CHAPTER - III

JUDICIAL SYSTEM IN BRITISH ORISSA.
ADMINISTRATION OF JUSTICE IN BRITISH ORISSA.
(1803 – 1912)

For the study of Judicial Administration in British Orissa, it is perhaps absolutely necessary to refer to an enumeration of the past, the earlier judicial system that to some extent had contribution to the British Judicial System.

During the Muslim Administration in Orissa from 1568-1751, the Principal Officers of the province, Subahdar or Nazim and Dewan, shared between them the responsibility of practically the whole administrative machinery. The Subahdar was responsible for the executive, defence, criminal justice and general supervision. The Dewan was responsible primarily for revenue administration and civil justice. The system was in nature of an administrative dyarchy with the purpose to create a most potent and reliable check on the highest officials of the province.¹

¹ M.A.Haque, Muslim Administration in Orissa, Calcutta, 1980 P.236.
With the establishment of Muslim Rule in Orissa, Persian became the Court language. Even during the Martha Rule (1751-1803) Persian continued to be the court language along with Marathi. The British occupied Orissa in 1803. But till 1823, Persian remained as the Official language.²

At the beginning, the British Commissioners allowed the Maratha system of administration of Police and criminal justice to continue.³ During Maratha regime Police and Judicial administration were vested in the hands of a set of officers known as ‘Amils’ who were exercising unlimited authority in all minor affairs of Civil or Criminal justice.⁴ Then while trifling disputes were settled by the village panchyats, more important cases were by the respectable gentlemen of the locality selected by ‘Amils’. However, cases of very serious nature

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³ BJ (c ) P.No.22 of September 5,1805, Govt. to Commissioner for affairs of Cuttack, May 4,1804.
⁴ Bj (Cr ) P.No.37 of April 28,1818, Ewer, Acting Judge of Cuttack, Govt. Feb., 27,1818.
were being adjudicated by ‘Subhadar’ of the province who was the controlling authority of ‘Amils’ or in such matters order of the ‘Amil’ was required to be referred to him for confirmation. That time summary trial was being followed in both Civil and Criminal cases even not requiring recording of deposition. Of course, it was so because of negligible number of serious offences and deposing falsehood was an exception. While maintaining the existing system, the British regime, however transferred the power of general superintendence to it from ‘Amils’. To tighten the system with authoritative control came the legislation 4 of 1804 under which some of the criminal laws and rules and police regulation of Bengal were extended to province of Orissa or Cuttack as it was termed. The province was divided into two divisions, River Mahanadi being the line of demarcation. While the province was included in Calcutta Circuit each of the division was kept under one Magistrate with same powers as vested in the Magistrates of Bengal.

5. Blunt and Shakedspair & Criminal Justice, Regulation 4, 1804.
Under the regulation, restriction was imposed on court of Circuit and Magistrates not to take cognizance of offence committed before British occupation of Orissa. Besides, judicial powers, control and superintendence of the Police rested with Magistrate.

After September 1805, the Cornwallis system, which prevailed in Bengal, was fully introduced in Orissa as per Regulation 13 of 1805 resulting amalgamation of two divisions to one, placing same under a Judge-Cum-Magistrate. The Board of Commissioners was abolished. Thana or Police Stations were established to be headed by Darogahs. However, in the line of the Maratha system 'Paik' was allowed to continue keeping the 'Paik' under the control of Darogahs with authority to perform certain duties under Zamindars and they were allotted for their daily life liable to be forfeited for their disobedience or misconduct. Zamidars were kept duty-bound to assist Police-Court of Sadar Nizamut Adawlut while supervising the Police administration and action as the highest court of appeal for administration of criminal justice under the guidance of the Governor General in Council.6

6. Bj (c) P.No.33 of September 5, 1805, Regulation 13 of 1805
16 Police Stations were established in 1806 in pursuance of regulation 13 of 1805 and by 1821 two more were added taking the number to 18 Police station viz., Basta, Balasore, Mutto, Soro, Bhadrak, Jajpur, Arakpur, Cuttack, Pattamundai, Pipili, Puri, Khurda Banpur, Gop, Hariharpur, Asureswar, Paharajpur and Tiran. William Blunt, Commissioner of Cuttack, carved out territorial jurisdiction of each Police Station limiting to 400 square miles like that of Bengal as per Cornwallis system (the regulation 22 of 1793) with each Police Station having control over about 614 villages.

Police administration was kept under the control of Magistrate. Regulation 13 of 1805 made provision for only one Magistrate for entire Orissa. But experiencing difficulties in administration of justice as well as Police by a single Magistrate over such a vast area from 1813 a Joint Magistrate was stationed at Puri with charge of Police Station of Pipili, Gop, Hariharpur and Tiran and from 1815 and another Joint Magistrate at Balasore to remain in charge of Police Station of Balasore, Basta and Sore. Of course, from 28 November 1808 the Police establishment was kept under the supervision of
Superintendent of Police for the provinces of Bengal and Orissa, comprising the territorial jurisdiction of Calcutta, Dacca and Moorshidabad Divisions, the post created by Regulation 10 of the year 1808. But still then Judicial Administration was clothed with certain control over Police Administration, Superintendent of Police being kept under the general authority of the court of the Nizamat Adawlut. But Zilla and City Magistrates were required to furnish the Superintendent of Police with information regarding the Police and Jail establishment of their respective jurisdiction. Also the Superintendent of Police enjoyed certain power as that of Magistrate being competent to impose fine on his subordinates, which of course, in strict sense was not on judicial side. Impact of their system was not felt in Orissa as because till the Paika Rebellion in 1817, no Superintendent of Police visited Orissa and taking advantage of paucity of time to look into both judicial and Police administration over vast area by Magistrate the real power in both fields

were enjoyed by thana officials who besides embracing corruption oppressed the public. That led to the Paik Rebellion of Khurda in 1817, a result of clear failure of the British Police and Judicial administration.

Thus, the period from 1803-1805 may be called a period of observation during which time Orissa was placed under the administration of two Commissioners, who not fettered in Regulations, adjusted matters to suit legal needs while paying due respect to the practice and precedent of the Maratha. If it could have been extended for a few years more, it would perhaps have done much good but from 1805-1817 Orissa entered a different type of administration. Cornwallis's judicial, revenue and salt regulations were introduced. But it appeared that they were somewhat hastily enforced without adequate investigation into the usages of the country.8

The School of thought deriving from Cronwallis ideas tended to ignore local institutions, old usages and traditions. It emphasized the introduction of Western instructions and methods in their

place. This approach seemed to its critics to be hasty, sudden and even reckless.

The second school of thought by Munrow and later by Malcom and Elphimstone respected the ancient institutions of India. It believed that they were valuable for the foundation of the British rule. It avoided innovations. It tried to give more scope to individual discretion, to avoid a rigid separation of powers, to give more powers to Indian Officials, to make use of Institutions like the Panchayat, a Rayatri settlement and so on. The whole approach was slow but appears steady and sure.9

Criticism was levelled at the judicial and Police system established under Cornwallis. In this respect the Munro system advocating on more extensive use of native agency appealed to the home authorities. So they considered the Cornwallis system an unwise departure from the established usage of the country. They expected that great benefit would be deprived from giving fresh viability to the native

institutions of the country. They in 1813 issued instructions to the British Government in India for the minimum adoption of these measures. They suggested the employment of village headmen and Panchayat in the adjudication of suits.

The instruction of the Home Department were soon implemented in Madras. But as in the case of Raitwari system the Bengal Government objected to it and suspended compliance of the orders from Home.¹⁰

Thus, the instruction from Home had no effect on the Bengal Government. In Orissa in particular, the Cornwallis system of administration continued after 1813 just as it had been before. In economic and judicial matters the framework of the Maratha system was set aside and the established institutions to which people had been accustomed were neglected.¹¹

Soon after the outbreak of the rebellion of 1817 the

¹¹ Ibid, P.326.
Government directed Edward Impey to enquire into the cause of the disturbances. Not content with Impey's report, the Government sent Watson to make further investigation. The reports of these officers advanced different causes. One of them was the unfitness of the existing laws to the character of the people and local circumstances.¹²

For a more detailed account, the Government appointed the Commission of two Members G. Martindell, the Military Commander of Cuttack, and Walter Ewer. As the Civil Commissioner Ewer was specifically directed to concentrate his attention to the redress of grievances, the detection of abuses, the punishment of offenders and the maintenance of public order. He was also appointed acting Judge and Magistrate of Cuttack in succession of Impey.¹³

After due enquiry, Ewer submitted report to Government on 13th May 1818. It suggested a radical change in both the economic and the judicial policy of the Government, on the ground that it had not been hitherto paid enough attention to the character of the people, the resources

¹³. Ibid, P.290
of the country and the historical legacy left by the former Government. Ewer suggested some judicial reforms. To him the Judge did not seem to inspire much popular confidence. He recommended that in selecting a person for the august office, dispositions should be coupled with ability. In order to win confidence of the people, the Judge should pass the cold season of every year in visiting every quarters of his district attended by as many as officers as necessary and should be Oriyas. These Oriyas should encourage the people to submit petitions. The Judge in his enquiry should prove himself anxious to ascertain their real condition and redress their grievance.

