

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

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

Radhika Singha

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

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

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

The next theme is the jurisdictional demarcation between public law in which the state claimed a right to intervene citing universal principles of justice, and the realm of personal law in which religious and customary law were supposed to have free reign. Contests around this boundary line impinged upon

the legal conceptualization of the household and the authority relations which marked it. We will examine colonial law as a constitutive element in the subordination of slaves, wives, servants and children. From this we move to a discussion of contractarian ideology as an aspect of world-wide movements to abolish slavery and its impact on labour regimes in India, in particular on provisions for criminal breach of contract.

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

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

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

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

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**CHOOSE from the following. Essential readings are starred.**  
**I Approaches to the history of crime and criminal law**

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

A). Wiener, M.J., **Reconstructing the criminal, culture, law and policy in England, 1830-1914**, 1990. NMML/DSA xx two copies, X717( good overview )

B).1\*Hay,D.`Property, authority and the criminal law', in Hay, D.,Linebaugh P., and Thompson E.P. (eds.) **Albion's fatal tree: crime and society in eighteenth century England**,1975, Y, 756;45'L L5. TB, JNU, .B(2)Langbein, J.H.`Albion's fatal flaws', **Past and Present**, 1983, 96-120. DSA. er aB(3.) Peter Linebaugh "( Marxist) Social History and ( Conservative) Legal History", New York Review, er (*first class discussion* )

C). \*S.Amin, 'Approver's testimony, judicial discourse: the case of Chauri Chaura', **Subaltern Studies (SS)**, V, Delhi, 1987, pp.135- 166. er

\*Guha, R. 'Chandra's death', **SS**, V, 1987, pp.135-166.

\*Baxi, U. 'The state's emissary: the place of the law in subaltern studies', **SS**, VII, 1992, pp.247-63. (*second class discussion*)

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

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

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

\*M.Ignatieff, 'State, civil society and total institutions: a critique of recent social history of punishment', in Cohen, S. and Scull, A.(ed.) **Social control and the state**, 1983, DSA, er

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

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

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

A). The Hastings-Cornwallis epoch 1772-1793

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

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

Good overviews

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

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\*Metcalf, T. R, **Ideologies of the Raj**, NCHI, III.4, Cambridge, 1994. JNU, DSA.(one chapter er)

Fisch, J., **Cheap lives and dear limbs: the British transformation of the Bengal criminal law 1769-1817**, Wiesbaden, 1983.DSA, NMML, er

\*Singha, R. **A despotism of law: crime and justice in early colonial India**, 1998, JNU V, 44; 17(2,05) M5, J, DSA xx X1236, X 1237, pdf ( academia.edu) preface and chapters 1-3

Kugle, S.A. 'Framed, blamed and renamed: the recasting of Islamic jurisprudence in colonial South Asia', **Modern Asian Studies, MAS**, 35, 2, 2001, 257-313, pdf

Cohn, B.S., 'Law and the colonial state in India' in Starr and Collier (eds) **History and power in the study of the law**, pp.131-52. DSA. **An anthropologist among the historians** G -530 DSA.

Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal* DSA, chap one

C.) \*Stephen, J.F., **A history of the criminal law of England**, London, 1883, vol. III, ch. on Indian law, DSA xx; \*Or Stephen's chapter on law in Hunter, W.W., **The Earl of Mayo**, London, 1875. DSA xx also er

Barry Wright "Macaulay the Indian penal code" er

Singha, ADOL. Chap 6, academia.edu

### **III Crime and state making: predatory states, criminal bands, infanticidal communities**

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

\*Blok, A., 'The peasant as brigand: social banditry reconsidered', **CSSH**, 14, 4, 1972, 494-503, er

\*Hobsbawm, E.J. 'Social bandits: a reply', **CSSH**, 14, 1972, 530-5, er  
-----**Bandits**, 1981, New York, 2000, DSA. .

\*Gordon, S., 'Scarf and sword: thugs, marauders and state formation in eighteenth century Malwa', **IESHR**, 4, Dec 1969, JNU, DSA xx.

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

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

Kim Wagner, 'Confessions of a skull' **History workshop Journal** er

Malavika Kasturi, **Embattled identities: Rajput lineages and the colonial state in nineteenth century North India**, DSA, X-729. or 'Taming the dangerous Rajput' in H. Fischer-Tine and M. Mann ed. **Colonialism as civilising mission**, 2004, pp.117-140, DSA, xx; , "Rajput lineages, banditry and the colonial state in nineteenth century 'British Bundelkhand'" **Studies in History, SIH**, 15,1, 1999, 75-107, JNU. 'chapter 6 'The bandit as king' er

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

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

Foucault, M. **Discipline and punish the birth of the prison**, 1979. JNU TB Y;4:62 L7 er ch one.

