

Administration of Criminal Justice In The Princely States of Odisha A Historiographical Study

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Abstract:

There were 562 Princely States in India at the time of independence. Out of that 24 Princely States were situated in Odisha. These 24 Princely States covered nearly half of the areas of the present Odisha State. The administration of justice was far from satisfactory in these Princely States. It was defective in several ways. Various reasons led to the denial of justice to the people. Firstly, there prevailed personal rule in the states. The cases were generally decided according to the sweet will of the ruler and not according to laws. Secondly, the various codes of laws were not enforced in these states. Thirdly, a lot of discrimination was practiced in the judicial sphere. For the same crime, some were punished lightly and some severely. Fifthly, there prevailed wide-spread corruption in the ranks of police and the rest of administrative machinery. However, the greatest advantage of the judicial system of the princely Odisha was that, it was speedy and inexpensive.

There were 24 Princely States in Odisha covering nearly half of the present Odisha. The Rajas held these states as their personal properties. The Raja himself was the highest court of appeal and revision in the states.ⁱ No regular appeal from his decision lay to any authority outside the state. He could not be a party to any suit in any court of the state.ⁱⁱ In some states the Dewan as the senior judicial officer exercised original criminal jurisdiction equivalent to that of a Magistrate of the first class. An appeal from his court lay to the Raja. Thus, there were only 2 appellate courts in the feudatory states- (i)Raja or Chief's Court and (ii)Dewan's Court. The Raja's Court was the final appellate authority within the state. In some states the Raja used to dispense justice to the people in public sessions and this was the practice in the state of Dhenkanal.ⁱⁱⁱ The Dewan's Court was mainly an appellate court which heard all appeals from the lower courts. It was also vested with original power to administer civil and criminal justice.^{iv} Court of Assistant Dewan and that of the Yuvaraj mainly constituted the original courts. The court of Assistant Dewan which was found in all the states exercised in criminal cases the powers of a first class Magistrate.^v

There were Night Courts and the ecclesiastical courts in most of the feudatory states. The former called the Andhari Court used to be presided over by a Magistrate. It was instituted mainly to realise fines against different offences. In his court no regular procedure was followed and no attempt was made either to acquire if the charges were false made either to enquire if the charges were false or true. The ecclesiastical court called Dharma Sabha dealt with social and religious cases including the caste cases. It was presided over by the chief priest. Usually the chief's temple was the venue of such courts. Since it remained under the guidance of the Raja, it had no original jurisdiction.^{vi}

In almost all the princely states, the Raja enjoyed enormous powers in the administration of criminal justice. Sentences of death and of imprisonment for terms exceeding 7 years were to be submitted to the British Government. He was also not empowered to try cases in which Europeans were parties.^{vii} He was free to decide which cases should be referred to the

Superintendent. Until 1894 there was no limitation to the nature or extent of punishment which the Raja could inflict in cases within his cognizance. In the absence of a code of law, there was no conformity in the administration of justice. Sometimes the offenders were let off without any punishment. While in other cases, an unusually heavy penalty was imposed for a minor offence.^{viii} Theoretically there was nothing to prevent the Raja from imprisoning an offender for 10, 15 or 20 years, but practically the sentences did not exceed 3 or 4 years.^{ix} As reported by Henry Ricketts, the crimes in most of the feudatory states were wilful murder, murder of children, culpable homicide, rape, wounding with intent to murder, affrays and incendiarism which were of heinous nature. Besides other crimes such as rioting, ordinary burglary, thefts, cattle lifting, house breaking and petty thefts of grain were prevalent.^x Of course, the states were usually free from criminal cases of any heinous nature. Criminal cases mainly consisted of ordinary burglaries and thefts. Dacoities took place occasionally but there were seldom any cases of rioting. Dacoity and robbery were as a rule exceptional, but certain limited areas bore an unbelievable reputation for this class of crime. Dacoities from Agrarian troubles or other causes war rare, though from time to time rebellions, involving serious dacoit, had broken out among the indigenous races owing to opposition to some action of the state or to the pressure of the more civilised cultivators on the lands of these races. In the princely states, suits and cases were disposed of with promptitude and this tendency was steadily maintained.^{xi}

A striking feature of judicial administration in some of the states were the institution of large number of frivolous cases, the large number of compromises and dismissals for failure of complaints to appear showed the cases to be very petty and virtually put in merely as a vindication of personal honour.^{xii} The Panas and Hindus of low caste were mostly involved in heinous crimes like murders or serious wounds. It was reported have been caused mostly by the tribal people in a drunken state.^{xiii} The number of crimes in the princely states was fairly high due to certain factors. As mentioned by P.L.Chudgar, "In some of the states the police officers were the originators of the crimes. They employed well-known criminals to perpetuate the offences and act as accomplices in exchange for a share in a booty".^{xiv} In the view of Mills, "In the states of Angul and Dhenkanal if Panas and Khonds commit robbery and steal the hostile killahs, their robberies are generally perpetrated with the connivance of the Rajas who take a share of the stolen property". In 1840, 8 Panas of Hindol made confessions to this effect.^{xv} For instance the Raja of Baud, his Diwan and Mahal Gumasta were known to have harboured and protected a notorious criminal of the estate, Pallo Mallick, who used to make predatory incursion into the adjoining territory of Sonepur.^{xvi} Death, transportation for life or for 14, 10 or 7 years rigorous imprisonment, fine and whipping were the nature of punishments for the different crimes.^{xvii} Usually 10 stripes of whipping or less were resorted to by the feudatory chiefs. The collection of fine was a source of income for the Rajas. Sometimes the Rajashad adopted certain measures for the prevention of the crimes. First of all, kothagarh system was enforced in the feudatory states. Under the system all the Panas of a particular village were made to sleep in one place at night and the village headman kept walkover them. Besides, in large number of cases the offenders were caught red handed by the people during the commission of petty crimes.