In view of Ewer's report, deciding to change nature of administration, the Government in April 1818 nominated R.Kor, the second Judge of the Court of Sadar Dewani Adawlut. "A Civil Servant of high rank, great weight of character and extensive experience both in the Judicial Character and territorial Department", as Commissioner of Cuttack.He was vested with general control over the Civil Administration

of the district as well as with the powers and functions hitherto exercised by the provincial court of Appeal and Circuit Court for the division of Calcutta. His decision and order in all suits coming under his cognizance was to be final.\textsuperscript{15}

Reforms were made in the Police and Judicial system as it entails in economic policy. Ker recommended suspension of the Choukidari Regulation in Cuttack, chiefly on the ground that the tax was oppressive and that the number of burgularies committed in the town of Cuttack was less.\textsuperscript{16}

The vexations and hardships of prosecutors, witnesses and Prisoners were obviated to great extent, first, because the Sessions Court were held more frequently than before; and secondly, because "Superior" regularity was maintained in trying cases within the competency of the Magistrate.


\textsuperscript{16} Ibid, P.309.
The Civil branch of Judicial Administration was improved to great extent. As a result of Judicial decisions passed since 1818 in cases of disputes about land many of the land-holders were restored to their land.\textsuperscript{17}

There had been many affrays arising from disputes, dealing with the right of succession to estates or other contested case of land prior to the arrival of Ewer. These contested claims drew the ready attention of the Government and those were settled by either summary or regular courts.\textsuperscript{18}

\begin{footnotes}
\item[18] Ibid, P.311.
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ADMINISTRATION OF CIVIL JUSTICE IN ORISSA.

For the administration of Civil Justice in Orissa or the Zilla of Cuttack the Governor-General in Council on 4th May 1804, framed certain rules as temporary measure, which remained in force till 5th September 1805.19 The said temporary rules provided that the province of Cuttack including Balasore and its other dependencies would form a Zilla and remain under Calcutta division of the provincial Court of Appeal. The Zilla of Cuttack was to be divided into two divisions such as Northern division and Southern division, river Mahanadi as the boundary between the divisions, each division remaining under the jurisdiction of one Judge to try the Civil Cases. As a further temporary measure, the provincial Court of Appeal over Cuttack was suspended and it was provided that those who held the office of Commissioners in Cuttack should act as Court of Appeal for the Zilla. They were empowered to try

19.W.Bengal Govt. Archives, Orissa Records, Bj (c) P. No.24 of September 5, 1805, Governor-General in Council to Commissioner in Cuttack, May 4, 1804.
all Appeals from the Court of Zilla Judges and in turn Appeal against the decisions of the Commissioners to be referred to Sudder Dewani Adawlut. The most important feature of the measure was that the Judges of Zilla Courts, the Commissioners and the Sudder Dewani Adawlut were to decide cases according to the law, customs and usages which prevailed in the said Zilla previously to its cession to the British Government”. The measure reflecting due consideration of the British Administrators to the local system showed no hurried introduction of their own system in Orissa. However, the Commissioners were empowered to make necessary alterations in the system with the approval of the Governor-General in Council.20

The above arrangement was made for over a year and in August 1805, the Government resolved to amalgamate two divisions into one and entrusted the administration of Civil justice in the hands of a

20.Bj (c) P.No.24 of September 5, 1805 Governor-General in Council to Commissioner in Cuttack May 4, 1804.
single Judge. Robert Ker was then taking charge of the new office.\textsuperscript{21}

Under the regulation passed on 5\textsuperscript{th} September 1805, jurisdiction of the provincial court of Appeal over Cuttack was restored removing the temporary suspension. While abolishing Appellate jurisdiction of the Commissioners, the regulation prohibited the Civil Court of Cuttack from hearing, trying and deciding Civil Suits, wherein the case of action was more than 12 years before 14\textsuperscript{th} October, 1803, the date on which Orissa came under British rule.\textsuperscript{22}

This regulation extended the Bengal regulation to Orissa for the administration of Civil Justice providing that as in the cases the Bengali language and character were used in the provinces of Bengal, the Oriya "language and character" are similarly to be used in Orissa. This regulation excluded the Tributary Mahals from the jurisdiction of Civil Court of Cuttack.\textsuperscript{23}

\begin{itemize}
\item \textsuperscript{21} Bj (c )P.No.1 of August 29,1805, Resolution of Governor-General in Council.
\item \textsuperscript{22} Ibid, P.No.34 of September 5,1805, Regulation of 1805.
\item \textsuperscript{23} Ibid.
\end{itemize}
As regulation 14 of 1805 brought Orissa under the British system of administration of Civil justice which prevailed in the Bengal Presidency, it began under a single Judge for the whole province but subsequently made justice available to all classes of people and more officials were added. By 1821, besides the Judge at the Sudder Station of Cuttack, there were two Registrars one at Balasore and the other at Khurda. Also besides these British Officers, there were native agency of two Sadder ‘Amins’ at Cuttack and 16 Munsifs at different places to try small Civil suits.24

Further change in the Judicial system came under Regulation 5 of 1818 on the basis of enquiry report of Walter Ewer, Special Commissioner on the causes of Paik Rebellion of 1817, who reported that like Police darogahs and Munsifs were also corrupt.25 He further reported

24. Bj (Cr) P. No.18 of December 17, 1821, Commissioner at Cuttack to Government, September 7, 1821.

25. BRP No.15 of July 7, 1821, Commissioner at Cuttack to Government, September 7, 1821.
that in Orissa, the British regulation had totally a different effect from that which it produced in Bengal. Here institutions of suits and complaints by the ordinary people was checked by extension of the stamp laws to Orissa. There was lack of practical knowledge of the Presiding Officers of the Court on the local customs and usages and lack of confidence of the people over the Court officials and their ignorance of British laws. This regulation created new office of the Commissioner in Cuttack with powers of general control over the administration of every department in the province. The Commissioner enjoyed the powers and functions of the Provincial Court of Appeal. It was provided that his decisions and orders in all Civil suits coming under his cognizance to be final and conclusive except in those cases which were appealable to Sadar Dewani Adawlut and his Majesty in Council on pecuniary jurisdiction.26

In 1813 Marquis of Hastings, the Governor-General in Council, encouraged appointments of Indian Judicial Officers such as Munsifs and Sadar Amins to relieve the Judges and clear up the pending

26. BRP, No.44 of April 28, 1818, Regulation 5 of 1818.
business while appointing more Indians in the British administration, also for economy, nevertheless there were shortage of covenanted European Officers. The Munsifs were authorised to decide Civil suits upto the valuation of Rs. 150/- and the Sadar Amins upto Rs. 500/-. The Registrars and Sadar Amins were empowered to execute their own decrees.²⁷

On 23rd October, 1826, the Governor-General in Council resolved to divide the province into three distinct divisions or districts, such as, Balasore, Cuttack and Puri. In the district of Balasore or Northern division, the Collector-Cum-Magistrate was given the authority of Registrar with full powers for administering Civil justice. For the district of Cuttack or Central division, the office of the Magistrate was combined with that of the Judge who had also jurisdiction over the Southern division of the district of Puri and no separate higher Court was established for Southern division in consideration of the less distance between Cuttack and Puri.²⁸

²⁷. Bj (c) P.No.24 of January 19, 1821, Regulation 2 of 1821.
²⁸. Ibid, No.1 of November 27, 1828, Resolution of Governor-General in Council.
Reformation in the judicial administration stepped further in the year 1831 when a series of extensive changes in the department were adopted, because of the exigencies of the Government looking into economy and efficiency.\textsuperscript{29} Under the regulation passed on 1\textsuperscript{st} November, 1831, the pecuniary powers of the Munsifs were enhanced upto Rs.300/-. The Sudder Amins were empowered to try original suits upto Rs.500/- referred to them by Zilla or City Judges under ordinary circumstances and Rs.1000/- for special reasons. The Principal Sudder Amins were empowered to determine original suits from Rs.1000/- to Rs.5000/- besides appeals referred to them by Zilla and City Judges from the decisions of the Munsifs or Sudder Amins.\textsuperscript{30} The regulation provided that against original suits decided by the Principal Sudder Amins, a regular Appeal could be made to the Zilla and City Judges except special referred appeals which were to be preferred to Sudder Dewani Adawlut. It was provided that the Principal Sudder Amins and Sudder Amins would not be removed from their office without sanction of the

\textsuperscript{29} Bj (c) P.No.23 of November 8, 1831, Regulation 5 of 1831.

