms from the Evangelicals, the Christian missionaries as well as the anxiety of the Oriyas.

The Court of Directors in 1809 asked the Company to specify the degrees of interference in matters of native religious practices. Under constant pressure and criticism the Company appointed the Raja of Khurda as the Superintendent of the Temple and assigned him the right to manage the interior economy of the Temple while retaining the power to remove the Superintendent as and when it wish. The Regulation IV of 1809 vested the superintendence of the temple in the hands of the Raja on a hereditary basis. The colonial bureaucracy institutionalised surveillance. The subject population were further controlled when the colonial bureaucracy used the labour of the prisoners of Puri and Cuttack jails to construct the New Jagannath Trunk road.

Abolishing the violent superstitious rituals and customs of the natives was central to the colonial state building in India. It was necessary to justify the theory of 'benevolent paternalism' of the British. At the same time it was also essential to maintain law and order to safeguard British commercial interests in India. For the Evangelicals and the Christian missionaries, indigenous rituals and customs were inhuman and against civilization which needed to be rooted out by the British as part of its civilising mission. Many European travellers wrote in detail about Jagannath and his car festival since 14th century. Thomas Bowrey's account is more informative. His accounts described in detail how people voluntarily casting themselves under the wheels of Lord Jagannath and crushed to death. This was considered as the most noble and heroic act in order to attain a sacred death. The practice of self-immolation of pilgrims under the car of Lord Jagannath has been reported by William Bruton when he visited Puri in 1632 A.D. According to him it was the belief of the pilgrims that they will attain heaven if they get killed under the wheels of Lord Jagannath's chariot. Sebastain Manrique in 1636 said that people used to immolate themselves under the car of Jagannath. Bernier mentioned about this practice in his travel account in 1676. Apart from blind religious beliefs he pointed out another dimension of the practice. According to

him the huge crowd, the arduous journey and the fatigue squeezed people to death who used to fall on the ground in the way of the car. Colonel Harcourt who came to Puri in 1803 however said that though the pilgrims had talked about the self-immolation practice but much of the observations were based on exaggeration. Andrew Striling writing in 1825 said he witnessed three cases of self-immolation and one of the cases was accidental. In the other two cases, the devotees were suffering from incurable diseases and in order to relieve themselves from this burden of life they preferred this mode of suicide. James Fergusson in 1837 told about how the people were delighted to be present at Puri during the Car festival despite so much written accounts of horror stories about the death of people during the Car festival. Claudius Buchanan who visited Orissa in 1806 provided the horrible accounts about the temple, its festivals and customs. He particularly narrated the practice of pilgrim's self-immolation under the chariot of Lord Jagannath. William Bampton and Sutton's preaching against idolatry received violent opposition from people. Charles Buller, the then Commissioner of Cuttack wrote back to the Court of Directors of East India Company that he had not seen horror and wretchedness during the Car festival. He reported to have seen one case of self-immolation under the wheels of the car. He vehemently denied that this ritual practice was an established duty thrown upon on any sect of Hinduism. Thus it can be said that the self-immolation of the pilgrims during the Car Festival was not so an established and religiously sanctioned practice unlike the Meriah sacrifice of the Khonds. The cases reported by the European travellers and British officials were primarily individual in nature and took place out of blind devotion of the devotees to get relief from the pain and sorrow in their life.

The Pilgrim Tax in Puri was collected since Mughal rule and also continued during Maratha and British period. The political economy of the colonial state justified the collection of this tax in the capacity of a legitimate ruler. The British claimed to have spent the pilgrim tax in developing various amenities for the pilgrims as well as in facilitating smooth administration. But in reality the tax was an important source of government revenue collected to strengthen the surveillance mechanism over the people. The Christian missionaries opposed to the collection of Pilgrim Tax and described it as "inhuman, inpolitic and unchristian". In 1831, Lord William Bentick however supported the collection of Pilgrim Tax for the smooth conduct of religious rites, care and protection of pilgrims. But Charles Grant criticised the Company and accused it of patronising idolatry. In 1833, the Court of Directors banned the collection of Pilgrim Tax, ceased the interference of the British on the rituals, customs and the internal economic affairs of the temple. Further it said that the police

force required for the maintenance of peace and security of the pilgrims would be paid out of the general resources of the country. Act of 10 of 1840 abolished all the taxes and fees upon pilgrims. However the lands of the Temple were still under the control of the revenue authorities before it was finally transferred to the Superintendent of the Temple (the Raja of Khurda) in 1843 under the direction of the Court of Directors.

Thus legitimacy to the British rule in colonial Orissa was sought to be established by the East India Company by first locating the place of Jagannath and his temple in the hearts of Oriyas. The East India Company conspicuously brought the temple and its patron (the Raja of Khurda) within the broad framework of colonial political economy. The instrument of the 'Rule of Law' facilitated the task by enforcing rigorous surveillance over the subject population. The efforts to abolish and regulate the superstitious religious rituals displayed the benevolent paternalism of the alien ruler. The East India Company generated huge revenue from the vast landed properties of Jagannath and by collecting Pilgrim Tax which helped it in conducting the administration smoothly. It enabled colonial governmentality over the subject population through surveillance.

View from Below: State-Subject relationship from the periphery

The colonial policy in India brought a change in the indigenous social structure. While the ruling classes were removed from political power and were brought under colonial government, the emerging middle class was accommodated into colonial governance system. Many of them were given employment in the colonial civil and military establishment. From the letter written by Baxi Jagabandhu, it is very clear how he understood the political and legal subjectivity of the colonial government. He was not there either to fight against the British or to challenge the British authority over Orissa provided his immediate interests are fulfilled. For this reason, he described himself as a law abiding subject of the colonial government and appealed to the British paternalism. He tried to show his loyalty towards the British government. Here the two understanding of political and legal subjectivity merged. Along with this merger, it was also an indication of a process of isolation from the people in the capacity of a good and law abiding subject of the colonial government.

While the upper class and middle class understanding of a good legal subject isolated the people, the official discourse in this regard widened this process. This helped the British to stigmatize the indigenous people and carry out its civilising mission within the framework of 'rule of law'. Any intellectual study pertaining to the history will remain incomplete

without making a reference to the people and their role and responses. It is the important aspect of this state subject relationship formation in the 19th and 20th century Orissa. Therefore it is necessary to go into this aspect to understand the various dimensions of this relationship from below. Therefore the second half of this chapter examines the discursive strategies employed by the colonial government to constitute the understanding of both the ‘good’ and ‘bad’ legal subjects.

Social legislations: Identifying and categorising crimes and criminals

The colonial government’s strategy to bring the people under its control was materialised in India with the delivery of packaged product endowed with all ingredients to get hold of the people i.e. the colonial ‘**rule of law**’. The ‘rule of law’ with equality, justice rationality in theory as its basis while legitimised the colonial rule also allowed the upper classes to get immunity from it. The ‘rule of law’ was also manipulated and sometimes twisted to grant immunity to the upper class whose support was initially necessary for the British survival in India. But it was very stern and regressive while it was applied in the life of common people. The upper classes could use this law into their advantage as a result of their knowledge about the legal system and the political immunity enjoyed by them. It was not possible for the common, innocent and ignorant people to understand such a complex process of law which was out of their reach. This ignorance helped the colonial government and their political and legal subordinates in India to exploit the people in the name of a so called ‘equal and rational system of rule of law’.

Raja Rammohan Roy’s accounts and letters and petitions to the British government display the natives loyalty towards the British in India. Roy claimed that ‘the great body of natives of wealth and respectability’ supported the British in their struggle with the ‘Neighbouring powers’ (Marathas), ‘from a deep conviction that under the sway of that nation, their improvement, both mental and societal, would be promoted and their live, religion and property be secured’.²²⁹ The question of loyalty to the British rule was packaged within Roy’s understanding of the ‘legal subject’. Within this understanding of a good legal subject, any law and order problem disrupting the lives of the indigenous elite as well as the British rule was undesirable. Therefore the British dived to eliminate the law and order problem creating elements from the society. These law and order problem creating elements were characterised as ‘wild’, ‘uncivilised’ and a terror to the stability of the society. The

²²⁹Shashi Ahluwalia & Meenakshi Ahluwalia, “Raja Rammohan Roy and the Indian Renaissance”, 1992, South Asia Books, p-104

official discourse described their barbarity and their undesirable role in the society. The indigenous elite took the advantage to show off their status by successfully juxtaposing the lawless disloyalties of other communities with the law abiding loyalty of the elites.

Categorisation of crimes and criminals: The concept of ‘Collective Crime’.

There were two conditions that determined the nature of the colonial legal system. The first was that the colonial legal system had to be implanted in a space inhabited by subjects of different cultural understanding. Secondly the British officials had to implement the colonial rule of law by acquiring information from indigenous sources. The players between the British Raj and the ruled were the British administration and the elite section of the society. This resulted in an amalgamation of indigenous values and the British priorities. As a result of this amalgamation the elites assumed a different character in India. This section formed an important element for the construction of a social order by the British in India. This new social order created by the British consciously marginalised certain social groups. The conflict between the Raj and these social groups also determined the creation of this social order. Key to this exercise was the construction of the categories of ‘extraordinary crime’ and criminal groups. These were the crime as the British explained committed ‘collectively’. The strategies used for controlling the collective crime reveal much about the working of the colonial legal system.

The legal structure established by the criminal code in British India had much similarity with that of the English society, hence the rule of law. Alongside the legal structure that targeted the individuals, the British also developed a covert legal structure to deal with collective crime. Collective crime was defined as a crime involving a group of people behaving in ways defined by the state as anti-social and hence against the authority and interest of the state.²³⁰ Sandria Freitag has narrated how the British legal system created two realms to deal with law and order problem. One was with the individual and the other at collective realm. The British brought different regulations and structures to contain individual crime. The collective realm was taken more seriously as the British perceived collective crimes are directed against the state and a challenge to the authority. The first coordinated efforts to control collective crime occurred in the 1830s. It marked the imposition of British Raj in Orissa and India at large.

²³⁰Sandria Freitag, “Collective Crime and Authority in Northern India”, in A. Yang (Ed), *Crime and Criminality, Passages to Social History of British India*, 1985, University of Arizona Press, p-231

Collective crime refers to particular group or some people of the group committing a crime. The colonial government derived the conclusion that the group thus was criminal collectively. The legitimacy of this conclusion resulted from the fact that these groups came from the bottom of the society and are prone to crime. Their social origin 'explain' their marginality. In the nineteenth century the colonial government found that certain communities basically residing in the hilly tracts of Orissa could not be situated in the established colonial administrative and legal structures. They were described as deviant factors and had to be 'controlled'. The British therefore carefully moulded the colonial legal and penal institutions to bring these communities under the legal net. To deal with these aberrant elements, the colonial government introduced the "Criminal Tribes Act of 1871 or Act XXVII. Under this Act, the colonial government categorised certain communities as '*criminal*' and brought them under the legal and penal dragnet. This Act became an instrument in controlling '*criminal tribes*'. In Orissa, '*Meriah*' sacrifice was one such practice that secured the attention of the British. It quickly found its presence in the colonial discourse on '*Oriental Criminality*'. It was considered as an imminent threat to the law and order system in colonial Orissa. The CTA provided registration of all dictated criminal tribes and imposed restrictions on the movement of the members of such '*criminal tribes*'. Under the Act, the members of the tribes declared as criminal were to report to the police station at regular intervals. They required passes for travelling outside their settlement and the members without passes were imprisoned²³¹. Escaping from any settlement or reformatory invited imprisonment or fines or both.²³² "Defaulters"...were given imprisonment for one year on first conviction, two years on second conviction and to three years or a fine... or both on any subsequent conviction"²³³. The Criminal Tribes Act No XXVIII of 1871 gave the power to the Governor General to proclaim a tribe as 'criminal'. The administrative identification of a group as criminal was based on documentation. This documentation was prepared from anecdotal evidence provided by indigenous informants along with partial statistics to establish the criminal tendency of the group. Registration and surveillance and incarceration of the members of the criminal tribes proved to be effective strategies to control their criminal behaviour. In defining the groups as criminal, the British government also resorted to caste identity of the people. It gave rise to a legal characterization which rendered 'crime' a genetically transmitted trait and hindered the path of the English 'rule of law' in India.

²³¹CTA 1871, section 25, OSA,BBSR

²³² Ibid. section 20,2

²³³Ibid. section 22(1), 22(2).

This Act was amended in the year 1897 to make punishment more stringent going up to seven years of imprisonment and transportation of life²³⁴. Provisions were made to separate children of four to eighteen years of age from parents. These children were sent to the reformatories established solely for the children of declared criminal tribes and classes.²³⁵ The British colonial authority and the discourse of rule of law defined crime and criminality which were culture bound and contextual. In the words of J.A. Sharpe, “the law was a cultural and ideological force so widely diffused in English society as to inform the notions and actions of the population at large”.²³⁶ This force is ‘*the rule of law*’.

The administrative understanding of concepts like ‘Criminal Tribe’ was both genetic and cultural. Information for constructing such categories was provided by the indigenous informants which were then shaped by intellectuals from Europe. The description of the ‘tribe’ in local folklore, opinions of the District Magistrate and police chiefs, the frequency of arrest enacted against ‘tribe’ members, prejudices of local administrators, the elite allies of the British all reinforced the understanding and defining a certain tribe as ‘criminal’. Amalgamation of these sources, administrators created definitions of ‘Criminal Tribes’. Hence public opinion got legal recognition. The British compiled the knowledge about these groups without regard for the civil rights. Thus it camouflaged the true spirit of ‘rule of law’ that it sought to create. The emergence of a crusading zeal for reclaiming these ‘criminal souls’ and to integrate them in the mainstream society by some of the British officials and the Christian missionaries also reinforced this process. Prevention of the reproduction of more genetically criminal children and the integration into mainstream society was also another impetus to the process. Thus the target of the colonial government was to bring control over women.

Communications between the ‘political’ and the ‘religious’ domains was important instrument for establishing authority and legitimacy. The chiefs and Hindu kings were often giving royal patronage to these inhuman practices. The kingdom of Jeypore, the present day Koraput District was ruled by the dynasty of Jeypore Suryavamsies. They established power in the mid fifteenth century and retained it up to modern times. An important means by which the kings exercised authority over the indigenous population was through patronage of tribal goddess to be found in Rayagada- goddess Majhighariani. She was worshipped in the form of seven white stones. The largest of the seven stones was painted with vermilion to represent

²³⁴CTA amended in 1897, section 23.1 and 23.2, OSA, BBSR

²³⁵ Ibid, Sections 16 and 17

²³⁶J.A. Sharpe, “Crime in Early Modern England, 1550-1750”, 1999, Longman, p-143

her head. Sacrifice of a human being on the eighth day of Durgapuja²³⁷ was an established practice there. The priests of the temple were the low ranking caste of Paiks. They were also the king's militia. It was believed that the human sacrifice will bring good fortune and well being of its inhabitants, increase the fertility of the land and end the droughts and other calamities in the life of an individual or of the community as a whole. The king was nominally subordinate to Gajapati kings of Orissa. Others goddess where human sacrifice were performed included Khambeswari in Aska, Thakurani in Berhampur and MohuriKalua near Berhampur.²³⁸ With the establishment of the British legal system these practices were held as barbaric and the local political authority was held responsible to curb such practices. The local king submitted himself to the British authority. At the same time they also liaised with the practice to win over the trust and support of their people. This was essential to protect their authority and power one one hand and to win the confidence of the colonial authority on the other. Thus the local elites played double games by pretending to be good legal subjects of the British on one hand and retaining the support of the people on the other. In both the games they had nothing to lose and the colonial legal machinery fell heavily on the innocent people.

Dealing with robbers was the pressing issue for the enforcement of law and orders. Dacoits were described by Warren Hastings "as a race of outlaws who live from father to son in a state of warfare against society, plundering and burning villages and murdering the villagers".²³⁹ The Committee of Circuit in 1772 said that they were "not like robbers in England...they are robbers by profession and even by birth and are formed into regular communities".²⁴⁰ Warren Hastings reports that the pilgrim route to Puri was full of *Sannyasis* who were robbers in disguise and looted the villages which they passed through.²⁴¹ Regarding the atrocities of the dacoits over the people, Lord Minto had observed: "if a whole village was destroyed, not a man was found to complain. If a family was half murdered and half tortured, the tortured survivors could not be prevailed upon to appear against the criminals. Men have been found with their limbs and half the flesh of their bodies consumed by slow fire, which persisted in saying that they had fallen into their own fire or otherwise denying all knowledge of the event that could tend to the conviction or detection of the offenders. They

²³⁷ Dussehra: 10 days festival celebrated to worship Goddess Durga

²³⁸ B. Schnepel, "Durga and the King, Ethno-historical Aspects of Politico- Ritual life in a South Orissa Kingdom", *The Journal of the Royal Anthropological Institute*, Vol-1 No-1, March 1995, 145-166

²³⁹ Ibid., p-208

²⁴⁰ O. Malley "History Bengal, Bihar and Orissa under British Rule", 1925, Bengal Secretariat Book Depot, Calcutta, p-209

²⁴¹ Ibid. P-213

knew if they spoke, they would, either themselves or the remaining members of their families be despatched the same evening”.²⁴²

The *Zamindars* had very commonly no other idea of an estate than as a field to plunder. The leaders of the dacoits find it in their interest to conciliate this class of people and by a participation in the plunder or by other inducements, obtain a secure refuge and protection in their estates.²⁴³ Cornwallis observed that the abuses (dacoits, robbery) “*disgraceful to government, ruinous to commerce and indeed destructive to all civil society, needed to be remedied*”.²⁴⁴ In November 1789 Cornwallis sent a questionnaire to 25 district magistrates of Bengal of the nine queries, one specifically related to the efficiency of existing police arrangements. Most of the answers harped on the abuses in the *Nizamat* branch of the administration. They referred to the defects inherent in the *Muhammadan* criminal law then in force. “*the power in the plaintiff to withdraw the prosecution, the dependence on the expounders of the law, the corruption of necessitous officers the in admission of equality by testimony, the frequent disproportion of sentence to crime, the horrid custom of torture and impalement, the ill-judged punishment of mutilation, the absurd frequency of perpetual imprisonment, the insufficiency of salary to support the dignity and reward the integrity of the judge*”.²⁴⁵ These many magistrates believed, were mainly responsible for the alarming spectre of dacoity and related crimes. The inefficiency of the *Muhammadan* law developed into a general agreement along racial lines- “*the natives in general wrote the collector of Dacca district, “are deemed so void of integrity and prone to corruption that I am clearly of opinion, they are by no means fit to have the sole authority and control entrusted to them*”.²⁴⁶ Regarding the involvement of the *Zamindars* in the crime, the Magistrates of Dacca and Sylhet categorically asserted that “*no dacoit plundered without the knowledge and support of Zamindars or their men*”.²⁴⁷

Many of the European travellers have alleged the prevailing dacoity in Orissa. At Bhadrak weary pilgrims, who slept in the mango groves woke up often stark naked being

²⁴² Ibid. p-306

²⁴³ Ibid. p-308

²⁴⁴ Letters to Court, 2 August, 1789 and 17 November, 1790 quoted in B.Chattopadhyay, “Crime and Control in Early Colonial Bengal, 1770-1860” 2000, K.P. Bagchi & Company, Calcutta, p- 35

²⁴⁵ Letters to Court, 2 August, 1789 and 17 November, 1790 quoted in Chattopadhyay, B. (2000) “Crime and Control in Early Colonial Bengal, 1770-1860” K.P. Bagchi & Company, Calcutta, p- 35

²⁴⁶ A. Aspinall, “Cornwallis in Bengal”, 1931, Manchester, p-47

²⁴⁷ B. Chattopadhyay, “Crime and Control in Early Colonial Bengal, 1770-1860” 2000, K.P. Bagchi & Company, Calcutta, p- 36

robbed under the influence of an intoxicating preparation put into their noses in order to make them senseless. Such things were generally attributed to some supernatural power.²⁴⁸ The roads were not free from the nuisance of robbers and thieves. Robbers and thieves were numerous at Bhadrak where pilgrims were often robbed.²⁴⁹ The robbers were so daring that the baggages of the British army under Colonel Pearse marching towards Madras were once plundered.²⁵⁰

Mudoji Bhonsla once complained that during the time of Hastings a sum of Rs.22,000 sent by the brokers of Cuttack to Murshidabad was looted and taken away in the midst of journey at Bhadrak.²⁵¹ Motte wrote that at Bhadrak when the weary pilgrims went to sleep they woke up stark naked. This was because the people of this part applied some intoxicating preparations into the nostrils of the sleepers and when they went senseless their belongings were stolen away.²⁵² Robbers were often found in the hill tracts from Komeriver to Barasambar. At times plunderers were cutting off *Daks*²⁵³ at Jajpur. At Barmal pass if the travellers did not pay presents to the mountaineers they very often felled the tree on the narrow way and forced the travellers to purchase assistance from them.²⁵⁴

The colonial literature refers to bandits known as ‘thugs’ as the serious most law and order problem. The term ‘thug’ cannot be defined with precision. It sometimes refers to people who ritually strangled their victims, who simply robbed and killed and sometimes poisoned their victim and even stole children. They had local support as they serve important part of the military force of the Zamindars. The Zamindars also benefitted from them who share a portion of their looted. To deal with this pressing issue the British developed an alternate legal structure. It established a special centralized police force to deal with the crime. This alternate legal instrument also prescribed special treatment in court and special techniques of investigation. The formulation of central legislations and special police force were the attempts to control through policing and a new method for imposing the British notions of authority on Indian society. As Freitag has argued that the aim of this new

²⁴⁸ Early European Travellers in the Nagpur Territories, 1930, Govt. Press, Nagpur, p-41 <https://archive.org/details/in.ernet.dli.2015.62005>

²⁴⁹ Ibid. P-10,15, 30, 53

²⁵⁰ B.C.Roy, “Orissa under Marathas, 1751-1803”, 1960, Kitab Mahal, Allahabad, p-158

²⁵¹ Ibid.

²⁵² Early European Travellers in the Nagpur Territories, 1930, Govt. Press, Nagpur, p-10, <https://archive.org/details/in.ernet.dli.2015.62005>

²⁵³ Dak: Postal system

²⁵⁴ Early European Travellers in the Nagpur Territories, 1930, Govt. Press, Nagpur, p-25 & 53, <https://archive.org/details/in.ernet.dli.2015.62005>

alternative structure was neither to prevent or protect nor to safeguards....it was a convincing demonstration of the strength and capacity of British authority as exercised over groups of criminals.²⁵⁵

Construction of categories of crime and criminals was central to the functioning of the new social order charted by the British. It gave rise to the concept of the appropriate social behaviour to be followed by the indigenous elite along with a definition of the crime that marginalized the activities of certain groups. The British administration created new method of suppression of this criminal activities. They sometimes tampered with techniques and soften the repressive measures to control crime. Therefore certain groups now became criminal in the hands of an alien government trying to penetrate deeply into the Indian society. The colonial government exercised control through explicit working of special police force as well as through the pseudo-scientific descriptions of group activities and beliefs.²⁵⁶ This knowledge was utilized to develop alternative structure of law to vindicate extraordinary measures.

