CURING THE PENITENTIARY: THE MEDICALISATION OF THE PENAL REGIME 1858-1920

Dissertation submitted to Jawaharlal Nehru University in partial fulfillment of the requirements for the award of the degree of

MASTER OF PHILOSOPHY

ROOPAL PRAKASH

CENTRE FOR HISTORICAL STUDIES
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067
2007

Chairperson
Centre for Historical Studies
Jawaharlal Nehru University
New Delhi-110067, India

20th July 2007

CERTIFICATE

This is Certified that the dissertation titled **"Curing the Penitentiary: The Medicalisation of the Penal Regime 1858-1920"**, submitted by **Roopal Prakash** in partial fulfillment of the requirements for the award of the Degree of **Master of Philosophy**, has not been previously submitted for any degree of this or any other university and this is her own work.

We recommend that this dissertation be placed before the examiner for evaluation.

Radhika Singha.

Supervisor
(Dr. Radhika Singha)

Aditya Mukherjee

Chairperson
(Prof. Aditya Mukherjee)

CHS Office Phone : (011) 26704456, 26704457
Fax : 91-11-26717586 E-mail : chsjnu@yahoo.com

Acknowledgements

There are times when the limitations of language to describe deep human emotion become only too apparent. This is one such occasion when a simple 'thank you' seems hardly enough. Yet, it must stand in today to describe my deep debt to all these people without whom this work would never have been completed.

First of all, my supervisor, Dr. Radhika Singha, for enriching my work with her guidance and inputs, for bearing with my numerous absences, and most importantly for having unwavering confidence in my ability to see this research through.

Dr. Indivar Kamtekar, under whose direction the early contours of this work took shape. His reassuring presence and generous support made it possible for me to achieve a lot more than I had hoped for.

Prof. Yogesh Sharma, who has been a constant source of encouragement and whose advice has been invaluable to me, not just at an academic but also at a personal level.

All my friends who have taken care to drag me out of my periods of self-imposed exile, anchored me through my highs and lows, and have made me feel wanted and loved more than I will ever deserve. In particular, gratitude is due to Devika for being my 'angel of help' and Charu for being my twenty four-hour on-call adviser.

My sister, for showing me the meaning of unconditional love, for forgiving my mistakes and letting me commit some more. I depend on you more than I will ever confess.

My father, for being my bulwark, my ideal, my inspiration, my conscience-keeper, for teaching me by example everything I value in life today, and for never letting me give up even when I wanted to.

My mother, for making me into everything I am, for being my fount of strength and will power, for teaching me how to live life, even without her. This work like all my other endeavours in life is dedicated to her.

Contents

Introduction

Medicalisation of the Penal System: A Historiographical Review

A significant characteristic of the modern world is the hegemonic role medicine has come to play in our day- to- day lives. To most people today, a visit to the doctor seems to be the natural follow-up of the advent of any illness. Social life and social problems have become more and more medicalised and are viewed through the prism of scientific medicine as 'diseases'.[1] Medical men have increasingly expanded their sphere of influence and claimed the authority to speak on crime, insanity, alcoholism and other forms of deviance. On an institutional level, they have extended their license over asylums, rehabilitation centres, and prisons, besides entering the law courts to pronounce on issues like criminal liability.

Historically, the advancement of medicine in traditionally non-medical fields like law and criminality has generally been traced to the 19th century. Indeed in recent years a bewildering array of literature on the phenomenon has come up in Western historiography. It needs to be remembered that an examination of the process of medicalisation of the penal regime is a subject that straddles both medical and legal history. It entails not just a study of the punishment system and how it came to be altered by the involvement of the medical men, but also of how the medical profession sought self-definition, legitimacy and advancement through this connection. Writings on the subject have tended to embrace both these perspectives.

The history of penal change has been a key focus area for many scholars in the last few decades. Much of this academic work has attempted to dismantle the idea that penal reform came about as a result of the humanitarian intent of reformers. Instead, in this revisionist historiography, the emergence of prisons has been assessed as an exercise mainly in instituting newer forms of social control.

---

[1] Deborah Lupton, 'Foucault and the Medicalisation Critique', in Alan Peterson and Robin Bunton eds, *Foucault, Health and Medicine*, London, Routledge, 1997, p. 95

One of the most significant texts in this regard has been Michel Foucault's *Discipline and Punish: the Birth of the Prison* in which he has explored the disappearance of spectacular forms of punishment and the emergence in their place of the prison. Foucault stresses that the prison was designed not only to punish an individual by depriving him of his liberty but also to transform him. It aimed at disciplining the individual by bringing him under constant surveillance and scrutiny, 'to induce conformity rather than to exact retribution or expiation' and to make individuals more self controlled.[2] The new regime wanted 'not to punish less, but to punish better... to insert the power to punish more deeply into the social body.'[3]

Foucault of course does not place the penal system in any specific class structure. Indeed for him power is not the property of particular classes or individuals but 'a pervasive aspect of life'. 'It refers to the various forms of domination and subordination which operate 'whenever and wherever social relations exist.' [4] Other scholars have however been less vague about who sought to benefit from these new disciplinary techniques.