There were also a large number of caste cases and offences of a religious character and such cases were often referred to the chief in appeal who either decided the matter offhand or referred it to the Dharmasabha. In these cases punishments like fines were imposed. Caste cases were punished according to the shastra. Ex-communication from the society was the punishment in such cases. In the state of Nayagarh, there were caste committees which used to sit once or twice a year to decide all social and

religious cases.^{xviii} In the Tributary Mahals of Odisha, the number of criminal charges instituted during the year 1862 and 1863 were 742 and 560 respectively. The number of persons apprehended were 446 and 520. During the year 1863, 322 persons were convicted and 192 acquitted.^{xx} During 1864, 525 cases were under trial; the number of persons apprehended was 651 out of which 393 were convicted and 238 acquitted.^{xx} In the year 1869 the total number of criminal cases under trial was 560, in which 793 persons were apprehended, out of which 439 were punished and 348 were acquitted.^{xxi} In 1870 the total number of criminal cases under trial was 480, in which 596 persons were apprehended, of which 421 were convicted and punished and 151 were acquitted.^{xxii} In the year 1879, the total number of cases instituted was 1142. The most serious crimes of the year were 7 murders, 13 cases of culpable homicide and 1 case of dacoit. The dacoit and 4 of the murders took place in the Mayurbhanj State and of the remaining murders, 1 occurred each in Angul, Baud and Dhenkanal. 5 of the cases of murders were disposed of during the same year, out of which 3 cases the murderers were sentenced to transportation for life.^{xxiii} During the year 1885, the total number of criminal offences reported was 2231, of which 1763 were returned as true. Of 3150 persons under trial during the year, 1191 were acquitted and 1881 convicted. Crimes of violence and offences against property increased during the year, but cases of criminal trespass declined. Mayurbhanj contributed 632 cases, Angul 250, Dhenkanal 228, Narasinghpur 146, Baramba 137.^{xxiv}

In 1886 the total number of criminal offences was 2141, in which 3106 persons were concerned, of whom 1990 were convicted. During the year, a large number of criminal cases were pending both at the beginning and close of the year in the courts of Keonjhar and Nayagarh showed that trials did not proceed with regularity and promptitude in those states.^{xxv} The total number of offences reported from the tributary mahals was 2387 during the year 1887. Out of 3886 persons sent up, 1212 were discharged and 2592 convicted.^{xxvi} In 1894 and 1895 the total number of criminal cases brought to trial was 5046 and 4490 respectively, in which 8999 and 7689 persons were implicated, of whom 4932 and 4082 were convicted and 3245 and 3215 were acquitted respectively. The percentages of convictions and acquittals were 54.08 and 36.05 in the year 1894 and 53.0 and 41.8 in 1895.^{xxvii} The number of criminal cases under trial during the year 1898 was 4832, against 5432 in 1897; and the number of persons implicated was 8905 against 9264 in the previous year. Of the 8905 persons brought to trial, 4989 were convicted and 3567 were acquitted. The percentage of convictions was 56 both in the year 1897 and 1898. During 1902 and 1903, there was considerable decrease in the number of criminal cases instituted under penal code and an increase in the number of cases under special and local laws. Of the total number of persons brought to trial 57.3 and 52.2 percent were convicted during the said period.^{xxviii}

The administration of criminal justice in the princely states was not free from defects. At the outset, the conduct and trial of criminal cases in the state did not appear to be fair and impartial. Very few of the judges and magistrates were really qualified for the work entrusted to them. In some of the states, the members of the royal family or the favourites of the Raja held the position of judges. So that people had little confidence on them.^{xxix} Further, proceedings in criminal as well as in civil cases were not recorded or taken down in writing.^{xxx}

So that they might be subsequently reviewed or taken notice of by the British authorities. The will of the Raja was the law of the state. Except cases of homicide and of other heinous nature, the Rajas furnished no returns relating to the administration of justice by them to the Government.^{xxxi} Whenever the Superintendent or the Assistant Superintendent touring the state, desired to inspect the Raja's records they

were shown documents which were prepared for the purpose without any connection with the actual state of things and thus the real shoddy happenings in the state were kept concealed.^{xxxii} Besides, justice was often delayed beyond reasonable limits of expediency and propriety. For example in the state of Nayagarh during the minority of the Raja, the Rani, "was utterly negligent and allowed justice to go by default in a good number of suits".^{xxxiii} It is a fact that the Raja of Nilagiri takes many months to reply to the simplest call for information from the office of the Superintendent and he also makes delay in disposing of cases in his state.^{xxxiv}

Moreover, in the princely states, administration of criminal justice was arbitrary arrests, detention without trial, deportation and confiscation of property were frequent. Even criminal assaults on both men and women and tortures by petty officials were not unusual.^{xxxv} For small offences the punishments awarded by the lower courts was often severe. In the state of Dhenkanal, a person preparing Guli was fined Rs.120 but when he failed to pay the fine he was sent to jail where he died 8 days after.^{xxxvi} As reported by Ricketts, "a chief of Nayagarh put to death on Raja's orders without trial, as the Raja claimed that he had the right to exercise the power of life and death". So, impartial justice was not ordinarily available in the princely states of Odisha during the colonial period.^{xxxvii}

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