

**CRIMINALIZING THE NATIVES:  
A STUDY OF THE CRIMINAL TRIBES ACT, 1871**

by

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## Abstract

The wandering groups of India, who were criminalized by the British through the Criminal Tribes Act of 1870 (“CTA”), have been a subject of much scholarly discussion. The secondary scholarship on the criminal tribes in India and the Act itself has hitherto viewed it as a continuation of the earlier efforts to root out thuggee in India (e.g. Thuggee Act, 1836); in my work, I place the Act in context more broadly, delineating its relationship with a wide range of legal initiatives and codes in both British India and the UK, to understand how the wandering tribes were integrated into a broader British legal regime in India. In the first chapter, I look into the specific conception of ‘crime’ in the nineteenth century British India. The colonial officials classified an activity as a ‘crime’ by relying on the information contained in the contemporary official reports, minutes, and the ethnographic accounts. The act of defining a crime was then followed by a campaign for its elimination which would later be publicized through what I call the *elimination narrative*. In the second chapter, I examine the development of CTA as a statute by looking into the debates over the draft bill which was circulated among the bureaucrats of Punjab, NWP & Oudh. I trace the different responses submitted by officials from Punjab and NWP & Oudh to the proposed Act, as some of its provisions were already in place in the latter and had already drawn criticism from the provincial bureaucrats due to their inefficacy. I also establish a connection between Indian Penal Code (“IPC”) and CTA inasmuch as the latter originates from the former and in fact refers back to it while delineating the punishment for violation of its contents. I also study the CTA in conjunction with other similar statutes, such as Cattle Theft Act of 1871, that had been promulgated in the same time frame. In the last chapter, I situate CTA in the wider imperial context by comparing it with the Habitual Criminals Act, 1869 (“HCA”) and highlight the difference in the imperial and colonial perspective of these wandering groups of people. I also explore the history of the Salvation Army mission in India and their efforts to reform the criminal tribes of India through a close reading of Criminocurology, a book

written by one of the founders of the Salvation Army in India. Such a multi-pronged study of CTA helps us recreate not only the story of the wandering groups but also that of law as an important marker of change in the colonial society.

## **Lay Summary**

This work looks into the history of the Criminal Tribes Act of 1871, which was intended to control and discipline the wandering tribes of India. In addition to laying out the British Indian conception of 'crime' in the late nineteenth century, it traces theoretical linkages between this Act and various colonial statutes such as Indian Penal Code and Cattle Theft Act. It further underscores the difference of perspectives in the metropole and the colony in terms of defining the notion of habitual criminality by conducting a parallel study of the Habitual Criminals Act, 1869 in the UK and the CTA in British India. In this way, this thesis seeks to understand the CTA in broader perspective, and understand the development of the Act in the wider context of the British legal regime in India.

## **Preface**

This dissertation is an original, unpublished and independent work by the author, Arafat Safdar.

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Finally, I would like to thank my parents for their constant support during the writing of this dissertation.

## **Dedication**

*To my parents*

# Chapter 1

## Introduction

“The word *crime* and *criminal* go back to Latin *crimen* ‘charge, accusation’, ultimately deriving from a base related to *crenere* ‘to separate, decide’, or more technically in legal usage, ‘to make known a determination’ – and also found in *discern*.”<sup>1</sup>

India had historically been home to a number of tribes and groups of people who moved from one place to another round the year and did not maintain a fixed place of residence. They reared animals, performed music, indulged in acrobatic feats, in addition to displaying countless other skills to make their ends meet. However, this all changed with the advent of British rule in India. Ever cynical about these wandering people, the British held their activities suspicious and tried to settle them into new lands. With the passage of time, the colonial state in India became convinced of the criminality of these people and ascribed it to their genetic makeup. The Criminal Tribes Act of 1871 formalized the British suspicion of their activities. This thesis relates the story of this Act, examining the colonial notion of ‘crime,’ that informed its enactment, and the broader politico-legal discussions that led to, and has continued the branding of these tribes as habitually criminal.

Any study of the criminal tribes must begin by addressing the obvious question, i.e. what is meant by a ‘criminal tribe’? The term is a colonial construct and, thus, replete with misconceptions about the very group of people it seeks to characterize. The colonial policymakers themselves did not have any clear idea about who should they classify as the ‘criminal tribes.’ Broadly speaking, the British used the term to refer to the groups of wandering tribes found all over India who moved from

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<sup>1</sup> Simon Horobin, *Bagels, Bumf & Buses, A day in the life of the English Language*, (Oxford: Oxford University Press, 2019) 65.

one place to another and at times, settled at some places temporarily; the Criminal Tribes Act, 1871 refers to them as ‘any tribe, gang, or class of persons ... addicted to the systematic commission of non-bailable offences.’<sup>2</sup> However, as I will show in the following chapters, the practical application of this statute did not always conform to the standard set by this definition. It was rather, a catch-all term that would be utilized to round up the suspicious characters in the society to prevent the possible commission of non-bailable (and bailable) crimes.

Under the Criminal Tribes Act, the colonial government classified a large number of wandering groups into ‘criminal tribes’. As I argue in the following pages, the criminalization of these ‘tribes,’ followed by their surveillance, was accomplished in order to assuage the fear of masses who were increasingly alarmed by the spike in crime rate. On the one hand, “criminal tribes” were deemed to be *inherently* criminal, “explaining” why crime was occurring and providing a measure for action against crime. On the other hand, the colonial state sought to ‘reform’ these itinerant tribes by redefining their relationship to property, and imparting sedentary habits among them, modifying their inherent nature. There were thus cultural, political and economic factors at play in the determination of their criminality. The existing scholarship on the criminal tribes has mostly situated CTA in the foreground of Thuggee Act, an approach which has led to a marginalization of multiple other factors, such as the regional specificity of Punjab and NWP & Oudh and the colonial state’s approach towards the resolution of what they classified as a criminal activity overall. To establish this further, I provide an overview of the existing scholarship on the subject.

### **1.1. A Brief Historiography of the Criminal Tribes Act, 1871**

The history of CTA as a legal statute finds a tangential reference in most of the histories of the criminal tribes. Such histories appear to follow a pattern which roughly goes as such: There is general

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<sup>2</sup> “An Act for the Registration of Criminal Tribes and Eunuchs, 1871,” IOR: L/PJ/5/14

information about the Act (year of its passage, parts of the Act, sections, etc.), closely followed by a narrative description of the sections of the Act. As will be shown here, no historical account of the Act so far has explored the inter-regional and inter-statutory tensions, which are quite pronounced in the memoranda written by the colonial bureaucrats, whose opinions and suggestions were sought on the initial draft of the Act. David Arnold's work on the criminal tribes of Madras and Anand Yang's study of the Magahiya Doms of Northeast India are extensive works in terms of their engagement with the criminal tribes, but offer little help in terms of establishing trans-regional connections.<sup>3</sup> One major reason for this omission may have been the principally anthropological and sociological focus that the study of criminal tribes has received. As is obvious, the focus is more on the criminal tribes themselves, than the Criminal Tribes Act in such works<sup>4</sup>. Even the works that apply a historical framework in order to understand the criminal tribes and CTA, seem deficient in terms of their engagement with the evolutionary aspect of CTA as a legal code. Such works tend to focus more on the amendments that had been introduced to the original Act (in 1897, 1911 and 1924). This is particularly visible in an edited volume, *Crime and Criminality in British India*, which is one of the earliest works in the field. In his essay on the situation of crime in Madras in the later colonial period, David Arnold views CTA as "a means by which to remold the recalcitrant and, in colonial view, unproductive communities into "useful" and law-abiding participants in the colonial economy"<sup>5</sup>. Anand Yang gives a good overview of CTA in his essay in the volume, which deals with the impact of CTA on the Magahiya Doms of

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<sup>3</sup> There exists a range of excellent essays on the criminal tribes of various regions and how CTA affected them, such as David Arnold, "Crime and Crime Control in Madras, 1858-1947" in *Crime and Criminality in British India*, ed. Anand Yang (Tucson: the University of Arizona Press, 1985), 62-88; Meena Radhakrishnan, "Surveillance and Settlements under the Criminal Tribes Act in Madras," *IESHR* 29(1992), 171-98; Anand Yang, "Dangerous Castes and Tribes: The Criminal Tribes Act and the Magahiya Doms of Northeast India" in *Crime and Criminality in British India*, ed. Anand Yang (Tucson: the University of Arizona Press, 1985), 108-127. However, none of these articles explore the inter-regional tensions in the legislative genesis of CTA itself.

<sup>4</sup> See, for example, Anand Pandian, *Crooked Stalks: Cultivating Virtue in South Asia* (Durham: Duke University Press, 2009).

<sup>5</sup> Op. cit. n. 6, p. 85

Northeast India<sup>6</sup>. Holding on to the pattern I have outlined above, he gives basic information about CTA and views it as stemming out of the “contemporary ideas about crime causation, as well as from colonial conceptions of deviance”<sup>7</sup>.

In her 1991 essay that situates crime in the social order of colonial India, Sandria Freitag relies on Yang’s description of the CTA and provides a whistle-stop overview of the Act, before jumping into its impact on the Sansiahs, a criminal tribe<sup>8</sup>. In another brilliant article on the criminal tribes of Punjab, Andrew Major draws on archival research to locate the place of criminal tribes in the social hierarchy of Punjab, to demystify “the self-image projected so successfully by the colonial regime itself”<sup>9</sup>. Perhaps the most important article on the CTA has been Sanjay Nigam’s two-part essay where he engages thoroughly with the debates leading up to the passage of the Act and places the criminal tribes within a framework that is richly informed by the works of Edward Said and Ronald Inden.<sup>10</sup>

There have also been some more recent attempts to reimagine the notion of a ‘criminal tribe’ itself. For example, in her 2015 essay “The ‘Criminal Tribes’ in India before the British”, Anastasia Piliavsky takes a radically different stance, criticizing the postcolonial historiography for overlooking the ‘large and readily accessible body of precolonial references to robber castes.’<sup>11</sup> In what appears to carry strong overtones of Kim Wagner’s ‘reassessment’ of thuggee in which he criticizes the postcolonial literary criticism for its ‘prevalent trend of dealing with the colonial encounter through the

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<sup>6</sup> Op. cit. n. 7, p. 108

<sup>7</sup> *Ibid.*, p. 126

<sup>8</sup> Sandria B. Freitag, “Crime in the Social Order of Colonial North India.” *Modern Asian Studies* 25, no. 2 (1991): 227-61

<sup>9</sup> Andrew Major, “State and Criminal Tribes in Colonial Punjab: Surveillance, Control and Reclamation of the ‘Dangerous Classes’,” *Modern Asian Studies* 33, no. 3 (1999), p. 659

<sup>10</sup> See Sanjay Nigam, “Disciplining and policing the ‘criminals by birth’, Part 1: The making of a colonial stereotype - The criminal tribes and castes of North India,” *IESHR* 27, no. 2 (1990): 131-164; and Sanjay Nigam, “Disciplining and policing the ‘criminals by birth’, Part 2: The development of a disciplinary system, 1871-1900,” *IESHR* 27, no. 3 (1990): 257-287.

<sup>11</sup> Anastasia Piliavsky, “The “Criminal Tribe” in India before the British,” *Comparative Studies in Society and History* 57, no. 2 (2015): 325

British colonial discourse only',<sup>12</sup> Piliavsky tries to show that the “presumptive colonial stereotype” of criminal tribes “has a history stretching far beyond British colonialism”<sup>13</sup>.

Another dominant theme in the historiography of CTA is the obvious comparison with the Thuggee and Dacoity Suppression Acts. The foregrounding of Thuggee Act in the analysis of CTA, as has been done by Yang and Freitag, however, jeopardizes an independent analysis of the latter, particularly as this cart-before-the-horse approach fails to reflect the legal *zeitgeist* prevalent in the 1860s, as opposed to the 1830s when the Thuggee Act came into force. Another problem with this approach is that it unconsciously ends up following the same logical trajectory that had been principally followed by the colonial administrators. In the colonial literature, there is hardly any distinction made between the thugs and the criminal tribes. As Sanjay Nigam writes, “Be they the Sansis, the Harnis and the Bawarias of Punjab or the Harburahs of the North Western Provinces, in virtually every report, the criminality of these groups is by a process of elision traced back to the thugs and the Buddhiks.”<sup>14</sup> By placing the history of thuggee and that of the vagrant criminality on the same pedestal, modern historians of criminality run the risk of not seeing the *trees* for the *forest*, and not recognizing why and how the idea of “criminal tribes,” and the need to control them, emerged at the time they did.

## **1.2. Structure of this Thesis**

This thesis places the CTA in historical and regional perspective, to understand the factors that contributed to its formation both in India and with reference to developments in Britain, and the specific effects that the CTA enabled. By viewing CTA as a site where the colonial ideals of criminality and nomadism were synthesized into a document which carried the force of law, it seeks to highlight the

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<sup>12</sup> Kim Wagner, The Deconstructed Stranglers: A Reassessment of Thuggee." *Modern Asian Studies* 38, no. 4 (2004): 931-63.

<sup>13</sup> Op. cit. n. 12

<sup>14</sup> Sanjay Nigam, “Disciplining and policing the ‘criminals by birth’, Part 1: The making of a colonial stereotype - The criminal tribes and castes of North India,” *IESHR* 27, no. 2 (1990), p. 137



multiplicity of factors responsible for the promulgation of CTA, with reference to the British Indian conception of ‘crime’ in the nineteenth century. Another hallmark of the colonial legal statutes in general, and CTA in particular, is their ability to incorporate and reflect the growing colonial scholarship on the subject they are dealing with. The subsequent amendments introduced to CTA (in 1897, 1911, 1924) reflect the shifting colonial stances on the question of nomadic criminality. CTA, in this way, can be seen as a panoramic repository of evolving colonial thought, carrying within the ideas and notions held by the colonial policymakers at various points in its history.

In Chapter 1, I look at the specific conception of ‘crime’ in British India in the late nineteenth century. I argue that the British conception of ‘crime’ and its ultimate resolution followed a trajectory in which the enumerative data served as the key ‘reference point’. The so-labelled elimination of a certain criminal activity was accompanied by a *narrative of elimination* which helped publicize the extirpation of that criminal activity, with a secondary motive to shed light on the ability of the British government to restore peace in an otherwise turbulent region. I further analyze the Thuggee Report for the year 1872 to concretize my understanding of the British approach towards crime resolution in India. Since an understanding of the British Indian ideals of crime and punishment in the nineteenth century is necessary to understand CTA, this chapter lays out the context for looking at the promulgation of CTA, which follows in the next chapter.

In chapter 2, I explore the history of the Criminal Tribes Act 1871 by looking at the correspondence between the imperial government officials in Calcutta and the colonial bureaucrats based in Punjab and NWP & Oudh. I argue that the promulgation of Acts such as CTA was also an exercise in building public image by the colonial governments as these acts sought to criminalize those actions which had already been penalized under the Indian Penal Code. I also argue that the responses submitted by the colonial bureaucrats from both the territories changed in accordance with the past

experiences of the officials of both of these territories in dealing with the wandering tribes. While colonial officials in Punjab argued for more discretion in dealing with them, those in NWP & Oudh exercised cautions in light of the previous attempts to settle these tribes.

In the last chapter, I look at how the Habitual Criminals Act 1869 (HCA) in Britain itself dealt with the street criminals and hardened convicts who posed great threat to the public safety and property. This reveals the different approaches adopted by the British state towards the habitual criminals in England and the criminal tribes of India. I also analyze the role of the Salvation Army settlements in the reformation of criminal tribes in India to show how the rationale and ethos of the Act reverberated in extra-legal, non-state reform. This demonstrates how the language and approach of the Act worked on the ground, beyond the legal domain.

### **1.3. A Note on Terminology**

Before I proceed further, it is important to give an overview of some of the terms that are referred to throughout this thesis. Throughout this work, I refer to those deemed to be members of 'criminal tribes' by various terms such as 'vagrant criminals,' 'vagrant tribes,' 'wandering tribes,' 'gypsies,' 'dangerous classes.' A 'settlement' was a specified area where the members of the criminal tribes were lodged by the colonial government with the aim to reform them, e.g. the Sansi tribe was settled in Sialkot, Punjab in 1865.<sup>15</sup> Depending on the topography of the region they were situated in, settlements could either be agricultural or industrial. Initially, they were run solely by the colonial government. However, with the gradual ascendance of the religious groups such as the Salvation Army, the state allowed them as well to manage the settlements. A 'ticket of leave' refers to a document that allowed convicts to work for themselves provided that they remained in a specified area [and]

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<sup>15</sup> Op. cit. n. 12, p. 666

reported regularly to local authorities.<sup>16</sup> In Punjab, members of the criminal tribes were required to hold the ticket of leave while going out of their settlements.

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<sup>16</sup> [nla.gov.au/research-guides/convicts/tickets-of-leave](http://nla.gov.au/research-guides/convicts/tickets-of-leave)

## Chapter 2

### Crime and Its *Elimination* in British India: A Study in the Nineteenth Century

**“Polonius:** [...] But breathe his faults so quaintly  
That they may seem the taints of liberty,  
The flash and outbreak of a fiery mind,  
A savageness in unreclaimed blood,  
Of general assault.”