Suppression and abolition of social evils was another aspect of the formation of the state-subject relationship. Like India, the 19th century Orissa was also predominated by some of the most inhuman social practices having the sanction of religion and religious scriptures. The practices like, Sati, female infanticide, human sacrifices were some of the manifestations of these ugly practices. Orissa in 19th century comprised of two distinct political tracts. They were the Mughalbandi areas under the direct control of the British and the Gadjats. Mughalbandi covered an area of about one-third of the then province while the Gadjats covered about the remaining two-thirds area of the province and were ruled by Tributary chiefs. The native chiefs called rajas were permitted by the British to rule over their respective areas with absolute control over their subjects. The Rajas were very oppressive and exaction and repression was the standard norms of their administration. Oppressiveness of the Rajas of Athamalik, Baud and Mayurbhanja went to such an extent that agitations among the subjects occurred in 1862, 1863 and 1866 respectively.

There was a sharp contrast between the Mughalbandi areas and the Gadjats. While the British administration undertook various measures for the development of its territories in Orissa (such as road, transport, communication, education etc.) the Rajas of Gadjats thought

²⁵⁵ Sandria Freitag, "Collective Crime and Authority in Northern India", in A. Yang (Ed), *Crime and Criminality, Passages to Social History of British India*, 1985, University of Arizona Press, p-237

²⁵⁶ Ibid. 243

that such developments would make their subjects disloyal and disobedient.²⁵⁷ Society had drifted into many inhuman practices like sati²⁵⁸, meriah²⁵⁹ (humansacrifice) female infanticide, child marriage, polygamy etc. Moreover, when compared to the southern parts of Orissa, the northern part was in a better position. Meriah sacrifice and female infanticide were prevalent among two different sections of the Kondhs of the tribal community. During the nineteenth century, they inhabited in some parts of the districts of Ganjam and Vizagpatam in the Madras Presidency and the Tributary States of Baud, Daspalla and Nayagarh, Angul and Kondhamal. They were also found in the northern part of Kalahandi and the south of Patna.²⁶⁰ The Kondhs who practised female infanticide considered the ‘sun’ as the supreme god but, on the other hand, the Khonds practising Meriah sacrifice accepted the ‘earth’ as their supreme goddess. The horrid practice of female infanticide was widely prevalent among the Boora sect of Kondhs.²⁶¹ The Khonds believed in offering Meriah sacrifice for propitiating the deity for the maintenance of the fertility of the soil and to avert diseases and natural calamities. The cruel practice was more prevalent in the Taripenu sect of the Kondhs.²⁶² The Kondhs buried the flesh of the victims in the soil which had the power of fertilising the land. In case of the turmeric crop, the Kondhs had a belief that the tears of the victims brought rains and the blood of the victims caused redness of the turmeric. The Oriya hill rajas also performed human sacrifice to get divine blessings when they assumed power or wished to avert danger.²⁶³ To abolish this inhuman practice, the British followed the policy of persuasion and repression. Captain Macpherson of the Madras Government service was selected to become the Agent of the Government of India to work for the meriah Agency. In 1861, the Meriah Agency was abolished.

In 1836, G.E. Russell reported that the killing of female children among the tribes to the westward of Suruda.²⁶⁴ The British Government abolished this social evil by following two methods. The first method was the introduction of a system of registration in the

²⁵⁷Utkal Dipika, 23rd Septemeber, 1871

²⁵⁸ Sati – the rite of burning the widow along with the corpse of her husband

²⁵⁹Meriah – the name generally applied to the victim and hence to the human sacrifice of the Kondhas.

²⁶⁰D.Swaro, “The Christian Missionary Activities among the Kondhs of Orissa in Nineteenth Century-A Brief Study” 1987, *Journal of Orissan History*, vol-VII, no-1, p-46

²⁶¹Report of Meriah Agents, Madras, 1885, p-11; Report of Macpherson, 24.4.1842, OSA, BBSR

²⁶²J. Campbell, “A Personal Narrative of Thirteen Years Service among the Wild Tribes of Khondistan for the suppression of Human Sacrifice” 1864, London, P-141

²⁶³S.C. Padhi, “British Relation with the chiefs and Rajas of Orissa (1803-1858)”, 1986, Calcutta, p-180

²⁶⁴Selections from records of Government (Madras), Russell’s Report, Vol-II, p-28, 12th August 1836, OSA, BBSR

infanticide tracts to keep their attention on the girls and to prevent killing. The second method was the infliction of some exemplary punishment on those who were instigating others to commit female infanticide. In this respect, one Dombo was sentenced to imprisonment with labour in irons.²⁶⁵ The infanticide Act of 1870 aimed to abolish the practice of female infanticide. The Act directed the government to take Censuses, register births, marriages and deaths. It also prescribed punishments such as fines imprisonment, transportation and even deaths for female infanticide. It placed more emphasis on bringing the perpetrators to justice. The male elders of the household and village authorities were directed to report the crime. They were also given punishment for violation of the law.

Initially the British adopted a cautious attitude towards these socio-religious practices. This liberal policy of the British government was criticised by the Christian Missionaries who had infiltrated to Orissa. The Missionaries took active interest in the establishment and management of schools in these areas. They had set up stations and sub-stations in different parts of Orissa division. Though initially reluctant, the British government adopted some appropriate scientific measures and made enactment of laws to this effect. The reformist policy of the British government was followed very cautiously because of the apprehension of the law and order problem. The government instructed the officers to mobilise the victims by gentle persuasions.²⁶⁶ On one occasion of a 'Sati' case at Puri on 5th November 1816, the Magistrate tried to persuade the intended woman to desist herself but his trial was of no avail.²⁶⁷ In 1812 the government formed regulations on the subject and supplemented them by others in 1815 and 1817. The regulation was meant to prevent the 'Satis' who were either of tender age or pregnant or had infant children. The regulation also made it criminal to compel or persuade a widow to become sati or to drug or intoxicate her for this evil purpose.²⁶⁸ The regulation XVII was passed on 4 December 1829. It made Sati illegal and punishable by criminal courts. In 1839, the wife of Mayurbhanja Raja's younger brother and the second wife of Keonjhar raja became 'Satis'. In the year 1841, the British government sent parwanas to all the Tributary chiefs. In 1842, engagements were made with the chiefs of Tributary Mahals to prevent the practice of 'Sati' in their territories and would

²⁶⁵Board Proceedings (Judicial) MacNeill to W.Knox, Acting Agent in Ganjam, 4 March 1858, Orissa State Archives, BBSR

²⁶⁶ Board Proceedings (Judicial), 30 July 1819, Chief Secretary to Government to the Registrar of NizamatAdalat, Orissa State Archives, BBSR

²⁶⁷Papers relating to East India Affairs, viz. Hindoo Widows and Voluntary Immolations, Ordered by the House of Commons to be Printed, 10 July 1821, p-21, OSA, BBSR

²⁶⁸P.Mukherjee, "History of Orissa in the 19th century, 1964, Utkal University, Orissa, p-500

report the matter to the superintendent. But after the death of Khandapara raja on 26th January 1842, two queens and two slave girls sacrificed themselves. Two principal officers of the raja were imprisoned.²⁶⁹ Mills believed that the ‘terror of punishment’ would check the frequency of ‘Sati’ even in those haunts of superstition.²⁷⁰

The traditional beliefs and age old superstitions of people like ‘witchcraft’ were also brought under the net of criminal law. For instance, the outbreak of small pox in early 1870s from Gangpur (a princely state) was attributed to witches or to an evil spirit. Evidence from early missionary reports and colonial officials suggest that the tribals of India suffered from a wide range of diseases such as malaria, tuberculosis, smallpox, pneumonia, dysentery etc. To cure these diseases they were following various indigenous practices. The village priests were called to find Dakans who located four women. These women were ritually tortured who out of physical pain admitted of being witches. Among them two women died and the other two were released with a warning. The most striking fact was that the Raja was fined Rs. 2000 and rigorous imprisonment for a year for his complicit with the crime. But he was not sent to common jail due to his elite status and detained in Ranchi in Bihar.²⁷¹

Another term that ought to explain the formation of state-subject relationship is the ‘criminal lunatics’. Earlier, the British Raj has experienced the gradual development on lunacy law in their home country. The experiment done there was also applied to the colonies of the British Empire. A new realm of state-subject relationship was explored through colonial rule of law. It was the ‘mental asylum’ specifically designed to deal with criminal lunatics to keep them under surveillance. In this the colonial authorities combined the health and crime in order to establish complete control of the prisoner. In fact the colonial totalitarianism was completed by the Lunacy Act. The colonial health establishment was linked to colonial rule of law. Both of them together completed the state-subject relationship further. The criminal lunacy Act, demonstrated that the person suffering from insanity makes him or her legally irresponsible. At the same time the accused person also became unfit to plead at his trial. The colonial rule of law skilfully transformed people into criminal lunatics. The debate on insanity was going on in England in the seventeenth and eighteenth

²⁶⁹Board of Proceedings , Revenue, no-117, 15th April 1842, Mill’s to the Secretary to Government, OSA, BBSR

²⁷⁰ Selections from Records of Government (Bengal), 1867, XXIVB, no-3, Mill’s Minute on the Tributary Mahals, 23rd January 1847, p-62, OSA, BBSR

²⁷¹ Biswamoy Pati, “Situating Social History, Orissa (1800-1997)”, Orient Longman Limited, New Delhi, 2001, p-9

century. The debate centred on the question whether to punish a person suffering from insanity. Whether punishing such a person would serve the purpose of law i.e. to deter others from committing crime was the discussion in the official sphere. The question of the legal responsibility of an alleged insane person was highly debated. Till 1840, the law for insanity 'was not guilty on the ground of insanity'. There was a tremendous outburst of popular fury that declared the law was unsafe. A debate ensued and the jury demanded medical evidence from the prosecution determining the exact timing of the insanity, the reason of insanity etc. The exact level of insanity was all examined before delivering the judgement on the crime by an insane person. Sir James Stephen defined mental disease as something which deprives a person of the power of controlling his actions. At the time of the act then he is 'guilty but insane' - mean that he would be confined as a lunatic and would not be executed. In 1923, a committee was appointed by the Lord Chancellor to reconsider the M. Naughton Rules. According to the rules it was decided that "If a person intends to do a criminal act and has the capacity to know what the act is.....then he commits a crime."

The Indian Lunacy Act was passed in the year 1912. It defined the Criminal Lunatic "as a person for whose detention in or removal to an asylum, jail or other place of safe custody, an order has been made in accordance with the provisions of Section 330 or 335 of the Criminal Procedure Code, 1861, of section 30 of Prisoners Act, 1911".²⁷² Lunatic means a person of unsound mind. The Act made detailed provision for identification, medical examination, and treatment of lunatics who went insane while serving their sentences in jails. But many a time the provisions of the Act were blatantly violated by the British administration. The police used their power arbitrarily to capture any person and declare him or her as lunatic and send them to the mental asylum. The in house prisoners after serving long years of imprisonment were declared insane if they showed any kind of social detachment. An example can be sighted here to point out to the unscientific identification of prisoners as insane by the British authorities.

Mussamat Topai, daughter of Bansi Behera, village Anantapur, Police station- Aligarh State, District-Anugul was convicted of an offence under Section 302 of Indian penal Code and sentenced to transportation for life by the Sessions Judge, Anugul on 28.01.1922. She was confined in the Bhagalpur jail where she became insane. The facts indicating insanity stated by the Superintendent and the Medical Officer of the Bhagalpur Central jail was as follows "she does not take her food properly, she

²⁷²Indian Lunacy Act, Chapter-1, Section 3, Sub Section 4.

sometimes eats about nothing for days, she talks to her own and talks to no one else. She is possibly fricidal”. The supposed views for her insanity were repentance for the killing of her son. On the recommendation of the Superintendent and the Medical Officer of the jail, this female prisoner MussamatTopai was transferred Patna Medical Hospital by a warrant on 24.01.1925 under section 30 (1) of the Prisoners Act III of 1900. The terms of the warrant was that she be kept in the mental hospital in safe custody and under proper medical treatment until her recovery or the expiration of her sentence which ever shall first take place when a report on the state of the prisoners mind be made by the authorities of the mental hospital for the further order of Government.²⁷³

Thus there was no scientific analysis of the state of mind of the prisoner. No scientific evidence was provided by the medical officer to prove that she is insane rather than a rough analysis of her social behaviour which might have resulted from her mental depression.

Similarly UchhabSahu, a criminal lunatic, village- Blanga, Police Station- Nimapara, District-Puri was convicted of attempt and conspiracy to murder was awarded death sentence. This was later commuted to transportation for life due to his insanity. His insanity was determined by his indifferent behaviour. The Medical Officer argued that the prisoner was quiet, muttering to himself, keeping aloof, melancholic, nonviolent sans scientific evidences.²⁷⁴ Thus no needful inquiry about insanity was made and medical testimony was not taken. Sometimes it was stigmatized and mainly directed towards the lower caste and the poor. Further consent of the prisoner or any of his or her relatives was rarely taken to transfer them to mental asylums. The Prisoners Act of 1911 further strengthened the rules and made the criminal tribes and classes to register their finger prints in the local police station so that the tracking down of an absconding criminal could become easier.²⁷⁵ Therefore the colonial government registered them, subjected them to surveillance and finger-printed to control the aberrant groups who might challenge the authority of the state by following their own socio-religious activities which the government had declared as ‘criminal’.

It is difficult to understand the nature of indigenous resistance towards the colonial legal intervention in the age old socio-cultural practices due to absence of records. The tribal groups of Orissa as well as other marginal social groups are largely absent from historical

²⁷³ Home Department, Law and Commerce (Judicial), Govt. of Bihar and Orissa, File no, VI 18/36, OSA

²⁷⁴ Ibid. File No. I& A-144, “Report on the Medical Condition of criminal lunatic Uchhab Sahu,” OSA, BBSR.

²⁷⁵ CTA amended in 1911, section 12.

records. Their understanding of the new state machinery could be retrieved to some extent from the literary world. I have used here a short story called '*Shikar*' written by Bhagabati Charan Panigrahy, a Marxist leader from Orissa which explores the myth of 'equality of rule of law' more gracefully. The hero of the story is Ghinua, an innocent forest dweller, who was tortured by a wealthy man namely Gobind Sardar. Gobind Sardar was the manifestation of the repressiveness of the structure created by the colonial state in the hitherto inaccessible hilly areas, thus exploiting the innocent tribals. Untouched by the progress and modernity outside their domain, these people depended upon the forests for their every need of life. The colonial land system brought outsiders like moneylenders, new Zamindars and middlemen into these areas, thus creating new power structures. This new power structures represented by moneylenders, Zamindars etc. exploited the tribals and snatched away their basic means of life i.e. their land. The colonial forest laws also deprived them of their rights on forest and forest produce. Along with the economic exploitation, the socio-cultural exploitation of the tribals in the hands of these outsiders continued uninterruptedly as this new power structures were well acquainted in twisting the colonial rules and regulations in their favour.

The story of "Shikar" critically portrays the language of the colonial law and the subaltern's response to it²⁷⁶. The protagonist of the story was a santhal guy called "Ghinua" an expert in hunting. The British officers used to reward him many times for his expertise. One day he killed Govinda Sardar, the cruellest and corrupt person and presented his decapitated head to the Deputy Commissioner and asked for a reward. Ghinua's innocent mind could not comprehend the turn of events when he was arrested with hands and legs chained. According to Ghinua, Govind Sardar had inflicted unbearable pain on the local people by snatching away their land and property, killed many people and had destroyed many families including rape of women. One day he was trying to rape Ghinua's wife while Ghinua confronted him and killed him with his axe. To Ghinua's sense of justice he had killed the greatest animal on the earth Govind Sardar and reduced the burden of injustice from this earth. He tried to justify his sense of justice when he thinks about Dora who was rewarded with 500 rupees for killing Jhapat Singh who had united the tribals against the British govt. and looted the government treasury and killed some soldiers. To him Jhapat Singh was a good fellow for he had neither looted anybody nor casted bad eye on any women. On the day of trial, he briefed everything indiscreetly before the judge. He killed Govind Sardar and put an end to his tyranny. Govind Sardar was a more dangerous man than Jhapat

²⁷⁶Shasini, S.R. "SHIKAR: A Literary Representation of State Power through Colonial Rule of Law", 2020, *Shodhak*, Vol-50, Part-C.

Singh for he committed heinous crimes. Thus Ghinua deserved a better deal because he killed a more dreaded criminal, Govind Sardar.

The challenge to the state authority brought into play the machinery of the rule of law as is delineated in the capture of Jhapat Singh and reward to Dora²⁷⁷. The lawyers, the judges and the Commissioner took their role as protector of colonial rule of law as well as the colonial state who actively aided the creation and codification of colonial rules and practices. Ghinua who silently protested against the partiality of the colonial rule of law was deemed as a disruptive element impeding the progress of the colonial state. Hierarchy was sanctioned within the colonial legal system and the requirements of the legal processes set in motion a reworking of the state power over the powerless. The mediation of the law courts highlighted the presence of the state in the lives of communities hitherto unexposed to the British legal system. For them, the law courts were an alien legality and institutions of state oppression which they were not used to under the pre-colonial regimes due to the marginal presence of the state.

The Middle Class Intelligenstia and the Colonial State

The introduction of the western English education and the colonial administrative and other infrastructures contributed to the growth of an 'Odia public sphere'. The 1866 famine of Orissa as well as other unpopular economic policies of the British accentuated this process. The newly western educated middle class Oriyas took the leadership of this public sphere. The 1860s and 1870s Orissa witnessed an anti-Benagli agitation which culminated in the demand for separate linguistic and administrative rights for Oriya speaking people. In the year 1903, the Utkal Union Conference or the Utkal Sammilani was established to represent Odia interests to the colonial state. It consisted mainly the native princely elites as well as the English educated Oriya middle class. Initially the Utkal Sammilani refrained from politics and anti-British activities but by 1920s politics became its central praxis to fulfill the demands of the Oriyas. It is very important to understand the tone of this new class who dominated the Oriya public sphere during this period. The leaders of the organization displayed their loyalty towards the British by using the concepts like 'British Raja', 'Odia Praja' and 'Rajaniti'. 'Rajaniti' according to them was the ethics of governance which the British possessed.²⁷⁸ An article written in 1868 explained the development of a subject under different political regimes.

²⁷⁷Ibid.

²⁷⁸ Pritipushpa Mishra, "Language and the Making of Modern India: Nationalism and the Vernacular in Colonial Odisha, 1803-1956", 2020, Cambridge University Press, p-108

“During the rule of the Hindu Rajas, the Praja were in the infancy. They entered into the phase of early education under the Musalman rulers. In both the case the Praja were unaware of their wants. Under the rule of the British, the Praja have attained their youth where they have to work for their interests”.²⁷⁹

This narrative on the development of a ‘Praja’ sounds distinctly liberal and loyal. The early leadership of Orissa was distinctly loyal towards the colonial state. This is quite evident when the Utkal Sammilani barred all discussions on political and religious issues and criticisms on government activities.²⁸⁰ It published a statement that Oriya people were not yet ready for political revolution.²⁸¹ However despite political denial the organization served as a site for the emergence of the political subject. The middle class loyalty towards the colonial state was evident from the argument advocated by Raja Ramachandra Bhanja Deo, king of Mayurbhanja. He recognised governance to be the prerogative of the colonial state in the first annual meeting of the Utkal Sammilani.²⁸² Infact he argued that the earlier Muslim and Maratharulers misruled the state and the British Raja lived upto the responsibilities of a ruler.

During the course of the Swadeshi movement it was untenable for the organization to maintain its apolitical stance. It came under severe criticism when it banned the singing of Vande Mataram in its meeting in 1908.²⁸³ Madhusudan Das a prominent liberal leader of the organization responded to such criticism by saying that political reform should be attained by ‘moral not by physical force’.²⁸⁴ To prove his point he came up with the idea of an alternate politics called ‘Prajniti’. Under this he asked Oriyas to educate themselves, identify their interests, the interests of their community as well as the interests of India and to work towards the fulfilment of these interests not by criticising the colonial government but by constructively presenting the problem before them. This is partial politics according to Das or the ‘Prajniti’ of the colonized Praja which opened up a new understanding of subjecthood. By doing this he accommodated the critics of the Sammilani as well as maintained distance from anti-colonial politics.

²⁷⁹ Anonymous “Samaj Unnatira Chesta”, Utkal Dipika, November 14, 1868 reprinted in Sudhakar Pattanaik (ed) “Samabad Patrare Odishara Katha”, 1972, Granth Mandira, Cuttack, p-97-98

²⁸⁰ Debendra Kumar Das (ed), “Utkal Sammilani (1903-1936), 2005, Pragati Utkal Sangha, Rourkela, p- 29

²⁸¹ Ibid. p-43

²⁸² Pritipushpa Mishra, “Language and the Making of Modern India: Nationalism and the Vernacular in Colonial Odisha, 1803-1956”, 2020, Cambridge University Press, p- 115

²⁸³ Ibid. p-125

²⁸⁴ Utkal Dipika, January 18, 1908

However after 1908, the Sammilani and its principles came under severe attack from the young radical leaders such as Gopabandhu Das, Nabakrushna Choudhury, Harekrushna Mahtab, Nilakantha Das, Godavarish Mishra, Jagabandhu Singh etc. They did not agree with the positive attitude of the Sammilani towards the colonial state. While the antipolitical segments saw politics as a betrayal of popular interests and the development of the colonized can only happen through elite alliance with the colonial state the propolitical groups argued that political rights were crucial for securing economic progress. In the conflict between the two, the leadership of the Sammilani was captured by the new radical leaders. By 1920 this leadership dominated the Sammilani and a new relationship was established between the colonized and the colonial rulers. This relationship transformed the 'Odia Praja' into 'Odia Nagarika' or Citizen and the platform was provided by the colonial institutions of control. The next chapter of my thesis dwells into a deeper understanding of this transformation by dispelling the fear towards the colonial rule of law, the courts, the jails and the penal practices.