Michael Ignatieff for instance has tried to locate the rise of the prison in the context of the Industrial Revolution and fears of social disorder characterizing the period. According to him, the penitentiary received support from an anxious middle class because 'the reformers succeeded in presenting it as a response, not merely to crime, but to the whole social crisis of a period, and as part of a larger strategy... designed to re-establish order on a new foundation.'[5] Similarly, Andrew Scull has linked the rise of asylums to the specific economic forces of the period and the growth of the capitalist

---

[2] David Garland, *Punishment and Modern Society: A Study in Social Theory*, Oxford, Clarendon Press, 1990, p. 145

[3] M. Foucault, *Discipline and Punish: the Birth of a Prison*, transl. by A. Sheridan, London, Penguin Books, 1991, p. 82

[4] Garland, *Punishment and Modern Society,* p. 138

[5] Ignatieff argued that ritual punishments such as public hanging, whipping or the pillory depended for their effectiveness on the crowd's tacit support and thus carried the risk of inversion of state authority if the spectators did not approve of it. The suspension of transportation in 1775 offered the reformers a pretext 'to create a new concept of punishment embodying a more stringent and rational strategy of order.' See Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*, USA, Pantheon Books, 1978, pp. 210-211

market system. In his view, one of the earliest casualties of the developing capitalist system was 'the old sense of social obligation towards the poor'. As there occurred an expansion of those receiving poor relief, the bourgeoisie was attracted to an institutionally based response to the indigent, resulting in the creation of work-houses. The presence of madmen threatened the order and discipline of the latter, making the establishment of specialized insane asylums a pressing need.[6]

David Rothman in his work *The Discovery of the Asylum* attempted a slightly different analysis by explicating the rise of an institutional network of prisons, poor-houses and insane asylums in the United States in the 1820s and 1830s with reference to Jacksonian democracy. He stressed that concern about madness stemmed from a sense of social upheaval experienced during this period. Insanity was seen as an ill-effect of this upheaval, and consequently the recommended cure was to withdraw the mad from society and house them in specialized institutions. Thus while Rothman saw this phenomenon as an attempt to control social unrest and disorder, he did not see this control in the context of economic forces or class interests. In his opinion, society as a whole appears to do the controlling.[7]

It is significant to note that within this paradigm of social control, the role of medicine in law was essentially one of collaboration. It was suggested that medical personnel who became associated with the penal regime played a key role in the attempts at surveillance and disciplining of the prisoners. Foucault for instance pointed out that the penal changes were accompanied by 'a displacement in the very object of the punitive operation'. Instead of the body, the target was now the soul. Extra-juridical elements- psychiatric or psychological experts, magistrates, educationalists, members of the prison service- all became incorporated in the penal system in order to enable it to perform these functions.[8]

---

[6] Andrew Scull, 'Madness and Segregative Control: The Rise of the Insane Asylum', *Social Problems*, Volume 24, No. 3, February 1967, pp. 337-351

[7] See David Ingleby, 'Mental Health and Social Order', in Stanley Cohen and Andrew Scull eds, *Social Control and the State: Historical and Comparative Essays* , Oxford, Martin Robertson, p. 157

[8] M. Foucault, *Discipline and Punish*, pp. 16-22

In more recent times however, this thesis is increasingly being modified as scholars seek to move away from the ideological certainties that characterized the earlier period. As Rothman himself accepted in a later article, 'the history of incarceration is too complicated to allow for either-or approaches. It is not a question of reform *or* social control, ideology or reality, nobility on one hand *or* capitalism on the other.'[9] Thus 'the institutions of criminal justice responded to a greater variety of motives and served a wider array of interests than that of "social control".'[10]

Of course, as far as medical men engaged in the penal sphere are concerned, these ideas had been put forth for a much longer period. Examining the career of medicine in law from the standpoint of a medical professional class intent on advancement, many historians have indicated the very different interests and agenda which doctors themselves could have. Martin J. Wiener for example has pointed out that the power of the prison doctor to pronounce on the physical and moral capability of the prisoners to bear punishment created the potential of tension between the medical officers and the prison administration. During the early Victorian period friction between the two was muted. The 'professional medical discourse of the period had not separated itself from the common moral discourse' and thus shared a common ground with the penal outlook. Moreover, careerist interest may have sometimes led prison and convict ship doctors to compromise their medical judgment on these issues. [11]

In the second half of the 19th century however, as the functions of prison medical officers expanded, a 'more assertive and self-administering medical profession' began to play 'a less supportive role'. The discourse of the medical officers became more deterministic, they became more concerned about the physical and medical disabilities of the prisoners, and gradually the balance began 'to shift between the relative importance of "doing (medical) justice to each case" as compared to doing legal justice.' These

---

[9] David J. Rothman, 'Social Control: The Uses and Abuses of the Concept in the History of Incarceration', in S. Cohen and A. Scull eds, *Social Control and the State*, p. 117

[10] Martin J. Weiner, *Reconstructing the Criminal: Culture, Law and Policy in England 1830-1914*, Cambridge, Cambridge University Press (CUP), 1990, p. 8

[11] Ibid. pp. 122-123

concerns lay for instance behind suggestions to create separate institutions for criminal lunatics.[12]

Conflicts between law and medicine have also been highlighted by scholars who have focussed on medical expert evidence, particularly psychiatric evidence in law courts. A useful work in this context is Roger Smith's *Trial by Medicine: Insanity and Responsibility in Victorian Trials* in which he has highlighted the dissonance between medical and legal discourses during the 19th century. Examining a series of court cases, Smith has indicated how alienists of the period objected to the restrictive legal criteria for criminal insanity. Keen to enhance their professional status, they claimed expertise for giving authoritative opinion on criminal intentionality. [13]

In an interesting article, Ian J. Burney has pointed out that that medico-legal knowledge was 'not an isolated artefact of the laboratory and the courtroom'. Focussing on a single case of poisoning, he has indicated that medical experts had to engage with 'the expectations of a differentiated audience' and thus often had to follow a tortuous path to gain acceptability for their opinions.[14] Clearly then, collaboration was not the defining point of the relationship between medicine and law in the European context; conflict, negotiation and compromise were at least equally, if not more, important characteristics.

The Colonial Context: The Case of India

Colonial history rarely replicates the trends in the metropolis in totality, and thus it is hardly any surprise that medico-legal history in the case of British India takes on markedly different hues than what we have noted in the case of Europe. Perhaps the most important factor bearing on the association of medicine and law here was the dependent status of the former. As many recent scholars have pointed out, Western medicine in

[12] Ibid. pp. 314-317
[13] See Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials*, Edinburgh, Edinburgh University Press, 1981
[14] See Ian A. Burney, 'A Poisoning of No Substance: The Trials of Medico-Legal Proof in Mid-Victorian England', *The Journal of British Studies*, Vol. 38, No. 1, January 1999, pp. 59-92

India was closely allied to the colonial state and 'remained integral to colonialism's political concerns, its economic intents, and its cultural preoccupations.'[15]As such, its aspirations, interests and agenda cannot be usefully separated from the latter. Significantly, the operative term used in the Indian context, and throughout this work is medical 'officer' rather than 'doctor' which is clearly indicative of the governmental roots of medicine.