— *Hamlet*, Act II, s. I, l. 31-34

In October 2019, after a delay of two years, India’s National Crime Records Bureau (NCRB) released its much-awaited *Crime in India Report for the year 2017*<sup>17</sup>. Established in 1986, the Bureau serves as “a repository of information on crime and criminals” with the express aim to “assist the investigators in linking crime to the perpetrators”<sup>18</sup>. While this Report was lauded for including new categories of crime such as cybercrime, many cried foul over the glaring omission of some important categories of crime in India, such as offences against journalists, crimes committed by religious preachers, illegal migrants and most importantly, lynching<sup>19</sup>. Considering the current political climate in India, many advised that these trends need to be dealt with carefully. To quote an example, the report shows a decline of 5.9 percent in the cases of murder recorded across India for the year 2017<sup>20</sup>. At the same time, the report also mentions how the data on many subheads of murder such as death due to mob lynching, murder by influential people, and murder committed for religious reason, has been withheld due to their unreliability<sup>21</sup>. *The Times of India*, a leading English daily, quoted a source as saying that the “data received for certain newly-created crime heads are unreliable and their definitions

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<sup>17</sup> “Decoding NCRB Report”, *The Hindu*, Oct 23, 2019.

<sup>18</sup> “National Crime Records Bureau,” Official website.

<sup>19</sup> “NCRB found states’ data on lynchings unreliable” *Times of India*, Oct 22, 2019

<sup>20</sup> Tiwary, Deeptiman. “NCRB leaves out data on lynchings, khap and religious killings” *Indian Express*, Oct 22, 2019.

<sup>21</sup> *Ibid.*

are also prone to misinterpretation”<sup>22</sup>. The same report, however, records a sharp rise in the crimes against state such as sedition, or waging war against the country, offences which happen to be far more prone to misinterpretation and abuse than the ones left out of the Report.

Though the discussion on the merits of this report is beyond the remit of my academic inquiry, I have mentioned it here to highlight the politics of enumeration as it continues to shape the parameters of the discourse of crime and criminality in India. The compilation of statistical records and their presentation as annual reports is a trend that harks back to the British colonial era, as has been shown by the scholarly works of Bernard Cohn and Arjun Appadurai<sup>23</sup>. Norbert Peabody has gone as far as to trace the enumerative pattern in the late precolonial Indian records.<sup>24</sup> Colonial officials paid close attention to details and meticulously collated them into annual reports. One particular aspect of Indian social life that came under increased scrutiny, and quantitative tracking, was the criminal justice system. The achievement by the British of their own economic goals in India required a smooth functioning of the criminal justice system. For this reason, crime in all its forms, and particularly against property, had to be managed.

In this chapter, I look into the notion of ‘crime’ as had been understood, shaped and at times invented by the British in India. The first half of the chapter deals with the British conception of ‘crime’ and its ultimate resolution. I argue that this resolution followed a linear trajectory in which the statistical data served as a key ‘reference point’ for the production of a *narrative of elimination*, which accompanied the alleged elimination of a certain criminal activity. This helped to concretize and publicize the extirpation of that criminal activity. It also produced the secondary effect of bringing to

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<sup>22</sup> Op. cit., n. 19

<sup>23</sup> Arjun Appadurai, “Number in the Colonial Imagination,” in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, ed. Carol A. Breckenridge and Peter van der Veer. (Delhi: Oxford University Press), 1994.

<sup>24</sup> Peabody, Norbert “Cents, Sense, Census: Human Inventories in Late Precolonial and Early Colonial India.” *Comparative Studies in Society and History* 43, no. 4 (2001), 819-850

light the British ability to restore peace in an otherwise turbulent region. The latter half of this paper deals with the examination of a statistical report on the state of thuggee and dacoity in India which, I argue, can be seen as an example of the *elimination narrative* as it attempts to prove the earlier claims made about the total elimination of thuggee by the British officials. This document is interesting in another way as its author refers to his personal experience as an Inspector of the Thuggee Department to highlight the problems of defining a criminal activity. He then discusses the problems raised due to various interpretations of that definition. The question of definition, therefore, lies at the centre of our discussion.

### **2.1. The British Indian notion of ‘crime’**

The British approach to crime in India was practical in character. Administrative efforts to curb a category of criminal activity followed a straight-forward trajectory that was informed by the enumerative information available on the subject. First, the ‘crime’ needed to be defined and identified. This was followed by a campaign for the ‘elimination’ of the criminal activity. The final strand of this approach entailed a wider propagation of what I call an *elimination narrative*. By elimination narrative, I refer to the vast colonial literature consisting of yearly reports such as the *Reports on Police Administration*, *Reports on Criminal Administration*, *Reports on Thuggee and Dacoity*, etc., that propagated the news of elimination. The elimination of thuggee in India, for example, continued to be asserted till the late 1870s through the Report on Thuggee and Dacoity, which only reported incidents of Dacoitee, thus helping maintain the impression among the masses that thuggee had been done away with forever in British India. Any activity, be it political, economic, or social, that posed a significant risk to the life and property of the masses could be classified as crime and eliminated under this scheme.

The act of defining crime or a criminal activity included a delineation of everything that could possibly be known, from the nature of the criminal activity itself to the knowledge about the argot used

by the groups said to be involved in such activities. In certain cases, it had to be ‘discovered’ as a crime as in the case of female infanticide, as argued by Malavika Kasturi and Bhatnagar, Rashmi Dube, et al<sup>25</sup>. Based on a critical analysis of W.H. Sleeman’s *A Journey Through the Kingdom of Oude in 1849–50*, they argue that the notion of violence against the female child in the colonial accounts is shaped more out of a consideration for “the war of representations” than by “the urge to present a faithful account of the practice”<sup>26</sup>. The female child was ‘discovered’ to be in trouble in the traditional setup and thus, an argument was forwarded for an intervention by the colonial state. However, the most important aspect of defining a criminal activity was its statistical enumeration. This statistical data would then serve as a reference point for the discourse of ‘elimination’ of crime and would also offer a site on which the battle for the elimination of native disorder would be fought. Hence, it is not surprising that the focus of all the administrative efforts was on eliminating the *statistical existence* of a criminal activity. Lata Mani has also challenged this notion of the colonial rule as having “provided the contexts for a thoroughgoing re-evaluation of Indian ‘tradition’” in the context of outlawing or ‘eliminating’ sati.<sup>27</sup> She argues that the historic contextualization of the “nineteenth-century debates on women includes specifying the notion of tradition that they seek to reinterpret.”<sup>28</sup> She further shows how the ‘conception of tradition’ that was debated upon by the modernists such as Rammohun Roy and the orthodox scholars of religion was fundamentally shaped by the ‘colonial’ agency<sup>29</sup>. Similarly, the elimination of a criminal activity in the colonial context requires an understanding of ‘crime in the colonial conception’.

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<sup>25</sup> Rashmi Dube Bhatnagar, Renu Dube, and Reena Dube. *Female Infanticide in India: a Feminist Cultural History*. (Albany: State University of New York Press, 2005), p. 33

<sup>26</sup> *Ibid.*

<sup>27</sup> Lata Mani, “Contentious Traditions: The Debate on Sati in Colonial India.” *Cultural Critique, The Nature and Context of Minority Discourse II*, no. 7, (1987), p. 119.

<sup>28</sup> *Ibid.* pp. 120-121

<sup>29</sup> *Ibid.*

It is necessary to draw a distinction between the elimination of a criminal activity *as contained in the statistical records* and the *actual* rooting out of that crime in society. As is obvious, the latter is a long-term process that would require a host of structural reforms in the administrative machinery of the colonial state. It was comparatively easier to accomplish the elimination of the statistical representation of a kind of criminal activity. After all, the advertisement of *small but multiple* gains is much more profitable, from an administrative point of view, than a *large but singular* exploit. Such an approach was justified by the official subscription to the ideals of utilitarianism, along with the financial and human resource constraints that the British administrators faced in India. As Radhika Singha writes in a different context, “the small number of thuggee superintendents and the limited resources they were allowed made the enterprise a very limited venture into an all-India framework of policing and surveillance.”<sup>30</sup>

This also held true in the context of criminal tribes as the limited number of people in the service of the Empire posed a grave challenge in the administration of the criminal justice system. In their reports, bureaucrats complain consistently about the understaffing of the imperial administrative machinery. They argue for the adoption of economically beneficial approaches for the resolution of criminal hazards in British India. For example, the introduction of juvenile cells in the jails of Punjab was deemed too costly by some bureaucrats who advised whipping the wayward juvenile criminals as punishment as it would be reduce the financial burden on the government exchequer<sup>31</sup>. Another way to deal with this human resource problem was through the incorporation of specialized forces such as Village Police, Railway Police, and River Police, among others. It was in view of these problems that

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<sup>30</sup> *Ibid*, p. 228. An excellent consideration of utilitarian and humanitarian approaches in the context of the colonial criminal justice system has been undertaken by Radhika Singha, for which see: Singha, Radhika. *A Despotism of Law: Crime and Justice in Early Colonial India*. (Delhi: Oxford University Press, 1998), p. 232-33

<sup>31</sup> “Report on the Administration of Criminal Justice System in the Punjab for the Year 1869,” (Lahore: Punjab Printing Company, 1870) p. 19



the administrative officials showed a marked proclivity towards exercising financial restraint in matters of administration, as has been extensively tabulated in the annual police reports. A combination of all these factors made the administration of criminal justice system all the more complicated. As Sandria Freitag observes in her seminal study on crime and criminality in the nineteenth century India, “the resulting social order may well have been uniquely colonial in character” in that the imperial goal of cultivating modernity was frequently compromised by the economic and social forces.<sup>32</sup> While there existed a deferential regard for ‘rule of law’ by the courts and the law-enforcement agencies, this notion itself underwent various modifications in the practical sphere. In many instances, *law of rule* took precedence over *rule of law*. I shall shed more light on these complications in the ensuing chapters.

The discourse of elimination revolves around and relies on the statistically enumerated data collected about the groups or ‘tribes’ thought to be habitually involved in criminal activities. Consistent within and true to its own logic, statistical knowledge helps put in place a structure that is both deceptively convincing and convincingly deceptive. Resting on these statistical stilts, the official narrative attempts to create a parallel universe that does not reflect the actual situation on the ground. Arjun Appadurai has argued that this vast amount of enumerative data, that existed in the colonial literature, served more than the normative pragmatic purposes: “It’s utilitarianism was part of a complex including informational, justificatory and pedagogical techniques”, he argues<sup>33</sup>. The effort to control these itinerant tribes by settling them at a reachable numeric address was visualized through statistics. This was again a part of what Appadurai calls “a colonial *imaginaire* in which countable abstractions, both of people and of resources, at every imaginable level and for every conceivable

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<sup>32</sup> Freitag, Sandria B. “Crime in the Social Order of Colonial North India.” *Modern Asian Studies* 25, no. 2 (1991): p. 260.

<sup>33</sup> Arjun Appadurai, “Number in the Colonial Imagination,” in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, ed. Carol A. Breckenridge and Peter van der Veer. (Delhi: Oxford University Press), 1994., p. 317

purpose, created the sense of a controllable indigenous identity”<sup>34</sup>. Appadurai’s approach has been questioned by scholars such as Norbert Peabody who are skeptical regarding the chronological origins of the enumerative tendency in governing India, arguing that the administrative regard for enumerative techniques precedes the arrival of the colonial government<sup>35</sup>. Regardless of when such practices were initiated, however, there is no doubt that the British colonial government was successful in recreating the situation *out there* on a statistical or an enumerative plane. The focus of efforts for the elimination of the criminal activity was therefore similarly directed at its elimination on the statistical plane.

Appadurai further notes that numbers did not merely have a “referential status” but carried “discursive importance in supporting or subverting various classificatory moves and the policy arguments based on them”<sup>36</sup>. This rings true in case of criminal justice system as well, since the imperial bureaucrats throughout the nineteenth century seem frantically obsessed with the statistical tabulation of criminal activities taking place in their administrative sphere of influence. Even the slightest hints of an increase or decrease in the official figures of crime would wring out elaborate missives along with copious notes.

This spirit is clearly reflected in the *Police Reports* and the *Reports on the Administration of Criminal Justice System*, for example, which document the worsening or the improving situation of crime quite meticulously. This up and down shift in the criminal trajectory was particularly notable in the province of Punjab. Being a newly acquired frontier territory, Punjab posed an administrative challenge to the colonial officials who were eager to leave a mark on the people of Punjab. To establish this further, I turn some leaves from the *Report on Police Administration in the Punjab and its*

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<sup>34</sup> Op. cit. n. 33

<sup>35</sup> A summary of Appadurai-Peabody debate can be found in Anne Murphy, “Configuring Community in Colonial and Precolonial Imaginaries: Insights from the Khalsa Darbar Records” in *Religious Interactions in Modern India*, ed. Fuchs, Martin, and Vasudha Dalmia. (New Delhi, India: Oxford University Press, 2019), 165-187.

<sup>36</sup> Op. cit. n. 33.

*Dependencies for the year 1869.*<sup>37</sup> In this report, the official figures of criminal activity had not only been *numerized*<sup>38</sup> but also tabulated, thus reinforcing the notion of ‘crime’ in British India as being negotiated chiefly on a numerical plane.

Presenting a summary of the overall state of crime in Punjab in 1869, Lieutenant Colonel Younghusband, who served as the officiating Inspector General of Punjab for that year, wrote this in his report, “[y]ou will observe that non-bailable offences have increased during the year 1869 by 20 per cent; bailable offences have decreased by 7 per cent; whilst crime generally has increased by 4 per cent.”<sup>39</sup> This is followed by a tabular representation of a comparison between the categories of crime in the year 1868 and 1869.

**Table 1.1 (showing the difference between classes of Crime)<sup>40</sup>**

		<b>1868</b>	<b>1869</b>
Class I	Against Currency, Stamps, Weights and Measures	311	365
	Against public tranquility	1194	1051
Class II	Against the person	10942	10575
Class III	Against property with violence	313	327
	Against property <i>without</i> violence	29990	35761
	Malicious Offences	528	490

This is followed by another table which presents a detailed analysis of the fluctuation in all categories of crime (defined by the British) across Punjab. Sprayed with *numerous* references and tables, this report best represents the vast official literature on crime published in that era, which set the scene for the discourse on criminality. In other words, the discourse of crime in British India owed

<sup>37</sup> *Report on Police Administration in the Punjab and Its Dependencies for the Year 1869.* (Lahore: Punjab Printing Company, 1870)

<sup>38</sup> Contrary to its current connotations, I use this word here in the sense of ‘converting into digits or numerals’.

<sup>39</sup> *Op. cit.* n. 37, p. 2

<sup>40</sup> *Ibid.*

its existence to the vast corpus of cadastral literature which comprised of, among other things, the bureaucratic annual reports and minutes of various conferences and meetings held by the colonial officials.

This Report also sheds light on the significance of numbers and, in a way, explains the logic behind using numerical figures to explain the situation of crime. In a bid to explain the unstable state of bailable crime, the report explains that it is impossible to locate the real reasons for such variation. As Younghusband tells us, “[t]he number of bailable cases is rather a token of activity or inactivity on the part of the criminal administration than of the existence or non-existence of petty crime.”<sup>41</sup> Owing to the impossibility of adjusting for the factors responsible for such fluctuation in the levels of criminal activity, there is an emphasis on the *number* of cases to be put to a more functional use, that of gauging the performance of the local administration. The report does, however, attempt to explain the broader reasons responsible for such sharp changes (there was an increase of 49 riot cases in 1869, for example) in the same paragraph. “As settlement operations are going on”, the report states, “angry feelings are often aroused and breaches of the peace ensue.”<sup>42</sup>

Whereas this report describes at length the situation of law and order in the province, it also gives rise to a string of questions regarding the administration of native disorder in British India, such as what would be done in the absence of statistical data, and how would the official policy shape up when the situation on ground was worse than the one enumerated, thus exposing the chink in the administrative armor. One possible way to deal with the problems arising out of the missing data could have been a recourse to the usual fallback option, i.e., a reference to the broader identifiable trends prevalent in the area where criminal activity was rife, ultimately leading to the speculative mode of policing. For example, rather than arguing in favor of a better understanding of the factors leading to

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<sup>41</sup> Op. cit. n.16, p. 12

<sup>42</sup> Op. cit. n. 16, p. 13

an enhanced commission of bailable offences in the above-mentioned situation, the author of the report adopts a deductive line of reasoning, concluding that such offences are a by-product of the expansion project envisioned by the imperial administration (such as, clearing land and setting up of new settlements). In other words, such crime could be classified as an unintended but necessary consequence of the restoration of order in the formerly chaotic landscape, essentially relegating such criminal activity to the domain of *collateral*. As Freitag points out, “by definition, the very creation of [the] social order marginalized certain groups.”<sup>43</sup> This new social order was premised on the notions of ‘property’ and ideas of ‘ownership.’ People who owned land and rendered unto Caesar what was his, occupied the topmost rung in the social hierarchy, whereas those who lacked such entitlements were driven down to the base of this pyramid. Unlike its predecessor, the colonial state “badly managed the task of assessing and collecting revenue” and thus, caused many famines during the course of their rule.<sup>44</sup> A combination of “famine and the revenue policies of the British” gave rise to the “roving gangs” who found an easy target in the “helpless peasantry.”<sup>45</sup> Instead of focusing on these broad factors causing the steady rises and falls in the crime statistics, the colonial officers appear to play them down in their reports and rationalize acts of violence as the indispensable price to be paid for the march of civilization.