Hence the interaction between the colonial government and the Oriyas took place at three levels i.e. interaction with the elites and the upper class, the interaction with the lower strata of the society and the interaction with the western educated middle class. The upper class elites played hypocritical politics. They were still yearning for the precolonial social and political order and glorified it. But they had to accept the British rule to protect their skin mostly their hereditary power and authority. Most of them embraced colonial rule to protect their interest and power and in turn became the most trusted and loyal subjects of the British. At the lower level, the colonial government rooted out traditional beliefs and practices through the application of rule of law. These were considered by these people as their common religious property. The Oriyas were exposed to new ideological, social and judicial pressures. The colonial government dived to build a socio-cultural, politico-economic and legal structures by making identities more homogenized making a shift away from earlier periods of heterogeneous and diversified forms of identities. The present chapter examines the various forces used by the colonial government which marked a departure from the earlier pluralist settings. The homogenized apparatus of rule of law inaugurated a perpetual state of ideological conflict among diverse interests and contributed to the reproduction of stereotypes. However, the interaction of the western educated middle class with the colonial government was unique. Created by the colonial government, this class played a significant role in securing legitimacy for the colonial state. They appreciated the colonial rule, its

administrative structures (particularly the 'rule of law' which guaranteed protection of life and property) its western scientific education and mobilized legitimacy for colonial rule in the capacity of good law abiding subjects. However they became anti-colonial in their liberal aspiration for power sharing and securing political rights towards the beginning of the 20th century. They came to be regarded as disloyal Babus in the colonial discourse. Through this changing politics of the middle class, the subjecthood got transformed into Citizenship and reflected itself prominently by violation of colonial rule of law.

Chapter: V

The Changing contours of Relationship: From Subject to Citizens

It is the weaknesses of the traditional institutions that facilitated the colonial conquest of India and subsequently the colonial hegemonisation. The intellectual awakening of Indian society in the 19th century got engrossed with an ideological and cultural battle while traditional culture was found inadequate. Cultural hegemonisation destroyed the traditional itself. Hence a struggle against both that shaped the intellectual awakening of the 19th century. The objective conditions created by colonial rule facilitated the formation of an intellectual community cutting across regional, religious and caste barriers. This bond was strengthened during the active phase of freedom struggle. The socio-cultural and administrative undertakings during the period ended the individual isolation and established communication links that brought the leaders together at an all Indian platform forging an uniform identity i.e. Indian. Though this integration was not identical but they were becoming part of a community committed to the transformation of the society. The British administration established a state structure in Orissa that was highly centralised while maintaining their superiority and alienness. Westernisation gave birth to forces which were mutually at cross purposes. On the one hand when it appreciated westernisation, on the other hand it gave birth to nationalism. For ex- the introduction of printing made possible the transmission of not only modern knowledge but also the glory of our ancient heritage. Indians were increasingly embracing British authority as a result of the reformation of the Indian social order in nineteenth century. They recognised the colonial state's rights promote its own definition of moral order.

The 19th century Orissa witnessed the formation of local and regional community identities. This community eventually transformed itself into a national community during the course of the freedom struggle. This intellectual community was initially involved in socio-cultural issues and later on developed its interest in political matters. It constantly challenged the colonial authority and its ideology in order to make way for the liberation of the country from colonial rule. The British colonial policies played a significant role to generate a public sphere in India. Sandria Freitag has noted that instead of a direct relationship, the British state relied on a 'representational mode of governance'²⁸⁵ As a result the colonial governance

²⁸⁵ S. Freitag, "Collective Action and Community: Public Arenas and the Development of Communalism in North India", 1990, Berkley University Press, p-191-192

had chosen certain individuals as the representatives of certain communities and regions. The representative mode of governance ensured that the native elites as the legitimate representatives of this model. In this public sphere people participated through public opinion. Meetings, public speeches, political gatherings, newspapers, magazines etc. served as the medium of sustaining that public sphere. The intellectual community in colonial India was deeply influenced by the bourgeois liberal ideology. The early nationalists were swayed by the western ideas filtering through the colonial ideal apparatus.²⁸⁶ Thus the early critiques of colonial rule held the British rule as a divine dispensation. They welcomed colonialism as a carrier of liberal, democratic and constitutional principles. Dadabhai Naoroji and Buxi Jagabandhu's characterisation of colonial rule as un-British were expressions of this dispensation. But many of them were attracted towards Marxism after 1920s.²⁸⁷

The Beginning of the Transformation in Oriya society

The introduction of English education had produced a generation of visionaries with critical outlook. Circulation of information through publication of books, periodicals, newspapers, magazines etc. had brought a stir in the close and dormant Oriya society. The 1857 revolt as well as the subsequent events like the Great famine of 1866 had already ignited the passion for patriotism in the hearts of Oriyas. The spirit of humanism, liberty, equality had generated a sense of consciousness among educated Oriyas who raised their voice against social wrongs and inhuman practices. The growth of education contributed to a new stream of literature produced during the period inspired by the spirit of liberty and equality. The literature marked by the jugglery of words, theology, scholasticism, mythology and sensuousness gave way to the rise of a form of literature that focussed on human being, their misery, rationality etc.²⁸⁸ Apart from patriotism, realistic and reflective thinking, social awareness, love for nature and humanitarian issues etc. formed important themes of these writings. The Oriya patriotism as reflected in literary activities first started with the fight to preserve its language. Oriyas were reduced into exploited minorities by being attached to three different provinces. The writings of Radhanath Ray, Fakir Mohan Senapati, Gangadhar Meher, Madhusudan Das, Nandakishore Bala brought new social and cultural values before the Oriyas. Not only they brought a new literary tradition but also engaged in the social and cultural reforms of Oriyas. In the beginning of twentieth century, a movement to build a new

²⁸⁶Ibid., p-2117

²⁸⁷K.N.Panikar, "Culture and Ideology: Contradictions in Intellectual transformation of colonial society in India", 1987, *EPW*, Vol-22, No-49, p-2116

²⁸⁸The literature of Dinakrushna and Upendra Bhanj comes under this category.

Orissa as well as a new literary movement began under the leadership of Pandit Gopabandhu Das. His writings called for dedication, self-sacrifice for the country, compassionate feeling for the poor and building a robust Indian nation.

*Let my body mingle with the earth of this country
And my countrymen walk on me
And the depressions on the path of 'Swaraj'
Be made even with my flesh and bones*²⁸⁹

His bold and candid messages imbibed a spirit of freedom in the reign of terror created by the colonial government. He could foresee an independent Indian nation under people's government and the end of colonial and alien oppressive rule. The writers like Banchanidhi Das, Birakishore Das, Laxmikanta Mohapatra, Kuntala Kumari Sabat, Bhagabati Charan Panigrahy etc. fetched undaunted spirit and patriotism among Oriyas. The Oriya writers of the period thus stood for social reformation, national reconstruction and anti-imperial ideas. Thus the new social idealism brought by these literary activities joined Orissa in the Indian revolution and the liberation movement.

The spread of western education resulted in the formation of a new class of 'educated elites' in the Oriya society. The publication of books, periodicals and newspapers enriched the Oriya language. The Brahmo movement was the first expression of awareness among the educated elites of Orissa. The Brahmo movement, a unique synthesis of the western challenge and indigenous response was propagated by the Bengali immigrants of Orissa. Cuttack was the main centre of Brahmo activities and gradually penetrated to the other urban areas of Orissa like Balasore and Puri. In the mid 19th century, press and Oriya literature grew under the patronage of Christian missionaries. Juxtaposed with the Brahmo Movement dominated by the elite and middle class voices and opinion was the rise of another trend in Orissa in late 19th century. It was the Mahima movement²⁹⁰ which had the voice of the suffering class and was a socio-religious campaign from below. It preached universal brotherhood, peaceful existence, non-violence, casteless puritanism and kindness to all. Its simplicity attracted people mainly from lower castes like SCs and STs in Orissa and its adjoining areas. The founder of the movement Mahima Gosain preached for a casteless and

²⁸⁹ Gopabandhu Das, "Bandira Atmakatha", <https://www.scribd.com/doc/267092677/Odia-Novel-Bandira-Atmakatha>.

²⁹⁰ A Hindu religious reform movement in Orissa. It began in the later part of nineteenth century and early part of twentieth century to wipe out superstitious beliefs distorted rituals from society. The founder of Mahima movement was Mahima Swami or Mahima Gosain.

classless society and voiced the suffering of the downtrodden and challenged the prevailing ethos of the society. It helped in generating a new awakening in Orissa by fighting against blind and superstitious beliefs.

Further the centralised system of administration contributed to the growth of socio-political and economic consciousness among Oriya's during the last quarter of nineteenth century and produced striking changes in religion, society, culture and literature. The British administration in the nineteenth century brought a complete change in the administrative, educational, socio-economic structure of Orissa. The introduction of modern education enlightened and broadened the horizon of the mind of the people that led to the growth of middle class intelligentsia with new hopes and aspirations. The growths of railways, postal services, press etc. provided the required propagation of ideas for giving necessary fillip to the growth of popular consciousness.

Abolition of marriage tax, the institution of Sati, Mariah sacrifice, the custom of throwing oneself under the wheels of car of Lord Jagannath at the time of car festival coupled with the formation of social cultural organisations revolutionised the minds of Oriyas. Along with these socio-religious reform movements, the British administrative policies brought measures to abolish the social evils like human sacrifice, female infanticide and Sati that were prevailing in the Oriya society. Russell found the existence of human sacrifice among the Khonds. His Report of 12th August 1836 submitted on the affairs of Ghumsur detailed out the nuances of these practices.²⁹¹ The government officers who were in direct touch with the practice suggested a policy of conciliation and persuasion to be followed at the early stage.²⁹² Establishment of schools, development of transport system, construction of roads and police stations were some of the steps taken by the British to combat this evil. The Khond chiefs were also brought under the political suzerainty of the British rule. Beside conciliatory measures the British Government took some stern steps rightly directed against the practice. Exemplary punishment was inflicted especially on those Khonds who instigated the people to continue the rite. A road was constructed from Aska to the base of the ghats through Suruda to make interaction of civilisation with the tribal society easier.²⁹³

In the words of Dosabhoy Framjee

²⁹¹Selections from the Records of Government of India, Vol-V, Russell's Report, 12th August, 1836, OSA.

²⁹² Selections from the Records of Government of India, Vol-V, 'Mills' Report, 1st June, 1874, p-82

²⁹³Board of Proceedings, Judicial, Mardras Government, Chief Secretary's Order, No-650, 27th April 1863, OSA

*The steady expansion of English dominion has been followed by the establishment of peace in all the boarders-of the land; by a firm and upright administration of the laws, and by a security of life and property to which India had been unhappily a stranger from the remotest times.....*²⁹⁴

This view is of highly imperialistic in nature which sought to justify and legitimise the British authority over India. However, it cannot be denied that the British administration brought a structural change to Indian society that did affect its socio, cultural and political formation. K.N.Panikar argues that the colonial conquest underlined the weaknesses of the traditional order and the colonial hegemonisation tended to destroy the tradition itself.²⁹⁵ The colonial hegemonisation waved a struggle on two planes- one against ideological sanctity of the traditional order and the other against the colonial hegemonisation itself. The struggle was purely cultural and ideological.

Displacement and marginalisation: The rise of the Oriya's from slumber

The British economic policies were also responsible for generating awareness among Oriyas. Its land revenue policies ruined most of the old landowners and transferred their estates to absentee Bengali landowners and Amalas of the courts.²⁹⁶ The change in the currency system from cowry currency²⁹⁷ to sicca rupees also caused dissatisfaction among peasants as well as the landed elites in Orissa. The introduction of the colonial system of administration had led to the displacement of the native elites of Orissa. While the Oriya elite were being systematically dispossessed, British interference in the local economy proved catastrophic for the livelihood of the poorer sections of the Oriya population. One of the most notable of these changes was the monopolization of the salt industry in the coastal districts of Orissa. The salt industry in coastal Orissa supported a large number of people. When the colonial government established a monopoly on salt manufacturing in Orissa, many lost their independent means of livelihood. This resulted in unemployment, overcrowding in agriculture, fragmentation of holdings and peasant indebtedness. In Gadjat areas, the local rulers enjoyed wide powers and exploited the peasants in the form of excess land revenue and

²⁹⁴ Dosabhoy Framjee's views in a pamphlet en-titled "The British Raj Contrasted with its Predecessors" *Bombay Gazette*, November 5, 1857, OSA

²⁹⁵ K.N.Panikar, "Culture and Ideology: Contradictions in Intellectual transformation of colonial society in India", 1987, *EPW*, Vol-22, No-49, , p-2115-2120

²⁹⁶ G. A. Toynbee, , "Sketch of history of Orissa (1803-1828)", 1873, *Orissa Historical research journal*, vol-IX, April & July, No- 1 &2, Calcutta, p-7-8

²⁹⁷ Cowry currency was prevalent in Orissa before British acquisition.

other illegal cesses. The report of the State Enquiry Committee of 1937²⁹⁸ describes how the rulers had lost touch with the people. The only training that the rulers got in twentieth century was how to mix freely with Europeans and to vie with one another in winning the favour of political officers. The British agrarian policies had led to many peasant movements in Colonial Orissa for example the Ghumsar uprising of 1835-37, the Kondh uprising of 1837-56, the Kendujhar uprising of 1867-68 etc. The colonial economic policies ruined the local economy of the state which had resulted the devastating famine of 1866.

The famine of 1866 proved to be an important harbinger of socio-political change in Orissa. The misery and plight suffered by the people during the famine generated a sense of self-assessment among the Oriya elites. It marked the earliest efforts by the Oriya elites to discuss the needs of the Oriya speaking people. In 1866, Gaurisankar Rai started the first newspaper of Orissa, *Utkal Dipika* to encourage public discussions on problems faced by the people. It helped in shaping public opinion and ventilated people's feelings. A recurring theme in the articles of *Utkal Dipika* and its contemporary newspapers was the question of why Orissa was not as 'developed' as neighbouring Bengal. In 1868, *Bodh Dayini* and *Balasore Sambad Vahika* came out from Utkal Press, Balasore. In 1889, *Sambalpur Hitaisini* was published from Bamra which shaped public views of the princely state of Sambalpur. This anxiety about the backwardness of Orissa as opposed to Bengal was resented by the Oriyas and often featured in political, social and cultural discussions in Orissa.²⁹⁹

Besides, the emergence of public associations greatly contributed to the growth of popular consciousness in Orissa. The earliest organizations were the *Mutual Improvement Society at Cuttack* (1859), *Cuttack Debating Club* (1869), *Utkal Brahma Samaj* (1869), *Ganjam Nashua Nishedhini Sabha* (1875), *Utkal Sabha* (1882), *Orissa People's Association* (1882), *Utkal Sammilani* (1889) etc.³⁰⁰ The year 1903 witnessed a new dawn in Oriya politics. The agitation for unification of all Oriya speaking areas began during this year. A new organization called the Utkal Union Conference was set up in this year to carry out this agitation.³⁰¹ Until 1920, the Utkal Sammillani dominated the political scene of Orissa with

²⁹⁸ Report of the State Enquiry Committee, Orissa State, 1937, Cuttack, 1938, P-8, OSA

²⁹⁹ For details on early newspaper publishing in Orissa see Natabara Samantaraya, "*Odia Sahitya Itihasa, 1803-1920*," 1964. Praphulla kumara Dhala o Hrudananda Dhala, Bhubanesvara and Sudhakar Patnaik, 1971, "*Sambada patraru Odisara Katha*, Vol-I, 1856-1881", Grantha Mandir, Cuttack,

³⁰⁰ Susanta Kumar Bag, "Agrarian Problem, Peasants and National Movement in Orissa", Proceedings of the Indian History Congress, 2007, Vol-68, Part-1, p-956

³⁰¹ Ibid.

the primary objective of uniting all Oriya speaking areas. The partition of Bengal and the formation of the province of Bihar and Orissa in 1912 subsequently strengthened the demand of the Oriyas to have their own regional identity. The Utkal Sammilani lobbied for the establishment of Orissa province consisting of Oriya speaking areas of the Bengal Presidency, the Madras Presidency and the Central provinces. With the appearance of Mahatma Gandhi in national politics, all local politics merged themselves in the broad current of the national struggle. Orissa under the leadership of Pandit Gopabandhu Das became a part of the nationalist politics. It was under the leadership of Gopabandhu Das that the Utkal Pradesh Congress Committee came into being in 1921, which stirred popular enthusiasm in Orissa.³⁰²

The members of the Sammilani consisted primarily of middle class educated Oriya elite, college students and the native princes of the Princely states. Initially the members avoided confrontation with the colonial government. It aimed to lead a peaceful agitation and persuade the British to unite all the Oriya speaking areas. This is also here to argue that the nature of politics of the Indian National Congress during this time was also similar to this. The early congress leadership also did not entertain the idea to outrightly challenge the British and believed in the art of persuasion. By the late 1910s there was increasing disaffection within the ranks of the organization towards this apolitical stance. Finally in 1920 the organization split and it was decided that the Sammillani would participate in political opposition to the colonial government and in particular ally with the Indian National Congress in the Non-Cooperation movement. After 1920 the politics of Indian nationalism came to dominate the Oriya public sphere. However, the movement for the formation of a distinct Orissa province continued. Eventually in 1936, a separate province of Orissa was formed. The Oriya political context for the changing meaning of Rajaniti and Praja was the emerging debate within the Utkal Sammillani about the need to practice anti-colonial politics. There was the growing support for anti-colonial politics within the Utkal Sammillani which could be justified by the transformation of the subject into a citizen who could legitimately claim a stake in politics.

Transformation of identity: from Oriya's to Indians

Orissa was dismembered and tagged to the Madras, Bengal and Central provinces. While its northern part was attached to the Bengal province, its southern and western part was

³⁰² W.W. Hunter, A History of Orissa, 1984, Vol-II, Calcutta, p-394

attached to Madras and Central provinces respectively. As a result Oriyas were reduced to linguistic minorities and were dominated by the linguistic majorities of these provinces. Lord Curzon once said there is no political protest among Oriyas. Another Viceroy had remarked, “Orissa is rotten by staunchly following monarchy”.³⁰³ Therefore when the stream of nationalism was flowing across the country, another powerful force dominated the social and political life of Orissa that had united Oriyas together. This powerful force had derived its current from the sense of identity crisis that the Oriyas had experienced due to the threat to their mother tongue. Started as a cultural movement to protect Oriya language, culture and its distinct identity, it gradually became a political issue in the twentieth century. The Oriya speaking people demanded a separate political identity of their own.³⁰⁴ Bengalis were making constant efforts to prove that Oriya is mere a dialect and not a separate language. The Oriya emotion was deeply hurt by this assertion of Bengalis which aroused their sentiment and national consciousness. Fakir Mohan Senapati spearheaded the movement to save the Oriya language from the linguistic onslaught of Bengalis. Many British officers like John Beames and T.E. Ravenshaw came to the defence of Oriya language. Particularly, John Beames established the historicity of Oriya language by scientifically analysing its grammar and phonetics.³⁰⁵ Similarly efforts were made to substitute Telugu in Ganjam and Hindi in Sambalpur region. The language controversy enriched the Oriya language and literature. The language movement thus laid foundation of Oriya nationalism which materialised with the creation of separate Orissa province in 1936. The national consciousness it generated contributed to the freedom movement in twentieth century.

The rise of nationalism in India is an important area of research. National consciousness grew among Indians in mid 19th century and they started countering the colonial policies and practices in India. The foundation of Indian National Congress was a step forward in this regard. The INC’s resistance to the colonial government has been divided into three different phases based on ideological differences. The Moderate phase lasted upto 1905 and the moderate leaders mainly relied on prayer, petition and protests modes to place their demands. It was followed by the Extremist phase from 1905 to 1919 which introduced new modes of resistance such as boycott, passive resistance, Atmashakti and emphasis on

³⁰³Dr. Nityananda Satapathy, “He Sathi, He sarathi”, 1969, Grantha Mandir, Cuttack, p-232. This was quoted by Gopabandhu Das in his written statement submitted to the Court to justify his participation in non-cooperation movement and becoming a non-cooperator.

³⁰⁴P. K. Mishra, “Growth of Oriya Nationalism 1868- 1921”, in S. Das, (Ed.) “Glimpses of Orissa”, 1986, Punthi Pustak, Calcutta, p.221.

³⁰⁵Utkal Dipika, 30 April, 1870

Swadeshi. The Gandhian politics also developed on the principles practised by the extremists but in a new form. A new change in the nature of Oriya politics under the leadership of Pandit Gopabandhu Das took place during the Gandhian phase of the national movement. In the struggle, the provincial fighters looked at Indian National Congress and Mahatma Gandhi for guidance.

Orissa was associated with the activities of Indian National Congress as early as 1885. In the Calcutta session of Indian National Congress, Madhusudan Das and Gourishankar Ray participated as members. Madhu Sudan Das once told: “Mother Utkal is not separate from Mother-India. The Utkal Union Conference which consists of the Oriyas, Bengalis, Telugus and Rajputs is a part of Indian nationalism”.³⁰⁶ It is under the leadership of Gopabandhu Das, Congress got a momentum in Orissa. He aroused the people of Orissa and constantly preached that the “isolated existence of the conference in national life is no longer possible. He also propagated that the Indian National Movement was forging ahead..... ..and if Orissa did not join the main stream of the Indian National Congress, she may lose her identity altogether”.³⁰⁷ The Nagpur session of the Indian National Congress in 1920 passed the resolution to constitute the provincial Congress Committees on linguistic basis. The Orissa Pradesh Congress Committee came into existence with Gopabandhu Das as president and Abdul Rassol as vice president to spearhead the national movement in Orissa. Subsequently the District Congress Committees were formed to guide Congress activities in districts. As a part of the non-cooperation agenda many Ashrams were formed in Orissa to facilitate Gandhian activities. Famous among them were Swaraj Ashram at Cuttack, Alaka Ashram at Jagatsinghpur, Swaraj Mandir at Balasore etc. The government took severe measures to suppress the movement. Almost all the leaders of Orissa were arrested. But none of the accused gave any defence observing the Gandhian principle; therefore all were sent to jail.³⁰⁸ During 1921-23 all frontline leaders of Orissa were sent to jail under the Indian penal Code. The colonial government employed innovative measures to display public humiliation to freedom fighters. They were handcuffed and thick ropes tied in their waist and made to walk on the street. Even Gopabandhu Das was not free from it³⁰⁹. Through this the government wanted to terrorise the people.

³⁰⁶N.K Das (Ed.), “Madhu Sudan’s Oriya Speeches and Songs”, 1967, Cuttack, p-9-10

³⁰⁷Utkal Dipika, 11 Nov, 1920.

³⁰⁸Jagannath Pattanayak, “Odishare Swadhinata Sangram”, 2001, Cuttack, Uidyapuri, , p- 115- 130

³⁰⁹H.K. Mahatab, (Ed) “ History of Freedom Movement in Orissa”, 1957, Vol- V, p-66

Thus the objective of the Utkal Sammilani which was so far to create the separate Orissa province changed during this period to achieve national independence first. On the call of Gandhi and under the able leadership of Gopabandhu Das, the Oriya middle class elite joined the Indian National Congress to fight for independence. Oriyas participated prominently in the Non-cooperation movement of 1920. The assimilation of Oriyas in national politics continued even after the death of Gopabandhu Das and the most vigorous phase of national movement in Orissa was witnessed in the form of Civil Disobedience Movement. The magnitude and the scope of participation in the movement submerged the Oriya identity into the national identity i.e. Indians.