Indeed, many recent works on different carceral institutions set up during the colonial regime such as lock-hospitals, asylums and prisons have stressed the disciplinary character of these. In the process they have also highlighted the role played by medicine in these institutions in constituting the 'native' body into an object of observation, experimentation, and control. For instance, James H. Mills in his book on 'native' asylums in India has indicated that the British created 'knowledges' about Indians in the asylums using 'the privileged position of judgment that they assumed over inmates as doctors caring of the ill and as colonizers surveilling the colonized'.[16] Similarly, Satadru Sen in his work on convict society in the Andaman Islands has indicated that medicine provided 'a language in which crime, criminality, and punishment might be described.'[17] 'Medicine provided the means, and the legitimacy, in the eyes of colonial administrators, for state intervention in all aspects of convict society...an instrument for surveillance and control, and a system for the monitoring and infliction of punishment.' [18]

It is obvious that many of these concerns appear to parallel the Foucauldian thesis. Yet, it is noteworthy that resistance to medical control has been highlighted by almost all these scholars. Mills for example stresses that Indians often had their own objectives and agendas in interacting with the asylums. Indeed the natives within the asylums, both patients and the staff were often implicated in thwarting the regimen and discipline of the

---

[15] David Arnold, *Colonising the Body: State Medicine and Epidemic Disease in 19th Century India*, Delhi, Oxford University Press (OUP), 1993, p. 8

[16] James H. Mills, *Madness, Cannabis and Colonialism: the "Native Only" Lunatic Asylums of British India 1857-1900*, New York, St. Martin's Press, 2000, p. 6

[17] Satadru Sen, *Disciplining Punishment: Colonialism and Convict Society in the Andaman Islands*, New Delhi, OUP, 2000, p. 20

[18] Ibid., p. 134

institution.[19] Sen also asserts that 'medicine in the penal settlement, particularly as an instrument of control and coercion was a highly contested political domain.' Convicts could use sickness as 'a tactic of resistance and evasion'.[20]

This work however focuses more on the interaction between medicine and the penal regime set up by the colonial state rather than on its engagement with the colonised population. It highlights the reasons which led the colonial regime in India to rely on its medical personnel in law courts and for managing its prisons, and the shifting alliances between the two. Further, it indicates how incorporation of doctors as 'penal experts' affected their status as 'doctors'.

The first chapter for instance engages with the use of medical evidence in court cases. By demonstrating how medical evidence was crucial during trials in proving the insanity of Europeans accused of violence against 'natives', it seeks to bolster the thesis that of collusion between medicine and the colonial regime. Yet, it also shows that the partnership was far from stable. The colonial state was ever-anxious about the political consequences of acquittal of Europeans on the basis of medical testimony. Medical witnesses on the other hand could be reluctant to render medico-legal services. Many of them complained to the government about the inadequacy of remuneration offered to them for these. Additionally, medico-legal work could be seen by some of the medical officers as an unnecessary burden to carry in their regular professional lives.

Chapter two highlights the process by which medical officers were increasingly incorporated as administrators in colonial prisons. The colonial state was keen to engage the services of these 'specialists' in jail administration. Yet, the debates around this process indicate that these steps were taken more due to administrative contingencies rather than solely out of deference to the scientific credentials of doctors. Moreover, doctors themselves as a professional class were far from forwarding their claims in this regard. As in the case of court evidence, many of them were unenthusiastic about the

[19] Mills, *Madness, Cannabis and Colonialism*, pp. 179-180
[20] S. Sen, *Disciplining Punishment*, p. 134

prospect of entering the jail department. In fact, various incentives such as higher remuneration and free accommodation had to be offered by the government in order to attract their services for penal work.

The last chapter tries to analyse the role played by medical officers in the prison regime. It shows that once medical men entered the penal set up, they tended to think and act according to the constraints of prison administration in the colony rather than as doctors. For instance, as far as jail discipline is concerned, the increasing medical presence in jails did not bring down the incidence of corporal punishment. Indeed there was little to distinguish the discourse of the medical officers from the non-medical ones on the subject. Whipping was generally perceived by both as an indispensable form of punishment for making jails deterrent and maintaining the labour regime in prisons context. Not only was it cheap, it was also believed to be particularly effectual for a 'barbaric' native population.

The professional background of medical officers was more in evidence when it came to the issue of jail dietary. With their specialised knowledge, doctors were far more assertive about their role as experts on the subject. Significantly though, they still failed to present a unified theoretical stance on it. Professional differences of opinion on the kind of diet which should be given to prisoners were rampant which in turn gave the colonial executive considerable space for manoeuvre, and allowed it to assume the role of the arbiter.

We find then that in British India, there were many points of contact between medical discourses on penal matters and the interests of the state. This was, at least in part, due to the disinterest of many doctors in establishing themselves as authoritative voices in this sphere. Of course friction between medicine and the legal set up did become apparent from time to time. These conflicts however did not always occur along predictable lines. In court trials the colonial regime was anxious about medical evidence resulting in the acquittal of those criminals whom the public expected to be punished. In prisons, overweening authority of jail superintendents to inflict corporal punishment was

another matter of concern to the government. Complexity thus remains the bye-word in defining the relationship between medicine and the penal regime in colonial India during the period.