British claims regarding the ‘elimination’ or the ‘extirpation’ of criminal activity seldom corresponded with the actual state of such criminal activities, as has been shown by Kasturi and Bhatnagar<sup>46</sup>. Hence, the power to classify a particular activity as ‘crime’ allowed the colonial officials to appear to be in control of the law and order situation on ground. Since the actual state of crime *out*

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<sup>43</sup> Op. cit., n. 11, p. 229

<sup>44</sup> Bernard Cohn, *Colonialism And Its Forms of Knowledge : the British in India*. Princeton, (N.J. :Princeton University Press, 1996) p. 57

<sup>45</sup> *Ibid.* p. 60

<sup>46</sup> Op. cit., n. 25

*there* had been successfully recreated on the statistical plane of reference, the battle for the ‘elimination’ of a crime was more about shaping and controlling the *narrative* of ‘elimination’. It was based on the statistical reports drafted in the 1820s and 1830s that Sleeman finally announced a total extirpation of the menace of ‘thuggee’. Therefore, a careful study of the notion of ‘crime’ in the colonial India necessitates the identification of the particular notion or shade of ‘crime’ that the British administrators sought to define or interpret with the goal to finally eliminate it.

After conducting a successful campaign in order to root out the criminal activity, it was deemed necessary to publicize both the information about the crime (and the criminal gangs) as well as the British efforts to eliminate that crime. Extensive reports were compiled on the state of crime in various parts of India with the aim to round up the so-called criminals in those regions. Similarly, once a particular criminal activity was said to be ‘eliminated’, reports would be published in order to reflect the relatively peaceful state of affairs prevalent in the respective regions. Such reports would ensure that the discourse of ‘elimination’ is sufficiently popularized so as to gain currency among the wider masses. Although Sleeman had claimed towards the end of 1830s that thuggee had been ‘eliminated’ and that India was now free of thugs, reports on the state of thuggee and dacoity kept coming out till as late as 1870s. Not only did this *elimination narrative* popularize the proceeds of the British policy in the colonial era, it also seeped seamlessly through the later accounts of British India. Many popular historians have unquestioningly bought this narrative and fit it into their descriptions of British India. For example, Rosie Llewellyn-Jones, the author of *The Last King in India: Wajid Ali Shah*, writes this about the elimination of thuggee: “In happier times, one of the major successes of East India Company had been the elimination thuggee... Sir William Sleeman, who disliked everything about the old Awadh

regime, had been so influential in suppressing the movement that he was nicknamed ‘Thuggee Sleeman.’”<sup>47</sup>

Similarly, in his history of the Indian Police, Giriraj Shah engages with the *elimination narrative*:

“The most significant attainment of the Company rule was the eradication of Thuggee. This romantic establishment called the Thuggee and Dacoity Department was established in the year 1830 and was directed from 1835 to 1839 by Colonel William Sleeman. He was responsible for eliminating Thuggee from India.”<sup>48</sup>

The fact that such a simplistic statement on the so-called campaign against thuggee finds a mention in the popular narratives of history bears testimony to the success of the narrative of elimination. The literature of *elimination narrative* did not merely shape the public opinion in the era of its propagation but has continued to inform the later accounts of the state of crime in India.

## **2.2. Elimination Narrative: An Analysis**

This statistical course of reform adopted by the administrators of criminal justice is best evidenced in the tri-annual report titled *Statistics of the Crime of Dacoitie in British Territory and Dependent Native States*<sup>49</sup> authored by Colonel Charles Hervey and published from Calcutta in 1873. Colonel Hervey served as the General Superintendent of the Operations for the Suppression of Thuggee

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<sup>47</sup> Llewellyn-Jones, Rosie. *The Great Uprising in India, 1857-58: Untold Stories, Indian and British*. (Woolbridge: The Boydell Press, 2007). P. 164

<sup>48</sup> Shah, Giriraj. *Image Makers: an Attitudinal Study of Indian Police*. New Delhi: Abhinav Publications, 1993. p. 52

<sup>49</sup> Hervey, Colonel Charles, *Statistics of the Crime of Dacoitie in British Territory and Dependent Native States, for the Years 1867, 1868 and 1869 with a Comparative statement for the three years, and a distinct comparative statement for each administration*. (Calcutta: Office of the Superintendent of Government Printing, 1873)

and Dacoitie. The report in question was a comparative analysis of the state of thuggee and dacoity as it existed in India between the years 1867 and 1869. It also contained a ‘comparative statement for the three years, and a distinct comparative statement for each administration’. However, the most important feature of this report is the prefatory note that Colonel Hervey had addressed to E.C. Bayley, who was the Secretary to the Government of India in the Home Department. Hervey starts by offering a critique of the notion of ‘crime’ and quotes examples from his time in service. I argue that this document serves as a primary example of what I have earlier referred to as the *elimination narrative*. Written in 1873, the report is essentially an attempt to popularize and *normalize* the discourse of elimination of thuggee and dacoity. Like others reports compiled in the same era, this report also uses numerical and tabular methods to support its claims.

Drawing on his vast experience in working for the suppression of crime in British India, Hervey jotted down his reflections on the notion of crime and the difficulties attached to classification of a certain crime. Quite unlike the general bureaucratic *zeitgeist* of the 1860s, he begins by reserving unqualified praise for the judicial branch. “The information received from some Magistrates,” he observes, “is full and valuable, and I always feel grateful when it is so; but what others supply is often short of some important point of detail or of narrative.”<sup>50</sup> It is important to point out that there was a tension prevalent between the judicial and the executive branches of British Indian administration. Many bureaucrats kept complaining about how unhelpful judicial forays had been in the administrative affairs. It was mainly because of these that the judicial and executive branches of government kept their horns locked over such thorny questions as the issue of thugs and the criminal tribes. Many bureaucrats blamed the judges for what they called their myopic and ill-informed view of Indian society and, thus, vented their vituperation on the judicial department in the annual reports they drafted for the higher

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<sup>50</sup> *Ibid.* p. 1



officials and policy makers. (The complex relationship between the judicial and the executive branches of the colonial state is explored in the next chapter). When read against this background, Hervey's comments seem quite generous. He also tells us why he had such regard for the data submitted by the Magistrates when he observes that a lack of similar data from the executive officials is exactly the reason why it took him so long to compile the report. From there onwards, Hervey outlines his thoughts on the problematic nomenclature of crime in India. He quotes from one of his earlier reports,

“[I]t has been difficult to arrive at any classification of the crimes enumerated, by which to distinguish their degrees of heinousness or importance, or to arrive at any approximation of the number of them which might be marked off as *professional crime*, in contradistinction to crime committed by ordinary offenders.”<sup>51</sup>

Hervey problematizes the judicial administration of criminality in India by highlighting the gaps between the laws on paper and their execution on ground. He uses the definition of *dacoity* as delineated in the law of the land to present his case.

The legal statutes recognized dacoity as a form of robbery “which should be committed by five men or more persons,”<sup>52</sup> Hervey informs us. The issue with such an approach, Hervey notes, is that the officers looking into an act of robbery would buy into this definition too literally and focus disproportionately on the *number* of people alone. They would “care little to discover whether they were committed by professional dacoits or by ordinary robbers”<sup>53</sup>, writes Hervey. In fact, the room for interpretation afforded by this definition is such that Hervey himself admits he had been deficient in

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<sup>51</sup> *Ibid.* p. 2

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

“draw[ing] any line in that matter”<sup>54</sup>. The problem, Hervey notes, does not lie in the legal codes and statutes but in the way officers tend to implement them. He also hints at a structural problem in the administrative machinery. The administration of criminal justice in a province like Punjab offered promising prospects for many ambitious bureaucrats. The popularity and likeability of a colonial officer would recommend him for a higher post. Naturally, an officer who chose to interpret the laws in a liberal fashion would be more popular among the masses than the one who shows too much regard for the letter of the law. Hence, there was a multiplicity of opinions and policies that resulted from an official’s own reading of a statutory provision. This would, in turn, cause an incoherence of sorts in the administration of criminal justice.

Moving on to the specifics, Hervey cites one example of the problems caused due to the lax attitude of many officers towards the classification of crime. Some officers, Hervey observes,

“arbitrarily exclude from their dacoity Returns, robberies on the highway or in the open country; while others, again, as exclusively consider that where lighted torches have not been used, *real* dacoity has not been committed at all, as that “torch light gang-robbery,” as it is defined, was the only act of the crime which ought to be considered, because the dacoities which take place in their jurisdiction were ordinarily *not like those which were committed in other parts of the country*, every other form of the crime being “technical dacoity” only”<sup>55</sup> (Italics retained from the original)

This observation helps us complicate the argument put forth by Sandria Freitag regarding the classification of crime in British India. Building on the framework introduced by David Washbrook

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<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*, p. 3

regarding the ‘distinction in treatment of individuals and groups’, she characterizes the crimes committed by the individuals as ‘ordinary’ crimes and those committed by groups as ‘extraordinary’ crimes<sup>56</sup>. She contrasts the British attitudes towards both these types of crimes, arguing that the British were more concerned with the latter category than the former. “Unless such crime grew alarmingly in a short period, or its policing fell significantly short of what came to be seen as the norms of efficiency..., the state did not reckon individual crime to be of great importance.”

This makeshift arrangement, Freitag argues, was unique in existence as it “melded together the notion of a modern state’s direct relationship with its individual citizen, and the colonial state’s reliance on a hierarchy of groups to deal with its subjects.”<sup>57</sup> Hervey’s observations, however, seem to suggest a different picture and encourage us to explore the grey areas in this black-and-white narrative of the British administration of criminal justice in India. As he has recorded in the above-quoted passage, the colonial officers did not conform to a uniform ideal of criminality. When in field, they would make use of their discretionary powers and decide the nature of a crime committed on a case-to-case basis. The official markers of criminal activities were dispensed with in such situations. In her article, Freitag deals mostly with the normative aspect of the criminal justice system and does not take administrative factors into account. The implementation of the legal order and the role of officers were very crucial in this structure of governance, as has been observed by Hervey. It is what he calls the ‘capriciousness’<sup>58</sup> of behavior among the officers responsible for executing law on ground that the notion of ‘crime’ takes on different meanings in different contexts. This also leads to practical difficulties for report-writers such as Hervey who find it hard to reach a definite conclusion regarding the state of crime. In view of his observations, Hervey suggests that the officers write accounts of offences which would help report

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<sup>56</sup> Op. cit. n. 32, p. 229, 230.

<sup>57</sup> *Ibid.*

<sup>58</sup> Op. cit. n. 49, p. 3.

authors such as him to write things with conviction. As a result of this, “the value of a statistical account so supplemented would be augmented”<sup>59</sup>. Here, Hervey is asking for the officers to furnish descriptive accounts of various incidents along with the statistical data because it was the synthesis of these two that resulted in an effective ‘definition’ of crime. On another occasion, he had this to say regarding the *Returns* submitted by the Presidency of Madras, “Of the number and the classification of the robberies, the information is complete enough; but there is no narrative of the attendant circumstances, not even of a single case, by which a looker-on might obtain some knowledge of the perpetrators.”<sup>60</sup>

It can be seen that Hervey’s idea of an effective report on the situation of crime in a particular region needed to have a fine balance between the text and the number. Numbers are misleading on their own. It is the accompanying text that adds meaning to them by putting them in a proper context.

This complexity regarding the role of the officer on ground is further evidenced by the report submitted by Mr. Brandeth, the Commissioner of Multan, an excerpt from which has been quoted in the Police Report of 1869 as such,

“The old ziladars used to tell me that [crime] increased and decreased mainly according to the arrival of a convicting or acquitting officer, or according to his views of punishment..., though in their opinion the tendency of the district staff to convict had more real effect than anything. They stated that word would be passed down the line to stop at present ‘till this officer had gone elsewhere. Or till, owing to dispute with the police, convictions were obtained with more difficulty”<sup>61</sup>

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<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.* p. 12

<sup>61</sup> *Op. cit.* n. 37, p. 10-11

The author of the report, Lt. Col. Younghusband, lends further credence to this view by adding, “if a Magistrate is fallible in convicting there is no reason to suppose he is infallible in acquitting.”<sup>62</sup>

As I have mentioned earlier, Hervey’s report also serves as an example of publicization of the narrative of elimination. Written long after Sleeman’s famous claim of the elimination of thuggee, this report now normalizes this narrative. The colonial administration used the narrative of ‘elimination’ in order to burgeon their own claims to governing India. Hervey hints at it while writing this at the end of his report:

“[...] I shall hope, on the present occasion, for the same favorable opinion of them from His Lordship in Council which the late Lieutenant-Governor of the Punjab accorded to the previous Statements, namely, that “the system of Imperial Statistics now in course of introduction, would enable the Public to form a better judgment than heretofore it could possibly arrive at, of the comparative state of crime, and the working of the police in the different Provinces of India for its suppression.”<sup>63</sup>

In the linear trajectory of this system evolved for the resolution of crime, once the elimination of a particular criminal activity had been announced, it did not simply mean that the crime ceased to be committed. When it was committed, the government simply recast it into a different mold by classifying it under a new heading. This can be seen in the relationship between thuggee and highway robbery. The so-labelled *elimination* of thuggee did not mean the caravans or the ordinary travelers moving across India were no longer prone to highway violence. Part of the elimination narrative was also the diffusion of an already existing crime into its constituent elements. For example, despite the

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<sup>62</sup> *Ibid.* p. 11

<sup>63</sup> *Op. cit.* n. 49, p. 22

elimination of thuggee, crimes such as highway robbery, dacoity, etc. continued to take place across India. Such an *elimination by diffusion*, however, was not highlighted in the *elimination narrative*. Highway robbery and dacoity continued to be reported separately as has also been evidenced by Hervey's report. The narrative of elimination of thuggee also meant that the definition of 'thuggee as a crime' had to be frozen in time and dealt with as a thing of past. In other words, the elimination of thuggee was successfully conducted over a statistical plane and was replaced by a narrative of elimination which would gradually creep into the official records and statements. This is the process of normalization that needed to be spread out to the masses in order to put up a strong case for the ability of the British to govern India and thus, gain the local support.

In colonial India, law in general and criminal law in particular were propagated as instruments of modernity. This was deemed necessary especially in the face of what was portrayed as the "precarious" law and order situation in India. However, this particular view also afforded the British the opportunity to shape how law and its effects were conceived, by classifying a particular aspect of a criminal activity and celebrating the extirpation of *that certain shade* through legal means. Such methods would further augment the image of the colonial government as being capable of governing India and by extension, worthy of introducing their own ideas of civilization and progress. Therefore, it was deemed important to translate the law and order situation into a variable which could then be exploited in order to gain favorable public opinion of the British rule in India. The statistical information, accompanied with textual content, would give rise to the corresponding *body corpus* of the law and order situation the colonial state was encountered with. The successful transition of the state of crime onto numerical plane was accompanied by simultaneous efforts to cultivate a corresponding numeric ethic among the people. The whole effort was meant to enforce the idea that an abstract entity such as crime could successfully be defined and then eliminated if it was somehow

negotiated in the numeric currency. It was this process of bringing people to negotiate in the same currency that the state had already been transacting in, that was facilitated by the genres of official literature, such as the elimination narrative.

The statistical conversion of crime on ground had a strong impact on the British policies towards the wandering tribes in India. For a rise or fall in the number of criminal incidents in a certain territory, the colonial officers had to record reasons in their annual reports, which would then form the basis of legal statutes and legislative bills. The explanations offered by the officers would also give rise to stereotypes about various groups of people. Over a long period of time, these official reports, supported by a sedimentation of statistical facts, would come to inform the content of legislative bills. The Criminal Tribes Act, 1871 was one such act that came into being after a sedimentation of bureaucratic reports about the tribes, backed by statistical data, posed them as a risk for the public life and property. The next chapter looks into the impact of bureaucratic opinions on the criminal tribes, along with an analysis of colonial lawmaking.

## Chapter 3

### Criminal Tribes Act, 1871: Birth of a Statute

“Why, then, should incorrigible criminals, at the healthy, vigorous period of life, be at large; why should they go into prison for short periods only, to be sent out again in renovated health, to propagate a race so low in physical organisation?”<sup>64</sup>

In August 2019, the police chiefs of Punjab, Sindh and Balochistan “held a marathon meeting” to devise a scheme to curb criminal activities in the tri-border areas (TBAs) of Pakistan.<sup>65</sup> It is widely believed that the tri-border areas of Pakistan provide an ‘ideal setting’ for the criminal outfits who benefit from a lack of interprovincial coordination among police officials. According to the report, this meeting was held in order to “eliminate the hideouts of proscribed organizations and criminal elements.”<sup>66</sup> The police chiefs “agreed on 10 key points” for ensuring the elimination of criminal bases from the region.<sup>67</sup> Among these proposed measures were some suggestions that, it can be argued, were plucked straight from the administrative playbook of colonial policymakers. For example, the ‘combing and intelligence-based operations,’ ‘conversion of tribal and border areas to settled areas,’ and the ‘establishment of riverine police force and posts’ are the measures that had been implemented in the colonial era and thus, have had a rich historical past.<sup>68</sup> As much as these proposals reveal the

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<sup>64</sup> J. Bruce Thompson, The Hereditary Nature of Crime, *The Journal of Mental Science* 15 (72) ( January 1870): 487–98

<sup>65</sup> Asif Chaudhry, “Provincial police chiefs draw up plan to rid Punjab, Sindh and Balochistan’s border areas of crime,” Dawn, Aug 07, 2019.

As the name suggests, TBA consists of the frontier regions of the provinces of Punjab, Sindh and Balochistan.

<sup>66</sup> Op. cit. n. 1

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.* For example, *The Report on Police Administration for the year 1868* mentions the effectiveness of river police in dealing with the criminal tribes. A call for the establishment of settlements harks back to the settlements of Sialkot which housed Sansis. For more, see Andrew Major, “State and Criminal Tribes in Colonial Punjab: Surveillance, Control and Reclamation of the ‘Dangerous Classes,’” *Modern Asian Studies* 33, no. 3 (1999)



urgency of an action against the so-called criminal elements, they also give us a sense of the colonial baggage carried by modern policymakers who, more or less, happen to share somewhat similar assumptions about crime and criminality as did their colonial counterparts.