26th January 1930 was celebrated as the Independence Day. Many leaders were arrested in connection with the Independence Day celebration. In a public meeting at Cuttack on 30th January, Jadumani Mangaraj strongly protested against the arrest of Subhash Bose as well as Lingaraj Mishra and Harihar Das and many others in Puri and the sentencing to death of Bhagat Singh and Batukeshwar Dutt.³¹⁰ Thus Oriya nationalists took up national issues and raised their voice against the arbitrary practices of the colonial government. The fear of the police, jail and court was dismantled by the nationalist activities who mobilized people to participate in demonstrations defying the colonial authority. Various creative methods were also used to remove fear among the people towards the police. In Ragadi village of Puri, a spinning competition was organized at the initiative of a local activist, Laxmidhar Mahapatra to make people fearless against the police.³¹¹ People were advised to rely on village panchayats to settle their problems instead of going to the courts

The idea of breaking Salt Law was conceived by Harekrushna Mahtab. He shared this idea with Mahatma Gandhi in 1927 in Balasore camp when he later visited Orissa.³¹² Salt manufacturing was an ancient trade in coastal Orissa and was an important source of livelihood for many. But the British imposed salt monopoly in Orissa and unauthorised manufacturing of salt became a crime.³¹³ Thus Mahatma Gandhi's decision to hold the Dandi March for breaking the Salt Law had a special appeal to Orissa. The Pradesh Congress Committee met on 16th March at Balasore and endorsed the plan to launch the Salt Satyagraha in Orissa. Inchudi in Balasore was selected as the site for the breaking of the law.

³¹⁰ The Samaj, 5th February, 1930

³¹¹ Ibid, 26th March, 1930

³¹² Harekrushna Mahatab (Ed), "History of Freedom Movement in Orissa", 1957, Vol-V, Cuttack, p-2

³¹³ G. Toynbee, "A Sketch of the History of Orissa", 1873, Calcutta, p-70

Harekrushna Mahatab was kept in charge of organizing the movement in Balasore.³¹⁴ The period from 6th April to 13th April was observed as National Week in Orissa. Under the initiatives of Mahatab and Surendranath Das, 12 volunteers were trained to clean up tanks and reservoirs in Inchudi, Srijanga and other neighbouring villages of Balasore.³¹⁵ Throughout the journey, the leaders explained to people how British courts and bureaucracy were helping to perpetuate the misery of the people. The people in their enthusiasm jeered at the policemen present at the spot without the slightest trace of fear.³¹⁶ The leaders like Gopabandhu Choudhury and Purnachandra Bose were arrested at Chandol on 8th April, 1930. The satyagrahis reached Balasore on 12th April. In the morning of 3rd April, Harihar Das divided the marchers into 3 groups under respective captains and at exactly 8 a.m. began the symbolic production of salt at Tundura village thus breaking the Salt law.³¹⁷ Various groups like “Louha Stambha Bahini” (Iron pillar Brigade) and Patita Pabana Bahini carried on the march to different places for breaking the Salt law.³¹⁸ The satyagrahis in several batches broke the Salt law and courted arrest for several days due to the arbitrary use of Section 144 of Criminal Procedure Code. A batch of Satyagrahis from Gujarat too reached Inchudi to support the violation of the Salt law.³¹⁹ About five thousand Salt Satyagrahis or more courted imprisonment reflecting popular enthusiasm in Orissa.³²⁰ Thus the Civil Disobedience Movement served the medium for the submergence of a regional Oriya identity into the national identity i.e. Indian. The important tool which facilitated this identity formation was the sharp defiance of the colonial legal system by the Oriya nationalist. The Oriya nationalists worked constantly with people to remove the fear of colonial jails, courts and police by voluntarily courting imprisonment and objecting the arbitrary penal practices thus dismantling so strong a pillar which had formed the bedrock of colonial rule in Orissa as well as in India.

The Civil Disobedience Movement also integrated Orissa into India at another level. This was the rise of popular and anti-feudal movement against the rulers in princely states. These popular movements provided a radical thrust to the national movement. There were 26 princely states ruled by the princely rulers or chiefs under the direct advice and guidance of

³¹⁴ Home Department (Political), Fortnightly Report, Second half of March, 1930, OSA.

³¹⁵ Harekrushna Mahatab (Ed), “History of Freedom Movement in Orissa”, 1957, Vol-V, Cuttack, p-3-27

³¹⁶ Chandiprasad Nanda, “Vocalising Silence: Political Protests in Orissa, 1930-42” 2008, SAGE Publications, New Delhi, P-12

³¹⁷ Ibid.

³¹⁸ Surendranath Pattnaik, “Odishara Swadhinata Andolanara Itihasa”, 1973, Cuttack, p-74-76

³¹⁹ Utkal Dipika, 26th April, 1930

³²⁰ W. W. Hunter, “Orissa”, 1984, vol-II, Calcutta, p-400

British political officers. Severity of *Bethi*, arbitrary enhancement of land revenue and other illegal exactions like *Rasad* and *Magan* were found to be the chief causes of discontentment against the rulers.³²¹ There was absence of civil liberties as well as ban on press to prevent people from getting infected by the emerging political ideas. The main instrument through which the princely rulers were able to create terror in the areas was the ruthless police machinery to restore law and order. However these restrictions led to the emergence of popular protests and *Prajamandal*³²² were formed with the dominant objective of establishing a responsible government in these areas. The installation of the Congress Ministry and the distinct intervention of the Congress leadership provided a powerful thrust to popular movements. Thus the feudal oppression came under the attack of the national movement supported by both the Congress as well as the Congress Socialist Party. The rulers of the princely states frequently resorted to arrest of leaders for delivering “seditious” speeches. The leaders advised the people to violate ordinances and overcrowd the jails thus dispelling the fear about jails and police. The people responded by garlanding the arrested leaders and accompanying them to jail.³²³ Nilagiri, Dhenkanal and Talcher were prominent princely states where the Prajamandal movement became really aggressive and the princely rulers were forced to accept the demand of the movement. The movement was successful due to the efforts of the national leaders who mobilized the people by removing the fear of jail and police from popular mind.

The Congress Socialist Party of Orissa which fought against the tyranny of both the British rulers as well as the rulers of princely states on the common people was formed in 1934. It made efforts to organize the peasants, the tribal’s against the internal oppression of the existing social and economic order. In 1934, the Prajamandal Movement was started in the princely states of Orissa. Meetings and protest demonstrations started in various parts of Orissa under the respective Prajamandalsthat fought against the oppression, severity and the evil systems of *Bethi* and *Begar*³²⁴.

³²¹ Orissa State People’s Conference, Orissa State’s Enquiry Committee Report, Cuttack, 1939, p-5-25, OSA. *Rasad* was the system of forced requisition of provisions. *Magan* was the forced requisition of money on ceremonial occasions like thread ceremony or ear piercing ceremony of the Raja or the heir apparent.

³²² The Praja Mandal movement was a part of the Indian independence movement from the 1920s in which people living in the princely states, who were subject to the rule of local aristocrats rather than the British Raj, campaigned against those feudatory rulers, and sometimes also the British administration, in attempts to improve their civil rights.

³²³ AICC papers, File No-G-35/1938, Nehru Memorial Museum and Library, New Delhi.

³²⁴ Forced labour

The Second World War on 1939 brought new political discourse in Indian politics. Oriya leaders like Malati Choudhury, Nabakrushna Choudhury, and Harekrushna Mahatab etc. exposed the evil face of imperialism through their public speeches and started organizing volunteer corps in different parts of Orissa. Individual Satyagraha and Gandhian constructive activities were two prominent political discourses of the period. The leaders undertook consistent efforts to mobilize popular opinion and generate mass preparedness for the war while projecting the vision of an imminent collapse of British imperialism.³²⁵ People at grass root level also participated in opposition to British Imperialism. Quit India Movement was launched by Mahatma Gandhi on 9th August 1942 demanding the immediate withdrawal of the British from India. The Quit India Movement witnessed unprecedented mass uprising and the jails were overcrowded in Orissa. The British government made desperate efforts to overpower the movement. The government was ready with instruments of its legal system to challenge the consequence. The Congress Offices in the provinces were declared unlawful.³²⁶ The province was brought under the Penalty Ordinance. The district of Balasore and Cuttack were brought under the special Criminal Court Ordinance.³²⁷ The special instructions that were issued by Gandhi were to defy the government and its laws and to gain over the police. An important characteristic of the movement was the exceptional and active participation of the vast majority of illiterate masses of Orissa.

The colonial government in Orissa resorted to firing on a large scale.³²⁸ In the district of Koraput alone about ten thousand persons were arrested, two persons including a boy of four years old were murdered in lathi charges, twenty five lost their lives in firing, fifty died of torture in jail, thirty two were transported for life and one Lakshman Naiko mounted the gallows.³²⁹ The people resorted to acts of lawlessness such as attacks on police stations, damaging colonial infrastructures like road, bridges, telegraph wires etc.³³⁰ Firing occurred at two places namely Mathili and Papadahandi and lathi charges at 24 places.³³¹ The intensity of the movement was highly felt in the district (present day Malkangiri district). The district

³²⁵ Chandi Prasad Nanda, "Vocalizing Silence: political Protest in Orissa, 1930-42", 2008, SAGE, New Delhi. P-298

³²⁶ Orissa Gazette Notification No. 137, 142, 9th August, 1942, OSA

³²⁷ H.K. Mahatab, (Ed) "History of Freedom Movement in Orissa", 1957 Vol -IV, Cuttack, p-87

³²⁸ H.K. Mahatab, (Ed) "History of Freedom Movement in Orissa", 1957, Vol — V, Cuttack, p-52

³²⁹ W. W. Hunter, "Orissa", vol-II, 1984, Calcutta, p-401

³³⁰ Home Department, (Political), Confidential Do. No 2955 - c, 5th September, 1942, File No. 18/08/42, National Archives of India.

³³¹ At Mathili, firing was opened on 21st August, killing 4 and injuring 4. At Papadahandi on 24th August Causing 15 casualties, 12 on the spot, and 3 in the hospital. See H.K. Mahatab, "History of Freedom Movement in Orissa", 1957, Cuttack, Vol — V, p - 88.

recorded 1970 arrests, 560 convictions, 11 detenues, 78 deaths, 2147 injuries, 12 cases of molestation of women and Rs. 11,200/ fines imposed.³³²

As early as March 1942, we have references to sweepers under the leadership of Gourhari Naik lighting fires in many streets of Puri town³³³. The objective was to discredit the local administration and police supervision contributing to the disillusionment with British rule. The arrest of leaders on 9th August, 1942 just one day after the beginning of the Quit India Movement was strongly resented by the Oriya nationalists. Protests emerged in different parts of Orissa including the rural pockets. The immediate interface between the protesters and the colonial government was the colonial police. The fear and inhibitions towards the police had already been dismantled by the fiery speeches and dare devil acts of many Oriya leaders. In many places the police were attacked by stone, their uniform, red purgis (turbans), haversacks and parawanas (warrants) were snatched away thus pulling apart the foundation of the colonial rule. A campaign to boycott the police, by refusing to sell anything to them, also picked up in Bari when the police camped there to arrest some of the local activists.³³⁴ Police stations across the state were attacked and burnt down. The colonial government responded through severe repression. The Eram police firing led to the killing of 26 people and serious injuries for another 46³³⁵ often compared with the Jalianawallabagh firing is a black chapter in Colonial rule over Orissa. Thus the participation of educated middle class Oriyas in the national movement merged Orissa politically with India. The main terrain on which the leaders were able to mobilise the people against the colonial government was by dismantling the iron pillars of the colonial government i.e. the police and the jail.

Another dimension of the formation of state-subject relationship in Orissa was the politicisation of the role of women. As early as 1920s, the Oriya women came out of the four walls of the houses and joined actively in various political activities. In 1922, Rama Devi, Sarala Devi, Padmavati Devi and Hiranmayee Devi attended the Gaya session of Indian National Congress.³³⁶ In 1924, the All Orissa Women's Conference took place where the Oriya women demanded various aspects that will contribute to the development of women. Many women's conferences were held in 1928 (at Puri), 1929 (at Balasore and Kendrapara) where resolutions were passed to spread education among women, stop child marriage and

³³² Amrita Bazar Patrika, Independence Number 1947, p - 184

³³³ HPD, Report of SP, Puri, 26th March 1942, OSA

³³⁴ HPD, Special Report 66/42, 29th August 1942, OSA.

³³⁵ Chandi Prasad Nanda, "Vocalizing Silence: political Protest in Orissa, 1930-42" 2008, SAGE Publications, New Delhi, p-335

³³⁶ Rama Devi, "Mo Jibana Pathe", 1984, Gobardhan Dora, Thesaurus, p-372

promote widow remarriage. In 1929, a political resolution was passed to endorse the Civil Disobedience Programme of the Indian National Congress and many women leaders participated in the Civil Disobedience Movement and suffered jail sentence. The individual Satyagraha campaign was inaugurated in Orissa on 1st December 1940. Sarala Devi was the first Oriya women who took part in the individual Satyagraha campaign.³³⁷ In Ganjam district A. Laxmibai was arrested for delivering anti-war speech at Berhampur and taken to custody by the police.³³⁸ Smt. Taramani Acharya took part in the individual Satyagraha campaign at Anarkali Bazar in Lahore on 18th August, 1941 and was sent to Lahore jail for seven months.³³⁹ These are the earliest efforts made by Oriya women to give voice to their demand for equality with menfolk and display their capability by actively participating in the national movement as well as internally working to create awareness among women to make them active citizens. However the women's movement in Orissa was confined to urban middle class and the women who were taking part in these activities were relatives of nationalist leaders and lawyers.

At the same time there emerged the low caste movements which radicalized the national movements. The socially ill-treated low castes like Bauri, Pana, Doma, kandra, Ganda, Hadi, Ghasi, Mochi etc. formed their caste organizations and demanded elevation of their status in the social hierarchy. Their protest movements against caste repression as well as social elevation were supported by many congressmen who belonged to higher caste groups. Under the Gandhian constructive programme these congressmen took up the campaign to abolish untouchability, spread education, change the food habits and rituals of the low castes and simultaneously blamed the caste Hindus for perpetuating untouchability. Another aspect of change that became prominent from 1927 onwards was in the sphere of leadership. People from low castes came forward and started leading their movement.³⁴⁰ This brought the low castes nearer to the anti-colonial campaign led by the nationalists. In their attempt to integrate the lower castes in the national movement, many congressmen like Jay Mangal Rath from Ganjam led campaign to drive the congressmen out of the party who do not support the anti-untouchability campaign. According to him the campaign would be broad

³³⁷Sushil Ch. De, "Diary of Political events in Orissa", 1964, Cuttack, p-34

³³⁸Nabeen, 19th December, 1940, & AnupTaneja, "Gandhi, Women and the National Movement: 1920-1947", 2005, Har Anand Publications, p-183

³³⁹AnupTaneja, "Gandhi, Women and the National Movement: 1920-1947", 2005, Har Anand Publications p-183

³⁴⁰Prithi Acharya, "National Movement and Politics in Orissa, 1920-29", 2008, SAGE Publications Ltd., p-241

based among the 'low castes' only when a Satyagraha was launched against caste oppression.³⁴¹ He urged people to integrate into a "broad Indian Caste" (Mahabharatiya Jati) for the purpose of achieving Swaraj.³⁴²

Sashi Bhusan Ratha who edited *Asha*, worked for the upliftment of Dandasis of Ganjam, a tribe which was declared a criminal tribe by the British government. In 1926 under the leadership of Sashi Bhusan Ratha, the Dandasi Sabha demanded the withdrawal of Dandasis from the criminal tribe list.³⁴³ Under the leadership of Sarat Chandra Mahapatra around 500 Dandasis in 1925 took a pledge to handover their caste men who engage themselves in theft to the police and to open night schools to dissuade them from stealing.³⁴⁴ In their drive to gain the support of the lower castes many innovative strategies were applied by the congressmen. For example Laxmi Narayan Sahu suffixed *Pana*³⁴⁵ to his name as a mark of identification with the "low Caste".³⁴⁶ Many nationalist leaders supported the lower caste issues. Thus Godavarish Mishra and Rabindranath Majumdar extended their support to the Hadis of Banapur who were protesting against the government direction to clean the pilgrim city of Puri after car festival in 1923.³⁴⁷ Thus in their attempt to solicit the support of the low caste who were the majority, the nationalist leaders of Orissa represented their voice and actively involved them in national activities. The so far secluded place of the low caste from the mainstream now became vocal and visible in the national sphere. These are the people who massified the anti-colonial struggle and suffered the numerous pain of the penal regime of the British government.

The changing nature of Prison and Penal practices

The 1920s witnessed new strategies in the history of nationalist movement with the beginning of Gandhian leadership based on *Ahimsa* and *Satyagraha* to achieve independence. The earlier fear to colonial jail was replaced by voluntary imprisonment under the call of Gandhi for sacrifice and suffering for motherland. This political environment enabled the elite nationalists to undertake the leadership of the masses by defining the programmes of action and methods of protest. There unfolded a twofold movement. On the one hand the

³⁴¹Gadhat Basini, 2nd August 1924; Utkal Dipika, 26th July 1924

³⁴² Quoted in the *Asha*, 3rd May 1926

³⁴³ *Asha*, 21st June 1926

³⁴⁴ *Asha*, 16th March 1925

³⁴⁵ A low and untouchable caste in Orissa

³⁴⁶ Laxmi Narayan Sahu, "Mo Barbula Jiban", 1968, Lakshminārāyaṇa Sāhu Smṛti rakshā Samiti, Cuttack, p-57

³⁴⁷ *Asha*, 3rd September, 1923

nationalist leaders tried to seize moral authority from the British and on the other hand the British government resorted to repressive measures to display its dominance. The colonial government had hitherto responded by invoking repressive measures like incarceration, deportation, transportation and reformation. Just before the Non-cooperation Movement, the British had dealt with a different set of political prisoners who were involved in violent activities. The colonial government differentiated between the political prisoners and ordinary prisoners and segregated them as part of its penal strategies. The Non-cooperation movement brought a new problem to the fore for the colonial government. Under it the prisoners were not forced to jail rather voluntarily went to jail to represent their voice as the nationalists decided to challenge a prison regime that operated on the principle of 'fear'. Under this voluntary action the prisoners entered prison professing to 'overcome fear'.³⁴⁸

The new strategies of the nationalists forced the colonial government to review its penal practices. It brought a lasting impact on prison administration as well as moulded the strategies of the nationalists who used prison as a site of protest. A major debate ensued to provide equal treatment to persons convicted of political offence. But the Indian Jails Committee of 1919-1920 rejected 'political crime to be treated differently' decided to have an intermediate form of imprisonment to accommodate prisoners accused of political crime.³⁴⁹ Thus the category of 'special division' was created in jail. This category of special division was created for political prisoners who were unable to bear the pain and rigorous jail discipline due to their birth and high socio-economic status. By this the colonial government conspired to exploit the class divide between the elite nationalists and the masses.

The Non-cooperation movement under the leadership of Mahatma Gandhi used non-cooperation as a strategy to mobilise the diverse masses and challenge the legitimate authority of the British government to rule India. Jail Bhara (the act of crowding the jails) was the strategy employed by him to challenge the colonial authority. In this scenario the colonial government resorted to imprisonment as a major safeguard to deal with the nationalists. As a result of the confrontation of these two strategies (one by the nationalists and the other by the colonial government), prisons became sites for the demonstration of the colonial state power and the colonized surpassed subjecthood by voluntarily obeying and challenging jail laws wherever necessary. Gandhi employed various techniques to popularise

³⁴⁸ Ujjal Kumar Singh, "Political Prisoners in India, 1920-1977", SOAS Research Online, file:///C:/Users/Sasmita/Desktop/u%20k%20singh%20political%20prisoners.pdf, p-78.

³⁴⁹ These proposals are outlined in 'Classification and Separation of Prisoners', Chapter VII of the Report. Report of the Indian Jails Committee, 1919-20, Vol.I, Report and Appendices, Shimla, 1920, p.85- 91.

jail going among masses. Writing from Sabarmati jail he described his imprisonment as ‘the purest sacrifice’. He wrote “that it is only, the body (which) is held in bondage, but the soul grows more free....”³⁵⁰ These thoughts of Mahatma Gandhi were adopted by Gopabandhu Das in his autobiography, “BandiraAtmakatha” where he described jail as a ‘holy place’ and ‘national abode’. By doing this the nationalist leaders made a conscious attempt to distance the nationalists from ordinary criminals and dispel the fear towards jail. Jail going which was earlier an experience of degradation and shame now became the symbol of national integrity and solidarity. The act of jail going was bestowed ‘respectability’ in nationalist framework. Gandhi expected a Satyagrahi prisoner to be dignified and submissive to jail rules except under circumstances of gross inhumanity and indignity. For example the practice of “Sarkar Salam” was not obeyed by the prisoners of Orissa as it violates their dignity. Thus Gandhi was consciously transforming the colonial subject into a citizen who abides by the rules of the prison and disobeys the rules which invade upon self-respect and dignity. He construed the parameters of a modern and democratic state and a democratically empowered citizen who enjoys certain rights that could not be annihilated by a civilised government. Thus Satyagraha marked a passage from subjecthood to citizenship. As a citizen he was not bound by unjust laws and breaks them when it is necessary and accepts the punishment for breaking such law whole heartedly.