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

Ignatieff, M.A **just measure of pain: the penitentiary in the Industrial Revolution, 1750-1850**, 1978, DSA xx, two copies, X-648, X 649., Delhi Univ.

Linebaugh, P., **The London hanged, crime and civil society in the eighteenth century**, 1992, DSA, xx X639\*

Singha R, **ADOL**, Ch 6, DSA, JNU. Er chap "no needless pains' ..... "The rare infliction": er – on military flogging

\*Arnold, D. 'The colonial prison: power, knowledge and penology in nineteenth century India' **SS**, VIII, 1994, 148-87. and 'The Self and the Cell: Indian prison narratives as life histories' in D Arnold and S Blackburn eds **Telling lives in India**, Bloomington, 2004.

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

Chitra Joshi 'Fettered Bodies: Labouring in Public Works in Nineteenth-Century India' in Marcel van der Linden and Prabhu Mohapatra eds. **Labour Matters: Towards Global Histories** (New Delhi 2009) er

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

Anupama Rao, 'Problems of violence, states of terror, torture in colonial India', **EPW**, Oct 27, 2001, pp.4125-4133; XA – 731, and er. <[http://epw.in/epw/user/loginArticleError.jsp?hid\\_artid=6051](http://epw.in/epw/user/loginArticleError.jsp?hid_artid=6051)>

Peers, D. 'Torture, the police, and the colonial state in the Madras Presidency, 1816-55', **Criminal Justice History**, 1991, no.12 DSA.xx X-674

Carolyn Strange , "The Shock of torture " er

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

**VI .criminal law and 'domestic' authority: wives, slaves, servants and children**

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

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

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

Chatterjee, I. (2013). Abolition by denial: The South Asian example. In *Abolition and its aftermath in Indian Ocean Africa and Asia*. (pp. 150-168). Taylor and Francis. DOI: [10.4324/9780203493021](https://doi.org/10.4324/9780203493021)

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

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

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

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

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

\*Sarkar, T., 'Rhetoric against Age of Consent' and 'A pre-history of rights? The age of consent debates in colonial Bengal', in **Hindu wife, Hindu nation**, Delhi, 2001.DSA, X-689.

D R Banaji **Slavery in British India, 1933.**

## VII 'free' labour and the penal and policed end of the labour spectrum

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

Ahuja R, 'Labour relations in an early colonial context: Madras, 1750-1800', **MAS**, 36, 4, 20002, 793-827, JNU, er

Ahuja, Ravi, 'Labour unsettled: mobility and protest in Madras region, 1750-1800', **International Review of Social History** 35, 4, 1998, 381-404. DSA xx

Mahapatra, P ..... "From Status to Contract: Or How Law shaped Labour Relations in Colonial India" in Jan Breman et al (Debt Bondage in India); OR- "Regulated Informality: Legal Construction of Labour Relations in Colonial India 1814-1926" in **Workers in Informal Sector: Studies in Labour History 1800-2000** (ed Sabyasachi Bhattacharya and Jan Lucassen), Macmillan 2005; \*Or the chap in Hay and Craven ed. **Servants and Magistrates in Britain and the empire**, 1562-1955, pp.422-452, DSA xx, XA-1249, XA – 1240

\*Anderson, M.A. 'Work construed: ideological origins of labour law in British India to 1918', in Robb, P.(ed.) **Dalit movements and the meanings of labour in India**, Delhi, OUP, 1993. DSA; OR - 'India 1858-1930: the illusion of free labour', in D.Hay and P Craven, ed. **Servants and Magistrates in Britain and the empire**, 1562-1955, pp.422-452, DSA xx, XA-1249, XA – 1240.

## VIII the terms of urban order

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

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

Masselos, J. 'Migration and urban identity: Bombay famine and refugees in the nineteenth century', in S.Patel and A Thorner (ed.) **Bombay, mosaic of modern culture**, Bombay, 1995, 25-58. DSA 2381 -----, 'Power in the Bombay mohulla, 1904-15' **South Asia**, 1976 DSA, NMML.