Chapter One

Evidence Under Oath: Medical Expert Testimony and the Insanity Defence

The 19th century saw the growing importance of medical testimony in the law courts both in the Anglo-American world as well as in the colonies. In the former, medicine with its increasingly self-assertive claims to scientificity and rationality gradually came to be regarded as almost indispensable in the legal sphere. Paradoxically though this development was not the result of any natural fit between the legal and the medical discourses. On the contrary, the relationship between the two was marked by persistent friction, the conflicts being eventually resolved only by an uneasy compromise.[1]

This chapter however attempts to show that in the colony, medicine and law shared a far more congenial relationship than in the metropolis. While there was a certain degree of friction, the popular perception was of collusion between colonial medicine and law in various matters such as those involving criminal violence against the natives.

Background

Nineteenth-century British jurisprudence distinguished an expert witness from a lay one by the fact that the former was entitled to deliver opinion based on secondary sources to the court. Lay witnesses were required to report 'only their direct sensory perceptions to the court' and refrain from adding to their testimony their personal beliefs of opinions. An 'expert' witness on the contrary was one who had 'uncommon skill or knowledge gained through advanced learning, artisan crafts, or unique occupational

[1] See R.Smith, *Trial by Medicine.* Also Tony Ward 'Law, Common Sense and the Authority of Science: Expert Witnesses and Criminal Insanity in England, CA. 1840-1940', *Social and Legal Studies*, Vol. 6, No.3, pp. 343-362

experience.' Consequently he was explicitly called upon to advise the court 'in matters thought to be beyond the ken of the ordinary citizen.'[2]

Indeed, calling upon persons with special skills to give their opinion to the court was a practice which had been in place in Europe since the early modern period. Medical men were among the most important of various classes of expert witnesses and made appearances in diverse cases involving poisoning, infanticides, rape and insanity. 'Medicine, as both a skilled craft and a growing body of knowledge, was particularly useful to the court due to the continuing presence of suspicious deaths that suggested the possibility of foul play.' Questions such as 'why were the lungs of a drowned man free of water' or 'was the death of an infant the result of a stillborn birth or due to suffocation within hours of delivery at the hands of his unwed mother' could be sufficiently explained only by medical men.[3]

Nonetheless, Stephen Landsman in his case study of medical witnesses at the Old Bailey court of London between 1717 and 1817 stressed that while medical witnesses were 'no oddity' at the court, their appearance was 'not an everyday event'. 'Expert medical testimony was seldom presented in more than a dozen cases in any given year.'[4] He however indicated that there was an increase in the authority ascribed to medical evidence over the course of the 18th century. For instance during the first half of the 18th century lay witnesses with little or no expertise were allowed to render opinions in doubtful or mysterious circumstances where medical insight seemed essential. After the 1760s however 'the use of lay opinion dwindled and there was a growing inclination to hear only the medical opinions of expert witnesses'.[5] Indeed, the process appears to have continued in England over the next century as well as is indicated by the fact that by the

[2] Joel Peter Eigen, 'Lesion of the Will: Medical Resolve and Criminal Responsibility in Victorian Insanity Trials, *Law and Society Review*, Vol. 33, No. 2, 1999, pp. 425-438
[3] Ibid. , p. 429
[4] Stephen Landsman, 'One Hundred Years of Rectitude: Medical Witnesses at the Old Bailey, 1717-1817', *Law and History Review*, Vol. 16, No. 3. (Autumn) 1998, pp. 445-494
[5] Ibid. pp. 454, 455

1840s three homicide trials in four featured a medical witness. In the late 1840s the frequency grew to nine in ten.[6]

The growing significance of medical testimony in criminal cases in turn appears to have been the result of a number of factors. Landsman stated that in the latter half of the 18th century, there was a greater insistence on 'proof beyond a reasonable doubt' in judicial circles. Furthermore, during the 1700s there was a devaluation of the estimated worth of direct testimony particularly in the light of a series of scandals involving false depositions. This in turn was accompanied by a substantial enhancement of the credit ascribed to circumstantial evidence.[7] To these favourable developments may be added others such as spread of adversarial court procedures by the turn of the 18th century and the emergence over the following decades of medical doctors as a professional class anxious to project its claims as specialists and 'experts'.

The rise of the medical witness as a figure of some importance in the law court was however, by no means, an uncontested or uni-linear phenomenon. Carol Jones in her has argued that the growing authority of science in the early 19th century posed a challenge to the authority of law, and particularly to the role of the jury. [8] The law responded to this challenge by seeking to restrict the role of the expert witness by strict rules of evidence. It was only in the early years of the 20th century that these rules were relaxed and an accommodation emerged between law and science.[9]

Indeed the adversarial relationship between medicine and law in the 19th century has been highlighted by many other scholars as well, particularly in the context of a specific class of medical experts, those specialising in giving psychiatric evidence. Martin J. Wiener for instance has pointed out that the advancing individualism of the Victorian era led to a heightened concern with unregulated human power, both personal and collective. Images of the criminal during this period reflected this rising unease about

[6] Eigen, 'Lesion of the Will', p. 430
[7] Landsman, 'One Hundred Years of Rectitude', pp. 459-460
[8] Cited in Ward, 'Law, Common Sense and the Authority of Science', p. 345
[9] Ibid.

'impulses and will out of control'. Judicial interpretations of criminal liability tried to narrow down the grounds of excuse thus tying the law more closely to the task of inculcating moral character. The notion of 'the responsible individual' became a central point of the criminal justice system as it was believed that treating men thus would be the 'best way of making them more so...'[10] In the context of criminal insanity, this meant making the criteria for insanity defence more stringent so as not to allow criminals to escape punishment on grounds of mental illness.[11]

Medical claims to expert knowledge of the human mind however could be seen as a threat to social order and legal authority.[12] As Roger Smith in his work on mid-Victorian trials involving the insanity defence has indicated, there existed a clear disjunction between the medical and the legal discourses. Alienists of the period definitely hoped to advance their social status by appearing in court and making 'a spectacular display of authority and humanity'. They justifiably believed that the acceptance of their evidence would indicate that they did possess the professional position to which they laid claim. At the same time however their opposition to existing law on insanity also stemmed from the fact that 'it embodied a *lack* of science' and that 'it epitomised social reaction and unreason'.[13]