\textsuperscript{30} Ibid.
Governor-General in Council. But Munsif could be removed by Sudder Dewani Adawlut. While effecting such changes in the powers and functions of the Indians in the Judicial service, substantial changes were also brought in the functions of the European authorities. The European Judges were authorised to transfer original suit upto the valuation of Rs.5000/- to Indian Officers while enjoying liberty to retain any such suit for trial and regulate any suit referred to Indian Officers and to transfer such cases from one Munsif or Sudder Amin to another. Though there would be no European Judicial functionary below Zilla or City Judges yet they were required to control and regulate the proceedings of Indian Officers and report on their conduct and ability to the Sudder Dewani Adawlut. The Office of the Registrar was abolished. Thus, the jurisdiction of Zilla and City Judges became almost unlimited. This regulation 5 of 1831 reduced the number of European functionaries in the Judicial Service by abolishing the Provincial Court of Appeals and providing appeals to the Sudder Dewani Adawlut from the decisions of Zilla and City Judges.³¹

³¹ Bj (c) P.No.22 of November 8,1831, Minute of Charles Metcalfe.
Eligibility of the native Indians to the Judicial Office was more and more recognised by the British Government. Such reformation in administration of Civil justice by the Government brought necessary change in Orissa. Actual number of original suits instituted in Orissa during the years 1828-1830 were 4569 on an average of 1523 suits per annum. During the period, 4482 cases were disposed of on an annual average of 1494 disposal made by a Judge, two Registrars, three Sudder Amins and Seven Munsifs. Taking the volume of work into consideration, the Government decided that besides the Judge one Principal Sudder Amin at Cuttack, two Sudder Amins at Balasore and Puri and six Munsifs at different parts of the province would administer Civil Justice in Orissa. The Munsif at Cuttack remained in-charge of 36 'praganas', like-wise the Munsifs at Kendrapara, Dhamnagar, Balasore,

32. Letter from the Court, Judicial Department, September 11, 1833, No.2.

33. Bj (c) P.No.of December and Judge at Cuttack to Gvoernment, December 8, 1831.
Pipli and Puri were in charge of 46, 34, 42, 28 and 24 praganas respectively. To ensure further disposal of Civil cases from 1st March, 1832, the Judge –Cum- Magistrate at Cuttack was relieved of his duties of Magistracy.³⁴

The Government in 1835 decided to abolish the Persian language in Judicial Courts and introduced the vernacular language in its place. It was further decided to maintain proceedings of the Court in the provincial language and to send to Sadar Courts copy of Persian translation of the proceedings in Oriya.³⁵

Thus, in 1837 Oriya was introduced in Courts as the vernacular language of the province. But it took time to replace persian and Hindustant from the Courts as British Officers were not well-versed in Oriya. Many subordinate officers in the Courts had possessed no knowledge of vernacular language of Orissa, and there was dearth of native educated persons to teach Oriya language to Court officials.

³⁴. Bj (c) P.No.26 of January 167, 1832, Government to Commissioner at Cuttack, January 17, 1832.

On 16\textsuperscript{th} June, 1838, Henry Ricketts, the Commissioner of Cuttack, reported to the Sudder Court that though vernacular language had been introduced, statements in the Courts were being prepared in Persian.\textsuperscript{36} In 1839, the Sudder Board of Revenue assessed the effects of the introduction of the vernacular language on the people as well as the administration. Magistrate of Puri reported that people were immensely benefited by the introduction of vernacular language which report found favour from Magistrate of Cuttack but Magistrate of Balasore doubted the feasibility of disposal of official work quickly in the vernacular language. The Commissioner suggested that the correspondence in subjects not connected with the people to be maintained in Hindustani instead of Persian with a view to remove delay in official work owing to implementation of vernacular language and not to cause any harm to the

\textsuperscript{36} BRR Letter issued from January to June 1838, Vol. 65, P.171, Commissioner to Registrar, Nizamat Adawlut, June 16, 1838 No. 1628.
interests of the people. Unfortunately the Sudder Board of Revenue failing to appreciate the correct spirit of the report and coming to believe that introduction of Oriya not at all beneficial to official work in 1841 recommended for a gradual introduction of Bengali in place of Oriya in the province. In 1850, Henry Ricketts, the Member of Sudder Board of Revenue, proposed for introduction of Hindustani in Orissa on the ground that there were a large number of Muslims in Orissa who knew Hindustani well. But Gouldsbury, the Commissioner of Cuttack, gave his decided opinion that such a measure would be both impolitic and injudicious, with his argument that total number of Muslims in Orissa was negligible and it was the duty of the British Officers to learn the language of the people where they served. The Government accepted the views of the Commissioner and the question of introducing Hindustani in Orissa was dropped.


38. Ibid, Vol-105, PP.53-81, Letters issued in 1850-51, Gouldsbury to Sadar Board of Revenue, October 8, 1850, No.2241.
ESTABLISHMENT OF LAW COURTS (CIVIL JUSTICE)
IN ORISSA.

With regard to law, the courts of Orissa were to be guided in
their decisions: 1st by the regulations of Government and acts of the
Indian legislature, as applicable to the cases; 2nd by Hindu or
Mohammedan Law, as the case might be in all suits regarding succession,
inheritance, marriage, caste, all religious usages and institutions and 3rd in
case in which no specific rule existed, the Judges were to act according to
"Justice, equity and good conscience".

After transfer of power to British Crown, like every branch
of administration the administration of civil justice was reorganised,
starting with in the year 1860 with the introduction of the Code of Civil
Procedure 1859.39 Before the passing of the Civil Procedure Code, there
was no codified law of procedure applicable to the Civil Courts. The
essence of the Code was to be exhaustive in matters in which the Judge
could not go outside the letter of the enactment. This Code gave Courts’

39. J.K.Samal, Orissa under the British Crown, Delhi 1977 P.162 to 175
RAB 1859-60, P.4.
jurisdiction to try all suits of civil nature excepting the suits of which their cognizance was either expressly or impliedly barred.\textsuperscript{40}

Under this Code a great improvement was attained in the administration of justice. Legal plans and technicalities, which under the system were used as instruments of delay, had been swept away. A disputed claim could be disposed of upon the verbal statements of the parties concerned without a single written pleading being filed. Of course, as a matter of convenience, the parties to the suit almost invariable filed a written statement.\textsuperscript{41} The most general complaint under the judicial system of the Company was that a frightful amount of perjury and of forgery was affecting the administration of justice in civil and criminal courts alike. The new procedure code attempted a remedy by making provisions for the verification of the pleading.\textsuperscript{42}

\textsuperscript{40} Samal, Op.Cit, B.V.Biswanath Aiyar, Code of Civil Procedure, P.2

\textsuperscript{41} RAB, 1860-61, P.21.

Prior to the passing of the Act, the law on the subject of the relation between landlord and tenant was confused and imperfect. The Act X of 1859 provided a code of procedure for the trial of suits between landlord and tenants. The Act gave jurisdiction in such cases of revenue officers such as Collectors and certain Deputy Collectors. It was specifically provided that no Deputy Collector should exercise judicial power under the Act if entrusted with any Police functions. Collector had pecuniary jurisdiction to try or hear appeal of suit not exceeding Rs.100/-.

District Judge was to hear appeal from suits of valuation to Rs.5000/- and appeal to lay to the Sudder Dewani Adawlut exceeding that amount.

The act was extended to Orissa in 1860 and rent suits were tried in the Revenue Courts.

43. C.E.Buckland, Bengal under the Lieutenant Governor, Vol-I, Calcutta, P.54.
45. RAO, 1859-60, P.46.
Enquiries made by local officers in 1871 brought to notice numerous instances of high-handed oppression and oppressive exactions on the part of the Zamindars in violation of the rent law 1859 as the peasants in Orissa were in general poor and ignorant of law.46

Experience showed that provisions of the Act were inadequate to accomplish the object for which it was framed. To provide remedies for the abuses, some provisions of Bengal Tenancy Act were extended to Orissa in 1892.47 The great measure was based on three guiding principles, (1) to give the ryot fixity of tenure (2) to enable the landlord to obtain a fair and reasonable increase of rents corresponding to increase of produce of the soil and (3) to provide for the settlement of disputes between landlord and tenants on equitable principles.48

On 6th August 1861, a statute was passed empowering the Crown to establish by Letter Patent, a High Court at Calcutta. The Company’s appellate Courts, the Sadar Dewani Adalat for criminal

46. RAB, 1874075, P.12.
47. Ibid, 1892-93, P.49.
justice and Sadar Nizamut Adawlut for civil justice were at the same time abolished. The High Court exercised the appellate powers of the abolished courts. The Calcutta High Court commenced to sit on 1st July 1862.