Imprisoned leaders were treated like thieves and dacoits in colonial jail. They were neither allowed to meet the outsiders nor read newspapers in order to keep them aloof from the outside world. Narrating the arrest of Gopabandhu Das under section 144 of IPC, Dr. Nityananda Satapathy had said how he was taken to the jail like an ordinary prisoner by tying a rope around his waist and handcuffs in his hand. According to him this was derogatory for a political prisoner like Gopabandhu Das. Even he was not untied while travelling by rail. He was made to walk from Cuttack railway station to the Cuttack jail at night. The gatekeepers did not open the jail gate as it was well past midnight and Gopabandhu Das and Bhagirathi Das were made to take rest in front of the gate without any food. He was served with ordinary and low standard food in iron plate like other ordinary prisoners. He was served with rice (very low quality rice like seeds of Malabar spinach) and ‘KalamiSaag’ daily. It created stomach problem for which Gopabandhu used to remain hungry for days in between.³⁵¹ Expressing his displeasure for his treatment by the police he

³⁵⁰ ‘Indian Opinion’ January 1909, CWMG, Vol. IX, p. 182. Quoted in Ujjawal Kumar Singh, “Political Prisoners in India: 1920-1977”, SOAS online, p-82

³⁵¹ Dr. Nityananda Satapathy, “He Sathi, He Sarathi”, 1969, GranthMandir, Cuttack, , p-230-31

once said to Bhagirathi Mohapatra in Hazaribagh jail, “we are political prisoners, still the police handcuffed us. We were made to sleep in front of the Cuttak jail gate as the gate was not opened by the gate keepers. No body objected to this. This came into discussion when PitabasaPattanaik raised this matter in Bihar and Orissa Legislative Assembly. On 24th January, 1923, Gopabandhu Das was sent the Hazaribagh jail after being convicted and awarded two years of rigorous imprisonment along with Bhagirathi Mohapatra. Though they were awarded rigorous imprisonment but they were only jailed on the secret orders from higher authorities.³⁵² Separation of political prisoners from ordinary prisoners was seen to be expedient of penal policies by the penal authorities and the nationalists saw this segregation as an ideological victory. This is the reason why the ordinary prisoners were marginalised in nationalist’s narratives. The nationalists were very much conscious of carving out a special political identity by distancing themselves from the ordinary prisoners. The middle class often involved in agitation for preferential treatment in jail to maintain their separate identity.

The official accounts have reported the changing dynamics brought by the changing prison condition during this period. The Hazaribagh jail Superintendent lamented that “the incarceration of prisoners as first class misdemeanant had changed atmosphere of the jail and contaminated other prisoners.”³⁵³ Showing their sympathy towards the Non Cooperation Movement, two Assistant Jailors of Muzaffarpur jail resigned. The colonial government accused a political prisoner Dr. Mahmud in motivating these officers.³⁵⁴ Pandita Godabarish Mohapatra documented that the police officials who came to note down the speeches of various leaders during the Non-Cooperation Movement used to contribute to the TilakSwaraj Fund. They also delete the most seditious statements made by nationalists from the report to be submitted to the higher officers³⁵⁵. Further there was uneven and discriminatory treatment to prisoners belonging to same social status and convicted under same provisions. During the Non Cooperation Movement a protest against ‘Bethi’ and ‘Rasad’ took place in the Kendujhar Garh of Orissa. Though the colonial government termed it a political crime, still the leaders were tortured and flogged in police custody. Nanda Puhan and Jagabandhu Chakraborty were served transportation sentence for four years and other seven leaders were given severe imprisonment for 3 years each. There are few instances in India where this kind

³⁵² Ibid., p-237

³⁵³ File no. 201\VI\22, H(P), Part B, NAI, p. 125

³⁵⁴ File no. 80 of 1922, July 1922, Local Self Government (Jails), OSA, p. 12-17.

³⁵⁵ Pandita Godabarish Mohapatra, “Ardhasatabdira Odisha O Tahinre Mo Sthan” 1954, GranthaMandira, Cuttack, p-161-162

of punishment was awarded for protests similar to this. It was deeply resented by PanditaGopabandhu Das who had questioned the justice system of the British.³⁵⁶

In one incident in Hazaribagh jail, Bhagirathi Mohapatra in the presence of Gopabandhu Das said to the Jail Superintendent, “Sir, we are political prisoners. Will you always serve us boiled vegetables? The Jail Superintendent asked the jailor to catch fish from his pond. Gopabandhu Das and Bhagirathi Mohapatra cooked the fish and served all. The prisoners were also given milk and flattened rice and Gopabandhu Das used to prepare curd and buy fine sugar from market and ate flattened rice by mixing curd and sugar into it.³⁵⁷ Thus elite nationalists on the basis of their higher social status were using many strategies to lead a comfortable life in the prison unlike the ordinary prisoners.

The voluntary imprisonment programme of the Indian National Congress caught the provincial governments unaware. The prison structure was not built to imprison the new prisoners. The prison preparations were not suitable for political prisoners, said an official from Bihar and Orissa government as “it was built on the assumption that all prisoners were ordinary criminals”.³⁵⁸ Orissa was one among other provinces like Assam, Bihar, Bengal etc. which decided to give differential treatment to political prisoners and segregate them from ordinary prisoners. The Bihar and Orissa government was first to treat nationalist as “offenders of the first division as in England”. Such offenders were given simple imprisonment instead of rigorous imprisonment³⁵⁹. However Madras government did not allow any concessions to its political prisoners. The southern part of Orissa including the Ganjam division came under Madras Regulation. C.Rajagopalachari wrote in his jail diary on 22 December 1921, “about the indifferent attitude of the colonial government and common criminal like treatment”.³⁶⁰ In 31 January 1922 he complained about how “the political character of the prisoner is recognized only as an additional sin”.³⁶¹ The officials of the Central Provinces (covering the Sambalpur division) tried to regulate the behaviour of the jail staff to guard against the prisoners efforts to tinker with their loyalty. The influx of prisoners during the Gandhian phase of the national movement necessitated to embark upon new strategies to instill discipline within the prison. These varied from separate confinement to

³⁵⁶Pandita Suryanarayan Dash, “Utkalamani Gopabandhu” 1975, GranthaMandira, Cuttack, p-385

³⁵⁷Dr.Nityananda Satapathy, “He Sathi, He Sarathi”, Grantha Mandira, Cuttack, 1969, p-243

³⁵⁸ File no. JI 16, Local Self Government (Jails Branch), March 1922, OSA, p.3.

³⁵⁹ Letter dated 21 December 1921, from the IG of Prisons to Superintendents of all Central, District, and Sub-Jails on the subject of treatment of political prisoners pending orders from the Government, Ibid., p.95.

³⁶⁰C.Rajagopalachari, “Jail Diary: A day to day record of life in Vellore Jail in 1920”, 1991, 3rd edition, BharatiyaVidyaBhavan, p.4.

³⁶¹Ibid., p. 52

special concessions. The Bihar and Orissa government decided to accord special status to the prisoners in the same way political prisoners in Britain were treated. But the nationalist discourse argued for equality in prisons based on privileges apt to their middle class status.

The debate on status and special privileges to prisoners unfolded in Britain towards the end of eighteenth century. According to Radzinowicz and Hood³⁶², “no one could claim any exemptions from criminal law on grounds of politically motivated act”. But in practice relaxations were given to those prisoners convicted for political crime on the basis of health and social background. The politicisation of prison in England emerged in the eighteenth century with the rising demand for parliamentary reforms and with the upsurge of Jacobian radicalism after 1792.³⁶³ The Chartist movement³⁶⁴ brought another occasion when the contentious issue of treatment of political prisoners came into question. The Prison population were divided into two categories according to the the Prison Bill of 1840. The first category was allowed certain privileges. However there was absence of clear criterias to define prisoners as first class prisoners.³⁶⁵ The British parliament came up with the Treason-Felony Act in 1848 to deal with political dissentees.

Under Section 67 of the Prison Act of 1865, prisoners were divided into two categories. Under the first category, prisoners who had temporarily deviated the path of honesty without any great moral depravity were included. They were not deemed as ‘criminal prisoners’ and allowed to enjoy special privileges such as wearing their own clothes and reading books and newspapers. Under The Prison Act of 1877, the prisoners under sentence for sedition were included in the first category within the meaning of section 67 of the prison Act of 1865. The Prison Act of 1898 created another division of convict prisoners who were allowed some privileges, thus creating three categories of convict prisoners. The courts had the discretion to distribute offenders into categories depending upon the nature of the offence as well as their social status.³⁶⁶ The Suffragette movement again brought the issue into limelight as many women suffragettes despite their high and respectable social

³⁶² Leon Radzinowicz & Roger Hood, “A History of English Criminal Law and its Administration from 1750, Vol-5: The Emergence of Penal Policy in Victorian and Edwardian England, 1990, Oxford: Clarendon Press, p.461.

³⁶³ Michael Ignatieff, “A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850”, paperback, 1989, p. 120-21.

³⁶⁴ Chartist movement was a working class movement in nineteenth century England.

³⁶⁵ Leon Radzinowicz & Roger Hood, A History of English Criminal Law and its Administration from 1750, Vol-5: The Emergence of Penal Policy in Victorian and Edwardian England, 1990, Oxford: Clarendon Press , Vol.V, p-414

³⁶⁶ S.H.Hobhouse & A.F. Brockway, English Prisons Today: Report of the Prison System Enquiry Committee, 1922, Pp. 214-215.

background were accommodated into second class and third class prison facilities. Winston Churchill defined political prisoners “as persons who had committed an offence with a distinct political object involving no moral turpitude”. He said that the sole objective of the imprisonment of political prisoners was to restrict their liberty and not to diminish their self respect.³⁶⁷ A new Prison Rule (Rule 243 A) was instituted that allowed privileges of the first division to the second and third divisions.³⁶⁸ There was vehement official resistance towards recognition of political offenders as a separate category. However concessions were given to political offenders in prison on certain grounds with the objective to deter them from committing political offences. Social class of the prisoners determined the preferential treatment to a section of political offenders. But in the colonies, the nationalists could not escape repression by the state. While political offenders in Britain were repressed on the ground of being undemocratic, in India the nationalists suffered repression on the ground of being unfit for freedom and democracy. This was a colonial construction to vilify the subject population and to demoralise the nationalists.

In India the debate on the status of political prisoners surfaced with the beginning of the Gandhian politics. The Gandhian call for voluntary imprisonment led to the overcrowding of the prison and drew a comparatively high social and economic status group into jails. This created imbalance in the prison administration system and initiated the debate on handling these new social groups in the prevailing penal regime. The Indian Jail Reforms Committee of 1919-20 simply created two categories of simple imprisonment with or without the liability to labour. It granted special treatment to persons of social and economic standing who were not habituated to pain and discomfort. It did not recognise political prisoners as a separate class. The ‘well-to-do criminals’ and the ‘leisured classes’ were given penalty that did not affect their health.³⁶⁹ The committee also allowed the medical officer to recommend special dietary, clothing etc. thus safeguarding the prisoner’s of good social status.³⁷⁰ But differentiating the crime on the basis of political and criminal motive was an arduous task for the government as the political offence in India in the opinion of the colonial government was dangerous. This created ambiguities in defining the political nature of the crime. Thus the revolutionaries, the communists, the radical freedom fighters were kept out of this privilege.

³⁶⁷R.S. Churchill, “Winston Churchill”, 1969, Vol.II, p.387 and Vol.II, Companion, Pt.2, p-1154-1155.

³⁶⁸S.H.Hobhouse & A.F. Brockway, English Prisons Today: Report of the Prison System Enquiry Committee, 1922, p.222

³⁶⁹Paragraph 131 of the Indian Jails Committee Report 1919-20, NAI, New Delhi, p-89

³⁷⁰ Ibid.

This provided the ground to reject the status of political prisoners similarly granted in England. Further the discussion to confine political prisoners separately from ordinary prisoners as the jails crowded with political prisoners will be a hot bed of sedition, insubordination and indiscipline made the officials reluctant to recognise the status of political prisoners.

There was an attempt to bring uniformity in jail administration by framing a set of rules which was discussed in a conference held in 1922. It was also discussed to bring the legislative and administrative changes to implement the rules. The discussions focussed on the criteria for selection, the agency responsible for selecting the persons, the concessions to be given to special prisoners etc. It excluded prisoners involved in violence, offence against property, loot, criminal intimidation, manipulating the loyalty of police and army. The selection for differential treatment was to be based on the 'status', 'education', and 'character' of the prisoner. It reached in a consensus to keep this class of prisoners separate from the ordinary prisoners. This class of prisoners were allowed to supplement their diet, wear own cloth, beds at their own expense, permission to use reading materials like books and magazines, (newspapers were, however, not permitted), and reprieve from performing menial duties. However it did not consider motive as a criteria to allow such concessions. It reiterated the aim of punishment to political offenders was deterrence. This was primarily an attempt by the government not to recognise a different category of political prisoners demanding differential treatment. The colonial government instead used the expression of 'special division prisoners' to designate such prisoners. The special class division also included non-political offenders. This was done skilfully to avoid recognising political prisoners as a separate class.

During the Gandhian phase of Indian national movement, the prisons were intensely drawn into public scrutiny. The colonial government used the prison to exercise its authority over the colonized. The nationalists on the other hand used the prison space to assert their freedom from colonial rule. In the confrontation between power and protest, the colonial prison space was highly politicised. Prison was an important institution of colonial framework of disciplining and demonstrating the superiority of colonial power. The docile and passive subjects became active and there were frequent protests in prison. Prison protests were rampant in jails of Bengal and North Western provinces.³⁷¹ The Mutiny of 1857 presented a "historical rupture" having its implication in the nature of colonial sovereignty, agency and

³⁷¹Anand Yang, "Disciplining Natives : Prisons and prisoners in early nineteenth century India" , 1987, *South Asia*, vol-10, no-2

encounter. The British govt. started codifying categories of Indians using terms such as “habitually criminal” in the Criminal Tribes Act of 1871³⁷² and religiously dividing India into “majority” and “minority” areas. The intensification of nationalist agitations in the early part of 20th century resulted in mass incarceration.³⁷³ David Arnold argued about the totality of prison control demonstrating coercive practices of British govt. that was violative of prisoner’s rights and religious requirement.³⁷⁴ But this totalitarian space gave rise to a diverse space where multiple ideas were discussed. Clare Anderson has dealt with the cultural economy of prisons from two perspectives: in “fashioning identities”, she showed how the attire associated with being incarcerated was key for the British govt. and colonial surveillance imperatives while in “legible bodies”, she argued how colonial prisons literally imprinted their dominance using tattoos.

The memoirs of many Oriya nationalists of 20th century point to the jail maladministration and prison injustice. Illegal detention and conviction ignoring the principles of natural justice was the hallmark of the colonial authority.³⁷⁵ On the onset of Gandhian freedom struggle, many freedom fighters responded to the call of Satyagraha, they accepted the inevitability of jail interludes in the context of their Satyagrahi struggle. Prison labour was an important aspect of punishment. The prisoner was to be frightened and broken into blind submission. The objective was to terrorize the prisoner to avoid crime.³⁷⁶

The freedom fighters had to undergo severe punishment like flogging and whipping.³⁷⁷ Dibakar Pattanayak, a leading freedom fighter of South Orissa protested against the atrocities and punishment against prisoners, he was cruelly flogged by the British authorities.³⁷⁸ The system of ‘Ghana’ was there. In this system the prisoners were made to stand in the place of bullocks to turn it round to squeeze out oil.³⁷⁹ The custom of ‘Sarkar Salam’, a special kind of salute to every jail official visitor was practiced. Any violation of

³⁷² Ross Lawrenson, “Frederic John Mouat (1816-1897)”, *Journal of Medical Biography*, 2007, V-XV, p-201

³⁷³ Radhika Singha, “A Despotism of Law: Crime and Justice in Early Colonial India”, 1998, OUP, p-7

³⁷⁴ David Arnold, “The Colonial Prison: Power, Knowledge and Penology in 19th century India” in R. Guha, David Arnold & David Hardiman (Ed), *Subaltern Studies VIII*, 1994, New Delhi, OUP, p-148-187

³⁷⁵ Sirisa Kumar Sadangi, “The Prisons of south Orissa and the freedom fighters in incarceration, 1900-1947”, 2005, PunthiPustak, Kolkata, p-91

³⁷⁶ J. L. Nehru “Discovery of India: An Autobiography”, 1962 New Delhi, p-96-97

³⁷⁷ R. N. Datir, , “Prison as a Social System”, 1978, Bombay, p-233

³⁷⁸ B. C. Swain & P.K. Mohapatra, “Berhampur Saharar Ayatihasi Bhitibhumi”, Berhampur, p-27

³⁷⁹ Sirisa Kumar Sadangi, , “ The Prisons of south Orissa and the freedom fighters in incarceration, 1900-1947” 2005, Punthi Pustak, Kolkata, p-96

this custom was followed by punishment.³⁸⁰ The prisoners were getting two under wearers, one banyan and a small cloth. They were not getting any oil to use it for their body. Mirror was not provided to them. Even years together they were not getting any chance to see their face in the mirror.³⁸¹ Further each prisoner was getting two pots made of iron. They would have their food, drink water and they also used it for latrine.³⁸² So in order to remain in prison, the Satyagrahis underwent special rigorous training like taking half boiled rice, not to take ghee or oil in their food, sleep on the ground etc.³⁸³ The torture was such that in the morning when they were going for latrine, a rope was tied around their waste and the prison staff drew the rope if some delay was made in the latrine.³⁸⁴ Transfer from one jail to another was frequent. In his “Jyanamandal”, Binod Kanungo has given the vivid account of the death of freedom fighters. By firing these freedom fighters the British authority created a terror in the mind of the people of South Orissa. They kept 8 to 10 prisoners in one cell which was usually meant for one prisoner. So the prisoners could not sit and sleep. They had to stand for the whole day and night. The Koraput jail was hell to the prisoners because of its cold climate. Most of the prisoners out there were disease stricken and died in the jails.³⁸⁵ In 1942, the Matili police station was a prominent centre of the national movement. Lakshman Naik with some of his followers made an agitation against the British govt.³⁸⁶ The protest led to the firing by the British govt. over the unarmed people. The govt. report revealed that only seventeen people died in the police firing.³⁸⁷

Another form of rigorous punishment was ‘DandaBhedi’. Bearing this ‘DandaBhedi’ they had to make jute from the leaves of the Murga tree. The juice of Murga leaves was very injurious to health. It creates wound if it falls on the body.³⁸⁸ The dealings of the jailors towards the freedom fighters were not good. They were inflicted with severe punishment for petty offences. If they complain to the jail authority, their head was shaved and they were left bald headed.³⁸⁹

³⁸⁰ B.C. Roy, “The journal of historical and social analysis”, 1996, Bhubaneswar, p-37, OSA

³⁸¹ Binod Kanungo, “Jnanmandal”, 1984, Bhubaneswar, p-143

³⁸² Biswanath Patnayak, “Utkal Prasang”, special Issue for Republic, 1993, Bhubaneswar, p-19, OSA

³⁸³ Manoj Ku. Mohapatra, “Odisara Sanskrutika Itihasa”, 1992, Cuttack, p-270, OSA

³⁸⁴ Sangrami Sri Purussottam, “Swadhinata Sangramara Banarsena”, Sri Press, 1977, Cuttack, p-65

³⁸⁵ Binod Kanungo, “Jnanmandal”, 1984, Bhubaneswar, p-148

³⁸⁶ N. R. Pattanayk, “Lakshman Naik: A Study in Tribal Patriotism”, 1992, Academy of Tribal Dialects & Culture, p-98

³⁸⁷ Special selection, Confidential File No.484, 1942, Govt. of Orissa, Accession no.2370, OSA and Koraput District special Report, Case no-83,

³⁸⁸ Abhaya Mohapatra, “Jungle Bhitarku Rasta”, Cuttack, 1984, p-103, OSA

³⁸⁹ Harsha Misra, “Swadhinatara Jayayatra”, 1974, Cuttack, p-221

The classification of Prisoners

The Indian Jails Committee of 1864 recommended classification of prisoners into four categories based on the nature of offences. They were: a) crimes against persons, b) crimes against state, c) crimes against religion, marriages etc. and d) crimes against property³⁹⁰. Thus the caste wise classification of crimes was replaced by classification based on the nature of offences.³⁹¹ The object of classification, as recommended by the Committee of 1864 was “To prevent the contamination by depraved prisoners of prisoners not so depraved.....”³⁹²

Among all class of prisoners, the class of “political prisoner” is perhaps the most twisted status as far as the colonial govt. as well as the nationalists is concerned. Under the cloak of political prisoner status, leaders demanded much immunity from jail rules and special privileges. The term “political prisoners” refers to the prisoners convicted of an offence under section 153(A), chapter VI of Indian Penal Code. These prisoners are detained separately from all other prisoners and were allowed to use facilities such as books, writing materials...³⁹³

The self-perception of “political prisoner” has a legacy going back to colonial India. The colonial govt.’s constant criminalisation of political activities and denial of rights to political prisoners ignited the fire among nationalists of India in the beginning of 20th century. It led to a transition from passive colonial subjects into active colonial citizens as it defied the colonial or imperial authority. The “political prisoner” status was claimed by nationalists belonging to the elite sections through a well-constructed process of identification and selective exclusion. The onset of a political culture of jail going brought by the Gandhian mass movement transformed the jail into a political space. The prisoners considered themselves unfettered even after so many restrictions imposed on them. They protested to every indiscriminate use of power and the most extreme form of this protest was the hunger strikes displaying right over the bodies. Thus prisons also became integral parts of the popular protest. Many nationalist leaders as well as some British officials have suggested for the creation of a separate class of political prisoners to receive special treatment in jails.³⁹⁴ They argued that a political prisoner is not really a criminal. Therefore he needs different

³⁹⁰ Report of the Indian Jails Committee 1864, p.21, quoted in R.N. Datir, Prison as a Social System, Popular, Bombay, 1978, p.177.

³⁹¹ Ibid.

³⁹² Ibid. p-177-178.

³⁹³ Vidya Bhusan, “Prison Administration in India”, 1970, S. Chand Publication, Delhi, , p-79

³⁹⁴ Ibid

treatment from ordinary prisoners. “He was confined for his opinions. The purpose of imprisoning him is to restrict his liberties and check his acts which may be considered rebellious by the government in power.”³⁹⁵ The first Jail Reform Committee in Orissa under the Chairmanship of Lal Mohan Patnaik had recommended for a separate jail for detention of political prisoners.

The most important aspect of claiming the status of “political prisoner” is the notion of sacrifice which is a supreme act of morality in Indian tradition. This art of sacrifice was open for all irrespective of social hierarchy. But it has its inegalitarian moments. According to Dipesh Chakravarty “the idea of sacrifice was really an appeal to the power that flowed from inequality. In order to be able to make sacrifices, one need to possess, he who did not possess could not sacrifice. The glory of the renouncer belonged to the possessor. To talk of sacrifice was thus to talk of possessions and hence of power”. This path of sacrifice through jail going, courting imprisonment, fasting, hunger strikes earned the elites the status of national heroes and helped them shade their Bhadrak status to be true representatives of people with mass following.

The native middle class, a product of colonial rule initially spoke the language of colonizers. Peasants, working class and other subaltern groups were far from the dominant discourse due to their subalterneity. The colonial state required legitimacy for their rule which was provided by this agency i.e. the English educated middle class. This legitimacy of the colonial state was threatened by the same agency using the language of the colonizers. They fought against the racial discrimination and the superior treatment given to the European prisoners. They protested for a new classification of prisoners on the basis of the social status. The colonial govt. excluded the revolutionary terrorists and the communists from the political prisoner’s category by branding their activities as dangerous.