The frontier regions of Punjab had historically been singled out in the colonial narratives as being notorious for harboring the so-called criminal elements. With the advent of British colonial rule in India, the discourse of criminality began to evolve in a more formalized manner, as I have discussed in the previous chapter. Partially originating from the ‘colonial perceptions of control’ as has been argued by David Arnold<sup>69</sup> and partially arising out of a lack of comprehensive ‘knowledge about the social causes of crime’ as has been maintained by Anand Yang<sup>70</sup>, the hierarchy of Indian social order became more adamant, leading to a criminalization of a section of society who failed to resist the drive of mobility. The colonial administration acknowledged the sedentary mode of living as the preferred mode of existence since it facilitated the governing of people. This preference for sedentism is reflected, for example, in the judicial ethic to this day, where the first question to be settled before the courts is the issue of maintainability of a lawsuit. A plea can be dismissed by a court if either of the parties is not found to be living within the precincts of the court. The already lower status of wandering tribes among the Indian people was further weakened by their failure to adapt to the changing political and economic landscape of Punjab. As Brian Caton argues in his study of the transition of colonial Punjab from a reliance on ‘animal capital’<sup>71</sup> to land capital, “accumulation of animal capital implied

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<sup>69</sup> David Arnold, “Crime and Crime Control in Madras, 1858-1947” in *Crime and Criminality in British India*, ed. Anand Yang (Tucson: the University of Arizona Press, 1985), p. 86

<sup>70</sup> Anand Yang, “Dangerous Castes and Tribes: The Criminal Tribes Act and the Magahiya Doms of Northeast India” in *Crime and Criminality in British India*, ed. Anand Yang (Tucson: the University of Arizona Press, 1985), p. 117

<sup>71</sup> Brian Caton, “The Transition from Animal Capital to Land Capital in Colonial Punjab, 1850-1900,” *Capitalism Nature Socialism* 26, no. 3 (2015), 64

Animal Capital “operates in societies when animals are stores of wealth; produce wealth through generating labor, offspring, and marketable food, fiber, and other objects; and serve as the repository or conveyer of social and cultural meaning about, for example, power, masculinity, or justice.” His emphasis on the ‘animal capital’ as a separate category is because of Marx’s understanding of “pre-capitalist property in the forms of animal and land; but only the latter formed the root of pastoralists’ natural conditions of production.” (p. 65)

the exercise of domain and vice versa, making the colonial conversion of domain into title a very significant process in the social history of Punjabi herders.”<sup>72</sup> The pre-existing social hierarchy of Punjab was relied upon by the colonial officials to draft reports and write ethnographies of the local populace. The ownership of large herds of cattle, for example, became a signifier of higher social class, who “consider[ed] it beneath their dignity to own [sheep and goats], which are usually kept by Gujars or menials,” as was recorded by A. M. Stow in his 1910 book *Cattle and Dairying in the Punjab*.<sup>73</sup> In this new formalized colonial discourse where the enumerative capabilities of the state, with an enhanced focus on *mode de vie* of its subjects, informed the official policy towards groups of people, whose lack of a defined address was liberally equated with vagrancy, and by extension, criminality. Perceived as an unnatural style of existence by the new colonial state, vagrancy also led to a methodical robbing off of privileges from its condemned practitioners. When modern-day police officials discuss the prevalence of ‘criminal elements’ in the border regions in a hurriedly-convened meeting, they more or less end up reiterating the same old notions of criminality that have historically been assigned to the wandering groups by the colonial officials.

In the first section of this chapter, I look at CTA with reference to its initial draft that was circulated among the colonial officials in Punjab, NWP & Oudh<sup>74</sup>. I also look into the responses and memoranda submitted by the colonial officials in which they approved and disapproved certain provisions of the draft bill and suggested improvement towards the bill that would be passed into an *Act*. I argue that the nature of the responses from both the regions differed mainly because Punjab faced a ‘grave’ and ‘urgent’ problem in the form of wandering tribes. I also argue that the Punjab government

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<sup>72</sup> *Ibid.*

<sup>73</sup> A. M. Stow, *Cattle and Dairying in the Punjab*, quoted in Op. cit. 73, p. 67

<sup>74</sup> Oudh was merged with the North-Western Provinces after its annexation in 1858. For the scope of this chapter, I shall refer to the territories of North-Western Province and Oudh in a collective fashion as ‘NWP & Oudh’. This is because the official documents and memoranda also refer to them as such.

used the deliberations over this bill as an opportunity to build their case for seeking broad powers for the local government. The government of NWP & Oudh, on the other hand, warned of the earlier botched attempts at dealing with the tribes while also acknowledging the need for CTA. Where Punjab asked for absolute control, NWP & Oudh advised caution. In addition to describing the history of the promulgation of CTA, I aim to display how the deliberations around a draft legal bill can as well be used to read into the administrative and regulatory tensions and currents of the era.

In the second half of this chapter, I discuss the unique relationship between CTA and the Indian Penal Code. The acts and behaviors that had been circumscribed by CTA had already been criminalized by the Indian Penal Code. Why would there be a need for a separate legal statute to address it yet again? As I have argued in the previous chapter, the official designation of a *problem* as a *crime* was fundamentally defined by the ability of the colonial state to propose a mechanism for its resolution. Promulgation of a new statute can as well be perceived as an extension of the same logic of colonial rule. I also look at the Criminal Trespass Act 1871, with a focus on the incidents of cattle theft in Punjab. By doing this, I show that the introduction of a new legislative bill can be read as an official acknowledgment of a problem on ground along with a simultaneous assurance to the public at large that the government had taken cognizance of the issue at hand and a solution is afoot. The ultimate goal of such an approach would be to highlight the capability of the colonial state to pose a solution. In such a situation, the criminal activity in question was carefully selected based on its recent figures in official reports and measures were proposed for its elimination in the legislative bills, which would be passed into Acts in most of the cases.

### **3.1. PUNJAB v. NWP & OUDH: Imperial Bureaucrats on the question of Criminal Tribes**

The initial draft of the “Bill for the Registration of Criminal Tribes and Eunuchs” was circulated among the bureaucrats of Punjab and NWP & Oudh in 1870 and contained two parts. The first part sought to bestow upon the local government officials the power to declare any “tribe, gang or class of persons reasonably suspected of being addicted to the commission of theft or robbery” as a *criminal tribe*, whereas the second part proposed measures for the containment of eunuchs who were “reasonably suspected of kidnapping or castrating children, or of committing offences under the Indian Penal Code, section three hundred and seventy-seven, or of abetting ... the commission of any of the said offences”.<sup>75</sup> The bill called for the maintenance of a register by the resident magistrate and also criminalized the withholding of information by members of the criminal tribes. Ironically enough, the draft bill also required the *wandering* groups to have a “fixed place of residence during the whole or any part of the year” to be classified as criminal tribes<sup>76</sup>. This early draft contained only 9 sections that dealt with the criminal tribes and contained simple guidelines for managing those who were *reasonably* suspected of showing a questionable conduct. The set of rules detailed in the draft bill mainly concerned the registration of these tribes, alteration to the register and penalties in case of a breach. However, by the time this legislative bill had morphed into the Criminal Tribes Act of 1871, its fundamental character along with its contents had undergone a drastic makeover. Unlike the draft bill, the final Act of 1871 contained 23 sections that dealt with the criminal tribes and did away with most of the provisions that had been put forth in the initial draft. I will analyze here the transformation of the bill that was initially meant to offer a set of rules to regulate the behavior of the itinerant people into an

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<sup>75</sup> For a detailed discussion on the second part of this Act, see Jessica Hinchy, *Governing Gender and Sexuality in Colonial India: The Hijra c. 1850-1900*, (Cambridge: Cambridge University Press, 2019).

<sup>76</sup> “A Bill for the Registration of Criminal Tribes and Eunuchs,” IOR: L/PJ/5/14

elaborate code of conduct through engagement with the responses submitted by the governments of Punjab and NWP & Oudh.

Initially, the imperial bureaucrats from NWP & Oudh proposed only minor changes to the bill; most of them refrained from proposing any major amendment. Major MacAndrew, who was the Commissioner of Lucknow, recorded that he had “gone carefully over the provision of the Bill, and see[n] nothing to suggest by way of amendment”<sup>77</sup>. The comments made by Sir George Cooper, the Judicial Commissioner of Oudh, had been summarized as such, “the provisions of [the bill] seem to him admirably calculated to fulfil the objects aimed at.”<sup>78</sup> Colonel Reid, Commissioner of Faizabad, thought it ‘desirable’ to include the village police and the land-holders in the process of monitoring these criminal classes<sup>79</sup>. They should be held ‘liable to punishment’ if they fail to report “the absence, without leave, of members of the criminal tribes from their villages.”<sup>80</sup> Colonel Thompson, Commissioner of Sitapur, was the only official to record his disagreement with the lack of a certain provision in the bill. “[T]here is no provision for appeal from the order of the Magistrate directing registration”, he observed<sup>81</sup>.

Most of the recommendations and suggestions from these imperial officials called for an imposition of a stricter code of conduct for the criminal tribes. No comments are made on the questions of language and law. However, in a later memorandum, drafted by the Officiating Secretary, C. A. Elliott and submitted on behalf of the government of NWP, the draft bill was thoroughly deliberated upon. An objection was raised regarding the confinement of two distinct groups, i.e. the criminal tribes and the eunuchs, within the same legal statutory framework. “There is no connection between the

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<sup>77</sup> A summary of his response can be seen in “Abstract of replies of Commissioners, Inspector General of Police, and Judicial Commissioner, Oudh”, IOR: L/PJ/5/14

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

subject-matter of Part II of the Bill, which proposes to deal with criminal tribes, and of Part III which proposes to deal with the eunuchs,” noted Elliott<sup>82</sup>. He further expressed a disagreement with the measure to criminalize the tribes on the ‘evidence of injury to the public,’ as it would be very difficult for the government to establish that. Instead, it would be “advisable for the Government to take power from the legislature for the settlement of wandering and thieving tribes.” The memo further delineates practical issues that might arise out of the criminalization of these groups, and hints at the earlier experiment of establishing a settlement in Muzaffarnagar district that “failed to a great extent, because it was not possible to punish desertion or to make those refused work for their livelihood.” In the end, Elliott asks for an empowerment of the Local Government “to frame rules which may prescribe the means that shall be taken to remove the criminal families from their homes, or to collect the wandering tribes to spots selected by the local Government.”<sup>83</sup> However, this proposal is preceded by a request for caution in view of the earlier attempts at settling them.

The memorandum submitted by the Government of Punjab was authored by Lepel H. Griffin, the Under Secretary to the Government of Punjab. A ‘competition wallah’ who had ‘passed the competitive examinations without attending university,’ Griffin had joined the Indian Civil Service in 1860.<sup>84</sup> Known for his ‘peculiar mix of talent and indiscretion,’ Griffin believed in a thorough engagement with the Indian society in order to make effective policies.<sup>85</sup> In his memo, he criticizes the generic content of the bill which failed to reflect the actual situation of the vagrant tribes. He calls for a correction to the requirement of ‘residence,’ the obvious oxymoron, in the bill by pointing out that

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<sup>82</sup> “From Officiating Secretary to Government, North-Western Provinces, to Officiating Secretary to Government of India, Legislative Department, (No. 640A, dated 21<sup>st</sup> April 1871),” IOR: L/PJ/5/14

<sup>83</sup> *Ibid.*

<sup>84</sup> Barbara Metcalf, Islam and Power in Colonial India: The Making and Unmaking of a Muslim Princess, *The American Historical Review* 116, no. 1 (2011), p. 21

<sup>85</sup> He criticized his fellow civil servants who “prefer[red] the companionship of their books to the attraction of Indian society” (Lepel Griffin “The Indian Civil Service Examinations,” *Fortnightly Review* 23 (April 1875): 522-536 (Quoted in Op. cit. n. 84)

the so-called criminal classes did not maintain a permanent residential address and most of them kept moving all over the province. Instead, he advocates the maintenance of a ‘general register [to be] kept at the district head-quarters’ to account for the mobility of these groups<sup>86</sup>. However, Griffin’s memo takes a different course from there onwards. It complicates both the scope and the language of the bill<sup>87</sup>. Instead of “theft or robbery”, Griffin advocates severity of approach by suggesting an addition of the words “*non-bailable offences against property*”<sup>88</sup> (Italics from the original). Section 9 of the initial draft had held that any person “found in any part of India beyond the limits so prescribed for his residence, without such pass as may be required by the said rules” faced the possibility of an arrest without warrant<sup>89</sup>. In his memo, Griffin records the objection raised to this point by the Lieutenant Governor of Punjab and suggests an addition of the following words to the existing sentence:

“or who may be reasonably believed to have otherwise committed a breach of the said rules”<sup>90</sup>

What reads as a simple proposal at first is actually a carefully worded critique-cum-request, that asks for an enhanced discretion for the local officials. The original provision contained in the draft is quite narrowly constructed and strictly outlines the scenario where the itinerant or under-observation characters could land into any trouble. The Punjab government, however, demanded sweeping legal powers for what could be described as the acts of arbitrary nature. This can partly be explained by the geo-political situation of Punjab as a frontier province, as it wrestled with the problem of wandering

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<sup>86</sup> *Ibid.*

<sup>87</sup> “From Under Secretary to Government, Punjab, to Secretary to Government of India, Legislative Department, (No. 258, dated 25<sup>th</sup> February 1871),” IOR: L/PJ/5/14

<sup>88</sup> *Ibid.*

<sup>89</sup> *Op. cit.* n. 76

<sup>90</sup> *Op. cit.* n. 87

groups of people that roamed all over the province and were the prime suspects both in the eyes of the law and the locals. While the governments of NWP & Oudh seemed more interested in strengthening the existing law and learning from the past mistakes, Punjab government appeared to utilize this opportunity to discuss the bill to achieve a greater say in the local affairs<sup>91</sup>.

Griffin's memo also highlights the problems of defining these wandering groups. The initial draft was vague enough on this question as it referred to the wandering groups as 'tribe, gang or class of persons'. In his memo, Griffin sought to capitalize on this ambiguity by asking for the scope of the term 'class' to be expanded so as to include those who had been incarcerated multiple times and who, in the opinion of Local Government officials, still posed a threat to the society:

"I am to enquire if the word "class" in section 2 of the Bill, would cover habitual offenders.

It would strengthen the executive beyond doubt if the Local Government had power to declare, the case of persons convicted a third time of a non-bailable offence, that the provisions of the Act under review applied to them; that they should remain under the surveillance of the Police, and reside in a particular place appointed by the Magistrate of the District."<sup>92</sup>

An example of clever draughtsmanship, this paragraph achieves many goals in one fell swoop. Firstly, it delivers a tongue-in-cheek critique of the vagueness of purpose (and the terms) which rang throughout the draft bill. Secondly, taking a leaf out of the recent British legislative discussion around the habitual offenders (I shall discuss that in detail in the next chapter), it also dropped a gentle plea

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<sup>91</sup> This is not to suggest that the Government of NWP & Oudh was any less invested in the idea of bestowing more powers on the Local Government. The key difference between their response and the one submitted by Punjab was that the NWP Government asked for these powers while being skeptical of their effective use by the local government officials. However, the Punjab government asked for the maximum width without any qualification.

<sup>92</sup> Op. cit. n. 87



for importing that framework into colonial India. Thirdly, it also hinted at a solution for the problem of ‘residence’ with respect to these tribes. There is yet another aspect to this proposal. The government lacked a legal premise to hold the ‘habitual offenders’ in prolonged custody after they had served their terms. From an economic perspective, however, the administration considered it more convenient and profitable if there was a way for these people to be kept under extended surveillance, as they could not run away after committing an offence and could be readily rounded up in case of any disturbance. However, the regional officials always found it hard to find a legal way to whisk these *usual suspects* off of their rights.