The cases involving Edward Oxford, who fired at the Queen in 1840 and Daniel McNaughten who killed Sir Robert Peel's private secretary in 1843 in fact brought matters to a head. In both cases the testimony of medical witnesses ensured that the accused were found not guilty by reason of insanity. To allay the popular apprehension fresh fears judicial decisions created, the famous McNaughten rules were formulated. Essentially they incorporated the 'right-wrong test': a man was not responsible for his criminal deed if, at the time of committing it, he was unable to know that the deed was

[10] Wiener, *Reconstructing the Criminal*, p. 11
[11] Ibid., pp.82-91
[12] Ward, 'Law, Common Sense and the Authority of Science', p. 346
[13] R. Smith, *Trial by Medicine*, p. 14

wrong.[14] The direct consequence of these Rules was that in the following decades 'few capital convictions were reprieved on grounds of insanity.'[15]

The judges' legalistic formulations however aroused bitter opposition from Victorian alienists. The latter criticised the Rules for 'acknowledging incapacity following intellectual, but not emotional or volitional disorder.' In fact in the medical discourse 'there was a tendency towards conflating tests of insanity with tests of responsibility'. Thus the alienists argued that a person suffering from insanity could be aware of the consequences of his action but still be moved to perform it by virtue of 'irresistible impulse', a notion not recognised by law.[16]

It seems however that towards the end of the 19th century the medical and legal discourses tended to move closer to each other. At one level this change was fuelled by the very success of the Victorian paradigm of deterrent and moralizing punishment. The increasing mastery of police, courts, and other agencies of the state over the criminal classes lessened the felt need for further deterrence or of the clear fixing of responsibility. With advances in science, social problems began to be defined in terms of heredity and environment.[17] In fact as Tony Ward has emphasised, 'science, and especially biology, partially usurped the role of religion as a source of moral authority'. It thus became evident even to the most conservative jurists that 'if the law refused to take account of medical views of madness its moral authority would be weakened.'[18] The result was a greater flexibility in the interpretation of the Rules and an increase in the number of successful insanity reprieves.

Broadly speaking then, the relationship between medicine and law tended to be characterised by initial discord followed by a degree of reconciliation, albeit an uneasy one. In the case of psychiatric evidence however the situation was made even more complicated by the fact that medical experts on insanity 'had either to compete with or to

[14] Ibid., p. 15
[15] Wiener, *Reconstructing the Criminal*, p. 89
[16] R. Smith, *Trial by Medicine*, pp. 16- 17
[17] Wiener, *Reconstructing the Criminal*, pp. 258-259
[18] Ward, 'Law, Common Sense and the Authority of Science', p. 346

build upon common sense views.' As Ward suggests other kinds of forensic experts were engaged in decoding signs 'which *only* an expert (or a layperson with expert guidance) could interpret'. This however was not the case with testimony called upon in deciding on criminal insanity. In the latter, the psychiatrists were called upon to interpret events which had already been invested with meaning by legal authorities and lay audiences. In interpreting such evidence, the courts were not faced with a stark choice between total rejection and uncritical acceptance.' The jury could use its own common sense to settle the question.[19]

The Colonial Context

But what of the colonies? What was the character of the relationship between medicine and law in these countries?

As far as India is concerned, it may be noted that colonial law posited a distinction between lay and expert testimony similar to that which prevailed in the Anglo-American world. The India Evidence Act enacted in 1872 lay down the rules regarding the admissibility of expert evidence in matters such as handwriting or science. It also seems that the trend regarding the increasing resort to medical evidence in law courts which has already been noted in the case of England was also repeated in British India. While actual figures are difficult to come by, the colonial archive by the middle of the 19th century is littered by regular mention of medical doctors being called upon to render their opinion on the injuries of the victim, and to answer questions relating to post mortem reports, or on the mental state of the accused. Legal medicine appears to be a growing sub-branch during the period. Books on the subject such as Norman Chevers' *Manual of Medical Jurisprudence in India* became significant reference points for every jurist and the discipline was also introduced in various universities.[20]

[19] Ibid., pp. 346, 352-353
[20] Norman Chevers, *A Manual of Medical Jurisprudence for India*, Calcutta, 1870

Unfortunately however, the theme is yet to catch the eye of modern day scholars working on South Asian history in a big way. It becomes difficult therefore to assess whether the initial career of medicine in the legal domain was as troubled in colonial India as was the case in the metropolis. The few works which have appeared in the context of the late 19th century however do indicate that while there may have been some tension between medicine and law, in many other respects the relationship between the two was closely conditioned by the specifically colonial situation.

It is important to note for instance that medical evidence in India enjoyed an even higher status than in England mainly due to the firmly entrenched belief among the colonial authorities about the unreliability of indigenous witnesses. Medical evidence in India was used to 'circumvent the "degraded" testimony of untruthful native witnesses.'[21] As David Arnold has pointed out, distrust of indigenous texts and 'native' informants resulted in a great deal of importance being attached to clinical observations and the use of post mortems.[22] In the judicial context this meant that medical experts used the Indian body as 'a source of knowledge that could potentially remedy the weakness of evidence in colonial courts.'[23]

This brings us to the other significant point. Western medicine in India continued to be closely identified with the requirements of the colonial state. As Arnold stresses, 'medicine cannot be regarded as merely a matter of scientific interest. It cannot meaningfully be abstracted from the broader character of the colonial order.' This in turn meant that the idea of medical testimony being 'neutral' and based strictly on scientific knowledge became much more difficult to uphold in India.