To begin with, the colonial govt. upheld the social hierarchies of caste and religion. The egalitarian principle of the rule of law later on tried to do away with social hierarchies and bind equally irrespective of caste, class etc. But the entry of middle class into prisons emphasized on the negotiation and construction of class inside the prisons. This is reflected in the early 1920s by the creation of a ‘superior class’. After 1930, a tripartite system of classification of prisoner was made. Political prisoners continued to mark their difference from ordinary prisoners based on their sacrifice of self for national interest in opposition to

³⁹⁵ Report of the Indian Jail Committee 1919, p.27, quoted in Vidya Bhusan, op.cit.,p.79.

acts motivated by selfish interests of ordinary prisoners. This difference widened also due to their superior position in social hierarchy. By doing this, the nationalists secured two things. Firstly it legitimized their role as political contenders of colonial govt. Secondly it helped them to solicit mass following of people through their supreme act of sacrifice for national interest. Thus begun a new political narrative where these nationalists got transformed into political rulers of independent India.

According to Vijayalaxmi, there were three classes of prisoners. “A” class were political prisoners, “B” class- who were either intermediates of leading a “comfortable mode of life outside” while “C” class is reserved for ordinary criminals. This classification is done on grounds of one’s social and financial status. The “A” category prisoners were bearing their own dresses; they brought food from their own home. They got the opportunity to write letter once in 7 days and mix with the people. The “B” category prisoners were bearing a pajama where a black line was there to mark their identity. They got the opportunity to write letter twice in a month and also mix with people. The “C” category was using a small under bearer. They got the chance to write a letter once in 3 months. The beginning of the 20th century marked an important phase of national struggle. The educated middle class who joined the freedom movement of India constantly demanded in the legislative council for proper treatment of the political prisoners in equal terms with the prisoners in England and grant of similar facilities as European prisoners in India fell into the deaf ears of the govt. The demand for special status as political prisoners was rejected by the Indian Jails Committee of 1920. The argument provided for such a rejection was that the recognition of special status will encourage crime or may be used as an excuse that the person committed his offence for a political motive. Lastly crime remains crime, whatever the motive of the criminal.

The 1920s and 1930s in Nationalist historiography is marked by the ascendancy of the Indian National Congress. As its corollary, the Utkal Sammilani was founded in Orissa by Madhusudan Das in 1903 for raising the issue of separate Orissa province. The nature of this organization got changed under the leadership of Gopabandhu Das who mobilised people to work for national independence first followed by separate Orissa province. In a parallel development there was the rise of revolutionary terrorists in different parts of the country. The colonial govt. developed coercive penal measures to deal with the upsurge. Though the penal policy has changed from punitive to reformatory, the colonial govt. believed that all detenus could not be reformed. Thus they need to be separated from the detenus who could

be reformed through 'educative' and 'reformatory' work. Vocational training was undertaken in July 1932. Under it classes on first aid and hygiene was organised in the Berhampore camp. Subsequently in September 1932 members of the staff of Krishnath College Berhampore delivered lectures in English. In 1933 provisions were made for training in shorthand, book keeping and typewriting. Along with social, economic and psychological measures to tackle the revolutionary upsurge, detention conditions were made more stringent. Many a times privileges and allowances of detenus were curtailed. Apart from reduction in allowances there was also curtailment in the scope of services and facilities given to the detenus. The colonial govt. adopted two pronged policy for dealing with revolutionary terrorists. The period from 1920s to 1940s was marked by frequent prison protests in demanding the status of "political prisoners"

Apart from "special class" prisoners there existed another two categories of prisoners. They were "European prisoners" and "Ordinary prisoners". The first category included Europeans and was enjoying higher level of comfort. This had led to discontentment among Indians and they accused the government of pursuing racial discrimination. Madan Mohan Malaviya proposed to consider social class as a criterion for classification of prisoners in order to deal with complaints of racial discrimination. He recommended creating three divisions among prisoners. The first division was to include European and high class prisoners without moral turpitude. The second division was to consist of European and high class prisoners with moral turpitude and middle class prisoners irrespective of their offence. He included the prisoners whose standard of living was below that of the middle class in the third category.³⁹⁶ He however opined that all political prisoners irrespective of their social status should be placed in the first division. However after consultations with the provincial governments, the colonial government declared that "the social status and the nature of the offence committed are the factors which should be taken into account".³⁹⁷

Therefore the special class came under class A and comprised of 'non habitual' prisoners of 'good' moral character. European, Anglo-Indian and Indian prisoners were placed under B class. Prisoners who could not qualify to be included in class A or B were included under class C. This scheme of classification revealed the colonial officers'

³⁹⁶Ujjwal Kumar Singh, "Political Prisoners in India, 1920-1977" 1996, Thesis submitted for the degree of Doctor of Philosophy School of Oriental and African Studies University of London. P- 151, SOAS Research online eprints.soas.ac.uk

³⁹⁷ Ibid.p-151

shrewdness in catering to the discontent among prisoners who feel offended by differential treatment based on race as well as feel threatened by moves towards equalizing. However the classification did not recognize a separate class of political prisoners and simply appeased one section of the prisoners at the expense of others. The civil disobedience prisoners were the first to come under this new scheme of classification.³⁹⁸

The civil disobedience movement witnessed massive rise in jail population and the colonial bureaucracy's objective was not to allow superior treatment to majority of the prisoners. Separate confinement of different categories of prisoners led to the overcrowding of 'c' class prisoners. The CDM prisoners reacted sharply to the new classification system. Some felt vindicated the system in the sanction of their self-perception as political prisoners and some saw it as an attempt to divide the movement. But there was broad agreement among the 'Bhadralok' middle class about the special treatment that they get under the new classification system under the cloak of their social status and lifestyle. It was used by the colonial government to repress the movement by arbitrarily allocating class and special privileges.

Though some nationalist leaders like Patel wanted to mitigate the class distance and intermingle with all classes for the sake of not dividing the national movement, not all were interested to partake with their privileges. Most of them considered it as their natural entitlement. Even Ramadevi, an 'A' class prisoner in Bhagalpur jail had a very proprietorial attitude towards ordinary prisoners as well as female jail staff whom she considered there in her service³⁹⁹. The double standard nature of the English educated Bhadralok came to the fore with the introduction of the Goondas Bill in Bengal Provincial Legislative Council in 1922. In 1919, they had staunchly opposed the Rowlatt Act, which had empowered the police to arrest and detain individuals on suspicion. In 1923, the Goondas Bill became an Act. Under this Act, the police got the power to deport anyone from Calcutta on mere suspicion without a trial. This did not invoke an iota of response from the nationalists hitherto fighting against the excesses of the colonial government. This brings home the contradictions inherent in the nationalist's myth of sacrifice underlying jail going. Jail going thus became a stepping stone for political career with the onset of provincial elections in 1936-37. Prison experience brought electoral advantage and became a qualification for fighting provincial election. Thus

³⁹⁸ Ibid. p-152

³⁹⁹ Ramadevi, "Mo Jibanara Pathe", 1984, Thesaurus, Cuttack, p-45-55

the nationalist construction of renunciation through jail going lost its moral fervour and became a matter of political contest.

After the provincial elections of 1936-37, the most important issue that circumscribe the congress ministries is defining the spheres of political activities and release of political prisoners. The congress ministries found it highly difficult to release political prisoners as one of its poll promise. It also resulted in a tussle between the Congress and the colonial government. The congress was also threatened by the rising current of communism in Indian political scenario. Sumit Sarkar described the changing attitude of the Congress as “a steady shift to the Right, occasionally veiled by ‘Left’ rhetoric”.⁴⁰⁰ It changed its strategy in dealing with the situation. It took a pro-labour and pro-farmer stance to contain the growth of left. It came up with measures to protect life and property and to condemn “people, including Congressmen...found in the name of civil liberty to advocate murder, arson, looting and class war by violent means...”.⁴⁰¹ The provincial governments in all the Congress ruled provinces resorted to repressive measures to contain communal riots and left led labour and peasant movements. Subsequently labour, farmer and communal problems were termed as ‘economic’ and ‘social’ problems thus conflating its stand on ‘political’ and ‘national’. The participants in labour and agrarian movements were not recognised as political prisoners by the Congress.

The Second World War changed the colonial discourse of handling law and order in India. The Government formulated the Defence of India Act of 1939 and any nationalist activity was perceived as a threat to India and liable to punishment. The Act empowered the police to detain and arrest persons without warrant. Detention without trial became a norm. This was evident from the fact that the entire Congress leadership was imprisoned without trial on 9 August 1942. This political and legal development influenced the prison administration. Under the Defence of India Act and Rules of 1939, a new category of prisoners called “Security prisoner” was worked out by the colonial government to deal with the war situation. Basically the communists who had consolidated their position among agricultural and industrial workers and gave leadership to many trade union and anti-Zamindari movements were targeted by the colonial government as “traitors” who challenged the British imperialism in India. The security prisoners were divided into two classes. While the first class received treatments corresponding to that of Class B prisoners the second class

⁴⁰⁰Sumit Sarkar, “Modern India”, 2008, paper back, Laxmi Publications; Reprint edition, p.357.

⁴⁰¹ Ibid. p-352

prisoners were treated like class C prisoners i.e. ordinary prisoners.⁴⁰² The government did not permit any interaction among these detenues due to their class differences and justified its action on the ground of secure custody of detainees in following words,

“It must be emphasized that the Government of India considered these security prisoners as no better than ordinary criminals and that the Government of India’s concern is directed mainly to see that they are kept even more secure than ordinary criminals while they are in jail.”⁴⁰³ The detention conditions worsened after 1940s, special facilities and allowances were withdrawn and the detainees were criminalized.

Simultaneously the colonial government treated the Satyagrahi prisoners harshly. It condemned the Congress activities and sentenced congress agitators with rigorous imprisonment due to Congress’s denial to extent support during the war. The Satyagrahis were divided into two groups viz- persons convicted of ‘symbolic offence’ awarded simple imprisonment and persons convicted of not so ‘symbolic offence’ awarded rigorous imprisonment. But majority of the provincial governments rejected the Central government’s proposal. The Central government finally allowed the provinces to take decisions on the basis of their peculiar situations and apprehensions. Protests took place all over the country by the prisoners against stringent detention conditions and government harshness mostly due to the perception of the jail employees about the changing power relations in the country during the brief Congress rule.⁴⁰⁴ The government reports indicated that the jail discipline had loosened in Orissa as far as the ex-ministers and leading Congressmen were concerned and most of the jail staff was “conducting itself with an eye to the possibility of Congress returning to power”.⁴⁰⁵ The jail discipline was further affected by the protests of political prisoners over the pathetic detention conditions.

The Quit India Movement was very different from the earlier congress movements. Both the state as well as the people adopted violence as the medium to showcase their power. Gandhi including the frontline congress leaders was arrested the next day after giving the call for ‘Do or Die’. The young and militant members of the Congress openly advocated

⁴⁰² See Minutes of the meeting of provincial representatives held at Simla on 29 and 30 August 1940. File no. 159\40, H [P(I)] L NAI, pp.77-78.

⁴⁰³ Notes in the Home Department dated 10 April 1940. File no. 43\1\40, H(P) & KW, NAI, p. 14., quoted in U.K.Singh, “Political Prisoners in India: 1920-1977” SOAS online, p-194

⁴⁰⁴ Confidential letter dated 23 August 1941, from the UP Government to the IG of Prisons. File no. 43\63\41, H[P(I)], NAI, p.17.

⁴⁰⁵ File no. 3\9\42, H[P(I)], NAI, p. 17

violence. Members of the Congress Socialist Party, the Forward Bloc, and the revolutionary terrorists actively participated in the movement. People openly attacked government offices, burnt post offices and police stations etc. Around 60,000 persons were arrested, 26,000 convicted and 18,000 detained under the Defence of India Rules by the end of 1942.⁴⁰⁶ The official reports talked about two kinds of prisoners during this period. They were the Congress and the non-Congress. The Congress security prisoners were segregated and were given facilities mid way between classes I and II.⁴⁰⁷ They were allowed correspondence only with family members on domestic matters and family allowances were granted only on the ground of absolute and proved necessity. The main reason this development was to secure the seclusion of congress security prisoners.

There was the creation of another class of security prisoners who were given class ‘C’ treatment. They were called the ‘criminal security prisoners’ or the ‘goonda’ class. This ‘Goonda’ class was denied some of the facilities which were provided to the security prisoners. Both mental and physical pain was inflicted on them. They were beaten, fettered and hands cuffed in cells, forced to eat dirty food and were kept awake for weeks. Sardar Sant Singh, the member of Bihar and Orissa Legislative Assembly posed a question to the government regarding the treatment of persons detained in the Red Fort in Delhi on 17th March 1943. The government denied to have detained any ‘educated’ and ‘respectable’ persons in the underground cells in Red Fort.⁴⁰⁸ This response displays the biased attitude of the government towards persons of low socio-economic status and the common masses of the country.

The Congress leaders jailed during the Quit India Movement were released in June 1945. The political atmosphere of the country was dominated by the INA trial, peasant and industrial workers movements and increasing communal disharmony. Under the Cabinet Mission proposal, an Interim government dominated by the Congress was formed on 2 September 1946 under the leadership of Jawaharlal Nehru. Earlier the status of political prisoner was prudently avoided by substitutes like ‘state’ and ‘security’ prisoners by the colonial government. However, this period witnessed a concerted effort to define political prisoners as a special class. Rules and regulations were clearly defined to treat the political

⁴⁰⁶ The figures are from Bipan Chandra et al., “India’s Struggle for Independence”, 2016, Penguin Random House India; Reprint edition, p-462-463.

⁴⁰⁷ U. K. Singh, “Political Prisoners in India: 1920-1977”, SOAS online, p-217

⁴⁰⁸ For the details of the questions and answers in the legislative assembly see file no, 22\15\43, H[P(I)]t NAI.

prisoners within the prison. Absence of moral turpitude, motive of offence and the issue of violence were officially considered as criterias for assigning the status of political prisoner. The move reflected the aspirations as well as the anxieties of nationalists in their journey towards power. It excluded persons “connected with communal, religious or labour movement” from the category of political prisoners.⁴⁰⁹ However there was no consensus over the definition of the status of ‘political prisoner’.

The above discussion shows how the nationalist leadership contesting for the status of political prisoner lost enthusiasm as independence brought with it the apprehensions of consolidating power. Soon the question of granting the status of political prisoner brought difficulties to impart stability to the nascent nation-state. It became very difficult to isolate labour and communal motive from the political. The Congress as the decision maker faced the problem of defining what constitutes ‘political’ in the changed political scenario. The Congress got leadership of the new nation and conflated the ‘political’ with the ‘national’ and went on excluding elements that posed challenges to the emerging nation state.

Oriya nationalists and the Colonial system of law

The Gandhian Movement that started with the introduction of the Non-cooperation movement brought a new change in the state-subject relationship. One of the most important premises on which Gandhi was to challenge the colonial government was the peaceful breaking of the colonial law. The earlier congress leadership which had made it a principle to respect the rule of law, the Gandhian leadership challenged the system which happened to be the backbone of the colonial government in India. To this new method of fighting against the British, the Oriya’s fully participated in the process and ignored and violated the rule of law.

The British penal strategies changed with the changing nature of Indian nationalism. With the emergence of new trends in the political struggle, the British penal regime was further strengthened to punish the Indians for their challenge to British authority. In the changed atmosphere of Indian nationalism, the British rule was held as a common foe by the nationalists across regions of India. The nationalist challenge was dealt by taking recourse to a number of existing penal and preventive laws by the colonial law. New laws and measures were also taken to deal with emergency situations. The law of sedition under section 124A (sedition) was applied to prosecute the nationalists for criticising the colonial government.

⁴⁰⁹ Note dated 3 February 1947 by G.V.Bedekar, Deputy Secretary, Home Department, Gol. ibid., p.54

Suspects were also held in prison without trial for years and severe punishments were handed down.

Out of the penal laws, the one which was most twisted to suppress nationalist activities was the law of sedition. Sedition has been defined as intentionally disseminating seditious matters with a view to bring into contempt and to incite disaffection against the Government established by law in British India. In Orissa it was resorted very often to jail the nationalist leaders. A meeting was about to be held on the bank of Kathjodi River where Gopabandhu Das was supposed to deliver his message of non-cooperation. Before that, he was served the notice under section 144. Nationalists also resorted themselves to innovative measures to carry on their activities. Gopabandhu Das sent his written speeches to the meeting to be read by one of his followers. The District Magistrate felt offended and served section 144 on the written speeches. Pandita Godabarish Mohapatra in his autobiography mentioned that section 144 was the most obnoxious law which obstructed the nationalist activities. He described how the colonial government resorted to various ways and means to serve section 144 notices to nationalists. Nationalists also searched innovative ways to deal with the menace of section 144. In one of the incident after Gopabandhu Das was served 144 notice, his speeches were read by Godabarisha Mohapatra in one public address in Suando where around ten thousand people gathered to hear Gopabandhu Das. At the end of the meeting, the police officer in charge remarked that “what a perfect riposte, u shoot our body in our own arrow”. Section 144 was employed to chase down the nationalists wherever they were going to hold public meetings.

In a defamation case related to the newspaper “Samaj”, Gopabandhu Das was acquitted both in lower court as well as in the High Court of Patna. This was not taken well by the Orissa police who nurtured angst against him. On 25th February 1922 in a meeting in Khurda, the police people prevailed upon ‘Mehentaras’ to throw liquor and spit on people attending the meeting to lower down their morale. Even the police people armed and placed themselves in strategic places to restrict the entry of people into the meeting. But people defied all these and attended the meeting by various means. Later on the people of Khurda decided to stop selling any provisions to the ‘Mehentaras’ and finally on 5th March 1922 they requested the Khurda people to forgive them. This was a big defeat for the police and lost their morale through repeated failures and remorse.

In an attempt to suppress the nationalist activities by hook or crook the colonial government was not reluctant to support even the most atrocious Gadjat kings of Orissa. One striking example was the Kanika atrocities. The king then resorted to excessive revenue collection, loot, arson, atrocities on women etc. The innocent subjects rose in rebellion against the king under the impact of Gandhi's Satyagraha call. The colonial police helped the king of Kanika to suppress the protest and served section 144 notices on Oriya nationalists who went there to support the innocent villagers. In that case the colonial government became an oppressor equally along with the king and thus the "maibaap" legitimacy of the British over Indians was ripped to pieces.

The 1920s inaugurated the communist movement in India and the gradual demise of the revolutionary terrorist movement. The 1930s saw the rise of revolutionary terrorist activities. Many organizations were formed for example Hindustan Socialist Republican Association, Naujawan Bharat Sabha etc. It evoked most intense repressive measures from the colonial government. The communists intensified their activities during this period and were perceived as a great threat to the British government. The penal measures of the government were formulated in the backdrop of the Civil Disobedience Movement. The colonial authorities perceived the revolutionary terrorism activities as 'dangerous' and 'conspiratorial' and have contaminated effect on CDM prisoners and other ordinary prisoners. The officials took necessary steps to segregate the detenus in different camps specially arranged for them. A large number of such prisoners accused of 'violent crimes' were transported to Andaman Jails. But the status of 'political prisoner' was denied to the revolutionary terrorists. Reformation and reclamation were also used as official strategy to deal with revolutionary terrorists. A camp was established in Berhampore for reforming revolutionary terrorists through 'educative and reformatory' training. The objective was to use their time and skill them in something useful to earn their livelihood after being released. In 1932, the English lecture to be delivered by a member of the staff of the Krishnath College, Berhampore was abandoned due to indiscipline of the detenus. Another initiative for the reclamation of detenus was taken in 1933. It was planned to provide vocational training in shorthand, book-keeping and typewriting to the detenus which would help them in obtaining employment on their release. But the detenus were required to provide written undertakings to be abided by the rules of discipline. This precondition set by the colonial government made the detenus apprehensive and thus the scheme ended in failure.

While these measures continued to tackle revolutionary upsurge, the government was progressively making the detention measures stringent. The privileges and the allowances of the detenus were curtailed. There was also the curtailment of amenities of prisoners who were perceived as 'Bhadralok middle class'. The government however provided study allowances to the detenus and allowed them to appear in University examinations. But the expenditure incurred on the 'study allowance', forced the government "to reduce the number of examinees. It also decided not to pay more than half for more than one examination to a detenu within the same academic year". The revolutionary terrorists in other parts of India particularly Punjab and UP demanded the status of 'political prisoners' and resorted to hunger strike as a mark of their protest. In course of formulating a strategy to deal with hunger strike by the prisoners the government evolved the method of 'force feeding' to deal with this menace. It accorded legal status to the method of force feeding on the ground of humanity and duty of the state to protect those in custody to save the prisoners. The colonial government adopted the policy of detention without trial as well as imposed stringent prison measures to deal with revolutionary terrorists thus pursued a policy of 'criminalization'. On the other hand by adopting 'reformatory' policies it professed to 'reclaim' subjects who it believed had been 'astrayed' by a perverted idealism' on to a 'wrong' path. The colonial government here performed a paternalistic role and the reclamation method was shifted from being 'political' to 'socio-economic' as lack of employment was seen as the primary cause behind the young masses joining in revolutionary activities.

The prosecution of Bhagirathi Das on charges of sedition suggest how desperate the colonial state was to get hold of the anti-colonial activities. Bhagirathi Das was accused of delivering a seditious speech and read certain portions from a prescribed book called 'Palasi Abasan' in a public meeting held at Aurangabad on 13th June 1930. The accusation led to the prosecution of Bhagirathi Das. While the prosecution produced three witnesses to justify the conviction of Bhagirathi Das, the defence produced five witnesses to acquit him. But the position of the prosecution was made strong by the account of a witness who had happened to be present and take note of the speech and submitted a report on the basis of these notes. Neither this report nor the original notes taken on the spot was produced. The witnesses have merely deposed from memory that the accused told his audience that government had been cheating the Indians, had been very oppressive and cut down the fingers of numerous skilled weavers to kill the Indian cloth industry. The witnesses deposed from memory about the speech which had been delivered more than two months ago.

Another dimension of the verdict points to the power and knowledge aspect of law. In the above case the defence lawyer sought to be more reliable than the prosecution. According to the judge, the defence witnesses were more respectable and reliable. But the prosecution witnesses were neither respectable nor reliable because they had no education and did not enjoy any privilege in the society. Therefore the colonial legal system was also not free from hegemony and privilege.