To minimise period of finalisation of Civil litigation in the courts, also the quantum of expenses in taking the suits from the Court of Munsif till Sadar Dewani Adawlut, an important step in the administration of Civil justice was taken on establishment of Small cause court upon the English system at Cuttack on 10th July, 1862 under Act XLII of 1860.⁴⁹ Suits upto valuation of Rs.500/- were to be tried in the courts of small cause and there was no scope of Appeal from the order of Small Cause Court. This system of Courts while securing the people certain advantages which were contemplated also put them to a great disadvantage. In absence of scope for appeal the Judgements of this Court depended on the calibre and ability of the Judges. In the long run, this

⁴⁹. RAB, 1862-63, P.7.
system of Small Cause Court came to be a source of discontentment to the people.\textsuperscript{50}

The question of re-organisation of the Subordinate Judicial Service was taken up in 1867. Upto the close of 1867, the uncovenanted Civil Judges were of four classes such as – (1) Small Cause Court Judges (2) Principal Sadar Amins (3) Sadar Amins and (4) Munsifs. Act XVI of 1868 abolished the office of Sadar Amin. The native designation i.e Principal Sadar Amin was substituted by the more intelligible designation of Subordinate Judge.\textsuperscript{51} This Act XVII of 1868 improved further the position of uncovenanted Civil Judges. A Notification issued by Government on 28\textsuperscript{th} February 1871, conferred all powers of Judges of Small Cause Courts upto the amount of Rs.50/-, on the Munsifs of Balasore and Puri.\textsuperscript{52}

To cater the public demand of Balasore in the year 1875 as an experimental measure for one year, a Subordinate Judgeship was

\begin{itemize}
\item \textsuperscript{50} Calcutta Review, Vol-XLIII, 1866, "Courts of Small Causes".
\item \textsuperscript{51} RAB, 1867-68, P.24.
\item \textsuperscript{52} RAB, 1870-71, P.121.
\end{itemize}
established. But at the close of the year, this Court was abolished due to non-filing of more suits and low pendency of suits in the Court of Munsif, Balasore. Since in subsequent years Government did not act to the public demand of re-establishment of the Sub-Judge Court at Balasore, the local people moved District Judge, Midnapur to allow them to file Civil Suits in the Civil Courts of his Judgeship. Subsequently, the District Judge, Midnapur submitted a proposition for the consideration of the Government to transfer a part of Balasore District to Midnapur as regards Civil jurisdiction. The state of affairs remained as such in spite of recommendation of A. Smith, Commissioner of Orissa, in 1881 for re-establishment of the Subordinate Judge Court at Balasore with proposal for extension of appellate jurisdiction over Jajpur Munsif.  

To lighten the work of the Subordinate Judge, Cuttack, another court of Munsif was established in Cuttack in 1880.  

53. RAO, 1881-82, Para- 117.  
54. Ibid, 1879-80, Para- 107.
The Civil Procedure Code of 1859 was repealed and re-enacted first by the code of 1877 and by the Act XIV of 1882. As a result, the jurisdiction of a District Judge or Subordinate Judge was extended to all original suits cognizable by the Civil Courts. The jurisdiction of a Munsif extended to all like suits in which the amount or value of subject matter in discipline did not exceed Rs.1000/-. Appeals upto the valuation of Rs.5000/- from Subordinate Judge or Munsif lay to the District Judge and appeals from the District Judge lay to the High Court.

The Civil Courts dealt satisfactorily with the mass of business submitted to them, though the number of civil suits increased from time to time. The number of disposals was well in excess of the number of institutions. Unless there was exceptional rise in the litigation, the cases were generally not kept pending. On several occasions, the District Judge expressed satisfaction with the works of the district Courts.

From the year 1879, the civil litigation showed a marked tendency to rise. In 1878 the number of civil cases instituted was 6,229;
in 1879, 8083;\textsuperscript{55} and in 1890, 13, 089.\textsuperscript{56} In 1895 the number rose to 15,893.\textsuperscript{57}

Several factors accounted for the steady increase in civil litigation. With the spread of education, the people became more conscious of the value of money and property and at the same time of the value of the courts to protect them. With better facilities for communication, it became more convenient for the villagers to come to courts, which were situated in the town.\textsuperscript{58} The great rise in the value of land caused an increase of litigation for its possession.\textsuperscript{59} Another cause was assigned to the provisions of the new limitation Act XV of 1879 which suits might be brought upon registered bonds from 6 to 3 years. The growth of business and trade and greater demand for money also led

\textsuperscript{55} RAB 1879-80, Para – 97.

\textsuperscript{56} Ibid, 1891-92, Para – 29.

\textsuperscript{57} Ibid, 1895-96, Para –33.

\textsuperscript{58} RAO, 1883-84, P. 24

\textsuperscript{59} Ibid, 1887-82, P.27.
to the same fact. The wide prevalence of the custom of adoption and the large number of religious endowments called ‘mathas’ with their special customs, incidents and rules of inheritance to the Mahantship gave rise to an appreciable amount of litigation somewhat peculiar to the province of Orissa.

The trial of rent suits in the revenue courts was an important feature of the administration of civil justice. In most of the divisions of Bengal, it was subsequently transferred from the Collector’s Revenue Courts to the Civil Courts under Act VII (B.C) of 1869. But in Orissa the rent suits continued to be tried in the Revenue Courts under Act X of 1859.

As the higher courts, such as the Courts of District Judge and Subordinate Judge were situated at Cuttack, far away from the northern part of Balasore, the transfer of rent suits to Civil Courts must have put poor people to troubles and sufferings. Besides, in the Civil Courts

60. RAO, 1879-80, P.31.
62. RAO, 1874-75, P.19.
sufficient time elapsed between the institution and decision of a contested suit. The People did not appreciate the delay. Therefore, the popular feeling was opposed to the transfer of rent suits to the Civil Courts.

During the period 1895-1900, there was a considerable increase in the number of civil cases instituted, owing to the settlement concluded in 1899, the opening of the railways, the general growth of trade and the consequent development of business relations. This resulted in the congestion of civil files. This was dealt with by the deputation to Cuttack of an additional Munsif and establishment of a new Court of Munsif at Bhadrak in April 1900. Disposals during the period 1900-1905 averaged 472 in the courts of District and Subordinate Judges and 22, 403 in the Courts of Munsifs against 432 and 17, 915 respectively in the previous quinquennium (1895-1900).

64. RAO, 1891-92, P.31.
The increase in the number of rent suits, in particular, had been very noticeable. The average of institutions rose from 6,200 during 1895-1900 to 16,500 during 1900-1905. The average disposals rose from 5,883 during the first quinquennium to 15,009 during the second quinquennium.

The increase in rent suits was attributed chiefly to the fact that the land revenue demand having been enhanced at the last settlement, the Zamidars could not afford to allow large arrears to remain outstanding as they were accustomed to do when they enjoyed larger profits. Also, the settlement records gave increased facilities to the Zamindars to prove the area and annual rental of the tenants holdings, which were formerly subject of dispute. Hitherto, many Zamindars shrunk from bringing before the courts their disputes as they had no reliable records of their own.\(^{68}\)

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\(^{68}\) O’ Malley, Op.Cit, P.293.
There was yet another reason why the landlord felt compelled to resort more largely to civil suits since the settlement than before. Formerly, the non-resident ryots were mere tenants at will. If he fell into arrears, he was summarily evicted and anybody willing to pay up the balance of the rent was installed in his place. This was not so common after the conclusion of the settlement. Nine years of settlement operations taught the people the nature of their rights. Armed with the record of rights, the poorest tenant could successfully resist this form of tyranny of the landlord. He could seek a remedy in an action against him in the Civil Courts. The result of many criminal cases had taught the Zamindars that a suit in the Revenue Court was a much safer means of realising arrears of rent than forcible dispossession of the defaulter or illegal distraint of his crop.\footnote{S.L. Maddox, Final Report on the Survey and Settlement of the Province of Orissa, Vol-I, Para –325.}
ESTABLISHMENT OF LAW COURTS (CRIMINAL JUSTICE) IN ORISSA.

The administration of criminal justice, during the early period of Company's rule, was attended with vexations and difficulties to the prosecutors, witnesses and litigants.\textsuperscript{70} The Sadar Nizamat Adawlut located at Calcutta was the Supreme Court of Appeal from the Courts of Sessions Judge. There was one Sessions Judge, who was enjoying Civil power as Civil Judge in each of the three districts of Orissa. While hearing Appeals from the orders and Judgements of Magistrates, District Sessions Judge had original jurisdiction to try the persons committed by the Magistrate for the trial at the sessions. Criminal Judicial Officer next in the rank Sessions Judge was District Magistrate. In larger districts a Joint Magistrate was appointed independent of the District Magistrate. Assistant Magistrates and Deputy Magistrates were to help the District Magistrate.\textsuperscript{71}

Immediately after the assumption of government by the Crown, several changes were introduced to restore confidence in the British system of justice by way of bringing in important reforms. The first important reform was the appointment of Honorary Magistrates to

\textsuperscript{70} B.C. Roy, Foundation of British Orissa, Cuttack, 1960, PP-255-256.

assist the judicial work of the Criminal Courts. It was proposed by the Government of India that the system already adopted in Oudh and Punjab, of entrusting Magisterial functions to carefully selected landholders and others should be introduced in the districts of Bengal. Its expediency was at once admitted by Sir J.P. Grant, the Lieutenant Governor of Bengal. He suggested that Honorary Magistrates should be vested with the judicial and not with Police powers of the Magistracy. The Government of India, in acceding to the above suggestions agreed that the extension of the measure would be advantageous. Accordingly, in 1860 Honorary Magistrates were appointed in Bengal inclusive of one at Cuttack and another at Puri.\textsuperscript{72}

A land-mark in the annals of judicial history came in when in 1862 the Indian Penal Code, the Criminal Procedure Code and the Police Act were introduced in Orissa and the Sadar Nizamut Adawlut was replaced by the new High Court.\textsuperscript{73}

The enactment of the Indian Penal Code of 1860 was a reform of the first order. It embodied the original genius of Macaulay's draftsmanship and the fruits of the expert criticisms of Lawyers and Judges.\textsuperscript{74}

\textsuperscript{72} RAB, 1860-61, P.14.
\textsuperscript{73} RCP, 1890, Para- 2.
\textsuperscript{74} C.E. Buckland, Bengal under the Lieutenant Governor, Vol-1, Calcutta, 1901, PP-218-219.
The Code preserved the spirit of the English Criminal Law, but discarded its mass of technicalities while adopting it to Indian conditions. The radical changes in the Court created a new and higher standard of efficiency both for the Magistrates and the Police. In true sense the administration of Criminal justice received a new life on enactment of the Indian Penal Code in 1860 and Criminal Procedure Code in 1861.\(^75\)

The new Code of Criminal Procedure came into force on 1\(^{st}\) January 1873 in Orissa. One of the most important novelties in the Code was the power of summary trial in certain classes of cases conferred on the District Magistrate. This power could be specially conferred on Magistrate of 1\(^{st}\) Class. The benches consisting of a salaried Magistrate with not less than 2\(^{nd}\) Class power sitting with two or more honorary Magistrates were to be conferred with powers of 1\(^{st}\) Class and the summary powers. A salaried Magistrate of any grade was sitting with one honorary Magistrate of whatever summary power but inferior to that of 1\(^{st}\) Class Magistrate. Two or more honorary Magistrates sitting together were to be vested in towns with summary powers in Municipal cases and like cases only.\(^76\) In pursuance to these rules, benches consisting of a salaried

\(^{75}\)RCP, 1890, Para-2.