Along with his memo, Lepel Griffin passed on another special memorandum authored by C. Boulnois, a senior judge of the Chief Court in Punjab<sup>93</sup>. In his memorandum dated February 20, 1871, Justice Boulnois described in detail the history of the measures adopted by colonial officials throughout the 1850s and the 1860s in order to contain the so-called criminal groups. The Government of India had asked the Chief Commissioner in 1855 to take appropriate steps for the containment of the criminal classes such as “Sansies, Bowrias, and Kunjars” and a circular was issued to that effect. The circular authorized the registration of these classes and held the village headmen responsible for furnishing security ‘bounding themselves to be answerable for their conduct’<sup>94</sup>. In a proposal submitted later by G. Campbell in 1856, as the memo describes, the onerous responsibility of overseeing these classes was shifted to the zamindars. Hence, the government had issues various circulars at various points in the 1850s to deal with the issue of criminal classes. Two of these circulars, namely the circular nos. 53 of 1853, 18 of 1856<sup>95</sup>, were challenged in 1862 in the Chief Court which struck them down as not having the force of law. But before that, Justice Boulnois mentioned in his memo, these rules had been

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<sup>93</sup> “Memorandum by Senior Judge of the Chief Court, Panjab, (dated 20<sup>th</sup> February 1871),” IOR: L/PJ/5/14

<sup>94</sup> *Ibid.*

<sup>95</sup> Both these circulars allowed for the ticket-of-leave system to be put in place for a better surveillance of criminal tribes.

deliberated upon by Mr. Cust, who acted as a Judicial Commissioner of Ambala Division. Boulnois quoted Mr. Cust as having made the following remarks on the criminal statistics for Ambala Division, “There is no such law as a vagrant law.”<sup>96</sup> In other words, the norms and customs of the wandering tribes did not carry any authoritative weight and the system could not exist parallel to the British common law regime. This was, in effect, an assertion of the supremacy of the British legal tradition and a total rejection of the customs of the groups whose folktales and customs were being simultaneously documented by the colonial ethnographers. In his analysis of the ‘savage periphery’ of North-West Frontier of British India, Benjamin Hopkins has tried to extrapolate Henry Maine’s opinion in the 1864 Kathiawar Case to understand the British approach toward the customs and laws of people in the frontier region.<sup>97</sup> In that case, “Maine insisted that though sovereignty may be divisible, independence was most decidedly not.”<sup>98</sup> As Barbara Ramusack points out, this implied that all the *claimants of sovereignty* in India, such as the rulers of the princely states, could carry out their affairs only by the permission of the *independent* suzerain, i.e. the British.<sup>99</sup> Since the colonial notion of sovereignty was identified with the ownership of vast tracts of land, only the Native States could lay any claim to sovereignty in British India. In his opinion on the Kathiawar case, Maine observed that in India “there may be found every shade and variety of sovereignty but there is only one independent sovereign – the British government.”<sup>100</sup> The independent suzerain who had acknowledged the sovereign of the princely rulers had denied the cultural and legal standing of the wandering tribes by the same token. The logic of Mr. Cust’s statement essentially dictated that the *uncouth* tribes would no

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<sup>96</sup> *Ibid.*

<sup>97</sup> Benjamin Hopkins, *Ruling the Savage Periphery, Frontier Governance and the Making of the Modern State*, (Cambridge: Harvard University Press, 2020) p. 35. The fundamental issue under consideration in the Kathiawar Case was whether Kathiawar was subject to the laws of British India.

<sup>98</sup> *Ibid.*

<sup>99</sup> Barbara Ramusack, *The Indian Princes and their States*, (Cambridge: Cambridge University Press, 2008), pp. 94-96

<sup>100</sup> E. Lauterpacht, C. J. Greenwood (eds.), *International Law Reports*, volume 50 (Cambridge: Cambridge University Press, 1994) p. 472

longer enjoy the protection of their own customary rites, and would have to be brought into the common law jurisdiction in order for them to enjoy the rights accorded to other subjects of the colonial state. Being civilized was made a necessary pre-condition to enjoy protection and the privileges granted by law. The wandering tribes would, hence, exist in a legal void by dint of this presumption of their remoteness from cultural existence.

This observation by Mr. Cust did, to an extent, solve the problem of law and its relationship with the wandering groups as it robbed the vagrant groups of their legal privileges if they persisted in their criminal trajectory. It was economically prudent and administratively convenient to withhold the rights of certain individuals of the society who happened to draw a ‘reasonable apprehension’ from the local authorities. However, this legal victory for the administrative officials was marred by the ongoing tussle between the judicial and executive officials in Punjab. In 1867, a new case titled *Reg. v. Hurnam Singh and Punjab Singh* was brought before the Chief Court which “decided there was no order in legal force which prohibited a person from leaving his village without a ticket-of-leave or the permission of the police,”<sup>101</sup> thus effectively eliminating the system of ticket-of-leave once and for all. This was a severe blow to the bureaucratic efforts to retain the status quo. The matter was put to yet another test when the Chief Court came to be seized of the same matter again in 1868. This time, the provincial government had filed a reference and the Chief Court struck down its last decision. As Boulnois writes,

“His Honour the Lieutenant Governor expressed his dissent from the opinion that exceptional treatment was not required in the case of these tribes. This was repeated to a great extent in the Resolution of Government on the police report of the same year, and the intention of

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<sup>101</sup> *Ibid.*

Government to suggest that the legislature “take action in order to correct the effects of the Chief Court’s decision” was declared”<sup>102</sup>

This judicial somersault put the administrative efforts regarding the criminal groups back to square one. Moving away from this administrative history of surveillance, Boulnois highlights some external factors which tend to explain the ‘predatory’ character of these classes. He approvingly quotes a district officer from *Sealkot* as such,

“The land of the Aidan village is so bad that a crop can hardly be raised on it, and it is scarcely a matter of wonder that the Sansies there take to crime whenever they can.”<sup>103</sup>

After a decade of judicial wrangling, the colonial officials thought it prudent to make efforts for this to be formalized into a legal statute. This is why the initial draft of CTA received an effusive reception from the Punjab administration. Not only did it accept the age-old demand from Punjab to criminalize the wandering groups but it also tried to rein in the judicial setup of Punjab which would exert its judicial oversight over the colonial bureaucrats, thus causing impediments in the functioning of administrative machinery. CTA also brought the executive-judicial duel to a close by bringing the official policy in statutory confines.

Another development traceable through Boulnois’ memo is the complete reversal of policy with respect to affixing the burden of proof. Through the 1850s<sup>104</sup>, the colonial state was trying to shift the

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<sup>102</sup> *Ibid.*

<sup>103</sup> *Op. cit.* n. 93, p. 3

<sup>104</sup> Even before that, landlords had been held responsible for informing the authorities of the suspicious elements in their locality. For an earlier history of this virtual supervision, see the first two chapters of Radhika Singha, *A Despotism of Law, Crime and Justice in Early Colonial India*, (New York: Oxford University Press, 1998).

burden away on to the landlord and zamindars. However, this changed markedly in the 1860s when the burden of proof was gradually shifted back to the individual sphere. With the ticket-of-return system and the proposal for establishing settlements, it was the *individual* who was deemed responsible to dispose of the burden of proof in case of a reasonable suspicion. There can be two possible explanations for this. First, the colonial government wanted to cultivate a legal ethic among the masses and was already encouraging people to avail legal recourse whenever they could. In fact, the backlog of cases heard by the Chief Court in Lahore had increased to such an extent that the provincial government had to introduce a nominal court fee to file a suit (to keep people from frivolous litigation). A calculated extension of this legal ethic to the criminal tribes would be a first step towards their way back into the civilizational fold. Thus, law would become ‘the great leveler’ in the assimilation of these criminal communities into the broader society. A willingness shown by the criminal groups to take responsibility of their actions would impart power and prestige on to them.

Another explanation could be attributed to the arrival of Henry Maine in India in 1862 as a legal member of the Viceroy’s Council. Although, there does not appear to be any indication of Maine’s involvement in the deliberations over the passage of CTA, it is quite possible that his views on the subject might have been solicited by the Council. Even if we discount that possibility, the final draft of CTA in itself echoes Maine’s famous ‘from status to contract’ approach and shifts the burden of proof on to the suspicious members of the society, which can be seen as a considered official policy to wean them off of their *status* and lure them into a *contractual* relationship with the colonial state. If successfully settled and reformed, these members would be assimilated into the broader society and would enjoy the same rights and privileges as had been accorded to other citizens. However, the prospects of such a transition would be in direct contradiction to the official notion of incorrigibility of criminal tribes. How could the colonial state allow, or make efforts for, the civilized sedentism of the

people who it believed, had inherited criminality and were, therefore, incurably addicted to dishonest pursuits? Though his views on the preservation of traditional society in India are well-known, it is hard to find Maine's thoughts on indigenous vagrancy.

### **3.2. Measure for Measure: Colonial Lawmaking in the 1860s**

Consider the following section from the Indian Penal Code ("IPC") 1860,

**Section 401:** Punishment for belonging to gang of thieves.—Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."<sup>105</sup>

Even a cursory look at this section raises questions as to why the colonial government deemed it necessary to promulgate a whole new statute that would criminalize those who had already been criminalized. As the "first code of criminal law in the British Empire"<sup>106</sup>, the IPC put forth a comprehensive set of rules to root out a range of criminal activities that could pose a threat to the life and 'liberty' of the 'citizens' of British India. The underlying legislative principle of IPC is perhaps best expressed by an epigram of its architect, Thomas Babington Macaulay who preferred "[u]niformity where [he could] have it; diversity where [he] must have it; but in all cases certainty."<sup>107</sup> The promulgation of CTA, after an exhaustive penal code had been put in place, is quite surprising.

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<sup>105</sup> "Indian Penal Code of 1860"

<sup>106</sup> Barry Wright, "Macaulay's Indian Penal Code: Historical Context and Originating Principles" in *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform*, ed. Barry Wright (London: Routledge, 2016), p. 20

<sup>107</sup> *Ibid.*, p. 23

However, when placed in the broader context of lawmaking in British India, it appears that lawmaking was as much an exercise in image-making by the imperial government as it was meant to serve to address the social evils, as I have argued in the preceding chapter. In this section, I argue that legal statutes such as CTA were introduced in acknowledgment of a rampant ‘social evil’ and that, as an Act, it conveyed this message to the masses.

The annexation of Punjab into the colonial state posed its own challenges. Bordering Afghanistan and the notoriously restive northern regions of India, Punjab proved to be an administrative quandary for colonial officials. The annual crime reports for the 1860s, for example, showed unsteady rises and (occasional) falls in the crime statistics and the colonial administrators in Punjab mentioned different reasons for these sharp turns. Sometimes, the overall spike in crime rate was attributed to crop failure (causing frequent famines which led to an increased crime rate). At times, it was the problem of the wandering tribes whose frequent movements and lack of a fixed abode explained their frequent run-ins with the officials. As I have discussed in the previous chapter, the situation was further worsened by the understaffing of provincial administration. On top of this, the colonial officials in Punjab realized the importance of maintaining the law and order situation in the province where agriculture formed the economic mainstay of the populace. It was important for them to maintain peace or at least a semblance of it to calm the masses who felt most threatened by the criminal activities. CTA would ensure a maintenance of this *semblance* of peace in Punjab by going after the easiest and the most obvious target. The criminal tribes found themselves doubly doomed since the public perception about them was hardly any different from the official policy towards them. The marginalization of criminal tribes was also owing to their lack of possession of either the ‘animal capital’ or the ‘land capital’ which played a crucial role in the determination of one’s social status, as

has been argued by Caton. The ‘social structures and dynamics’ in the pre-annexation<sup>108</sup> Punjab were formalized into the capitalist modes of production introduced by the colonial state. In addition to the ownership of large herds, the types of animals reared, and the ownership of vast swathes of land, social status was also determined by the ability to offer protection to the members of lower castes.

Just as the notion of ‘crime’ in nineteenth-century British India was a highly flexible category (as I have argued in the first chapter) and could be used differently under varying circumstances, the mechanism to deal with it was equally malleable. It was the scale of vagrancy and habitual offence along with the highly unstable crime rate in the frontier province of Punjab that forced the regional administration to draft a special statute that would deal with the most pressing concerns. Much like some categories (and sub-categories) of crime that were ‘invented’ only to be eliminated through ‘successful campaigns’ owing to effective administration, special statutes were promulgated for what can be described as the stop-gap management of crime. This would project an impression among the masses that the colonial government was making efforts to contain the disorderly state of affairs.

There appears to be another trend that can be identified from the way the introduction of CTA was thought to be necessary. In the 19<sup>th</sup> century British India, the inefficiency of a regional/central government to take decisive action against a criminal activity despite provisions against such an activity in the penal code were taken as an indication of administrative failure. Through the introduction of special acts, the government would reassert its commitment to quell that particular crime through a renewed concentration on the rampant crime. It was like a fresh start with an added zeal. The acts and behaviors which had previously been classified into non/cognizable offences in IPC and were mentioned *somewhere* in the thicket of provisions were now driven off into new elaborate statutes which focused entirely on *that* criminal activity. While an association with the wandering groups had

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<sup>108</sup> Punjab was annexed by the East India Company in 1849.



already been criminalized in IPC, a new *act* that devoted its first half entirely to the subject was likely to create a better impression of the government as having taken note of the oddity. The calculus here is fairly simple. The scale of a criminal activity must be commensurably adjusted for in the official playbook. Just a section or two in IPC would amount to nothing in face of the growing prevalence of a criminal activity in a region. To take one example, there was a steady rise in ‘crimes against property’ throughout the 1860s and the recovery of this stolen property hovered below 50%. *The Report of Police Administration for the year 1868* presents a tabular representation of the value of property stolen and recovered by the Police during the last three years:<sup>109</sup>

**Table 2.1 Tabular representation of the value of property stolen and recovered (1866-1868)**

Year	Value of Property		Per cent recovered
	Stolen	Recovered	
1866	808,592	292,245	36
1867	811,026	294,103	36
1868	991,645	388,620	39

The Report comments on the cause of this rise as such,

“The increase of crime against property is very marked; and is to be attributed to the great scarcity prevailing throughout the province, and particularly during the latter part of the

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<sup>109</sup> *The Report on Police Administration in Punjab and its Dependencies during the year 1868*, (Lahore: Punjab Printing Company, 1869)

year, also to the great influx of strangers from the famine-stricken districts of Rajpootana.”<sup>110</sup>

The scarcity mentioned here was caused by a famine that had struck Punjab that year<sup>111</sup> and the ‘strangers’ in question were none other than the Meena tribes of Rajpootana, a criminal tribe that had been put under the ticket-of-leave system but now roamed free thanks largely to the abrogation of Circular no. 18 of 1856 (which mandated the application of ticket-of-leave system against criminal tribes). Among other things, famine also upended the social hierarchy. As Bhattacharya writes, “[f]amine was seen to have definitely arrived when Jat zamindars came out to work with Chamars at the relief works, crossing the social marks of their status and distinction.”<sup>112</sup> As the discourse of criminality evolved from within the discourse of property, people without ownership of land or animal capital were left behind, as Caton has argued. The state also adopted different approaches towards different sections of the society. For the landed peasantry, “the Raj came forth to grant remissions of revenue, introduce relief, give work to the starving, and help the poor survive seasons of want.”<sup>113</sup> However, when the Gujars of Delhi failed to pay their revenue and asked for remission instead, the state refused and granted them a little extra time to pay their revenue. John Lawrence, master of the territory, went as far as to surround the Gujar territory with his *sawars* and threatened to cut off their access to the pasturage in case they failed to make the payment. The whole village coughed up the due amount to get their access to the pasturage restored.<sup>114</sup>

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<sup>110</sup> *Ibid.*

<sup>111</sup> Note that there is a steady rise in the crime statistics even during those years when there were no famines.

<sup>112</sup> Neeladri Bhattacharya, *The Great Agrarian Conquest: The Colonial Reshaping of a Rural World*, (Ranikhet: Permanent Black, 2018), p. 61

<sup>113</sup> *Ibid.*, p. 58

<sup>114</sup> *Ibid.*, p. 61

CTA can be viewed as an administrative effort to scale up the legal response to crimes in the region. In fact, CTA was one of the statutes that was introduced primarily to address the worsening law and order situation in the province. Cattle Trespass Act (also promulgated in 1871) is another similar statute. Describing the main purpose of Cattle Trespass Act, Mr. Cockerell from the Legislative Department remarked that the aim of the bill was “to consolidate the law relating to cattle-trespass” and “to provide that damages awarded for illegal seizures may be recovered as if they were fines”<sup>115</sup>. The Act itself deals with the issues related to impounding and illegal seizure of cattle. It validates the establishment of pounds where the cattle would be kept and much like CTA, requires the pound-keepers to maintain a register of seized cattle. Similar to CTA, it also gives wide powers of judicial oversight to the magistrates and hold them in charge of organizing the selling of cattle seized by the authorities.

Brian Caton has written about the cultural significance of cattle theft as it was “grounded in the symbolic value of animals”<sup>116</sup> Stealing the prize possession of a proud owner was an act of utmost bravery in the rural setting of Punjab and the person who would accomplish it without getting caught would be lauded for his bravery, in addition to getting respect among his peers. “[D]aughters were given in marriage only to those who had proven themselves by a successful theft,” as Caton quotes from the *General Report on the Administration of the Punjab for 1850-51*.<sup>117</sup> After the annexation of Punjab, the new order introduced by the colonial state enabled a shift from the animal capital to the land capital and a trend set off among people to sell off their cattle to purchase land. This was most notable in the canal colonies where new tracts of land were given off to people who ‘were keen to demonstrate their worth as cultivators in the capitalist environment of the canal colonies’<sup>118</sup> Those who

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<sup>115</sup> “Statement of Objects and Reasons (dated 20<sup>th</sup> September, 1870),”

<sup>116</sup> *Op. cit.* n. 73, p. 68

<sup>117</sup> *Ibid.*, p. 68. Although an exaggerated depiction of the situation on ground, this statement nonetheless highlights the cultural significance of cattle theft.

<sup>118</sup> *Ibid.*, P. 71

still held on to the animal capital and refused to trade it for the *better* capital ‘were either physically expelled from canal colony or reclassified as “criminal tribes”’<sup>119</sup> Caton’s analysis assumes a transition from one form of capital to another. Although the colonial state had promoted land as the preferred form of capital in the new order, this did not necessarily mean a loss of value for the animal capital. What does the passage of Cattle Trespass Act in 1871 mean for the rural population of Punjab? Who was the primary target of this Act? As it is hard to argue that the colonial state was seeking to protect the interests of vagrant tribes that it had criminalized the same year, the promulgation of the Cattle Trespass Act calls for a broader understanding of the situation. Perhaps, Caton’s analysis would make better sense if he focuses on a transition to ‘animal *and* land capital’ rather than ‘animal *to* land capital’. If this transition indicates anything, it is the adoption of sedentary lifestyle that had been put forth as the bedrock of the new colonial order in Punjab.

Interestingly, these cattle-related breaches had already been covered by the Indian Penal Code. Section 425, for example, criminalized ‘mischief’ and held any person responsible for damaging or causing damage to someone’s property as showing mischievous conduct. The ensuing explanation of this section entails many situations which would be deemed as causing ‘mischief’. One of them reads as such:

“(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.”