Jordanna Bailkin for example has highlighted the fact that medico-legal scholars generated knowledge about the fragility of the Indian body which could be used to render colonial violence against the indigenous people as less than murderous. In her study of

---

[21] Cited in Jordanna Bailkin, 'The Boot and the Spleen: When Was Murder Possible in British India?', *Comparative Studies in Society and History*, Vol. 48, No. 2, April 2006, pp. 462-493

[22] Arnold, *Colonising the Body*, p. 53

[23] Bailkin, 'The Boot and the Spleen'

the 'boot and spleen' cases, she demonstrates that by the second half of the 19th century, Indians were increasingly stated to possess a 'diseased spleen' which was likely to be ruptured in the face of the slightest violence. 'The "ruptured spleen" defense- a joint project of colonial law and medicine- provided a compelling judicial framework within which Britons could cause the deaths of Indians without being charged with murder.' [24]

Bailkin however does well to eschew the notion that there was any overall white conspiracy to save members of their own race in cases of murder. She emphasises that many of the colonial officials were acutely aware that the Raj's moral status depended on 'the successful prosecution of white criminals'. [25] The boot and spleen cases thus often came to exemplify 'the tension between the desire by members of the colonial executive to regulate and abolish the most deadly forms of violence in India and the judicial reluctance to class this violence as murder.'[26]

In fact we find that many of these tensions were replicated in cases of insanity defence involving Europeans. As will be shown in the rest of the chapter, British criminal lunatics posed a disconcerting problem for the colonial government wherein they could be seen as both victims and perpetrators. Most members of the colonial ruling class agreed that the alien Indian setting and environment posed a distinct hazard for the European constitution and were thus sympathetic towards the plight of those of their compatriots who lost their mental balance while attempting to cope with it. Yet the sympathy was counter-balanced to some measure by the acute self-awareness of the political consequences of what could be seen as denial of justice by the Indians.

The available records however show that the complexity runs even deeper. In some cases lunatics who actually benefited from a successful insanity plea protested against their 'insane' status. Moreover medical officers engaged in rendering evidence often pursued their own agenda which could lead to friction with the colonial government

---

[24] Ibid.
[25] Curzon in particular displayed considerable intolerance in matters such as unregulated use of weapons by British soldiers and personally intervened in several infamous cases involving military personnel. ibid.
[26] Ibid.

over issues such as remuneration. Indeed, by the 20th century the individualistic aims of medical experts could see them deposing on behalf of Indians against the colonial state. The situation thus was extremely intricate and defies any simplistic analysis.

To Punish or to Acquit: The Colonial Dilemma

The Insanity Defence in British India

The insanity defence is basically a legal construct that relieves a defendant of criminal responsibility for his conduct when it is determined that he meets the insanity defence standard.[27] Essentially then, it involves the drawing of a distinction between blameworthiness and unintentional behaviour; a decision on the circumstances under which the actions of an individual may be regarded as unintentional or outside his control because of mental derangement.[28]

As has been noted above, in England by the mid-19th century a man was held liable for his actions as long as he was capable of knowing what he was doing and was able to judge the consequences of his act. A similar principle also came to be laid down in the Indian context. A crime was 'an act determined by the will'. 'An act was to be considered criminal only by reason of its being done with a criminal knowledge or intention.' [29] The Indian Penal Code of 1860 thus clearly delineated the facts that negatived responsibility, or justified acts otherwise criminal. Responsibility was excluded in the case of children, intoxicated persons (when the intoxication was produced without their knowledge or against their will), and those persons who were or who justifiably

---

[27] B. A. Weiner and R. Wettstein, *Legal Issues in Mental Health Care*, New York, Springer, 1993, p. 354

[28] The legal concept of intentionality refers to what the actor meant to do, in other words, his control of events. Control, in this sense, signifies the individual's capacity to make choices based on an understanding of the circumstances surrounding his actions. See Joel Peter Eigen, 'Intentionality and insanity: what the eighteenth-century juror heard', in W. F. Bynum, Roy Porter and M. Shephard eds. *The Anatomy of Madness: Essays in the History of Psychiatry* Vol. II, London, Tavistock Publication, London, 1985, p. 34

[29] See Whitley Stokes, *The Anglo-Indian Codes*, Vol. 1, Oxford, 1887

believed themselves to be acting under the authority of law. As far as insanity was concerned, the relevant clause was section 84 which stated,

> Nothing is an offence which is done by a person who at the time of doing it by reason of unsoundness of mind is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. The fact of unsoundness of mind must be clearly and distinctly proved before any jury is justified in returning a verdict under this section.[30]

The insanity clause was also specifically incorporated in military law. Rules of procedure for military trials contained the proviso (Section 104 A) that if the court discovered that the prisoner was 'unfit by reason of insanity to take his trial', or that 'he committed the offence with which he is charge but was insane at the time of the commission thereof', the court shall in the former case 'find that the prisoners is unfit owing to unsoundness of mind to take his trial', and in the latter, 'shall find the prisoner not guilty but add that he committed the act for which he is being tried.' [31]

Sections 423 to 434 of the Criminal Procedure Code provided for the safekeeping and trial of persons who pleaded insanity. As in the case of England, the actual implementation of these clauses was fraught with conflict of interpretation. Where an insanity plea involved an instance of the European violence against an Indian the matter became even more complex as will be shown further.

A 'Touch of the Sun', a Stroke of Madness

One reason why criminal lunatics were viewed with much greater empathy in the colonial context was the firmly entrenched view of the potentially damaging nature of the Indian climate for European well-being. It is significant to note that 19th century medical practice in India was rooted in the belief of the unhealthy nature of the tropical conditions. David Arnold has contended that the environmentalist paradigm persisted in medical claims regarding disease in India throughout this period. 'The unfamiliarity of

---

[30] ibid.

