PREFACE

In published work like Administration of Justice under East India Company in Bengal, Bihar and Orissa by A.C.Patro, Orissa under the East India Company by K.M.Patra, Orissa under the crown by J.K.Samal, some aspects of British Administration in Orissa 1912 – 1936 by B.Devi and in unpublished work – some aspect of Police and Judicial aspects in Orissa 1803 – 1905 by Chittaranjan Mohanty and some aspect of British Administration in Cuttack in 19th Century by S.Das, brief discussion has been made on Judicial system in British Orissa. But with reference to case study no work has been undertaken on Judicial apartheid of the British Government specially in respect of British Orissa. In this work attempt has been made to surface that unexplored chapter of Administration of Justice in British Orissa. Opportunity to serve in both the fields of education and law has persuaded me to select the subject.

Britishers, a race with trade and colonisation in their blood, landed in different parts of territory of India in 17th century at intervals. Under the style of ‘East India Company’ they started with commercial
establishment securing trade license from native rulers. Gradually entered into the field of Administration obtaining zamindary. Followed the prevailant oppressive zamindary system to collect land revenue. At the beginning while adopting the existing Administrative and Judicial structure gradually injected system followed in their own land. A double standard was followed, privilege to Britishers and European subjects and oppression to natives, in judicial administration. Different judicial system was practiced at three separate British territories in India, Calcutta, Bombay and Madras, but the system containing same spirit of race apartheid. Gaining strong hold over their dominions in India and visualising colonisation of Indian sub-continent uniformity of laws in practices in different territories was aimed at through regulations passed time to time in British parliament.

Metamorphosis of British judicial system in India passed through stages. In Calcutta Fauzadari court and cutchery dealing with criminal and civil matters separately were kept under ‘Collector’, an English Officer. The appellate authority continued with Nawab of
Murshidabad. In Madras Chaultry court was allowed to continue to cater justice only to natives and Agent and Council established to decide cases of the Europeans and Britishers. While ‘Raja’ was the appellate authority of chaultry courts same power in respect of other body was with Courts in England. Then came the Governor-in-council or High Court acquiring appellate power against decisions of Chaultry Courts. Subsequently came admirality court soon to be replaced by Mayor’s court. In Bombay after following the Portuguese laws for a brief period English law was given effect, civil cases were tried by a judge with the help of jury after preliminary trial by a Justice of Peace and criminal cases by a Central Court with the help of jury and Justice of Peace. Appeal from these courts were preferred before Deputy Governor in council. Then came the Admirality court 30 years after to be replaced by Mayor’s Court. And the uniformity of these divergent practices came under Royal chapter in 1726, all the common and statute laws at that time extant in England extending to all the three Presidencies of Calcutta, Bombay and Madras by then established.
Governor General in council in India was authorised by the British crown to legislate and issue Rules, ordinance and Regulation for judicial administration in India subject to vetting by Supreme Court while not affecting the right of the parliament to legislate for India, such laws and regulation having the force of Acts of the parliament.

In January, 1975 Supreme Court at Calcutta began functioning with powers to exercise all civil, criminal, admirality and ecclesiastical jurisdiction. A parallel apex organisation in executive side also came into being on establishment of Executive presidency. Supreme Court was entrusted the powers of scrutiny to the excess of this body but without any clear cut guide line. That germinated the estranged relationship between the two systems of administration, judicial and Executive. In coming years the wings of Supreme Court were clipped. Never sincerity was shown in separation of Judiciary from Executive and all along criminal justice was kept under the supervision of executive authority.
Supreme court at Calcutta with its west minister leanings had when required, recognised the force of usage prevailed in Bengal courts of Munsif, Suddar Amin and Sudder Dewani Adawalut which formed hierarchy of Civil Justice. District Magistrates, Sessions Judges and Nizamat Adawalut looked after Criminal Justice. Provincial courts of Appeal and courts of circuit were pillars of civil and criminal justice. Subsequently Provincial Courts of Appeal were abolished its jobs transferred to zilla and city judges and Sudder Dewani Awadalut. Courts of Circuit were replaced by commissioners of circuit to be chaired by Superintendent of Police. Further reformation took place on establishment High court at Calcutta in 1862 on amalgamation of Sudder courts and Supreme Court.

On occupation of Orissa in 1803 Britishers followed the prevalent judicial structure for brief period and in 1805 the system in practice in Bengal was extended to British Orissa. British Orissa remained under judicial Administration of Supreme Court at Calcutta and then under High Court of Calcutta. Code of Civil procedure 1859, Indian panel code 1860 and code of Criminal procedure 1861 were made
applicable. When Munsifs, Sub-Judges and zilla judges formed the ladder of civil justice, Deputy Magistrates, Joint Magistrates, District Magistrates and Sessions Judges formed the hierarchy of criminal justice. System of Honorary Magistrate was introduced for speedy disposal. Jury system was adopted for assistance in administration of justice.

But never the executive control over administration of criminal justice was let loose by the British authority for political gain. The very spirit of English Judicial System 'Judicial Independence' was kept out of British Judicial Administration, British Orissa being no exception to it. This aspect has been surfaced on study of the case, Crown -Vrs.- Surendar Sai and others and follow up executive action.

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