Theft itself is criminalized according to section 378 of IPC. However, the promulgation of Cattle Trespass Act highlights the need to produce a uniquely identified category of crime that could

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<sup>119</sup> *Ibid.*, p. 71

then be ‘eliminated’ as I have argued in the previous chapter. The Report of Police Administration for the year 1867 enlisted comparative statistics for the bailable and non-bailable offences (see Appendix A). Cattle-theft was the second most committed crime in Punjab and, like all the other categories reported in the list, showed an increase. There were 3,978 incidents of cattle theft, clearly posing it as a grave threat to the property of local population. In a province that was largely reliant on agricultural proceeds for their prosperity, a failure on part of the colonial government to ensure safety of the livestock would amount to a grave failure. Like the reports produced by the colonial officers to identify a crime that needed to be eliminated, the promulgation of statutes such as the Cattle Trespass Act sought to restore the public faith in the abilities of British government to restore order and ensure safety to the life and property of the masses. Interestingly enough, the *Report on the Administration of Criminal Justice in the Punjab and its Dependencies during the year 1871* mentioned that statistical figures for cattle trespass incidents were not mentioned under the head ‘Cattle Trespass’ because

‘Mischief caused by cattle trespass is punishable under the Penal Code, and hence not shown in this place.’<sup>120</sup>

In addition to proposing measures to *alleviate a criminal activity*, these special statutes conveyed a message, i.e., the issue at hand is receiving sufficient official attention. Having contained it first in the theoretical framework, the government would now go ahead with the implementation of the proposed measures in a real world. Just as thuggee continued to occur in its variant forms, such as highway robbery and poisoning, etc. the elimination of cattle theft would not mean an extirpation of the larger

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<sup>120</sup> “*Report on the Administration of Criminal Justice in the Punjab and its Dependencies during the year 1871*,” (Lahore: Punjab Printing Company Limited), 1872

crime of theft and robberies which continued . However, focusing the discussion on a particular type of theft or mischief was a way to assure the masses of the state's efficiency.

In its promulgation, CTA was meant to be a temporary measure put in place to deal with what the colonial state thought of as a temporary problem, i.e. the wandering tribes. Deemed by the colonial officials as outside of the civilizational norms, vagrant/unsettled people needed to be civilized in order to fall under the purview of the law, which was deemed to regulate the affairs of the 'civilized' masses. A law therefore was created to contain them, to enable the full pursuit of this regulation. The transformation of the draft bill for the containment of the criminal tribes into a legal statute in 1871 was made possible by a range of factors. Although the bill was initially extended to the territories of Punjab and NWP & Oudh, it was the administrative setup of Punjab that took the lead in suggesting amendments to the bill mainly because Punjab faced an unsteady crime rate throughout the 1860s and the officials believed that this rate would be considerably reduced if the vagrant criminals are constrained within settlements. While the officials from NWP & Oudh warned of earlier failures and suggested a careful step forward, the officials from Punjab advocated a wholehearted support for the measure and also suggested amendments to the Act. Another motive the Punjab government sought to achieve through this Act was the demand for discretionary powers to keep an eye on the habitual offenders.

CTA itself owed its existence to the Indian Penal Code. It was the consideration of satisfying the public concern over worsening law and order situations that forced the government to promulgate a special act dealing with a crime that would otherwise be dealt with in the IPC. Such decisions were motivated by imperial concerns for creating an impression of efficiency and assuring the masses that appropriate actions were being taken to quell any signs of lawlessness. In addition to the local circumstances in Punjab, the colonial views on vagrant criminality were also shaped by the debates and

discussions taking place in the imperial metropole. The next chapter deals with the impact of debates around habitual offenders taking place in the British Parliament by exploring the history of the Habitual Criminals Act, 1869. It also highlights the different policies adopted by the British governments against the habitual offenders of England and the criminal tribes of India by looking into the activities of the Salvation Army in India.

## Chapter 4

### Pulling Up the ‘Rogues’:

#### Governing the ‘Habitual Offender’ and the ‘Criminal Tribes’

“When a race of plants is once pretty well-established, the seed raisers do not pick out the best plants, but merely go over their seed beds and pull up the “rogues”, as they call the plants that deviate from the proper standard. With animals this kind of selection is, in fact, likewise followed; for hardly any one is so careless as to breed from his worst animals.”

Charles Darwin<sup>121</sup>

Mr. Hugh Pilkington, an MP from Blackburn, was walking home after a long day of political deliberations in the Parliament when he spotted two silhouettes, steadily moving ahead of him. As he reached Pall Mall, those shady characters moved apace and strangled him<sup>122</sup>. They beat him severely and robbed him of his valuables. The resulting panic was contagious. Newspapers and magazines carried bleak tidings to every city-dweller. “Garotting is the talk of the town, penal jurisprudence the favorite after-dinner topic,” observed the *Illustrated London News*<sup>123</sup>. *The Weekly Dispatch* raised alarm over the criminal question that had been “pressed upon the public attention.”<sup>124</sup> Their concern was obvious: if an MP was not safe in the city, how could an ordinary citizen move around without thinking twice before leaving home? Members of the Parliament were equally perturbed and therefore, seriously engaged in enacting legislation to overcome this new wave of street crime. Dickens’ London was having her ‘epoch of incredulity.’<sup>125</sup>

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<sup>121</sup> Charles Darwin, *The Origin of Species*, (New York: P F Collier & Son, 1909), p. 47

<sup>122</sup> R. Sindall. "The London Garotting Panics of 1856 and 1862." *Social History* 12, no. 3 (1987), p. 354.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> Charles Dickens, *A Tale of Two Cities*, (London: Chapman and Hall, 1891), p. 1



This new wave of violence was not unprecedented as the citizens of London had seen a similar rise in roadside criminality in 1856. Adding to the extremity of lawlessness was a below par performance of London Police that had left the city populace distressed. Public anger at the failure of the police to stem the tide of crime was aggravated by the fact that the root cause of this spike was already known to them. Government had begun to stop the transportation of convicts to the eastern colonies of Australia in the 1850s in compliance with the requests (and occasional protests) made by the regional governments in Australia.<sup>126</sup> Unable to hold the large existing number of convicts in prisons, the government had introduced the ticket-of-leave system under the Penal Servitude Act of 1853<sup>127</sup>. However, in face of the rising crime rate, this new measure proved to be a damp squib. The ‘rise’ in garotting incidents was thus directly related to a refusal by the Australian colonies to accept any more convicts from England. This led to a public belief that since the dangerous characters could not be taken away from the mainland, people needed to be on their own guard. With the latest spike in street criminality in 1862, public fears of convicts at large were reawakened. Historian Rob Sindall has described these “London garotting panics” of 1856 and 1862 as ‘the first real moral panics experienced in Britain’,<sup>128</sup> which were induced mainly due to a lack of public trust in the administrative capabilities of the government. Urged to take serious action, the British parliament was “pressurized[ed]... into enacting hasty and ill-thought-out legislation,” along with a harshening of existing laws. Peter King directly relates this uptick in public demand for stricter action to the “journey towards greater severity...in the 1865 Prisons Act and the Habitual Criminals Act of 1869.”<sup>129</sup>

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<sup>126</sup> Radzinowicz, Leon, and Roger Hood. "Incapacitating the Habitual Criminal: The English Experience." *Michigan Law Review* 78, no. 8 (1980), p. 1308

<sup>127</sup> *Ibid.*

<sup>128</sup> *Op. cit.* n. 122. Though he does not make an express claim to this effect, Peter King’s description of the Colchester panic in 1765 certainly puts them before the London panic of 1856 and 1862.

<sup>129</sup> Peter King, “Moral panics and violent street crime 1750–2000: a comparative perspective” in *Comparative Histories of Crime* ed. Barry Godfrey, Clive Emsley, Graeme Dunstall (London: Taylor & Francis), p. 57

In this chapter, I narrate two different histories of habitual criminality that are often brought up in the study of Criminal Tribes Act (“CTA”). In the first section, I recreate the circumstances in the imperial centre which led to the promulgation of Habitual Criminals Act 1869 (“HCA”) in England. Historians of criminality in India have described CTA as bearing strong resemblance to HCA in England. Anand Yang, for example, has described how the administrators in British India knew about the incorporation of the notion of *heredity of crime* into the English law<sup>130</sup>. Similarly, in her classic study of the *Meos* of northwest India, Shail Mayaram has foregrounded it in her analysis of CTA by observing that the Habitual Criminals Act “assumed an internal differentiation within the working class in that the labor aristocracy was seen as distinct from the habitual offenders of the working class.”<sup>131</sup> In order to understand CTA better, I look at the immediate context HCA was promulgated in. I also analyze the parliamentary discussion on HCA in order to understand the imperial (metropole) notion of vagrant criminality and to draw a comparison with the colonial (British Indian) notions of vagrancy.

In the second section, I look at the role of Salvation Army in the administration of criminal settlements in British India. Not only did the Salvation Army advance the official vision of the reformation of wandering tribes, its ‘officers’ in India also had their own views on crime and criminality in India.<sup>132</sup> In order to comprehend their understanding of the question of native criminality, I look into Frederick Booth-Tucker’s account of the Indian criminal tribes, *Criminocurology or The Indian Crim, and what to do with him*, in which he offers a detailed exposition of his idea of an ‘Indian criminal’ and how to reform them. In the first half of this chapter, I work with the archives from the latter half of the nineteenth century, whereas in the second half, I focus on a text from the early half of the

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<sup>130</sup> Anand Yand, *Crime and Criminality in British India* (Tuscon: the University of Arizona Press, 1985), p. 111

<sup>131</sup> Shail Mayaram, *Against History, Against State* (New York: Columbia University Press, 2000), p. 127

<sup>132</sup> Regional chiefs of the Salvation Army were called the ‘Officers’ in the Army parlance.

twentieth century. I adopt this method to highlight the *consistency of expediency* that characterized the colonial policy towards what it referred to as the ‘habitual offenders’.

By focusing on the factors that shaped the imperial notions of vagrancy as they came into full bloom in HCA, along with a parallel study of the non-state organizations and their understanding of criminality, I attempt to present the colonial ideals of control and surveillance. Resulting from a farrago of domestic disturbances and overseas troubles, the imperial approach to habitual criminality in the metropole was markedly different from the colony. While the habitual offender in England was seen as an *individual* engaged in criminal activity, the habitual offender in India was always seen as a member of the *collectives* of organized crime, also known as the criminal tribes. Unlike the latter, the habitual criminals in England were seen as capable of reformation. The difference in the perceived criminality of these two categories was also pronounced in the punishment eked out to them. While the strict surveillance of the habitual offenders in the aftermath of their release from the prisons in England was conducted to *deter them from repeating their offences*, the harsh penalties for the criminal tribes in India were meant to effectively *isolate them from the society* for as long as possible. Unlike the criminal tribes of India, the habitual offenders could lead a normal life as long as they did not return to the old ways. Therefore, when the prisons of British India could not accommodate the members of criminal tribes, settlements were thought of as the most effective solution. To further establish the political motivation and expedient implementation of the colonial policy towards the criminal tribes, I look at the role of the Salvation Army vis-à-vis the settlement of criminal tribes. While the government in India had expressly prohibited any official engagement with the *reformation* activities of the Salvation Army, the colonial government forged an alliance of sorts with them and authorized them to establish new settlements once the Salvation Army managed to lodge the itinerant tribes into sedentary modes of living. From the street criminals in London to the Sansis in Punjab, the response of the

colonial government towards the ‘vagrancy question’ varied significantly as is reflected in the distinct statutes and convenient alliances, shaped up to deal with the problem of the habitual offenders. The treatment of the habitual offenders in the metropole was significantly different from the criminal tribes in the Indian colony, as I discuss it further in the following pages.

#### **4.1. Moral Panic and Habitual Offence: A case study in Britain**

As I have mentioned above, ‘criminal outcasts’ in England posed a serious problem for the administrators as they could not be shipped off to the Antipodes anymore. Kept at home, they were a source of panic among the masses who feared that a gradual increase in their numbers had turned them into a potential keg powder that could catch fire any moment, posing great risk to public safety and property. The government, therefore, decided to introduce a special “[b]ill for the better repression of crime” that would deal with the question of habitual offenders in England once and for all.<sup>133</sup> In this section, I look into the parliamentary debates on HCA as they have been reported in the Annual Register, along with the other important events that had been covered by the Register during the year of passage of HCA.

The *Annual Register* for the year 1869 contains a detailed report on the deliberations over HCA. The bill was

“to meet the urgent demands of the public for a more effectual protection of life and property and a more vigorous mode of dealing with that dangerous class who make crime their regular trade and pursuit preferring to prey upon the industry of others rather than to exercise their own.”<sup>134</sup>

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<sup>133</sup> “*The Annual Register: A Review of Public Events at Home and Abroad for the year 1869*,” (London: Rivington, 1870), p. 19

<sup>134</sup> *Ibid.*

It was introduced in the House of Lords by Lord Kimberley, who was Lord of the Privy Seal at that time. In his parliamentary speech on the merits of the bill, he presented a case for the urgency of this bill and also described a history of the earlier attempts made at holding ‘dangerous characters’ away from the precincts of social existence. Kimberley duly mentioned that after the eastern Australian colonial governments, there were now “remonstrances” from the government of Western Australia as well which, he argued, had forced the British government to issue a notice in 1864, to the effect that “transportation would entirely cease in three years from that date.”<sup>135</sup> This would mean that the British government could not put off the issue of habitual offenders and needed to deal with it head-on. Previously, Kimberley stated, the government had introduced the ticket-of-leave system under the supervision of Colonel Henderson. “Real, hard, patient industry and good conduct were required to be shown by the convicts before they were released.”<sup>136</sup> In addition to being very effective in his opinion, this system was also very economical as the *dangerous classes* were required to do work for their own economic sustenance. In his assessment, many of them took to industrious vocations, thus showing a possibility of reformation. After this, Lord Kimberley proceeded to describe two main reasons for the need of yet another bill for dealing with the condemned classes - “one general and one special reason,” as he described it.<sup>137</sup> Putting forth the *general* cause, Lord Kimberley stated that there had been 1566 men and 441 women on ticket of leave. “In ten years’ time it was estimated there would be 3000 convicts on ticket of leave.”<sup>138</sup> In view of this projected rise, Lord Kimberley asked, “how could they deal with this enormous mass of crime and this army of criminals?” A suggestion was made (we are not told who made it) that those who “had been convicted several times” should be imprisoned “for

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<sup>135</sup> *Ibid.*, p. 20

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.* p. 21

life.”<sup>139</sup> Lord Kimberley disagreed on the practical grounds that such convicts become a liability on the administrative apparatus and must, therefore, be put to some other use with reasonable surveillance restrictions in place.

The bill was sufficiently adorned to quell any future wave of street crimes or other similar criminal activities. By providing for the maintenance of a register, along with an arbitrary summons for the *suspect* from the police officials in order to establish that he “was earning an honest livelihood,” the bill sought to authorize the police officials with discretionary powers to round up the suspicious elements without any procedural rigmaroles. Lord Kimberley’s bill also shifted the *burden of proof* on to the suspicious characters.<sup>140</sup> In view of hardships borne by the police officials in conclusively establishing the incidence of crime on the *usual suspects*, it would have been a relief if the legal recourses afforded to such persons were withheld or at least reduced in the larger interest of masses. The bill also enhanced the sentence to be served by the habitual offenders to seven years. This severity was a direct result of the public outcry over the government inefficiency during the previous London panics. In the public perception, the criminals were emboldened to commit crimes owing to *lenient* terms stipulated for commission of such acts in the legal statutes. The parliament had been trying to strengthen the already-existing laws by increasing sentences for existing crimes through amendments. As a new piece of legislation, HCA sought to harmonize all the existing laws and end the confusion around them. In case of a repeat offence, the offender would be under enhanced police surveillance for seven years. In case of yet another conviction, “the sentence would never be less than seven years’ penal servitude.”<sup>141</sup>

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<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> ‘Penal servitude’ as a sentence entered British criminal law in 1853 as “imprisonment with hard labor at any penal establishment in Great Britain or its dominions.” It was a direct result of the growing public discontent with the increasing number of ‘criminals on the loose.’

After Lord Kimberley had delivered his speech, other members shared their thoughts on the bill. “[T]he children of felons should be removed from the control of their parents and educated at the expense of the State,” Lord Romilly chipped in.<sup>142</sup> Another member of the House also called for an end to discretion afforded to the judicial magistrates and proposed “more equality in punishments.”<sup>143</sup> Lord Shaftesbury who, despite having praised the letter of the law, waxed critical on the spirit of the bill. The bill, he argued, had exhausted “all avenues to honest occupation,” and hence might drive criminals “to desperate courses.”<sup>144</sup> Referring to the requirement of self-reporting on part of the criminal that was introduced in the Act of 1864, he highlighted how “useless or mischievous” that practice turned out to be. The bill at hand would increase the powers of police infinitely.<sup>145</sup>

After the refusal by the Australian colonies to allow more convicts into their territories, the British government had been putting off the question of ‘habitual criminals.’ The rise in a criminal activity was responded by either an increased surveillance or by the severity of existing laws. Between 1853 and 1864, government had introduced three different versions of Penal Servitude Act (1853, 1857, 1864).<sup>146</sup> The pace of amendments in the bill also highlights the inadequacy of the legal measures to deal with the problem. A strong public backlash after an increase in the criminal activities in the early 1860s forced the government to introduce a set of laws that essentially reiterated the earlier stance held by the government by increasing surveillance and tightening the sentences. Any attempt by the government to assimilate the rogue elements into society was fundamentally jeopardized by the paradoxical notion of reformation for the incorrigible characters.