[31] H. W. C. Carnduff, *Military and Cantonment Law in India*, Calcutta, S. K. Lahiri and Co., 1904

the Indian environment and its extreme and deleterious effects on the human body' were repeatedly stressed in medical literature of the times.[32]

Indeed, the idea seems to have been extended to not just physical but also mental infirmity. As Waltraud Ernst points out in her study of European lunatics in the first half of the 19th century, government authorities were tended to see insanity as the result of 'an unfortunate mishap rather than as the result of individual malice, self-inflicted misfortune, or simple lack of will power.' To a large extent it was attributed to 'the expatriate's problem in coming to grips with life under unfamiliar circumstances...or with exposure to the Indian environment, to the tropical sun...' In the event, 'community and patriotic spirit were revived and sympathy rather than blame was bestowed on the sufferers.'[33]

Of course this belief regarding frailty of Europeans in the midst of tropical climes took root gradually. In the early part of the 19th century the idea that insanity was more prevalent in advanced societies was widely prevalent.[34] Nor was the Indian climate considered inevitably harmful to European bodies; the possibility of acclimatising to Indian environments was by no means ruled out.[35] By the middle of the century, as racial theories advanced further, it became more difficult to maintain these arguments. Indeed by the 1820s and 30s, there was 'increasing pessimism about the capacity of European bodies to adapt to tropical environments'.[36] Fears regarding degeneration only strengthened the belief of expatriates regarding Indian climate being dangerous.

The result was that criminal insanity when shown to be the result of Indian circumstances was more likely to receive a sympathetic hearing from judges and the jury than would have been the case otherwise. Insanity defence trials involving Europeans tended to do things simultaneously. First, the evidence was used to highlight the

---

[32] Arnold, *Colonising the Body*, p. 32
[33] Waltraud Ernst, *Mad Tales from the Raj: The European Insane in British India 1800-1858*, Routledge, London, 1991, p. 41
[34] Ibid. p. 158
[35] Mark Harrison, *Climates and Constitutions: Health, Race, Environment and British Imperialism in India*, New Delhi, OUP, 1999, p. 11
[36] Ibid. p. 18

irrationality and unpremeditated nature of the action of the accused.[37] Second, after thus emptying the 'crime' of the prisoner of any reasonable motive, an attempt was made to attribute his disordered state to the specific circumstances to which he had been subject in the colony. In particular, climate and exposure to the sun were stressed as reasons behind the temporary insanity of the accused. The role played by medical evidence in this entire exercise varied from time to time. In some cases, medical knowledge only gave additional weight to what was in fact thought to be the 'common sense' view. In other cases, medical diagnosis of mental illness became the decisive factor in earning an acquittal for the accused.

A classic example of the first kind of case is that of Kelly, brought to trial in 1883 on charges of murder of a sweeper named Nidhan. [38] The circumstances of the case left little doubt of the fact that Kelly had indeed committed the murderous act.[39] Yet, in the court, evidence was also produced which showed that Kelly was in an unsettled state of mind at that time. It was shown that 'the accused had been in hospital for alcoholism in September for a few days, and that he had had a fit in the same month.' Further, it was suggested that on that particular day he had 'run in the sun, losing his helmet and going for a time bare-headed'. On returning to barracks he had seemed ill and was put to bed with a wet towel on his head by a comrade under the impression that 'he had had a touch of the sun'. Kelly was pronounced as being a good character from all military witnesses including the Captain of his company. His actions also appeared to be devoid of any motive as 'in so far as the evidence went, the deceased Nidhan was probably a stranger to him'.[40]

---

[37]It is interesting to note that both the prosecution and the defense were engaged in this process. The evidence presented by the prosecution was often the first step in pointing towards the irrationality of the actions of the prisoners, while the cross-examination by the defense served to only emphasize it further.

[38] Home, Judicial, A, May 1885, Nos. 379-399 (All primary sources cited here from National Archives of India, New Delhi)

[39] It was shown by the prosecution showed that Nidhan received gunshot wounds while in the vicinity of the Barracks of the Cheshire Regiment at Peshawar on the 30th September 1883. He died subsequently on 19th October, 'exhaustion from the illness caused by his wounds' said to be the 'immediate cause of death'. Kelly, a Private in the Cheshire Regiment was seen on the same day in close proximity to the place where Nidhan had been wounded with a rifle. He was subsequently seen and watched by several men of the regiment firing shots before he was captured with a rifle in his hand. Ibid.

[40] Ibid.

Both the Government Advocate representing the prosecution as well as the Counsel for the accused were thus convinced that the accused was not in a state to be responsible for his actions. Moreover, exposure to the sun leading to insanity appeared to be only plausible explanation for Kelly's apparently motive-less violent act. The jury thus returned a majority verdict that the accused had caused the death of Nidhan as alleged while in a state of unsound mind. As Justice H.M. Plowden, one of the Judges of the Chief Court of Punjab later noted

> The whole conduct of the accused on that afternoon pointed to derangement. There was no motive apparent for inflicting injury, nor any reasonable explanation for his extraordinary proceedings. [41]

Significantly, medical evidence produced in the case played only a supporting role in reaching this verdict. The opinion of the medical officer who examined Kelly after his arrest, Dr. Goggin, that the prisoner was suffering from 'delirium tremens', and 'incapable of exercising his judgment' was not the vital factor that had swung the case. Indeed the judge's reference to the circumstances surrounding Kelly's actions indicates that the conclusion regarding insanity of the accused had been formulated independently of the medical diagnosis. The latter may have simply re-inforced the judicial understanding reached on the subject.

The insanity defence of criminal lunatic Frederick Holden however is an illustration where medical evidence played a crucial part in establishing insanity of the accused. Holden, a Corporal in the South Straffordshire Regiment was brought to trial before the Chief Court of Punjab in 1903 after being accused of causing hurt by a dangerous weapon in respect of one Durga Das, and for setting fire to a barrack at Jutogh Cantonment.[42] At the trial, the evidence presented by the prosecution appeared to build up a similar narrative where the actions of the prisoner seemed to be devoid of any rationality or reasonable motive. Holden was established as a popular character in his regiment and the absence of any prior hostility between Durga Das and him was stressed.