\(^{76}\)RAB, 1872-73, P.115.
Magistrate and more than two honorary Magistrates were formed in Puri and Cuttack in 1873 and were vested with the powers of holding summary trials.77

When this system of summary trial was introduced, the Government was not without apprehension that while it would be undoubtedly attended with many advantages, it was still liable to partial failure. In some cases it might result in trials being held in a hurried and imperfect manner. The Government, therefore, in introducing the system deemed it necessary to proceed with care and caution.

Those officers who were shown to be of proved experience were vested with the powers of holding summary trials. At the same time the District Magistrates were requested to exercise a careful supervision over the proceedings of their subordinates, and to bring to notice all instances in which the power of summary trial were indiscreetly exercised. Similarly, the Commissioner was required to examine the file of each Court and to submit periodical reports on the manners in which the powers conferred on the several officers within their respective jurisdiction had been exercised.

77.RAB, 1872-73, P.117.
The Code of Criminal Procedure of 1862 was re-enacted in 1872 and again in 1882. The new Code, which came into operation in 1883, further improved the procedure. It envisaged the following procedure in criminal cases.

Criminal justice was administered by the High Court, the Court of Sessions in Cuttack, which had jurisdiction over the three districts of Orissa, and the courts of the various classes of Magistrates. The High Court, as the highest court of appeal, disposed of appeals in respect of convictions on trials before a Court of Session. It revised upon reference from Sessions Judge or District Magistrates, the decisions of the inferior courts, when in error upon points of law. It confirmed, modified or annulled all sentences of death passed by the Sessions Court. The Court of Sessions presided over by a single Judge, tried all cases committed by the Magistrates, all appeals from the decisions of the Magistrates of the first class when the sentence exceeded one month's imprisonment or 50 rupees fine. The powers of a Sessions Judge were limited only by the amount of punishment which might be inflicted for the offence under the Penal Code, except that sentences of death were passed subject to confirmation by the High Court. The power of a Magistrate of the first class extended to sentencing offenders to imprisonment either rigorous or simple, up to two years, to fine to the
extent of Rs.1000/- imprisonment and fine combined also to whipping as a separate or additional punishment for certain offences. The District Magistrate always exercised first class powers. He also heard appeals from the Magistrate of the second class and third class within the district. Any magistrate of the first class duly empowered by the Government could similarly hear and decide all such appeals. A Magistrate of third class could only imprison upto one month or fine upto Rs.50/- or combine these punishments. The Benches consisting of two or more Magistrates sitting together appointed at the headquarters and sub-divisional stations exercised judicial powers. Their powers varied in different localities.78

EXTENSION OF THE BENCH SYSTEM

The most prominent feature of the administration of criminal justice during the period from 1875 to 1895 was the extension of the Bench system. The policy of the Government was to establish Benches, consisting of two or more Honorary Magistrates presided over by a salaried Magistrate, in all the districts and sub-divisional headquarters of the province. Upto 1876 it could not be extended beyond district headquarters of Cuttack and Puri as educated landlords were not available elsewhere to act as Honorary Magistrates.

78.RAB, 1882-83, P.57.
In 1876, an increase in crime was reported. The officers concerned were of opinion that it was not so much due to actual increase of crimes as due to more accurate supervision and more frequent recourse to courts. They added that the tendency, hitherto, so strong amongst Oriyas, to settle their own differences among themselves without the intervention of Government officials was growing weaker day by day.

This new bench system had a mixed result. As observed by T.E. Ravenshaw, on one hand, rough and ready justice of the Zamindars or village Panchayats saved the people from long journeys and harassing attendance at distant courts with its concomitant expenses and on the other hand, untrained self-constituted tribunals often did a great deal of injustice. On the line of appreciation of the outcome of the system, he suggested extension of the powers of Honorary Magistrates to all Zamindars who could be trusted to wield them. According to him, the Government could not prevent the Zamindars from exercising considerable influence over their ryots, which was perhaps not desirable. It was better to acknowledge the advantage of the Zamindary system, which was deeply rooted in the minds of the people, that brought decisive advantage to the Government.79

79.RAO, 1876-77, Para – 70.
The Government accepted his views. Steps were taken immediately to organise a Bench System in all important places where educated and trusted persons came forward to play the role of Honorary Magistrates. By 1884, a Bench of Magistrates for the trial of criminal cases came into existence in the district headquarters of Balasore and in each of the sub-divisional headquarters, namely- Khurda, Kendrapara, Bhadrak, with the exception of Jajpur sub-division in the district of Cuttack. All the Benches were vested with second class and summary powers except the bench at Khurda. The latter tried cases referred to it by the District Magistrate and exercised third class powers.80

The Honorary Magistrates rendered great assistance in the disposal of criminal cases. They proved to be responsible and sincere. From the results of appeals in cases tried by the Bench of Magistrates, it seemed that their decisions were more popular than those of individual Magistrates.

In 1885, the Bench system was considerably developed by making some of them independent of salaried Magistrates. The Benches of Magistrates at the headquarters of the districts of Cuttack and Puri were made independent in 1885. The Benches at Kendrapara and Bhadrak were also invested with powers to try cases independently.81

80.RAO, 1884-85, P.22.

An independent Bench consisting of 8 Honorary Magistrates was created at Jajpur in 1889. In the same year the Khurda Bench was vested with second class and summary powers and Balasore Bench was made independent of salaried Magistrates.82

In 1889 the work of Kendrapara Bench and Cuttack bench was found to be unsatisfactory. The meagre out turn shown by these Benches was due to irregular attendance of its members. The attention of the Honorary Magistrates of Kendrapara was drawn by the Magistrate of Cuttack to the necessity of either observing more regularity in future or tendering their resignations if they did not wish to work as Honorary Magistrates. This warning ensured the regular attendance of its members. A.C. Tute, the Magistrate of Cuttack, recommended the abolition of the Cuttack Bench in February 1890.83 His successor, Manistry took measures to effect a thorough reorganisation of the Cuttack Bench. Persons expected to be more competent and sincere were allowed to take part in the Bench. The result was that the attendance of the Honorary Magistrates improved and that the Bench held an extra sitting every Saturday in addition to the former bi-weekly sittings. No less than 392 cases were decided by this Bench during 1890, against 207 in 1889.89

82.RAO, 1889-90, Para-79.
83.Ibid, 1889-90, Para-79.
84.Ibid, 1890-91, Para-73.
The Government not only refused to accept any proposal for the abolition of the Bench system but also deprecated any interference on the part of Government officers in the works of Honorary Magistrates. Full independence was allowed to them in the disposal of criminal cases.85

Jajpur was the heaviest criminal sub-division in Orissa. The Bench at Jajpur did useful work. But in 1892 it showed a tendency to acquit. On enquiry, G.Stevenson, the Magistrate of Cuttack, found that the acquittals in may cases were based on insufficient grounds. The special attention of Honorary Magistrates was called to these. The Sub-divisional Magistrate was asked “to watch the work of the Bench more closely and to bring to notice any case in which he thinks the bench has wrongly released the accused, explaining to them in each case the points on which the Honorary Magistrates may seem to have erred”.