The letter from Inspector General of police, Orissa to the chief secretary of Orissa on 23rd May 1938 for a note on the preventive action taken under sections 107 and 144 of the Criminal Procedure Code against persons, who work under a political cloak to disturb the public peace, excludes Ganjam, Koraput and Sambalpur. There was only one case against 4 persons in Balasore which was unconnected with any agitation. This left Cuttack and Puri. The former reports one case of this nature under section 144 and one under 107 while the latter reports one case under section 107. The cuttack 144 case was in Korai police station against PhanindraNath Pal who instigated people to commit mischiefs and thefts. In Cuttack, Section 107 CPC case in Tirtol against the behaviour of the members of the so called “29 villages Sabha”. A large number of allegations of thefts, assaults, threats and boycott have been laid against these people by various members of the public. The Puri case under section 107 was against 18 people of Gop police station alleged that they are stirring up trouble against the Mahanta of Erbang.

After the formation of the Congress Ministry in 1937 in Orissa, prison and penal practices occupied a major area of reform. The Congress Ministry proceeded to abolish the gradation of political prisoners into A, B and C categories. All political prisoners were henceforth treated as A class prisoners with all privileges except certain items of food. Many activities like spinning, cottage industry related activities were introduced to increase the economic productivity of the prisoners. The inhuman elements of the Criminal Tribes Act were sought to be removed by allowing more freedom to those under its purview, particularly the Dandasi Tribe of Ganjam, to ensure a full-fledged growth of their personalities. The colonial practice of Sarkar Salam Swas also discontinued. The Ministry also declared the release of all political prisoners. Political prosecutions were also withdrawn. The police manual was given a new looking by revising the old rules and instilling in the police a sense of duty towards the people.

The Oriya nationalist also objected to the abuse of law and by the police and court and demanded the loopholes of the law be done away with. On 29th December 1934, Sardar Sant Singh introduced the Code of Criminal Procedure (amendment) Bill (amendment of Section 167). Section 167 was intended to provide for the necessity of obtaining remand of the accused to custody, so that the police may be enabled to complete the investigation. The Magistrate is required to give reasons for granting the remand. The accused has a right to justice and to place his side of the case before the reasons given by the police are accepted by the Magistrate. Every person charged with an offence is presumed to be innocent till he is convicted of the crime with which he is charged. Hence the detention before the conviction should be as short as can conveniently be made. The accused is entitled to be placed on his trial at the earliest moment and should not unnecessarily be detained in custody. Hence it is in the interest of justice that the accused should have a right to be heard before he is remanded. There have been several cases during the recent years where the accused were not brought to the court before the Magistrate for obtaining the remand. The Magistrate was instead taken to the place where the accused was detained. Without giving an opportunity to the accused to be heard, the Magistrates often pass orders of remand after hearing the police side of the case. This is not in accordance with the principles of justice. Hence the present amendment is necessary in order to make it obligatory on the part of the investigating authorities to produce the accused before the Magistrate in calm and solemn atmosphere of court before any order of detention is passed. He also introduced a bill to amend section 205 (1) of the Criminal Procedure Code on 27th February, 1935. According to the Bill, cases have arisen where justice demanded that the personal appearance of the accused be dispensed with. But section 205(1) stood in the way. The courts had to circumvent these provisions by adopting the procedure of first cancelling the warrants and then ordering the issue of the summons in order to make the section cover the case. The proposed amendment Bill will bring the law in conformity with the established practice. The bill was objected by the Government of India on the ground that in the rare cases in which it would be appropriate to dispense with the personal attendance of the accused after a warrant had been issued it was open to Magistrate to revoke the warrant and convert it into summons: he would then have the discretion allowed by section 205(1) to dispense with personal appearance.

Oriya nationalists and the representation of Colonial jail

Pandit Gopabandhu Das, a freedom fighter appeared in the national scenario when Orissa was still isolated from the national political developments. It was he who for the first time felt the necessity and the urgency to include Orissa in the national freedom struggle. He was successful in sidelining regional issues and hold national interest as the priority. Orissa participated in the Non Cooperation movement under his leadership. He propagated Mahatma Gandhi's message of non-cooperation, non violence and call for jail bhara for attaining Swaraj. His important literary creations were *Bandira Atmakatha*⁴¹⁰ and *Kara Kabita*⁴¹¹ published in 1923 and 1928 respectively. It is during his prison days, he wrote *Bandira Atmakatha*, a long, semi-autobiographical poem. The poem is divided into 6 sections and 782. A marvellous literary creation, the poem portrays powerful expression of strong nationalistic sentiments. It also deeply resents the distressing socio-political environment created by the colonial state in Orissa. He appealed to the people through the poem to unite with conviction and faith. He generated confidence among people and mobilised them to fight against the colonial government.⁴¹² He said only through the path of truth, Swarajya can be achieved."⁴¹³

Gopabandhu argued for making Utkal Sammilani a part of the national movement.⁴¹⁴ Utkal Sammilani since its inception was following a very liberal and loyalistic politics towards the colonial government. Its objective was limited to unification of Oriya speaking people. But he transformed the organisation and made it a representative institution of the Indian National Congress in Orissa to fight for independence. He emphasized on attaining independence for the country first than making of a separate Orissa province. He influenced other members of the Utkal Sammilani to fight for the independence of the nation

⁴¹⁰The Autobiography of a Prisoner. In this Gopabandhu provides a geographical construction of colonial rule in Orissa. As an important sub-imperial centre, Orissa played an important role in the making of the colonial empire. Now in the twentieth century, Orissa has to play an equally important role within the imperial web of connections thereby making a contribution towards the formation of a national identity

⁴¹¹*Bandira Atmakatha: Poems from the Prison*

⁴¹²His spirit of service and sacrifice finds an apt echo in the following lines "*Misu mora deha a desha matire Desha bashi chali jantu pithier*", *Bandira Atmakatha*, stanza, 2, Line-3 (From these lines the sense of patriotism cultivated by Gopabandhu is imminent. He wanted to dedicate his whole life to the service of the people and the nation. For achieving Swarajya, he could happily give up his life for the nation.

⁴¹³"*Satya sanatan prabhu bhagaban*

a bhabe kara mo hruda baliyan

swarajya sadhane rahu mora dhyam

bharate swarajya jagata kalyana" , *Bandira Atmakatha*, stanza, 20 (Oh my God, give me strength to concentrate on achieving swarajya only. For the attainment of swarajya is not only a boon for India but also for the whole world)

⁴¹⁴Radhakanta Barik, "Gopabandhu and the National Movement in Orissa", 1978, *Social Scientist*, Vol. 6, No. 10, p- 40-52.

rather than seeking regional interests. Thus while the demand for a separate Oriya state had started the process of making of an Oriya identity, the integration of Orissa into the national movement by Gopabandhu Das completed it.

This poem also illustrated the nationalist culture of jail going in 1920s and 1930s. Jail was earlier perceived as a space for criminals and uncivilised in the upper class and the middle class understanding.⁴¹⁵ But the end of nineteenth century brought a new mental attitude. The Upper and the Middle class who had firm faith and loyalty towards the British government now became bitter critics of the colonial rule. They earlier had praised the benevolent rule through the '*rule of law*'. Now they condemned the colonial legal institutions and suspected justice system of the colonial administration. They glorified jail going during the Gandhian phase of Indian national movement, and treated imprisonment as a medium to get the status of '*nationalists*' or '*freedom fighter*'. Imprisonments of the nationalists were considered as '*honourable imprisonment*'⁴¹⁶. Gopabandhu Das thus described jail as national abode and holy place⁴¹⁷. He motivated people to court voluntary imprisonment and challenge the British legal sovereignty over India. According to him, the prison was the entrance to the dreamland of national independence.⁴¹⁸

In 1921, Rajakrushna Bose, a Non Cooperation preacher was arrested under section 108 of Criminal Procedure. He was fined Rs.200 and was set free. But Rajakrushna Bose declined and was put behind the jail for one year without labour. He was the first political prisoner from Orissa. Pandita Gopabandhu Das remarked that "finally the Cuttack prison got purified". He appealed emotionally to Rajakrishna to remain in jail for one year without any sorrow. For a non-cooperate patriot it is a pilgrimage. To relieve the mother earth from sins, Sri Krishna took birth in prison. Now you are there. Start meditation with peace and calm. It is through the selfless meditation of non-co-operators like you, Swaraj will be attained. Your body is in prison, but your mind and soul are free and independent. God has arranged a

⁴¹⁵Ibid., introduction

⁴¹⁶Ibid., p-120

⁴¹⁷"*Mile jadikahabhagyekarabasa*

Kara nuhai se pabitrprabhas"Ibid Stanza- 3 (he appealed the people to court mass imprisonment without any fear. He strengthened the moral of the people by defining the jail as a 'holy place') See Shasini, S.R. "Popular Construction of Self-government: The Literary Representation of 'National' in Bandira Atmakatha by Gopabandhu Das", 2015, International Journal of Multidisciplinary research and Development, Vol-2, Issue-3, p-697-702.

⁴¹⁸"*Srihari chandan bharat kardam*

Karagar amor swaraj ashram", Ibid. Stanza- 20 (in this stanza, he tried to politicize the space of Jail by defining it as a 'swarajya ashram')

peaceful place for your meditation. Let his wish be fulfilled”.⁴¹⁹ Thus Gopabandhu gave a spiritual meaning to imprisonment and described it as a great sacrifice to suffer imprisonment for the sake of others as well as for the country⁴²⁰. This had though boosted the morale of the protesters but a conscious attempt was made by him to shed the criminal nature of jail going thus establishing the superiority of the nationalists within the jail demography.

Birakishore Das, a poet and freedom fighter of the period wrote in his book “Foundation of Freedom” when mass whipping was going on in the year 1930:

“Beat me with cudgel as much as you can

We lay down our lives

And you are to blame

You are sure to come to an inglorious end

And taste the fruit of shame”

On 31st May 1922, PanditGopabandhu Das was arrested in Puri in the charges of establishing ‘Utkal Swaraj Seva Sangha’ and ‘Swechha Sevak Sangha’ under section 17/2 of the Criminal Procedure Code. He accepted it whole heartedly without an iota of remorse in his face. The police inspector felt embarrassed to arrest him but Gopabandhu asked him to do his duty. The arrest of Gopabandhu spread like wildfire in Puri. On his way to jail he was felicitated with flowers and people gathered in large numbers in every station to have a gaze of Gopabandhu. He advised people to follow the Gandhian programme of Satyagraha and described his stay at jail as an opportunity to give rest to his body. In a conversation with Niranjana Pattnaik during his journey from Puri to Cuttack, he told it is not for political power that he made Orissa a part of the national movement rather to mitigate the poverty in Orissa and to feed the poor, he has joined the national movement. He further told, the race which cannot sacrifice, cannot survive. When Niranjana Pattanaik asked him what message he wants to give the people outside Orissa, he said I appeal the leaders as well as the people of other states to fulfil their duty towards the poor people of Orissa. Orissa is way back in politics. People are extremely poor here which has resulted in the forfeiture of their character. If they don’t help Orissa now then the integrity as well as the all-round development of India cannot happen. They think that the separate Orissa province movement was an obstacle in national struggle. In the hope and believe that the struggle will help them in solving their problem had

⁴¹⁹Pandita Suryanarayn Dash, “Utkalamani Gopabandhu” 1975, Grantha Mandira, Cuttack, p-388-389

⁴²⁰ Shasini, S.R. “Popular Construction of Self-government: The Literary Representation of ‘National’ in Bandira Atmakatha by Gopabandhu Das”, 2015, International Journal of Multidisciplinary research and Development, Vol-2, Issue-3, p-697-702.

drawn thousands of Oriyas into the freedom struggle and they have donated as per their capacity to the 'Tilak Swaraj Fund'.⁴²¹

In his written statement submitted to the court for his participation in non-cooperation movement and defending his position under section 144 of IPC, Gopabandhu Das had said, "it is the birth right of every human being to sit together and discuss various matter freely without any restriction. If this right is chained how can people with self-respect be afraid of political punishment? The colonial government had arrested us while demanding the fundamental rights of every human being".

In his jail dairy during his stay in Hazaribagh jail, Gopabandhu Das narrated one incident where the prisoners fought against the jail authorities. In jail they used to sing a spiritual song after dinner and give slogan. Once the jailor Mr. Mick ordered to stop these otherwise he will stop all the facilities that they were enjoying as political prisoners. Even the I.G. of prisons, Mr. Banatawala threatened to take away the furniture and award fourteen days of solitary confinement. Only two hours in a day were given to the prisoners to complete their daily chores. But the prisoners became more reactive with these orders and sang the prayer and gave slogan more loudly. Finally the colonial authorities relented and the prisoners were allowed to sing with peace and calmness.

Prison as a Political Space

The prison became a highly politicised space from 1920s onwards. Hunger strikes had become popular feature of the nationalist movement of India. Mahatma Gandhi used fasting as a non-violent weapon to fight against the British and to teach moral principles to his followers. Where as Gandhi's fast was an individual act, the hunger strikes were collective and united efforts to challenge the colonial government⁴²². Hunger strikes were used as weapons to display the native defiance to the colonial government. Hunger strikes were symbolically used to secure more concessions from the government and to display the capacity and the rights of the conscious political human beings in the state. This technique of protest was never displayed before 1912. It became a part of the nationalist resistance movement in the beginning of the twentieth century. The procedure of force feeding that was practised by the prison administration to tackle the hunger strikers displayed a twofold struggle of the colonial government on one hand and the prisoners on the other hand. The

⁴²¹Dr. Nityananda Satapathy, "He sathi, He Sarathi", 1969, GranthaMandira, Cuttack, , p-229

⁴²²P.K. Srivastava, "Resistance and Repression in India: The Hunger Strike in Andaman Cellular Jail In 1933", 2003, *Crime, Historia and Societies*, Vol-7, No-2, p. 81-102

colonial government by force feeding demonstrated the complete control of the government over the native body. The prisoners on the other hand demonstrated their right to protest against an exploitative state trying to snatch their individual liberty and dignity. The colonial state was afraid of the dangerous ideas. Thus the tortuous procedure of force feeding got legal sanction and the element of inhumanisation was overlooked. Through the technique of mass hunger strikes the prisoners resisted the colonial administration from behind the prison walls.

Thus the emergence of the educated middle class and their participation in national politics brought a new change in the state subject relationship. First of all they played an important role in the integration of Oriya identity into the national identity. Secondly they challenged the colonial govt. on the ground of arbitrary use of power and fought for the independence of the country. In both the case colonial legal machinery served their purpose. They used the same language of the rule of law to challenge the imperial authority. Further the jail which was earlier held in abhorrence by the “Bhadralok” was now legitimised into a sacred space essential for the liberation of the country. They legitimised their role as nationalists sacrificing their interest for the sake of national interest and thus demanded special privileges to mark out their difference from ordinary prisoners. In this way the space of jail was politicised and ushered the state citizen relationship i.e. the active citizen now fighting against any wrong doings and forcing the colonial authority to establish responsible government.

This new change in the state subject relationship was also reflected regionally. The nationalist leadership in Orissa which was until fighting for a separate state set aside the regional issues. The national issues were upheld by Oriya leaders and identified themselves as Indians first, thus shedding their regional character. Leaders from Orissa joined the national movement and fought for the independence of India thus integrating Orissa into India. During the national movement, the main instrument through which the leaders fought against the British was the “Rule of law” the same instrument which used by the British to establish its supremacy. The “rule of law” platform was used to challenge the prison administration, the court and other institutions of coercion etc. Therefore initially the British utilised the “rule of law” to homogenize the Indian landscape administratively. Later on the nationalist leadership utilised it to generate nationalism and strengthen the nation called India to which all regional units submerge. Hence Orissa during the nationalist period got submerged into India and the Oriya identity transformed itself into the Indian identity. Alongside this phase also witnessed a change in the earlier understanding of the State-Subject

relationship where the subject was dociled, dominated, subjugated and exploited by an anlien state. The new subject became a citizen when it advocated rights, defied the authority, broke the law to challenge the government, spoke in terms of a nation of his own and fought for the independence of this nation.

Conclusion

This work has initially highlighted the underlying rationality of the precolonial state systems in India, with Orissa as the specific case study and the characteristics of indigeneous communities, using the works of two highly acclaimed scholars, Bernard Cohn and Sudipta Kaviraj. It has therefore first stressed the underlying relations of power, authority, legitimacy and legality in Indian pre-colonial systems of state and societies. It has then examined the grounds for major differences with Western forms of the State and social relations, especially the emergence of the middle classes. The first three chapters thus discuss the historical conditions of Orissa in the ancient, medieval and late medieval times, with special attention to state power and institutions, and how these systems claimed legitimacy. These three chapters also mention the enormous range of communities residing in these regions, with their own socio-political dynamics. The many aboriginal inhabitants belonging to various tribal groups, the intrusion of new races from north throughout the ancient and medieval period resulting in demographic changes in the region- show the co-existence of many systems of rule with their own logic of legitimacy. On the eve of colonisation of India by the British, Orissa became a place of both geographic and strategic importance for the colonisers. Its vast sea coast attracted the foreign traders who established their trading companies in different parts of Orissa. In the war for supremacy over India, the British emerged victorious and drove out all other foreign trading groups from India. The importance of Orissa as far as the political and economic interest of the British was concerned resulted in the second Maratha war in 1803. The war was won by the British and colonial supremacy was established over Orissa.

The treaty of Bassein in 1802 ended the Maratha supremacy over Orissa thus making it a part of British Empire. Many British officials have eulogized the British rule over Orissa in the sense that it had broke down the corrupt Maratha Government and established law and order machinery in a firm footing. Many scholars have criticised the police and judicial system in pre-colonial Orissa which was suffering under corruption, inefficiency, venality, compromises and purchase of pardon. The establishment of British rule necessitated the administrative changes in the land. Accordingly, the British established different administrative pillars like police, revenue, and judiciary in Orissa. More importantly it institutionalized a judicial structure based on western notions of legality to which the

indigenous people were not habituated. The introduction of the formal legal system surpassed the unrecorded customs and government by personal discretion. It is not to argue that the indigenous control over legal governance was completely dispelled rather the superiority of western legality was imposed on Oriya people. The rule of law was the major political as well as ideological instrument through which the East India Company colonised India. The liberal rational principles of the rule of law were mediated through ideal political and individualistic legal subjects.

Introducing the colonial system of rule of law was considered necessary by the British officials. As a part of imperial agenda, the rule of law was handed out to Indians with the promise of good governance and effective law and order system. It sought to uphold an idealized egalitarian order by resituating the hierarchical order. For effective state control, the rule of law was institutionalized through prisons, courts and jails. The Regulation of 1792 vested the police power with magistrates and directed to divide the districts into police jurisdictions under a Darogah. It declared all the population under the jurisdiction subject to the control of the Darogah, thus enabling the formal demilitarisation of Zamindars. They still retained some of their judicial functions outside the system of organized British law. Orissa was later divided into two political units i.e. the regulating areas under the direct administration of the British and non-regulating areas under the tributary chiefs. The regulation IV of 1804 and Regulation XIII of 1805 divided the districts into police stations. The Magistrates were vested with police power and functioned under Board of commissioners at Cuttack. The two divisions created by the Regulation 4 of 1804 were unified and placed under a judge cum Magistrate in 1805. The Board of commissioners was abolished. The Court of Sadar Nizamat Adalat was the highest court of justice and supervised the police administration under the guidance of the Governor General in council. Later on a Joint Magistrate was stationed at Puri in 1813 and at Balasore in 1815. By the Regulation 10 of the year 1808, the post of Superintendent of police was created to administer criminal justice effectively under the Nizamat Adalat. The Court of Circuit established under regulation 4 of 1804 was closed down. Under the Regulation 1 of 1829, the Commissioners of Revenue were assigned the powers of circuit judges. Sessions judges in each division of the Bengal Presidency as well as in Orissa were appointed as per the Regulation 7 of 1831. The office of the Judge cum Magistrate was divided. The Collector of Cuttack became the Magistrate and the Civil Judge was made the Sessions Judge of Orissa on March 1, 1832.

Criminal courts were established at Cuttack, Puri and Balasore in a hierarchical manner such as the Courts of magistrate, the joint Magistrate and the Deputy magistrate.

The revolt of 1857 necessitated reorganization of the police administration. Under the Police Act of 1860, the administration of police was placed in charge of an European Superintendent under the District magistrate. But no effort was made to provide professional training and guidance to the police particularly to the lower machineries like the Darogahs. The Darogahs in Orissa were basically non Oriyas which was resented by the local elites. The post 1857 era witnessed a series of laws framed by the British including the Criminal Procedure Code of 1882, Indian Penal Code of 1860, Indian Evidence Act of 1872, Indian Arms Act of 1878 etc. The Calcutta High Court and the Sadar Diwani Adalat were established at Calcutta with jurisdiction over Orissa. By establishing complete government monopoly over legitimate instruments of coercion; the colonial rulers established Thanas and placed them under the control of the Darogahs. These Darogahs functioned as local representatives of the Company. Thus the countryside was linked up with the apex administration in a single chain of command. The village Chowkidars functioned under the dual control of both the Zamindars and the Darogahs. The Zamindars were supposed to recommend the names for appointment of village Chowkidars to the Darogahs who used to appoint them formally. These Chowkidars acted as a link between the rural people and the police as well as between the Darogah and the Zamindar.

The rule of law which was desired by Hastings was the codification of Hindu and Muhammadan law as was practiced by natives of India. But the system of the rule of law introduced by Lord Cornwallis and followed by other officials was an instrument of oppression and exploitation of the natives. Corruption and abuse of judicial offices were the order of the day. It dismantled the so much prophesised egalitarian structure of the rule of law. It resulted as many British officials like Ewer opined in the total destruction of the confidence of the people in the justice system of the British and the impartiality of Courts. Further the ignorance of the rules and practices of the courts and the police stations by the natives of Orissa resulted in such exploitation. The regulations were not translated into Oriya thus creating linguistic barrier for natives. The natives were subjected to aggressive extraction of Darogahs and Amlahs in Courts. Thus through a series of regulations the judicial authority was shifted from the local authority to the British paramountcy.

Along with the new concept of colonial rule of law, a new understanding of penal regime also developed during this period. The importance was laid on reformation of the soul rather than torturing the body. The field of legal administration was revolutionized in eighteenth century England ushering a decisive transformation in the strategy of punishment along with new forms of authority within the prison. Physical punishment directed at the body was replaced by imprisonment directed towards the mind in a way to exercise control over both the body and mind of the prisoners. This necessitated the construction of the prison building initially called “the house of Correction” with due care to strict rules and codes of discipline. In 18th century John Howard brought a remarkable development in the realm of effective punishment when he recommended solitary confinement as the best form of punishment. But John Howard’s idea of spiritual awakening of the culprit through solitary confinement was questioned by Jeremy Bentham. Bentham proposed rational punishment by the state through framing of rules and inspections and surveillance over the convict in his book “Panopticon” published in 1791. In 1975 French philosopher Foucault think up the term of “panopticism” to describe the power relation manifested in supervision, control and correction to describe Bentham’s utilitarian theory and emphasized on Bentham’s ideas of utility of the rule of law.