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<sup>142</sup> Op. cit. n. 133, p. 21

<sup>143</sup> After the panic had spread through London, the magistrates had started awarding enhanced sentences as a makeshift measure to keep the ‘habitual offenders’ as far as away as possible. As could be expected, it had resulted in the abuse of power by some magistrates.

<sup>144</sup> Op. cit. n. 133, p. 21

<sup>145</sup> *Ibid.*

<sup>146</sup> Op. cit. 126, p. 1315

Although the habitual criminals of England shared many traits with the criminal tribes of India, they also had their differences. The habitual offenders were not considered to be as incorrigible as the criminal tribes of India, who were thought of as irreclaimably depraved groups of people. The habitual offenders had to commit a crime for at least three times to be deemed as such whereas the criminal tribes were labelled so because of the colonial view of their intrinsic criminality. The criminal tribes were seen as criminal collectives who would carry out ‘organized crime’ as opposed to the habitual criminals who were treated as individual criminals. Commenting on the *Report of Police Administration for 1869*, T. H. Thornton, Secretary to the Lieutenant Governor of Punjab, observed that the Lieutenant Governor ‘would desire... to point out ... the great value and importance of the facts recorded by Colonel Younghusband’ who, in his report, had suggested that “the only effectual mode of dealing with criminal confederacies is ... ‘to dam the stream at its fountainhead.’” Younghusband also highlighted the importance of ‘an organized police, for dealing at all events with organized crime.’ In the colonial reports on the criminal tribes such as the one authored by Colonel Younghusband, there is a presumption of perpetual offence on the part of the tribes. Since the latter could not change their ways, the colonial government could only maintain peace by preparing for war. The habitual offender of England, on the contrary, was cast in a very different image by the policymakers in England. When Lord Romilly proposed a separation of children of habitual offenders from their family in order to receive good education, Lord Kimberley opposed him and thought of it as a step too far. Similarly, in a discussion on HCA in the British Parliament on August 04, 1869, Sir Charles Adderley mentioned that ‘there were only three principles on which punishment could justly rest – the incapacitation of the criminal, the reformation of the criminal, and the deterring from a repetition of the crime,’ implying that there was always a possibility of reformation of a habitual criminal. He also emphasized upon the need to educate the habitual criminal in order to reform him, as



“all the old reformers of our criminal law, Howard, Bentham, Mackintosh, Romilly, and Peel, kept in view that education should precede punishment, which should be the corrective of violated laws.”<sup>147</sup>

In the parliamentary discussion over HCA, there was a heated debate over Clause 11 that sought to give summary powers to the magistrates to penalize those thieves who were reasonably suspected of having committed a crime. This clause was necessary because ‘there had been cases in which a person had been seen to put his hand into the pocket of another, and yet, because he abstracted nothing, and theft was not completed, the magistrate could not convict,’ Home Secretary Mr. Henry Bruce explained in the House.<sup>148</sup> In order to shift the burden of proof on the accused, Clause 11 mandated the magistrates to consider the ‘general circumstances of the case,’ in order to reach his judgment. However, other members of the House opposed this ‘conviction without evidence.’ ‘It could not be meant that a man was to be convicted of a substantive offence on account of his character,’ said Mr. Henley. Lord Collins suggested that the ‘previous conviction’ of a person be taken into consideration in such a scenario rather than judging from the ‘known character’ of a man. In the end, the Clause was amended and agreed upon.

#### **4.2. The Salvation Army in India and the Criminal Tribes: A Case Study**

The colonial government in India had a different approach to native disorder than the government back in Britain. Faced with a different territorial expanse and as ‘strangers in the land,’ they had to adopt pragmatic approaches in their criminal administration policy. Forging expedient alliances was an important strand of this policy. In this section, I look at the settlement operations of the Salvation Army in India with reference to the ideological framework they operated in. The operations of Salvation Army in India were independent of the colonial government. In fact, the

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<sup>147</sup> Op. cit. n. 133, p. 22

<sup>148</sup> *Ibid.*

colonial government had a sworn policy of absolute non-association, both implicit and explicit, with the Army for its bureaucrats. However, when the Salvation Army established its settlements in various parts of Punjab and lodged many itinerant tribes, the government was quick to realize the benefits of coordinating with the Army and, therefore, assisted them in the proliferation of their settlements.

The Salvation Army had started as “The Christian Mission” when its founder William Booth “preached to crowds outside the Blind Beggar pub” in London in 1865<sup>149</sup>. The flexibility of their approach and the laxity of their manners endeared them to the throngs of people, who had been cast aside by the too observant priests of the Catholic Church. When the self-styled Army’s missionary zeal was exported to the British colonies (India in 1882), the ‘officers,’ as they preferred to call themselves, had the following advice from their founder ringing in their ears,

“I say to my officers who is going to Holland “Can you be a Dutchman?” To the man who is going to Zululand “Can you be a Zulu?” To the one going to India “Can you be an Indian?” If you cannot, you must not go at all.”<sup>150</sup>

One of the first men yearning to qualify as an *Indian* in this sense was Frederick St George De Lautour Tucker who had been a civil servant in British India. Born and raised in India, Tucker had joined the Salvation Army in 1881 and was so impressed with their message that he quit his job the following year and devoted himself wholeheartedly to the missionary activities of the Army in India<sup>151</sup>. William Booth also admired the passion of his protégé and married his daughter, Emma, off to Tucker after the latter’s wife had died due to cholera. As a new member of the Booth family, Tucker was duly

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<sup>149</sup> “Our Story,” The Salvation Army, accessed April 28, 2020, <https://story.salvationarmy.org/#governance-108733>

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

christened “Booth-Tucker” and put in charge of the Army’s Indian operations<sup>152</sup>. Booth-Tucker’s 1917 book *Criminocurology or The Indian Crim, and what to do with him* provides an account of the criminal tribes of India and the efforts undertaken to reform them<sup>153</sup>. The book was published six years after CTA had undergone a drastic set of modifications and had been extended to the whole of India. Following the Indian Police Commission report in 1902-03, the colonial government had realized that the previous version of CTA needed alterations and that the police officials should be given broader powers to round up the criminal tribes. The new CTA was broad to an extent that the local government could declare *any* tribe, section or class of people as criminal tribes. Another important feature of the 1911 Act was a focus away from the ‘settlement, or provision of the means of livelihood,’ which were the key features in the 1871 Act. What could have led to this reversal of policy demands a detailed study of the colonial reports and the judicial cases from the late eighteenth century and early nineteenth century.<sup>154</sup> However, the growing success of the Salvation Army operations, one can argue, could certainly be seen by the financially prudent colonial government as a possible reason for a shift away from the establishment of new settlements. Although the colonial government itself had laid out new settlements in the form of canal colonies, vagrant tribes could still not be situated there because the foundational ethic of these canal colonies was based on landed property. In his book, Booth-Tucker rightly sees into the shortcomings of police administration and taps into the growing frustration of the colonial administrators so as to extend his own agenda for dealing with these tribes. In addition to discussing the achievements of The Salvation Army with respect to reforming the criminal tribes, he also develops a theoretical framework which occasioned the rise of what he calls the “Indian Crim”.

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<sup>152</sup> Ibid.

<sup>153</sup> Frederick Booth-Tucker, *Criminocurology or The Indian Crim, and what to do with him*, (Simla, The Royal Army Temperance Association Press, 1917).

<sup>154</sup> Meena Radhakrishnan has explored this in the context of Madras but no such work has been done in the context of Punjab. See Meena Radhakrishnan, “Surveillance and Settlements under the Criminal Tribes Act in Madras,” *IESHR* 29(1992), 171–98

He also offers a commentary on the Criminal Procedure Code (CrPC) and Indian Penal Code (IPC) inasmuch as they deal with the criminal tribes of India. This is followed by a discussion of CTA and the shortcomings that, in Tucker's view, limited the scope of what was otherwise "an admirable piece of legislation."<sup>155</sup> Divided into three parts, Tucker's account looks into the 'Crimdom' in the first part and "Curedom" in the second part. The last part deals with "Curedom in action' which is a quick overview of the work done by TSA in settlements across India.

In the *Introduction* to his book, Booth-Tucker describes his motivation for putting the book "before a wider circle of readers" which had previously been issued solely "for private circulation amongst experts on criminology."<sup>156</sup> His writing is guided by his conviction that the *Indian Crim*, no matter what category he belongs to, "can be guided back into the paths of honesty and good citizenship."<sup>157</sup> The guiding motto of the book is "It *can* be done, because it is *being done*."<sup>158</sup> In what appears to be a tongue-in-cheek reference to contemporary Marxist ideology, he makes a triumphant declaration, "a foundation [has been] laid on which a substantial superstructure can be built."<sup>159</sup>

Strangely enough, the only providential reference throughout the *Introduction* occurs towards the end when Booth-Tucker attributes the successful execution of their Army's plans to the divine blessings. Richly imbued with literary rigor, this last paragraph is worth quoting in full:

"For centuries the waste waters of Crimdom have rolled the ocean of despair. Now they are being harnessed and already by God's blessing the electric rays of virtue and honesty, of

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<sup>155</sup> Op. cit. n. 153, p. 20

<sup>156</sup> *Ibid.*, p. 1

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*, p. 2

<sup>159</sup> *Ibid.*

reformation and salvation, have flashed forth in hundreds of Crim homes. Thousands are waiting to receive that light.”<sup>160</sup>

Instead of subscribing to biblical notions of atonement and expiation for the wrongdoers, Booth-Tucker vows fealty to the secular notions of ‘industry’ and ‘citizenship.’ This is because, by 1917, the Army had begun to see itself as an extension of the colonial state that followed the same end (of *reforming* the unruly locals) through vastly different means (reformatory settlements).

The official policy of the colonial government in India towards the Salvation Army can best be understood through a letter written by Mr. W. McG. Drysdale, a former officer of the Punjab Police Force who had been dismissed from service because of his “becoming a Salvationist after return from a year’s furlough to Europe and America.”<sup>161</sup> Now settled in America, the former officer had written to the Governor General in order to have his “hard earned pension” grant restored which had been withheld on account of his dismissal. He had been relieved of his duties because of “wearing English Salvation Army uniform in private dress, and trying by open air preaching to win the Natives for Christ.”<sup>162</sup> By his own account, he had given “my testimony for Christ in an open air ring where two Native Missionaries were preaching” in Hissar and was forbidden by the Magistrate from doing so again<sup>163</sup>. (Later, the Magistrate “reported me to Government as being both mad and a fool”). After his removal, he returned to America courtesy Colonel L. Tucker (who could have been a relative of Mr. Booth-Tucker)<sup>164</sup>. The contents of this letter reveal that even the slightest hint of a colonial official’s involvement with TSA was reason enough for the government to distance itself from that officer. Having previously served as a civil servant himself, Booth-Tucker was well-aware of this tension and

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<sup>160</sup> *Ibid.*, p. 2

<sup>161</sup> “Letter of the Officer having connections with the Salvation Army,” IOR/L/P/3/303

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

attempted to maintain a cordial relationship with state officials. In *Criminocurology*, he strips himself of his missionary robes and brings forth his expertise as a keen observer of the society and an adept administrator. It is perhaps owing to this successful presentation of the Salvation Army's role in reinforcing the imperial agenda in India that the government had started awarding concessions to the Army by the first decade of the twentieth century. In 1910, for example, TSA was awarded a two-year grant to run "weaving and other cottage industries" at Kor Mokal in Punjab<sup>165</sup>. By the time *Criminocurology* was written, TSA boasted 26 settlements (with 8 more "pending") in Punjab, United Provinces, Madras, Bihar & Orissa, and Ceylon<sup>166</sup>.

The notion of industry that Booth-Tucker had referred to in the introduction to *Criminocurology* was not an abstract reference. Rather, it was realized in the settlements in the form of various 'employment' opportunities created by the Salvation Army for the members of Crimdom. These opportunities included weaving, silk reeling, carpentry, needlework, agriculture, gardening, forest cutting (this happened only in Changa Manga in Punjab), poultry, etc.<sup>167</sup> As Anne McClintock has argued in *Imperial Leather*, there had been a 'major transformation' in the nineteenth century 'as middle-class men laboriously refashioned architectural and urban spaces to separate, as if by nature, domesticity from industry, market from family.'<sup>168</sup> '[T]he Company Acts of 1856-62,' McClintock argues, 'finally freed commerce from kinship and the historic distinction between the public realm of business and the private realm of domesticity came into its own.' Like the domestic workers in the Victorian England who embodied the crisis 'between a feudal homestead economy and an industrial wage economy,' the settled population was also put through this transitory phase (the Salvation Army

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<sup>165</sup> Op. cit. n. 153, pp. 46-47

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*

<sup>168</sup> Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Context*, (New York: Routledge, 1995), p. 167

settlements) where they would be introduced to the ways of a sedentary living.<sup>169</sup> Along with this sedentism, the pursuit of an industrious occupation would make members of the criminal tribe conscious of their sense of individuality, after which stage they would be able to become a part of the broader society. For its part, the Army was using the *labor* power of the settled population to enhance its own *political* power.<sup>170</sup> It was this accumulation of the political capital that led the colonial state to acknowledge the activities of the Army and allow them further to increase the number of their settlements.

In his work, Booth-Tucker delineates his ideas on crime, especially crime in India. At the outset, he provides a general distinction between what he calls the ‘accidental crime’ and the ‘systematic crime.’<sup>171</sup> The former stems out of “special temptation” or “a fit or passion” and, hence, is not to be mixed with the latter which is tantamount to “a deliberate warfare against the moral and legal codes which govern social life.”<sup>172</sup> After this, he quickly jumps on to the classes of Indian Criminals, which are the *Incorrigible*, the *Habitual*, the *Hereditary*, the *Ordinary*, the *Youth*, and the *Child*. It is important to note that CTA does not set out any such distinction because, unlike the habitual criminals of England, it viewed the habitual criminals of India as part of an organized collective. Booth-Tucker’s categorization serves to identify the distinct elements of this criminal collective, that had been envisioned by CTA.

Owing to a lack of any clear distinction made between the two, the colonial government treated the incorrigibles as habitual offenders and vice versa. Booth-Tucker’s reassuring tone has its origins in the work done by the Army that had already enabled the *habitual criminals* to follow industrious pursuits. By presenting his ideas on the ‘criminals’ of India, Booth-Tucker was also making a strong

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<sup>169</sup> *Ibid.*, p. 165

<sup>170</sup> *Ibid.*, p. 164

<sup>171</sup> *Op. cit.* n. 153, p. 3

<sup>172</sup> *Ibid.*

case for the Army's enhanced participation in the 'reformatory' system designed to curtail the problem of vagrancy. As I have argued in the Chapter 1, colonial government in India (notably in Punjab) faced a bevy of problems from understaffing to the higher expectations from the local populace to govern effectively. However, the annual reports had been painting a disappointing state of affairs for a long time, mainly blaming the itinerant tribes for posing obstruction in effective governance. With the Salvation Army reporting successes in its settlements, the government had a potential partner that would put a temporary stop. In what is reflective of the expediency of the official policy, the government was willing to bend the rules to forge this alliance. Where once even the remotest association with the Army, or any religious group, would have raised concerns, colonial state was now willing to partner with a religious group *in toto*.

The first three categories of Indian criminals, i.e. the Incurrigibles, the Habitual and the Hereditary, are of particular interest here. 'The Incurrigible,' according to him, chooses "crime as a profession" and "finds it a profitable" way to earn his livelihood. The incurrigible is a habitual criminal but every habitual is not an incurrigible. This is perhaps the singular most important distinction as it sets apart Booth-Tucker's understanding of the criminal behavior from the colonial reports. He sees the possibility of reformation and thus, salvation in, at least, the latter. In the colonial legal trellis, there was practically no distinction made between the two categories and the administrative mechanism was rooted in the belief that the habitual criminals were incurrigible and, therefore, incapable of reformation. Commenting on the state of wandering tribes in Punjab, for example, the *Report on Police Administration for the year 1867* mentioned that '[t]here is this year nothing specially[sic] to notice about them, except that each year proves more clearly, that all will commit thefts if they can. This



department invariably endeavours to maintain a “watch” over a “gang” during its progress through a district, and by so doing, no doubt much thieving is checked.<sup>173</sup>

The ‘Incorrigible’, as Booth-Tucker writes, is the leader of the pack or the patron-in-chief of a criminal activity. “He does not necessarily commit crimes himself,” Booth-Tucker observes.<sup>174</sup> He is ‘often a man of affluence’ and ‘often employ[s] lawyers to defend his clients,’ and when every legal course is availed and exhausted, he extends his patronage to the family of the convict, providing for their essential monetary needs.<sup>175</sup> Such provisions, Booth-Tucker adds, are not ‘a debt of honor’ but part of the informal agreement reached upon by the Incorrigible and the convict. Likening them to Robin Hood and Dick Turpin, Booth-Tucker recounts a contemporary episode in which a member of such a gang “turned King’s Evidence against his gang.”<sup>176</sup> The bodies of some baniyas, who had gone missing long ago, were exhumed as this approver pointed them out. The Police Department finally managed to get hold of this whole gang and put them on trial.