T.E.Revenshaw was not in sympathy with these orders for three reasons. First, it was inexpedient to subject the work of Honorary Magistrates to the criticism of a Deputy Magistrate. Secondly, the Honorary Magistrates, if at all worthy of their position, should not require such close supervision in trying the class of cases entrusted to them, which seldom involved anything but a question of fact, on which an

85.RAO, 1890-91, Para- 73.
Honorary Magistrate was quite qualified to adjudicate. Thirdly, it was imprudent to open the door to executive interference with the courts.86

Thus the procedure of the Magistrate of Cuttack did not meet with the approval of the Commissioner. The Government condemned the practice in its circular of 29th August 1893.87

The Benches become gradually a regular feature of the administration of criminal justice. They rendered material help in the disposal of criminal cases. Their attendance was on the whole satisfactory in spite of the fact that the Government interference in their work diminished.88 They relieved the stipendiary Magistrates of an amount of work which almost formed in 1893 and 1894 a third of the cases disposed of by them.89 The Deputy Magistrates, being thereby relieved of any appreciable amount of criminal work could be able to devote more attention to the various revenue departments under their control. Besides trying cases, Honorary Magistrates assisted in holding local and judicial enquiries, recording confessions, and performing other duties which had formerly been effected by the regular staff.90 G.Toynobee, the Commissioner of Cuttack, admitted that in these days of high pressure,

86.RAO, 1892-93, Para-43.
88.Ibid, 1892-93, Para-44.
89.Ibid, 1891-92, Para-32.
In 1895, Maunde, Magistrate of Cuttack, recommended the appointment of Honorary Magistrates in the interior of the district. He pointed out the following advantages of the proposal. "A great many petty complaints come to the Magistrates at headquarters which should be disposed of in the village, and a great many other cases are instituted which could be settled amicably by village Honorary Magistrates, if such existed, and the cases were referred to them. It is not a healthy practice and not good for the people that they should resort to distant courts for every petty village squabble, with a number of witnesses who are well "drilled" before they appear as witness, whether the case be true or false. It is desirable that we should teach the people to look up to their own leading men for settling such cases, and that we should invest such men with some authority in such matters. The entire destruction of village autonomy, and of all the power and authority which leading and elderly villagers possessed in olden days, is not an unmixed blessing.\(^\text{92}\)

\(^{91}\text{RAO, 1891-92, Para- 32.}\)

\(^{92}\text{Ibid, 1894-95, Para- 183.}\)
institution, not suited to the habits of the people in the interior. But it is certainly possible to select intelligent, respectable, and reliable men in large villages, to appoint them as Honorary Magistrates within fixed area for a period of two or three years only and to make over to them all petty disputes within their jurisdiction, primarily for amicable settlement, and for judicial disposal of those cases which cannot be settled. If such magistrates satisfactorily perform their duties there can be no objection to their reappointment; if they fail we select others when their time is up. We can in this way get a great deal of local disputes locally settled: and they would be much better settled there than by Magistrates at headquarters, stipendiary or honorary.93

On the whole, the Benches of Honorary Magistrates proved very useful in the administration of criminal justice. They disposed of 2,313 cases in 1900 against 1,583 in 1895.94 Of the 45, 162 cases disposed of during 1900-1905, 28,562 were decided by the stipendiary, and 16,600 by the Honorary Magistrates.95

FAILURE OF THE ADMINISTRATION OF CRIMINAL JUSTICE

Some short falls in police as well as in judiciary stood on the way of administration of Criminal justice to satisfaction.

94. Quinquennial Administration Report, 1895-96 to 1899-1900, Para-73.
95. Ibid, 1900-01 to 1904-05, P.20.
The statistics of the crime cognizable by the Police reported and disposed of during the eleven years between 1875 and 1886 showed that a disproportionate number of persons brought before the courts were acquitted. During this period the percentage of convictions to the total number of persons tried by the courts and charged with offences never exceeded 61 in Orissa\textsuperscript{96} and 56 in Bengal.\textsuperscript{97} The results of the sessions trials were also unsatisfactory. It is worth noticing that the results of session trial of cognizable cases in the districts of Balasore, Cuttack and Puri within the same sessions division and under the same Judge showed respectively 80, 70.3 and 54.3 percent of convictions is 1879. There were again the same note worthy differences in the results of trials in these districts within the same sessions trials in 1889, Puri 43.2, Balasore 35.1 and Cuttack 25.\textsuperscript{98}

An examination of the ratio of cases convicted to the number of true cases both in the sessions court and Magistrate’s court revealed the existence of defects both in police and judicial administration. Certain defects existed in the working of the criminal courts which led to the failure of criminal administration.

C.F. Worsely, Commissioner of Orissa, assigned one

\begin{flushleft}
\textsuperscript{96} RAO, 1875-76 to 1885-86.
\textsuperscript{97} RAB, 1891-92, PP.7-10.
\textsuperscript{98} RCP, 1890-91, P.77.
\end{flushleft}
important defect in the working of the criminal courts to the insufficiency of the magisterial staff. When Magistrates were overworked, some parts of their work were done hurriedly or arrears accumulated or both. Their revenue duties were always increasing. An officer devoted only such time to criminal work as he could spare from the management of three or four revenue departments. The Commissioner suggested that there should be at least one first class Magistrate at each headquarters, employed solely on criminal work. 99

Another defects was pointed out by B.L. Gupta, the Judge of Cuttack. He complained that magistrates did not exercise a sufficient check on the Police, but sent up to the sessions, in an incomplete state, perfunctorily investigated cases without summoning and examining for themselves witnesses when Police had omitted to send up. 100

The Police Committee of 1890 was directed to enquire minutely into the imperfections which exited in the administration of criminal justice and to suggest remedies. 101

The Committee ascribed the failure of criminal justice

99. BJP (Police), November 1892, No.146, Commissioner of Orissa to Government to Bengal, No.961J, 31 July 1890.

100. Ibid, No.154, Judge of Cuttack to Government of Bengal, No.420, 13 August, 1890.

101. RAB, 1891-92, PP. 7-10.
mainly to the deterioration in the work of Magistrates. In their opinion the work of Magistrates was by no means as efficiently performed as it should be. The comparatively low standard of efficiency attained by most of the Deputy Magistrates was attributed to faulty selection in the past, want of proper judicial training, insufficient separation between judicial and executive duties, insufficiency of the magisterial staff, and insufficient supervision exercised by the District Magistrates over them.\textsuperscript{102}

**MEASURES TO IMPROVE THE SYSTEM.**

In order to increase the efficiency in the administration of criminal justice, the Committee gave several recommendations. Sir Charles Elliott, Lieutenant Governor of Bengal, accepted them and rules were laid down to give effect to them.

The Committee urged that District Magistrates should exercise greatly increased supervision over Subordinate Magistrates. While avoiding interference with the discretion of such Magistrates, they should endeavour to secure punctuality of attendance, method, regularity, promptitude, and general efficiency in the disposal of business, and when necessary, should assist their subordinates by judicious criticism and advice.\textsuperscript{103}

\textsuperscript{102} RCP, 1890, Para-177.

\textsuperscript{103} Ibid, Para – 189.
In order to secure the above objectives, the following measures were taken in the light of the recommendations made by the Committee. A fortnightly register showing the number of under trial prisoners was to be submitted to the District Magistrate for each subsidiary jail. The District Magistrate was directed to inspect once a week the trial register of each subordinate Magistrate at headquarters, sending for particular records, calling for explanation, or passing other orders where necessary. A statement was to be sent from each court away from headquarters, containing extracts from the trial register, showing each case which had been remanded more than three times or had been pending for more than a month. The District Magistrates were also, if possible once a quarter, to send for and inspect the records of the last six cases disposed of by each subordinate Magistrate without previous warning.\textsuperscript{104}

The system of competitive examination introduced for the recruitment of Subordinate Executive Service, appeared to the Committee to be excellent. But they suggested that the Evidence Act should be added to the subjects to be taken up for examination. This suggestion was acted upon by the Government of Bengal immediately.\textsuperscript{105}

\textsuperscript{104} RAB, 1891-92, P.9.

\textsuperscript{105} RCP, 1890, Resolution of the Lieutenant Governor of Bengal, No.4298J, 28 November 1891.
The Committee suggested that in order that Subordinate Magistrates might feel that their success depended as much upon attention to their Judicial work as to their executive work, their merits should be reported on by the Session Judges as well as by the District Magistrates.\textsuperscript{106} Sir C. Elliott accepted this suggestion. At his direction the High Court issued instructions to Sessions Judges that they were authorised and expected to inspect the courts of Magistrates subordinate to them.\textsuperscript{107}

With regard to the training of Deputy Magistrates, the Committee proposed that they should be kept in a State of probation for three months. During this period they should confine to learning the routine of the courts and procedure in criminal trials. They felt: “A short probationary training of this kind imperfect as it might be, could not but be valuable, and do much towards securing future efficiency on the part of a young officer subjected to it”.\textsuperscript{108} The Government, while recognising the wisdom of the proposal, decided not to implement it immediately.\textsuperscript{109}

On the defects arising from the union of Judicial and

\textsuperscript{106} RCP, 1890, Para 184.

\textsuperscript{107} Ibid,

\textsuperscript{108} RCP, 1890, Para-182.

\textsuperscript{109} Ibid, Resolution of the Lieutenant Governor of Bengal, No.4298 J, 28 November 1891.
executive functions, the committee stated: "The work of Magistrates suffer greatly from the division of attention, and the frequent interruptions consequent on the union of Judicial and executive functions in the same officer, and it has been further pointed out that an officer, who is entrusted with some executive department in addition to his judicial duties, is apt to concentrate his interest and his energies on the former." The Committee was, therefore, in favour of separation of powers. But it did not suggest this remedy in the case of sub-divisions, where complete separation of functions was impracticable. The reason assigned was that there was only one officer who was immediately responsible for both the executive and the criminal judicial administration of the sub-division. The Committee was of opinion that this was practicable at the headquarters where there were several officers. It was recommended that there should always be at the headquarters at least one Magistrate of the first class, who should be able to devote his undivided attention to the disposal of criminal cases.

This recommendation was not acceptable to Government. In their opinion, the advantages which might be obtained from carrying it out might be outweighed by disadvantage.