Prashant Kidambi, **The Making of an Indian Metropolis, Colonial Governance and Public Culture in Bombay 1890-1920**, Ashgate, 2007, chapter 5 DSA, X 1659, X 1290

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

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

Sarkar, Aditya. "The Work of Law: Three Factory Narratives from Bombay Presidency, 1881-1884," 247-79. In Marcel van der Linden and Prabhu P. Mohapatra, eds. *Labour Matters: toward global histories. Studies in Honour of Sabyasachi Bhattacharya*. Delhi: Tulika, 2009.

**Vid.) `Preventive policing': hereditary criminals, habitual offenders, and goondas**  
a.)Criminal tribes

Brown, Mark, `Race, science and the construction of criminality in colonial India', **Theoretical Criminology**, Vol.5,3, 2001, pp.345-368. DSA

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

Hinchy, Jessica – on eunuchs – their inclusion in CrTA

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

\*Gaikwad, Laxman, **Uchalya, The Branded** , Delhi, 1998. NMML, DSA.

Pandian, Anand, " Securing the rural citizen, the anti-Kallar movement of 1898' er

\*Rachel Tolen,`Colonising and transforming the criminal tribesman' **American Ethnologist**, er

b.) the badmaash/goonda  
Raj Chandavarkar, DSA

Dhareshwar, V, and Srivatsan, R. `Rowdysheeters: an essay on subalternity and politics', **SS IX**, 1996, er.

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

Stallybrass, P.,` Marx and heterogeneity: thinking the lumpenproletariat', in **Representations**, 31, Summer, 1990, pp.69-95. DSA xx.



Sugata Nandi 'Inventing Extraordinary Criminality : A study of Criminalization by the Calcutta Goondas Act', in John MacLaren and Shaunnagh Dorsett, *Legal Histories of the British Empire : Laws, Engagements, Legacies* (London, Routledge) 2014 scanned article

### **IX Race, class and gender in criminal law**

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

\*Jordanna Bailkin, 'The Boot and the Spleen: When Was Murder Possible in British India?' *Comparative Studies in Society and History*, Vol. 48, No. 2 (Apr., 2006), pp. 462-493 URL: <http://www.jstor.org/stable/3879358> , er ( class discussion )

P. Levine, ' Rereading the 1890s: Venereal Disease as "Constitutional Crisis" in Britain and British India' *The Journal of Asian Studies*, Vol. 55, No. 3 (Aug., 1996), pp. 585-612 JNU, er.

Cooper, F. and Stoler, A.L., 'Tensions of empire. Colonial control and visions of rule', **American Ethnologist**, 16, 4, November 1989.DSAxx

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

\*E.Kolsky, 'Codification and the rule of colonial difference: criminal procedure in British India', **Law and History Review**, Fall 2005, 23, 3, pp.631-683, DSA., e ( or her book, DSA)

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

### **X. The contested line – Politics versus crime and sedition**

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

\*Neeti Nair, "Bhagat Singh as "satyagrahi": The Limits to Non-violence in Late Colonial India', *Modern Asian Studies*, Vol. 43, No. 3, May 2009, 649-681.er //

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

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

Siddharth Narain '[Disaffection' and the Law: The Chilling Effect of Sedition Laws in India](#)”Economic & Political Weekly,February 19, 2011 vol xlvI no 8. 33

\*Donogh, Walter Russell. *A Treatise on the Law of Sedition and Cognate Offenses in British India*. Calcutta, Thacker Spink: 1911. rr ( see link)

\*Bakhle, Janaki. “Savarkar, Sedition, and Surveillance: The Rule of Law in a Colonial Situation,” in *Social History* Vol.35 No.1 (February 2010) pp.51-75.

Noorani, A.G. *Indian Political Trials, 1775-1947*. Delhi, Oxford UP: 2005.

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

### **Readings at leisure**

Cox, E., **Police and crime in India**, 1911.

Henry, E., **Classification and uses of fingerprints**, London, 1900. NAI

Hyder, Q. (transl) **The dancing girl**, Hasan Shah, 1790, A New Directions Book, 1993.

Taylor, P. Meadows, **Confessions of a thug**, new edition, Oxford, 1986.,

Rajagopalachari, C. **Jail diary**, Madras, 1922. NAI.

Savarkar, V.D., **Letters from Andamans er**

Sleeman, W. H. **Ramase eana**, 1836. NAI.

Urmila Shastri, *Karagar* (Delhi, 1980, 2<sup>nd</sup> edn.).

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