Booth-Tucker relates a comic turn of events that ensued the trial. The fate of the informer was yet to be decided so he “was asked what he would do.”<sup>177</sup> Given the apparent trouble that he had invited for himself, his life was not safe anymore. However, he disregarded such concerns and simply asked for Rs. 500 and to be “let [...] go [his] way.” A few days later, reports were rife that the horses belonging to the Police Officer who had arrested the gang were stolen by some unidentified persons. Pouring fuel over fire was a note received by the officer which went as follows:

“Sahib. You are a very clever Police Officer. You have suppressed crime with a strong hand. Now tell me, what has become of your two horses, and who has stolen them?”<sup>178</sup>

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<sup>173</sup> *The Report on Police Administration in the Punjab and its Dependencies for the year 1867* (Lahore: Punjab Printing Company Limited, 1868), 13

<sup>174</sup> *Op. cit.* n. 156, p. 4

<sup>175</sup> *Ibid.*, pp. 4-5

<sup>176</sup> *Ibid.*, p. 4

<sup>177</sup> *Ibid.*, p. 5

<sup>178</sup> *Ibid.*

The second class of Booth-Tucker's *Incorrigibles* includes the property-owning wealthy patrons of the Crims. The third class was made up of the receivers and disposers of stolen goods. Booth-Tucker highlights how the main criminal or the patron of the criminal activity almost never feels the force of law. The cogs in the wheel are treated disproportionately while the real movers and shakers remain at large. If any real effect is to be had, the evil needed be nipped in the bud. "The utmost terrors of the law should surely be reserved for the man who deliberately embraces crime as a career and incites others to its commission," Booth-Tucker proposes.

A 'habitual criminal' is far from being an incorrigible in that his habits arise mostly out of "circumstances, from which he cannot escape."<sup>179</sup> Therefore, his redirection onto the path of salvation is a "child's play," writes the experienced campaigner.<sup>180</sup> He holds the miscarriage of justice as the principle reason behind the rise of a habitual criminal. "When one or more convictions are against his name, under existing conditions his case is practically hopeless, and he soon abandons himself to despair and revenges upon society the injustice of which he feels himself the subject."<sup>181</sup> The jails are the breeding grounds for such types of criminals as they are practically abandoned by their "old friends and associates."<sup>182</sup> This, naturally, induces them to forge a close bond with their fellow inmates, who are already well-travelled on the criminal roads. In case of internment, there could be two possible outcomes: either the suspect would be found guilty and sentenced accordingly or he shall "be arrested as a bad character and required to find security" even "if there is no evidence" against the person held under suspicion.<sup>183</sup> This whole process, Booth-Tucker argues, is humiliating to a person who may have

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<sup>179</sup> *Ibid.*, p. 7

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*, p. 8

<sup>183</sup> *Ibid.*

nothing to do with the criminal activity in the first place. He, therefore, attributes the provenance of criminal inducements among the habitual offenders to “a faulty system.” However, there is always a possibility for such characters to be rescued before they fall into the cesspit of incorrigibility, Booth-Tucker reassures his readers. This is precisely the point where the role of the Salvation Army comes into play.

The hereditary criminals, on the other hand, can almost wholly be described as the province of the Criminal Tribes of India, Booth-Tucker reveals. “Almost unknown to Europe,” such a trend can “be more fairly called a state of war than a state of crime.”<sup>184</sup> He imagines the members of the criminal tribes as constituting “a compact phalanx of trained warriors, including men, women and children, and often martialled and led on by women chieftains.”<sup>185</sup> Marching on, Booth-Tucker leads his readers on to the statistical references from the official reports on criminal administration.

Booth-Tucker quotes many anecdotes about these tribes, mainly to prove his point about the martial ethic that these tribes have imported into their criminal exploits. Capable of an organized operation, they fear nobody but the Police officials who, they believed, would target them unnecessarily.<sup>186</sup>

Booth-Tucker also presents his commentary of the Criminal Tribes Act, which “is an admirable piece of legislation.”<sup>187</sup> However, he finds it deficient in terms of dealing with the Habitual and Incorrigible classes “who may not be members of Criminal Tribes.”<sup>188</sup> Therefore there was a need to strengthen the Act by extending its jurisdiction over the other two classes as well.

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<sup>184</sup> *Ibid.*, p. 9

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*, p. 10

<sup>187</sup> *Ibid.*, p. 11

<sup>188</sup> *Ibid.*, p. 12

Another impression the Booth-Tucker shows is prevalent among the members of the Criminal Tribes is a feeling of relief with the CTA in place. The members of the Criminal Tribes, he writes, wish to be transported to the settlement but “we cannot go, unless the Sarkar gives the Hukam (order),” as he quotes a member of one such tribe.<sup>189</sup>

Booth-Tucker also reflects upon the necessity of introducing the CTA despite the existence of similar provisions in the Criminal Procedure Code and the Indian Penal Code. The patronage of the notorious criminals by their wealthy caretakers, who furnish security on their behalf without any discomfort, renders these provisions infructuous. Moreover, he also points out that the Court “are naturally unwilling to commit to prison a man, however bad, against whom there is no definite evidence of a further crime.”<sup>190</sup> It is precisely these shortcoming of the Cr. P.C. and IPC that CTA seeks to overcome. However, the latter itself is a weak statute because it “has been often worked along permissive and voluntary lines rather than along the mandatory lines” which “is to be regretted.”<sup>191</sup>

Fusing administrative experience with a priestly concern for salvation of the wrongdoers, Booth-Tucker’s narrative is both a critique of the colonial approach towards the Indian wandering tribes and a manual for governing them effectively. In addition to highlighting the statutory pitfalls, it also calls into question the colonial understanding of the sociology of crime. It was the arbitrariness of the policy adopted by the colonial government towards the wandering tribes that convinced Booth-Tucker to project the image of the Army as a potential reformer that would solve the problem of vagrancy through extra-official means. Along with presenting his thoughts on crime and criminality, he also records public opinions about Police officials. This can be read as a tongue-in-cheek critique of the

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<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

British approach towards the tribes of India. It was not by sowing terror and augmenting the terms of sentence that the question of criminality could be resolved in India.

Vagrancy posed a major problem for the British government in the nineteenth century, both in the metropole and the colony. The ever-changing geopolitical landscape of the empire forced the government to take stringent measures. Whenever there was a spike in the criminal activity either in England or in India, the wandering groups, which included a wide range of characters from the habitual criminals in England to the itinerant tribes in India, would be the usual suspects. The official policy toward these groups leaned more towards ruling over them with an iron fist than understanding their circumstances, or assessing the real factors of crime that was mostly attributed to them. This resulted in an administrative policy towards these groups that was both arbitrary and capricious. Just as the government dealt with the panic waves of 1856 and 1862 in London by strengthening the existing laws and by introducing HCA to deal with the repeat offenders, its colonial branch extended a similar set of measures to deal with the local suspect groups. Equally whimsical was the colonial state's readiness to enter into alliances with partners, such as the Salvation Army, that would suit its goals no matter howsoever diagonally opposed their goals were.

## Chapter 5

### Conclusion

A study of the criminal tribes of India in the nineteenth century, with reference to the CTA, offers many insights into the colonial world of lawmaking. The British conception of 'crime' and its resolution was fundamentally driven by a need to project an image of stability. Such a projection entailed a publicization of the achievements crowned by the colonial government on the law and order front. This happened in the case of thuggee when it was reported to have been eliminated for good. Unlike the thuggee problem, however, the criminal tribes posed a bigger problem as they were scattered all over India and were not reputed to pose as immediate a threat to the law and order situation in Punjab. The criminal tribes suffered a significant decline in their already-weak social status when the colonial state promoted land capital as the preferred form of capital, which resulted in their marginalization.

Another important trend highlighted by the statutory history of vagrancy both in the metropole and the colony is a lack of any consistent policy towards the criminal tribes. The habitual offenders were always seen as individuals who could be reformed and cured of their misdemeanors, whereas the criminal tribes of India were always dealt with as groups who were incapable of being civilized. The habitual offenders of England were put under enhanced surveillance but they were allowed to lead a normal life once they had completed their sentence. The criminal tribes in India did not receive such concessions from the colonial officials. Instead, they were thought of as hereditary offenders who posed an eternal threat to the law and order situation in India. The existence of such fundamental differences between the official policy towards these two groups rules out any assertion that the CTA was based on, or derived from the Habitual Criminals Act. Instead, CTA was an act that arose out of the immediate socio-political condition of the post-annexation Punjab. The British faced

enormous difficulties in managing Punjab throughout the 1850s and 1860s and local populace would complain about the worsening state of security in the territory. This security problem was compounded by a disproportionately small number of bureaucrats stationed in Punjab. It was a combination of all these factors that informed the criminalization of the wandering tribes in Punjab, who had already been pushed beyond the pale, as noted earlier, in the colonial discourse of property in Punjab.

Focusing on the history of the CTA is a beneficial approach as it helps one understand the genealogy of an official discourse, which ultimately led to a large-scale criminalization of the itinerant tribes in India. It also highlights the complexity of opinions held by the bureaucratic officials, some of whom would radically differ from one other in weighing on the merits of a certain policy. In this way, a bill or an Act becomes a vessel of knowledge that preserves all stages in the evolution of a discourse. The Criminal Tribes Act of 1871 underwent many amendments in the subsequent years and was at times, radically adjusted to the accord with the changing circumstances. The amended version of 1909, for example, relieved the colonial government of its obligation to establish settlements for the criminal tribes. This was because there were new actors who were willing to share the responsibility of managing what was referred to in the official literature as ‘bad characters.’ The Salvation Army had already established a number of settlements in India and had been running them successfully. The economic benefits of entering into such an alliance would force the colonial state to shun its earlier policy of non-association with overtly religious group. This is how expediently the question of vagrant criminality was settled by the state in colonial India.

The legacy of the criminal tribes remains conflicted in the post-colonial states of India and Pakistan. Although the CTA was repealed in both the countries within the first decade of their independence, many features of the Act still persist when it comes to dealing with the question of

vagrant criminality. What started as an exercise in the cadastral reproduction of these tribes and their customs continues as their virtual banishment from the mainstream social setup to this day. Many of these tribes in modern-day Punjab live as nomads and vagabonds. Discussion of their rights and responsibilities is virtually non-existent and no particular attention is paid to their culture and customs. Much like the colonial state, the modern post-colonial state also utilizes this data to control the narrative in the war of representation. It is unfortunate that scant attention is paid to the fundamentals of this mode of data collection and its presentation which remain steeped in the colonial history and, thus, contribute towards furthering the injustices perpetrated by the colonial state.

As much as this study relates the story of the Act that criminalized the wandering tribes in the late eighteenth and nineteenth century India, it falls short of piecing the whole narrative together. There are still a number of questions which have not been addressed in the secondary literature on the criminal tribes. How did the criminal tribes themselves look at their criminalization? What did the common people in Punjab think about the Act, especially in the regions where the colonial state carved up the canal colonies? To what extent were the colonial reports, being the repositories of statistical data, reflect the actual situation of law and order in Punjab? The court cases from the late eighteenth and early nineteenth centuries, for example, may offer very useful insights regarding the notion of 'criminality' as it was played out in the public sphere. The diaries of agents like colonial officers and the Salvation Army officers can also enrich a historian's findings. It is the need of the hour to undertake an expanded study of these tribes in order to visualize them in the colonial world and understand the nature and scale of injustices eked out to them.



## **Bibliography**

### **Primary Sources**

“An Act for the Registration of Criminal Tribes and Eunuchs, 1871,” IOR: L/PJ/5/14

“A Bill for the Registration of Criminal Tribes and Eunuchs,” IOR: L/PJ/5/14

“Abstract of replies of Commissioners, Inspector General of Police, and Judicial Commissioner, Oudh”, IOR: L/PJ/5/14

Hervey, Colonel Charles, *Statistics of the Crime of Dacoitie in British Territory and Dependent Native States, for the Years 1867, 1868 and 1869 with a Comparative statement for the three years, and a distinct comparative statement for each administration.* (Calcutta: Office of the Superintendent of Government Printing, 1873)

“The Annual Register: A Review of Public Events at Home and Abroad for the year 1869,” (London: Rivington, 1870)

*Report on Police Administration in the Punjab and Its Dependencies for the Year 1868.* (Lahore: Punjab Printing Company, 1869)

*Report on Police Administration in the Punjab and Its Dependencies for the Year 1869.* (Lahore: Punjab Printing Company, 1870)

*Report on Police Administration in the Punjab and Its Dependencies for the Year 1870.* (Lahore: Punjab Printing Company, 1871)

*Report on the Administration of the Criminal Justice System in Punjab for the Year 1869.* (Lahore: Punjab Printing Company, 1870)

*Report on the Administration of the Criminal Justice System in Punjab for the Year 1870.* (Lahore: Punjab Printing Company, 1871)

### **Web Sources**

“Decoding NCRB Report”, *The Hindu*, Oct 23, 2019  
<https://www.thehindu.com/news/national/decoding-ncrb-report/article29775632.ece>

“National Crime Records Bureau,” Official website.  
<http://ncrb.gov.in/>

“NCRB found states’ data on lynchings unreliable” *Times of India*, Oct 22, 2019  
<https://timesofindia.indiatimes.com/india/ncrb-found-states-data-on-lynchings-unreliable/articleshow/71713761.cms>

Tiwary, Deeptiman. “NCRB leaves out data on lynchings, khap and religious killings” *Indian Express*, Oct 22, 2019  
<https://indianexpress.com/article/india/ncrb-leaves-out-data-on-lynchings-khap-and-religious-killings-6081188/>

## **Secondary Literature**

Bhattacharya, Neeladri. *The Great Agrarian Conquest: The Colonial Reshaping of a Rural World*, (Ranikhet: Permanent Black, 2018)

Breckenridge, Carol Appadurai, and Peter van der Veer. *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*. (Delhi: Oxford University Press), 1994.

Caton, Brian. The Transition from Animal Capital to Land Capital in Colonial Punjab, 1850-1900, *Capitalism Nature Socialism* 26, no. 3 (2015), 64-72

Darwin, Charles. *The Origin of Species*, (New York: P F Collier & Son, 1909)

Dickens, Charles. *A Tale of Two Cities*, (London: Chapman and Hall, 1891)

Freitag, Sandria B. “Crime in the Social Order of Colonial North India.” *Modern Asian Studies* 25, no. 2 (1991): 227–61.

Griffin, Lepel. “The Indian Civil Service Examinations,” *Fortnightly Review* 23 (April 1875): 522-536

Hinchy, Jessica. *Governing Gender and Sexuality in Colonial India; The Hijra c. 1850-1900*, (Cambridge: Cambridge University Press, 2019)

Hopkins, Benjamin. *Ruling the Savage Periphery, Frontier Governance and the Making of the Modern State*, (Cambridge: Harvard University Press, 2020)

Horobin, Simon. *Bagels, Bumf & Buses, A day in the life of the English Language*, (Oxford: Oxford University Press, 2019)

King, Peter. “Moral panics and violent street crime 1750–2000: a comparative perspective” in *Comparative Histories of Crime* ed. Barry Godfrey, Clive Emsley, Graeme Dunstall (London: Taylor & Francis)

Llewellyn-Jones, Rosie. *The Great Uprising in India, 1857-58: Untold Stories, Indian and British*. (Woolbridge: The Boydell Press, 2007)

- Major, Andrew. "State and Criminal Tribes in Colonial Punjab: Surveillance, Control and Reclamation of the 'Dangerous Classes'," *Modern Asian Studies* 33, no. 3 (1999)
- Mayaram, Shail. *Against History, Against State* (New York: Columbia University Press, 2000)
- McClintock, Anne. *Imperial Leather: Race, Gender and Sexuality in the Colonial Context*, (New York: Routledge, 1995)
- Metcalf, Barbara. Islam and Power in Colonial India: The Making and Unmaking of a Muslim Princess, *The American Historical Review* 116, no. 1 (2011), 1-30
- Murphy, Anne. "Configuring Community in Colonial and Precolonial Imaginaries: Insights from the Khalsa Darbar Records" in *Religious Interactions in Modern India*, ed. Fuchs, Martin, and Vasudha Dalmia. (New Delhi, India: Oxford University Press, 2019), 165-187
- Pandian, Anand. *Crooked Stalks: Cultivating Virtue in South Asia* (Durham: Duke University Press, 2009)
- Peabody, Norbert "Cents, Sense, Census: Human Inventories in Late Precolonial and Early Colonial India." *Comparative Studies in Society and History* 43, no. 4 (2001), 819-850
- Piliavsky, Anastasia. "The "Criminal Tribe" in India before the British," *Comparative Studies in Society and History* 57, no. 2 (2015)
- R. Sindall. "The London Garotting Panics of 1856 and 1862." *Social History* 12, no. 3 (1987), pp. 351-359
- Radhakrishnan, Meena. "Surveillance and Settlements under the Criminal Tribes Act in Madras," *IESHR* 29(1992), 171-98
- Radzinowicz, Leon, and Roger Hood. "Incapacitating the Habitual Criminal: The English Experience." *Michigan Law Review* 78, no. 8 (1980)
- Ramusack, Barbara. *The Indian Princes and their States*, (Cambridge: Cambridge University Press, 2008)
- Rashmi Dube Bhatnagar, Renu Dube, and Reena Dube. *Female Infanticide in India: a Feminist Cultural History*. (Albany: State University of New York Press, 2005)
- Shah, Giriraj. *Image Makers: an Attitudinal Study of Indian Police*. (New Delhi: Abhinav Publications, 1993).
- Singha, Radhika. *A Despotism of Law: Crime and Justice in Early Colonial India*. (Delhi: Oxford University Press, 1998).

Wright, Barry. "Macaulay's Indian Penal Code: Historical Context and Originating Principles" in *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform*, ed. Barry Wright (London: Routledge, 2016)

Yang, Anand A. *Crime and Criminality in British India*, (Tuscon: the University of Arizona Press, 1985)