110. RCP, 1890, Para-183.
111. Ibid, Para-183.
112. Ibid, Resolution of the Lieutenant Governor of Bengal, No.4298J, 28 November, 1891.
The Commissioner recommended that the Court Sub-Inspectors should be relieved of their routine duties in order that they might devote themselves fully to the prosecution of cases.\textsuperscript{113} From January 1893, the Court Sub-Inspectors were relieved of all duties as Cashiers of the Magistrate. Such duties were made over to the Magistrate's establishment. The Court Sub-Inspectors were thus left free to attend to the prosecution of cases.\textsuperscript{114}

The failure of justice at the Sessions Court was assigned by the Committee to the imperfect way in which many cases were committed by the Magistrates. The Committee advised that powers of committal should be entrusted only to selected Magistrates of the second class and not to all. After consulting local officers, the Lieutenant Governor vested this power in selected officers in every province.\textsuperscript{115}

It had been pointed out that accused persons were often detained before the courts for an unreasonable time while enquiries were being made by the police about their antecedents. It was enjoined on District Magistrates and Sub-divisional Officers that they should watch the proceedings of the investigating Police Officers with greater care, and

\textsuperscript{113} Utkal Dipika, 26 December 1891, PP-395-396.

\textsuperscript{114} RAO, 1892-93, P.14.

\textsuperscript{115} RCP, 1890, Resolution of the Lieutenant Governor of Bengal, No.4298J, 28 November 1891.
issue instructions as they might think fit in the interest of the success of courts.\textsuperscript{116} Above all, Sir Charles Elliott insisted that there should be no avoidable delay in the disposal of cases. It should be a point of honour with Magistrates not to plead want to time as an excuse for adjournment. When witnesses were in attendance, the court should not rise at 5 P.M. as had hitherto been too often the practice. It should sit till dusk or even after dark rather than subject parties and witnesses to the inconvenience of another day’s detention.\textsuperscript{117}

These reforms in the working of criminal courts were introduced immediately after the receipt of the Police Committee’s report. At the same time, steps were taken to improve the administration of Police. As already described, Honorary Magistrates rendered a great deal of assistance in the administration of criminal justice. As a result, a great improvement manifested itself in this branch of administration. The percentage of convictions for the whole of Orissa was 73.3 in 1883, 75.5 in 1894\textsuperscript{118} and 83.0 in 1895.\textsuperscript{119}

\textbf{CRIME SHEET.}

The People of Orissa were described as the least criminal in

\textsuperscript{116} RAB, 1891-92, P.9.
\textsuperscript{117} Buckland, Op.Cit. Vol-II, Calcutta, 1901, P.
\textsuperscript{118} RAO, 1894-95, Para- 186.
\textsuperscript{119} Ibid, 1896-97, Para- 150.
India. They were, as a rule, very quiet and orderly. There was no professional crime in Orissa.\footnote{120}

In 1877 crime showed a marked tendency to increase. The figures below explain the position.\footnote{121}

**COGNIZABLE CRIME**

<table>
<thead>
<tr>
<th></th>
<th>Cuttack</th>
<th>Puri</th>
<th>Balasore</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average number of cases reported during five preceding years.</td>
<td>1885.2</td>
<td>2001.2</td>
<td>1264.63</td>
<td>5151.03</td>
</tr>
<tr>
<td>Cases reported in 1877</td>
<td>2383</td>
<td>3452</td>
<td>1805</td>
<td>7640</td>
</tr>
</tbody>
</table>

**NON-COGNIZABLE CRIME**

<table>
<thead>
<tr>
<th></th>
<th>Cuttack</th>
<th>Puri</th>
<th>Balasore</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average institution of cases in five preceding years.</td>
<td>2351.8</td>
<td>1590.2</td>
<td>1200.7</td>
<td>5142.7</td>
</tr>
<tr>
<td>Number of cases instituted in 1877</td>
<td>3118</td>
<td>1980</td>
<td>1599</td>
<td>6697</td>
</tr>
</tbody>
</table>

The Commissioner of Orissa was of opinion that the increase in cases brought before the courts did not represent the actual increase of crime but was due to the following causes: (1) the increased familiarity of

\footnote{120. RAO, 1879-80, Resolution of the Lieutenant Governor of Bengal, 24 August 1880.}

\footnote{121. Ibid, 1877-78, Para- 71.}
the people with the machinery of courts; (2) the gradual decline of the authority of the Zamindars; (3) the greater facilities for complaining in the shape of improved communications: (4) the possession of the means of playing for the hearing of a case owing to good harvests for the last few years.\textsuperscript{122}

However, crime did not rise to such an extraordinary level between 1878 and 1892. But the year 1893 was criminally the worst since 1877. The number of crimes committed rose to 14,922. To account for the increase in the Cuttack district, the Magistrate of Cuttack said: “Settlement operations, as well as the suspension of agricultural operations for a long time, owing to extremely heavy rainfall, contributed greatly to this increase”. In Balasore the increase was ascribed to settlement operations. In Puri, the increase was ascribed on the one hand to a large concourse of pilgrims leading to a considerable increase in offences under Act V of 1861 and under Puri Lodging House Act, and on the other hand to active prosecution under excise and forest laws.\textsuperscript{123}

In 1897, crime took an upward course, and in the following year it reached the high figure on 19,960. During the nest two years the fluctuations were of a normal nature. But in 1902 a downward course commenced and continued.

\textsuperscript{122} RAO, 1877-78, Para-71.

\textsuperscript{123} Ibid, 1893-94, P.16.
The period from 1897 to 1900 was synchronised with the concluding stage of the land revenue settlement, and from 1897 to 1902 with a period of comparatively high prices and also with the construction of the Cuttack-Calcutta extension of the Bengal-Nagpur Railway which brought a large number of outsiders into the province. It was certain that the settlement had a disturbing effect upon the relations of landlords and tenants and upon the economic condition of the country. At the same time, high prices and the influx of outsiders as well as the introduction of railway communication were causes, which had some effect upon criminal statistics.

By 1905 the province had recovered from its temporary 'bouleversement' and was settling down into normal conditions. E.R. Growse, Commissioner of Orissa, did not expect that Orissa would ever again be so immune from crime as it was, in its days of peaceful isolation.124

124. Quinquennial Administration Report, Orissa, 1900-01 to 1004-05, P.16.
On 1st April, 1912 the new Province of Bihar and Orissa was inaugurated on partition of Presidency of Bengal against dissatisfaction of Oriyas whose sentiments were voiced at the 8th Annual Session of the Utkal Union Conference held at Berhampur on 6-7th April 1912. The legitimate demand of the all Oriya speaking people under one province, remained unfulfilled and inspite of agitation could not be solved till 1936.

In the new province of Bihar and Orissa there were five administrative divisions such as Patna, Tirhut, Bhagalpur, Chotangagpur and Orissa and a number of Feudatory States. The Orissa Division comprised the regular districts of Balasore, Cuttack, Puri, Sambalpur and the scheduled district of Angul. According to 1921 census the Orissa Division covered an area of 15,736 square miles and the population was 49,68,873.

As a part of the Presidency of Bengal, Orissa was under the jurisdiction of Calcutta High Court from its inception in July 1862. On separation of Bihar and Orissa from Bengal, in December 1913 the Governor-General laid the foundation stone for the construction of High

125. Utkal Dipika, 13 April 1912.
126. Decennial Review, P.236.
Court at Patna. Then it was made clear that for the people of Orissa the Judges of Patna High Court would hold Circuit Courts visiting Orissa for administering justice.\textsuperscript{127} Patna High Court started functioning from 1\textsuperscript{st} March, 1916 with a Chief Justice and six puisne Judges.

On the original side the High Court was empowered to try by a single Judge with a jury, all cases in which accused persons were European British subjects committed for trial by Magistrates in the interior. It had the power on its appellate side to dispose of appeals by a bench of two or more Judges, preferred against decision of Courts of Sessions passed in their original or Appellate jurisdiction.\textsuperscript{128} In respect of Civil Justice, the High Court could exercise appellate, revisional, admirality and matrimonial jurisdiction. When High Court functioned as the apex of judicial administration, appeals against decisions of High Court were forwarded to His Majesty in Council, subject to valuation of more than ten thousand rupees. Also such appeals lay on the certification of the High Court that the subject matter was fit for appeal to Privy Council.

\textbf{CIVIL JUSTICE}

To administer justice, in 1912-13 in the Province of Bihar

\textsuperscript{127}Sambalpur Hitaisini, 6 December, 1913.

\textsuperscript{128}Decennial Review, P.86.
and Orissa there were 11 District Judges, 19 Subordinate Judges and 68 Munsifs. In addition, four Executive Magistrates were exercising the power of small cause courts and six, the power of Munsifs.\textsuperscript{129} Pecuniary jurisdiction of Munsif was one thousand rupees which could be enhanced to four thousand rupees by the local government on the recommendation of the High Court. District Judge and Sub-ordinate Judge enjoyed unlimited pecuniary jurisdiction. Appeals from Munsif could be preferred before District Judge who had the power to transfer the same to the Subordiante Judge.\textsuperscript{130} Appeals below valuation of rupees five thousand from the decision of Subordinate Judge could lay before District Judge and above before High Court.