The British introduced prisons in Orissa in the beginning of nineteenth century. The objective of the British government was to reform the colonized and transform them into obedient legal subjects by inventing a synaptic regime of power. The prison became a site for the colonial government to acquire knowledge about the natives and exercise power over the subjugated people. This colonial power regime had acquired legitimacy among the natives. Ashish Nandy argues that colonialism not only colonized the body but also the mind and produced significant cultural and psychological changes among the natives. David Arnold identified three elements namely the physical incorporation manifested in prison, ideological incorporation and by speaking for the body of the colonized and its different needs, the colonial government was able to establish its legitimacy.

The next question that arouse in this context was the legitimacy of the prison as an institution and the British as the state power to control it. The prison served as a symbol of colonial superordination and native subordination. It was serving the imperial needs of policing the body of the natives to bring moral and civilised correction. However, the prison system developed out of the colonial need to collect revenue smoothly by maintaining law and order. Thus the prison also facilitated the economic exploitation of Indians by the British

government. By referring to the traditional and superstitious native practices, the colonial government was able to construct a civilizational superiority to establish the legitimacy of the rule of law.

At the beginning there was no code of rules and regulations for prison administration. The Prison Discipline Committee of 1838 for the first time emphasized the need of enforcing prison discipline. Throughout the nineteenth century, the prison network in Orissa was designed and redesigned according to the colonial needs. Initially, the Barabati fort of Cuttack served the purpose for confining the prisoners. Later on the Cuttack jail was established in 1811, Balasore jail in 1816 and jails at Puri and Khurda functioned around 1840s and 1850s. Reforming the prisoners was of little interest to the British as they focussed on deterrence through punishment and coercion. The colonial government categorised the crimes, caste and class backgrounds of the prisoners, educational level and age. It maintained detailed statistics or information about criminals which enabled them to control the subject race better.

In mid nineteenth century, the educated middle classes took up leadership in their fight against colonialism. Prison and prison administration was the centre of their fight to define their rights and mobilise public opinion. The Oriya nationalist in the early years of twentieth century were constantly demanding the status of political prisoners in equal terms with the prisoners of England. The Oriya members in the Legislative Council in 1922 demanded equal treatment to political prisoners as European prisoners enjoy. Prison protests were frequent in nineteenth and twentieth century. Many scholars like Nehru have described how the prison was functioning as an institution to instill fear among the nationalists rather than reforming them.

The prison remained as the most effective weapon to control the indigenous society socially, politically, economically as well as culturally. The colonial prison became an effective space to understand the various dimensions of indigenous life and change the role of prison and institutional punishment depending upon time and space. The statistics collected about the prisoners patterned the rules and strategies of the colonial state. The statistics helped the colonial government to identify habitual offenders, dacoits, thugs who could never be deterred from crime. Thus the prison served as a public site for the identification and categorization of criminals helping them to differentiate between the law breakers and the law abiding subjects. The educated middle class quickly jumped into the category of the law

abiding subjects enamoured by the new, rationale and efficient law enforcement machinery. Jail was perceived with great contempt and jail going was considered as a loss of respect for the educated middle class and other respectable classes. Thus the prison helped them to build a sense of conscious superiority springing from the social hierarchy. However the common people were exploited by the legal machinery of the colonial government. The Darogahs, the Zamindars, moneylenders etc. often fulfilled their illegal demands by terrorizing the common people in the name of jail. The ignorance of the laws pushed the subalterns to the periphery. They were exploited by the state machineries that carved out their fortune by threatening people and helped to build colonial authority in the areas that hitherto remained out of the colonial state clutch.

The beginning of the national movement brought a different facet of the colonial jail. The national call for jail going given by Gandhi in 1920s and 1930s politicised the space of jail. Two of the popular compositions of Gopabandhu Das namely “Bandira Atmakatha” and “Kara Kabita” make stringent efforts to reduce the abhorrence about jail going and glorify the space of jail. The jail which was earlier stigmatized as space for criminals and uncivilised was now considered as a legitimate space to ascertain their rights. During the course of freedom movement jail space was glorified and immortalised and served the medium to get nationalist status. Gopabandhu Das legitimized the new role of the prison when he described it as a “national abode and a holy place”. By popularizing the role of jail he motivated people to voluntarily court imprisonment to challenge the legal sovereignty of the colonial government.

The penal practices also witnessed a drastic change with the establishment of colonial legal machinery. The pre-colonial practices like ignomination, trial by ordeal, compromises, negotiation, power dynamics, and caste and class specific punishment were abandoned. Institutional confinement as a form of punishment was not a popular practice under the pre-colonial regimes. Fines, beatings, mutilation and death were the main forms of penal arsenal. Brutal punishment though prevailed in the West but was challenged in the late eighteenth century and regarded as inhuman and substituted with imprisonment. In pre-colonial Orissa penal power was widely diffused among a variety of institutions. Each social group in Orissa had its own standards of morality and conduct. Many disputes were resolved in the caste Panchayats following their own customary and informal laws. Though the king was the highest court of appeal, these caste Panchayats functioned as semi-autonomous and self-regulatory units. The peculiar customs and traditions had the force of common law in respect

of the concerned community. Similarly, each tribal community had their village council functioning autonomously to look after the various aspects of their day to day life. When the British courts were established with the elaborate process of judging the crimes by identifying new forms of criminality and punishment, it disturbed the socio-cultural, economic and political fabric of Oriya society. For example caste offences were made illegal. A tribesman was considered a criminal for brewing his own liquor and collecting wood from forest.

The colonial rule of law aimed at taming and disciplining the colonial subjects and wipe out evil cultural practices. The discourse of law was orchestrated through law, police, jail, mental asylums etc. The native body was considered as a site for inflicting pain as a form of political control. Under pre-colonial regimes, physical torture was extensively used to extract confessions. The colonial narratives portrayed a very poor picture of the pre-colonial regimes legal system in order to justify Britain's benign presence in India. Under the British rule, excessive violence and torture was practiced too in every steps of judicial inquiry. Towards the mid 19th century, medical jurisprudence was used not only to detect crime but also the torture and violence on the body of the accused. New methods of detection and physical examination were adopted for elaborate colonial judicial practices. The pre-colonial legal regime based on caste, class, religious differentiation was also relied upon by the British in their penal practices though not theoretically. The deficiencies in legal administration were always imposed on native police branding them irrational and prone to excess. This was done to mark a racial superiority as well as demonstrating the ideologically constructed beneficent colonial regime. They equalized native police officers with pre-colonial rulers to shield its inherent weaknesses and strengthen the ideal of subjecthood of the natives who were to be governed by the authority of the colonial rule of law.

Establishment of penal settlements in distant regions was another practice for disciplining the natives. Transportation was viewed as more agonizing and deterrent for Indians. The commercial interests of the British to fulfil the requirement of labour to exploit natural resources of the island laid to the establishment of penal settlements. During the course of the freedom movement, transportation served another purpose to contain the spread of dangerous ideas. Thus the colonial prison served as institutions of control and penal practices helped in bringing this control over the natives. These institutions and practices manifested in itself the centralised language of administration reducing the physical distances between territories and identities. Thus colonial Orissa was integrated into colonial India as a

result of the introduction of the colonial legal system. This legal system blurred the physical distances and brought the various socio-economic and cultural groups closer.

The modern state in India was established on the terrain of control over all aspects of life, thus making the society a political target. It in turn contributed to the formation and objectification of the subject within the yardsticks framed by the new state system. The rule of law was one such yardstick that helped in the formation of state subject relationship. Foucault's three models such as "dividing practices", "Scientific classification" and "Subjectification" are very important to understand the formation of this relationship. This relationship was translated at two levels, first with the establishment of institutions of control i.e. the jails, the colonial courts, mental asylums etc. where the mechanisms of power were deployed. Second is the perception of the law i.e. the way it entered into the psyche of the people. Mention may be made of two experiments of the colonial state in its evolution. The first occasion that helped in the accentuation of the colonial authority was the Paik rebellion of 1817. Bakshi Jagabandhu Bidyadhar challenged the British authority till 1825 when he finally surrendered after signing the instrument of negotiation revolving around the legal system. He was not punished in response to his activities thus using the legal instrument to bring recalcitrant subjects under control while the colonial law became very stringent for his followers. The just and equitable legal system which the British had claimed to have built in reality was used to empire building. Later on, a letter supposedly written by Bakshi to Mr. Melville explores many dimensions of subjectification recognising the British as their ruler. Later on Paik companies were formed by the British and made them paid soldiers diverting their loyalty towards the colonial state. The first phase of state-subject relationship unfolded with the end of paik rebellion.

The next phase of legal subjectivity of the Oriyas can be discerned from the trial of Veer Surendra Sai, the aspirant to the throne of Sambalpur. Denied the throne, he rose in revolt and secured the support of the prominent Zamindars and Guntias. The British government indiscriminately arrested the protesters and put them in jails. Unable to suppress the revolt by use of force, Major Imphey employed the policy of conciliation. Many rebels were pardoned and their property was restored and many of them were rewarded who mediated the surrenders of the rebels. Thus the policy of conciliation and policy of reward along with the legal system were instituted to establish state-subject relationship. Though Surendra Sai surrendered on 16th May 1862, he was believed to have secretly conspiring with the rebels. The recovery of three letters from his house produced as evidence for his trial

under section 25 of Criminal Procedure Code of 1860 in the charge of waging war against the queen. Found guilty he was sentenced for transportation for life with forfeiture of his property. It demonstrated the power of authority of the colonial state to discipline them into loyal and obedient subjects. Later on in August, 1864, the Sessions court of Central Provinces acquitted all the persons by opining that the three documents were “gross forgeries”. Where the first judgement uses the “rule of law” to establish its authority with complete disregard to its impartial and utilitarian aspects, the second judgement demonstrated the honesty, impartiality of the legal system to woo over the subjects to become their legitimate authority. Thus a continuous interface between these two opposite diametric legitimised the colonial rule as well as formalised the state-subject relationship in Orissa.

The pre-colonial ruling classes were removed from political power by following different strategies while the emerging middle classes were accommodated into colonial administrative structure. The upper class and middle class understanding of a good legal subject isolated the people. Thus it is necessary to understand the various dimensions of the relationship from below. The rule of law had different applicability which was twisted to grant immunity to the upper class who could use it for their advantage as a result of their knowledge about it. The complexity and the technicality of the “rule of law” was beyond the comprehension of the common people enabling the colonial government and their political and legal subordination in India to exploit the people. The British then focussed to eliminate the wild, uncivilised and terror elements from the society. It enjoyed the support of the upper and middle class under the cloak of good and law abiding subjects in its civilising mission. The British then went on identifying criminals and criminal behaviours. The foremost target of the British in this regard was the “collective crime” or the crime committed by a group of people. In 19th century, the colonial government discovered that certain communities of Orissa are aberrant factors and had to be controlled coercively. The “Criminal Tribes Act of 1871” was introduced to deal with these communities. The colonial administration identified the criminal groups from anecdotal evidences provided by indigenous informants and control was established over them through registration, surveillance and incarceration. Further reformatories and mental asylums were established for the children and mentally unstable people of the tribe and classes. Thus it assigned legal status to the local folklores in constructing the category of criminal tribes thus camouflaging the true spirit of the “rule of law” that it sought to create. Further the crusading zeal of some of the British officials and Christian missionaries also reinforced this process.

The barbaric and inhuman nature of some of the indigenous practices like “Merriah sacrifice” had enjoyed the royal patronage during the pre-colonial period. Mention may be made of Goddess Majhighariani of Rayagada where sacrificing a human being was the most important rite during the eighth day of Durgapuja. The king used to provide patronage to these practices to gain legitimacy among tribal communities. Robbery was another pressing issue for the colonial government. Many British officials like William Hastings, Lord Minto have describes the nature of robbers who had made it their profession and acquired it by birth. These robbers had created a state of terror in the mind of the people and no one could dare to provide any evidence against their activities. The robbers and dacoits were in alliance with the local Zamindar who protects them and in return gets a portion in the plunder. Robbery was rampant in Odisha and even British officials were not immune to it. Similarly the colonial literature refers to bandits known as thugs who ritually strangle their victim after robbery or simply robbed and killed and were enjoying local support as they serve important part of the military force of the Zamindars. The mechanism that was evolved by the colonial government to deal with such crimes was an alternative legal structure with specialized police force along with special treatment in court and special techniques of investigation. This resulted in the development of a series of legal strategies and structure to penetrate deep into Oriya society to strengthen the colonial authority.

Suppression and abolition of social evils was another aspect of the formation of the state-subject relationship. The Infanticide Act of 1870 was introduced and censuses, registration of births, marriage and death were recorded under this Act to deal with the killer of the girl child. The male elders of the household and village communities were made responsible to report such crimes. Another inhuman practice was the Merriah sacrifice practised by the Khonds of Orissa. The Oriya hill rajas were also performing human sacrifice to get divine blessings. Initially though the British adopted a cautious attitude towards these crimes but later on adopted the terror of punishment to check the frequency of these crimes like Merriah, female infanticide, Sati, witchcraft etc.

Another term that ought to explain the formation of the state-subject relationship is the criminal lunatics. Mental asylums were designed to deal with criminal lunatics. Throughout the nineteenth century the subject of criminal lunacy was highly debated both in England and India. Finally the colonial authorities combined health and crime to skilfully transform people into criminal lunatics. The Indian Lunacy Act was passed in 1912 which defined the criminal lunatics and the mode of their detention. But there was neither any

scientific analysis of the state of mind of the prisoner nor any scientific evidence to prove insanity of the person. It was based on the rough analysis of social behaviours which might have resulted from mental depression. Many a times it was stigmatized and mainly directed towards the lower caste and the poor. Thus the Oriyas were exposed to new ideological, social and judicial processes in an attempt to form homogenized identities by the colonial government and the formation of state-subject relationship took place at three levels i.e. interaction with the elites and the upper class, interaction with the middle class intelligentsia and the interaction with the lower strata of the society.

The weaknesses of the traditional institutions and practices facilitated the introduction of the colonial rule in India. The intention to achieve cultural hegemonisation over India was another objective of the colonial rulers. The socio-cultural and administrative reforms brought by the British contributed to the growth of an intellectual community in nineteenth century and brought them together at an all Indian platform forging an Indian identity. This community tried to reform the society sailing through the western education and philosophy. The representative form of governance followed by the British informally recognised the native elites as its legitimate representatives. The British colonial policies as well as the representational mode of governance helped to generate a public sphere in India as well as in Orissa. This intellectual community though initially involved in socio-cultural issues later developed interest in political matters. Meetings, public speeches, political gatherings etc. served as the medium of sustaining and enriching the public sphere.

The nineteenth century witnessed the rise of socio-political and economic consciousness due to the introduction of western education system and the centralised administrative system. This consciousness is reflected by the changes that happened in the literary world. The Oriya writers during the period started focussing on human being, misery, irrational socio-cultural practices thus a departure from the earlier literary compositions marked by jugglery of words, sensuous portrayal of characters , religion etc. The educated elites, a product of the English education system voiced their concern and opinion to create awareness among Oriyas. They became members of the Brahmo movement and Brahmo Samaj activities penetrated into the urban areas of Cuttack, Puri and Balasore. At the same time the Mahima Cult gave voice to the sufferings of the common people and led a socio-religious campaign from below. These indigenous initiatives along with the British reform policies like abolition of Sati, female infanticide, human sacrifices helped the Oriya society to embrace rationality.

The famine of 1866 was the watershed in the political life of Orissa. The devastating famine occasioned the earliest efforts in Cuttack to encourage public discussions of problems faced by the people of Orissa. “Utkal Dipika” was established in 1866 by Gourishankar Ray to encourage such discussions. The Oriya language agitation of 1860s and 1870s and the establishment of “Utkal Sammilani” in 1903 strived to amalgamate all Oriya speaking tracts under a single administration. The Oriya elites adopted the moderate congress leaders art of persuasion to unite all Oriya speaking areas. The linguistic game played by the British in Orissa by dismembering it and reducing Oriyas into linguistic minorities resulted in the identity crisis of the Oriyas. Thus a cultural movement started in Orissa to protect its culture, language and distinct identity and the movement went on demanding a separate political identity of its own. After 1920s the politics of Indian nationalism came to dominate the Oriya public sphere and “Utkal Sammilani” actively participated in anti-colonial politics. The participation of Oriyas in the national movement under the able leadership of Pandit Gopabandhu Das submerged Oriya identity into the national identity. The fear of jail, police and court was dismantled by the nationalist activities who mobilized people to defy colonial authority.

The Salt Satyagraha had a special appeal to Orissa as salt manufacturing was an ancient trade in coastal Orissa. It brought another occasion in the form of civil Disobedience Movement for the submergence of a regional Oriya identity into the national identity. The most important tool which facilitated this submergence was the sharp defiance of the colonial legal system by the Oriya nationalists. In the princely states of Orissa where native kings were terrorizing people with the help of ruthless police machinery also faced anti-feudal struggle in the form of Prajamandal movement. The leaders of the movement advised the people to violate ordinances and overcrowd the jails to challenge the recourse of the princely rulers to frequent arrest of leaders for delivering “seditious” speeches. The movement was successful as the leaders were able to mobilize people by removing the fear of jail and police.

The fight against imperialism became vigorous after the Second World War. Protests emerged in different parts of Orissa. The immediate target of these protests was the colonial legal machinery i.e. the police who were attacked by the crowd in many places. A kind of boycott movement also started against the police as people refused to sell anything to the police and police stations were burnt down. Thus Orissa during the nationalist phase came nearer to India and the most important method by which the Oriya leaders challenged the

colonial government was by dismantling the iron pillars of the colonial government i.e. the police and the jail.

The colonial government introduced the prison as a space for demonstrating its authority and power over the Indians. The prisoners were passive initially and the upper and middle classes supported the British in establishing law and order system, however towards the second half of the nineteenth century, the prisoner population in colonial jails became heterogeneous. The passive prisoners became active and protested against the British. The jail space was politicised and prison protest became frequent. Many Oriya nationalists have recorded in their memoirs about the jail maladministration, injustice, physical torture, and sweating labour, lack of basic necessities and frequent flogging and whipping of prisoners. In this scenario the British government also devised its penal practices and classified prisoners into different groups. The colonial government also fashioned identities by classifying prisoners into different categories on the basis of social and financial status.

The beginning of twentieth century brought new narratives in British penology. The educated middle class who joined the national movement constantly protested for grant of special facilities and the status of political prisoners. They went on defying colonial authority and designated themselves as political prisoners through a well-constructed process of identification and selective isolation. They resisted their criminal status as given by the British and the abusive use of power by the colonial government as they were sacrificing their life for the nation. The first Jail Reform Committee in Orissa under Lai Mohan Patnaik recommended for creation of a separate jail for detention of political prisoners. By isolating them from ordinary prisoners, the middle class laid their claim as equal contenders of colonial government and solicit the mass support posing them as sacrificing agents for national interest. Through this the nationalists intentionally created class distance and maintained their privileges. Even Ramadevi, a frontline Oriya freedom fighter was not free from this double standard nature.

Apart from demanding the political prisoner status, the nationalists went on nationalising and glorifying the space of jail. The prison which was earlier looked down upon and indicted was now popularised in public speeches, meetings, and literary writings. For example in “Bandira Atmakatha” and “Kara Kabita”, Pandita Gopabandhu Das described the colonial jail as national abode and holy place following the footsteps of Gandhi and other nationalist leaders. Jail going was treated as earning another status for the middle class i.e. the

status of freedom fighter. In their demand for special status they resorted to various acts to display their insubordination towards the colonial government. One such act was hunger strikes, both individual and collective to get concessions.

Thus the Gandhian movement brought a new language in the state-subject relationship dwelling upon peaceful breaking of the colonial law. The British also devised its penal strategies to deal with this. The most twisted law which was very often used to suppress nationalist's activities was the sedition law under section 124 of Indian Penal code. The Oriya nationalists objected to the abuse of law by the police and the Court. For example on 29th December 1934, Sardar Sant Singh introduced the Code of Criminal Procedure (amendment) Bill to amend section 167 establishing the right of the accused to be heard before being remanded. Many of the Oriya nationalists were prosecuted under the sedition law. After the formation of the Congress Ministry in 1937 in Orissa, prison and penal practices occupied a major area of reform. It tried to instil a sense of duty among the police towards the people. Thus the national movement brought a new discourse into the state-subject relationship. The Oriya nationalists admired this relationship and integrated themselves into the national identity and fought against the arbitrary use of power. This was the point of the when they surpassed subjecthood to become citizens. They used the same language of the rule of law to challenge imperialism and colonial legitimacy. The jail was transformed into a sacred space and its role was politicised for the liberation of the individual as well as of the country. Through resistance to the colonial legal system, the natives asserted their rights, demands and control over their own country and its resources.

The present research is a first of its kind as far as the historical scholarship of Orissa is concerned. It has made an attempt to understand the nature of colonial authority and legality. A decent attempt has been made to understand the elite sections and middle class understanding of this new form of legality and authority by situating themselves within the realm of colonial power structures. However as Orissa was comprised of many tribal groups as well as other lower socio-cultural groups, understanding the reaction and the resistance of these subaltern groups is essential for an analytical understanding of this crucial development in Orissa. Their response to the colonial legal system, the colonial prison and other institutions of control has not been explored fully thus leaving research gaps and raising many questions. May be the future research endeavours in this field will be able to successfully address this dimension of the State-Subject relationship within the framework of colonial rule of law in Colonial Orissa.

Glossary

Amil :An era in Orissa according to the lunar months.

Amla: Petty official of the local administration.

Anna: One sixteenth of a rupee or 4 paise.

Beegah :About 1/3 of a standard acre.

Bethi :Forced labour.

Bidroha : Revolution.

Chandal: Scavenger.

Chherapamhara: Ritual of sweeping the Cars of the Jagannath.

Chitao: Letter.

Chowki :Post where the police or custom are placed.

Chowkidar: Watchman

Cutchery :Court

Durbar: Royal court

Ghat :A landing place near river bank for loading and unloading of goods from boat.

Gola: A place where salt or grain is stored.

Hartal: Strike or protest.

Havildar :Native non-commissioned officer, equivalent to Sergeant.

Jagir: Land grant, usually for services rendered to state and king.

Jamadar: An Officer of Police, Customs or Excise; second to the Darogha.

Jatra: Fair or festival.

Kondh: A tribe of Orissa.

Mahajans: Money lender.

Malangi: Manufacturer of salt.

Pana: Eighty cowry shells.

Patta :A lease given to a ryot showing his land and his rent and the period for which it was.

Rajguru: Religious preceptor of king.

Ryot: Peasant.

Subah: An administrative-territorial division under the Mughal rule.

Tehsil :Sub-division of a district.

Thana:Police station.

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