In Orissa, for the three coastal districts i.e. Cuttack, Puri and Balasore, there was only one District Judge stationed at Cuttack. Besides, there were one Sub-ordinate Judge and ten Munsifs for those districts. The district of Sambalpur was tagged with Manbhum of Bihar and was kept under a separate Judge.\textsuperscript{131} There were a Subordiante Judge and a Munsif at Sambalpur and a Munsif at Bargarh. The Deputy Commissioner of Sambalpur exercised the powers of a Subordinate Judge.

\textsuperscript{129}AR (B&O), 1912-13, P.27.
\textsuperscript{130}Decenniel Review, P.88.
\textsuperscript{131}AR (CJ), 1920, P.3.
Judge, and the Sub-divisional Officers and Tahasildars exercised the powers of Munsif in respect of cases arising between the landlord and tenant. By 1935 only one more post of Munsif was created.

In respect of scheduled district of Angul, the Superintendent of the Tributary Mahals exercised the powers of High Court both in civil and criminal sides. The Deputy Commissioner of Angul was vested with the ordinary powers of a District Magistrate. He also exercised powers of a District Judge in civil side and a Senior Judge in Criminal side. The Sub-divisional Officers of Angul and a Khondmal exercised the powers of a First Class Magistrate.

The trial of rent suits in Orissa continued as in the 19th century in the revenue courts. The people did not like to transfer rent suits to the civil courts for fear of delay. Consequently, unlike Bihar, the rent suits in Orissa were not under the purview of civil courts which to some extent lessened the burden of those courts in Orissa.

Civil Courts of Orissa were to deal with mainly civil suits

133. L.S.S. O'Malley, Bengal District Gazetteers (Angul), Calcutta 1908, PP.122-123.
134. AR (B & O), 1930-31, P.67.
and Money suits. Figure of Civil suits was too less in comparison to that of Money Suits. The highest number of Money Suits was 20,310 in 1913. The lowest number of Money Suits instituted in Cuttack was 9,350 in 1924, which was of course highest number for a single district in the Provinces of Bihar and Orissa. The highest number of title suit was 4,947 in 1918. The variation was mainly as observed by the District Judge at different times, was due to variation in prices of food grain and economic distress.\textsuperscript{135}

In 1918 the European Civil Judge observed that Cuttack was responsible for more than one quarter of the Money suits instituted in the Province. Petty money lending by numerous individuals was a peculiar feature of social condition in Orissa. Connected with it, there was a pernicious and long standing practice by which a debtor gives a blank stamp paper bearing his signatures or thumb impression to his creditor who utilise the same in court with the help of dishonest scribe and couple of attesting witnesses antedating the bond.\textsuperscript{136} Also it was observed that under the guise of compromise, in a large number of money suit, debtors were subjected to harassment, terms of compromise being more burdensome to them, leaving no scope to court to check the same.\textsuperscript{137}

\textsuperscript{135} AR (CJ), 1924, P.8.  
\textsuperscript{136} Ibid, 1918, P.3.  
\textsuperscript{137} Ibid, P.5.
Further, it has been observed by the District Judge that the proposition of
infructuous proceedings was high in Cuttack district as in small money
decrees any order of attachment of property was not being executed on
mutual agreement of the parties after passing of the decree, none
indentifying the attached property.  

In the district of Angul, the majority of the cases brought to the civil courts also related to money suits. Title suits were not numerous and generally referred to disputes regarding occupancy right.

In the district of Sambalpur, Civil suits for arrears of rent were few in comparison with the number of pure civil suits. Suits for ejectment or for recovery of possession were more common. Money suits were mostly based on bonds and the number of title and mortgage suits was not numerous.

CRIMINAL JUSTICE.

With High Court at Patna at apex in the province, criminal justice was administered by the Senior Courts and the Courts of various classes of Magistrates. The Senior Court headed by a Senior Judge was to take up trial with the aid either of a jury or assessor. He was to try cases


Committed by Magistrate and hear appeals arising out of the decisions of Magistrates of the First Class containing sentence exceeding one month's imprisonment or fine of rupees fifty. A Magistrate 1st Class had the power to pass a sentence of imprisonment, rigorous or simple, upto two years including solitary confinement or to fine to the extent of rupees one thousand or both, also of whipping.\textsuperscript{140}

District Magistrate exercised powers of First Class Magistrate. He also heard appeals arising out of decisions of second clas and third class Magistrates. The Deputy Commissioner of Sambalpur and Angul exercised the powers of First Class Magistrate like that of District Magistrates. Any Magistrates could be empowered by local government to exercise higher powers. He could be empowered to try cases summarily and in such cases no appeals was allowed against a sentence not exceeding three months imprisonment, or a fine of two hundred rupees or of whipping only. A Second Class Magistrate had powers to sentence for imprisonment upto six months or a fine upto rupees two hundred or both. A Magistrate with third class power could pass sentence of imprisonment upto one month or of fine upto fifty rupees or both. Besides, benches of honorary Magistrates sitting together with varying powers were appointed at the district headquarters and Sub-divisional statons in the province.\textsuperscript{141}

\textsuperscript{140} Decennial Review, P.86.

\textsuperscript{141} Ibid
TRIAL BY JURY

The system of trial by jury in practice in 9 other districts of the Province was introduced in the district of Cuttack in January, 1922. The most important cases were, however, tried by the Senior Judge with the aid of assessors. The percentage of conviction was considerably lower than in cases which were tried with the aid of assessors. The contrast was noticed peculiarly in the district of Cuttack where 25% of the persons tried by jury were convicted compared with 75% of those tried with assessors.\footnote{142} It was even observed that such a system offered a high degree of protection to the criminals. The Senior Judge of Patna remarked that some of the verdicts of the jury were of a perverse and even discreditable nature.\footnote{143} It was further pointed out that the partiality of juries in trials of communal cases was at times obvious. It was even dangerous that members of community represented by a minority of jury would be unable to obtain redress. Even they could be falsely charged and convicted.\footnote{144} Thus, the system of trial by jury was not viewed sympathetically by the authorities and it was not extended to all parts of the province in spite of the resolution of Bihar and Orissa council for its extension to every district in the province.

\footnote{142}{AR (B & O) 1926-27, P.69.}
\footnote{143}{Ibid, 1925-26, P.83.}
\footnote{144}{AR (B & O), 1928-29, P.63.}
**BENCH SYSTEM**

The system of Honorary Magistrate first introduced in Orissa at Cuttack and Puri in 1873\(^{145}\) had subsequent extension to all Sub-divisional headquarters and important places as it became increasingly popular and proved effective and useful in administration of justice.

The bench system operated at Cuttack Sadar, Jajpur, Kendarpura and Bank in the district of Cuttack, at Balasore Sadar, Bhadak and Chandbali in the district of Balasore, at Puri Sadar, Khurda and Bhubaneswar in the district of Puri and at Sambalpur Sadar, Jharsuguda, Padmapur, Bijepur and Bargarh in the district of Sambalpur.\(^ {146}\) Percentage of attendance of Honorary Magistrates was 95 per cent in the district of Balasore and 80 percent in the district of Puri in 1920.\(^ {147}\) There were altogether twenty Honorary Magistrates in the district of Cuttack, Puri and Balasore. In the district of Sambalpur, the Honorary Magistrates were all Zamindars. In the district of Angul there was also an Honorary Magistrate at Phulbani exercising the powers of third class

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145. ARB, 1872-73, PP-115-117.

146. BRR (J), File No.31/1925, Commissioner to Secretary to Government, 1\(^{st}\) March, 1925.

147. BRR (J), File No.28/1929, Commissioner to Secretary to Government, 27 February 1930.
Magistrate. In 1930, the number of cases disposed of by the Honorary Magistrates was 928 involving 1614 accused persons out of whom 465 were convicted. The Deputy Commissioner of Sambalpur reported in 1930 that all Honorary Magistrates in his district possessed a sound knowledge of law and remarkable efficient. He further observed; "Although they do not know English, the proceedings of the Court being in Oriya, they follow the essential provisions of Criminal Procedure and write clear judgments. They bring a good deal of commonsense to bear on their decisions". The District Magistrate of Puri also observed that the judgments passed by the Honorary Magistrates were of as high standard as could be legitimately expected. In 1934, there were altogether 16 Honorary Magistrates disposing of 865 cases involving 1453 accused persons out of whom 663 were convicted, a satisfactory performance as observed by the Commissioner.

Government had watching eye on abuse of power by Honorary Magistrates. In 1917, on lodging of various complaints against Honorary Magistrate of Padmapur in the district of Sambalpur, the Government directed the Commissioner to ask the Magistrate to tender

148. BRR (J), File No. 25/1931, Commissioner to Secretary, 26 February 1931.
149 Ibid.
150 Ibid, File No. 25/1934, Commissioner to Secretary, 26 February 1934.
his resignation. In 1918, cases were not sent to Magistrates facing charges and in one case the Commissioner was asked to recommend removal of name of such a Magistrate from Civil list if he failed to mend himself.

151. BRR (J), File No.8/1917, Under Secretary to Commissioner, 30 July 1917.

152. Ibid, File No.3/1918, Under Secretary to Commissioner, 4 February 1918.