---

[41] Ibid.
[42] Home, Medical, A, April 1904, Nos. 161-166

Simultaneously, various witnesses attempted to offer alternative explanations for his deeds. One of them described the behaviour of Holden soon after setting the barracks on fire as 'strange and half-mad'. Another witness, brought to light the fact that the prisoner had been in bed the evening before and had complained that he had 'a headache from the sun'.[43]

While lay witnesses thus conveyed their understanding of the events that had transpired, the 'real' meaning was ultimately explicated by the medical expert witnesses in the case. For example, Captain Dalkeith Jephson of the Royal Army Medical Corps who examined Holden on the day of the crime testified that his symptoms were those of 'acute mania'. Further, he firmly delivered the opinion that the accused was not responsible for his actions on that day. As he stated,

> The condition of the prisoner was such that he might have done what the chaprassi witness described without knowing he was doing wrong, and might have sel (sic) fire to a barrack building without knowing that he was doing wrong. A man suffering merely from melancholia and acting the manner above described would not, in my opinion, know that he was doing wrong.[44]

Both Jephson and the other medical expert involved in the case, Major Nash also affirmed that the insanity had been brought about by sunstroke. Interestingly, the clue regarding this was provided by Holden himself. As Jephson said,

> The prisoner told me that he had had two previous attacks of mental disease and that these were due to sun. He told me that the day before I saw him he had been a long way in the sun and returned suffering from headache. That alone might have caused acute mania at 1 P.M. on the 21st.[45]

The medical opinion delivered in the case thus rested mainly on the circumstances narrated by the accused himself. Despite this ambiguity it was successful in securing

[43] Ibid.
[44] Ibid.
[45] Ibid.

Holden an insanity reprieve. The jury unanimously that the prisoner was at the time suffering from 'acute mania' and that his acts therefore came within the exception contained in section 84 of the Penal Code. The Court concurred with the decision, a verdict of *not guilty* was entered on both charges and the prisoner was acquitted.[46]

It is noteworthy that it was not just the hot climate of India which was more likely to be adjudged responsible for violent actions of Europeans in the country. 'It was the whole range of social and cultural trappings peculiar to their life in the East.' The Indian environment as a whole was seen 'to abound in hidden dangers...and to have a dire effect on the unwary European.'[47] The insanity defence of Corporal Cullen of No. 1 Mountain Battery who was charged in 1909 with the murder of Lachman Das, a native driver, was for instance was centred on the premise that the accused became mentally disturbed after hearing the news of the killing of a female acquaintance by an Indian bearer. Obviously the defence was hopeful that the disturbing connotations of a physical attack on a white woman by an indigenous male would be easily identifiable by all Europeans and be accepted as a legitimate triggering cause of criminal insanity. Significantly however, this Orientalist understanding was once again given authenticity by the medical evidence produced in the case. The Superintendent of the Punjab Lunatic Asylum, G.F.W. Evens told the defence that Cullen was suffering from 'melancholia' and thus 'liable to outbursts of rage'. This diagnosis was accepted and Cullen was accordingly acquitted.[48]

Home and Away: The Deportation of the Criminally Insane

The colonial belief in the fundamentally unhealthy nature of Indian environment for Europeans was reflected most starkly in attempts to repatriate the mentally ill patients at the earliest. Undoubtedly, deportation of European insanes to England was at least in part, a result of 'the European community's endeavour to permanently dispose of

[46] Ibid.
[47] Ernst, *Mad Tales from the Raj*, p.162
[48] Home, Medical, A, February 1909, Nos. 7-10

embarrassing members of the white ruling class'.[49] David Arnold has for instance pointed out that next to institutionalisation; deportation was an important means of maintaining the image of the British ruling elite in India as an intellectually and morally superior race. Thus the Vagrancy Act of 1869 was enacted to provide for the confinement of vagrants in workhouses and their deportation if they failed to find work 'after a reasonable time'. [50] In the case of European lunatics however medical belief in 'the healing power of repatriation' was also a key factor. That there was no better cure for an ailing and alien Company servant than 'home' was a view cherished by most Europeans in British India. 'It was shared by great parts of the medical profession and became the hallmark and centre-piece of the treatment of those afflicted with insanity.'[51]

In fact, the legal framework for deporting European lunatics from India was instituted very early on. The regulations regarding deporting both civil and criminal lunatics were contained in the statute 14 and 15 Vic., Cap. 81 enacted by the British Parliament in 1851. The first four sections of this Act dealt with criminal lunatics and entrusted the responsibility of the removal of these lunatics from India to the UK upon the government of the presidency where they were being held in custody. Upon their arrival in the UK these criminally insane were to be treated in accordance with the British law.[52] The remaining sections of the Act were related to non-criminal lunatics and were applicable in the main to all cases where a guardian, keeper or curator of the person and estate of any idiot, lunatic or person of unsound mind had been appointed by the High Courts in India.[53] The High Court could issue such orders authorising or directing the removal of such person and touching his safe custody as they seemed proper. A transcript of the proceedings in the matter of idiotcy or lunacy of such persons was however to be transmitted to that part of the UK to which the person was removed.[54]

---

[49] Ernst, *Mad Tales from the Raj*, p. 163
[50] David Arnold, 'European Orphans and Vagrants in India in the Nineteenth Century', *Journal of Imperial and Commonwealth History*, Vol. 7, No. 2, 1979, pp. 104-127
[51] Ernst, *Mad Tales from the Raj*, p. 163
[52] Allen, *The Law Relating to India and the East-India Company*, 5th edition, London, Wm H. Allen & Co., 1855.
[53] The 1851 Act referred to the 'Supreme Courts' in India but later this amended to include the term High Court.
[54] See Allen

Also, whenever an instance arose where the existing law was insufficient to meet the needs of deportation, the colonial executive endeavoured to find a way around it giving primacy at all times to the health and recovery of the individual in question. An interesting example of such procedural tightrope walking was the repatriation of Kelly. After being ruled as insane, by the Chief Court of Punjab, Kelly was lodged in the Lahore Central Jail for safe custody pending the orders of the government under section 471 of the Criminal Procedure Code (CrPC). Subsequently a Medical Board was assembled and reported that Private Kelly was in good health and of sound mind. On the basis of the report of the Inspector General of Prisons to the effect that Kelly was in bad health, the local government of Punjab recommended that he be sent to England as soon as possible. It was however pointed out that under the provision of section 1 of the statute 14 and 15 Vic., Cap. 81, only governments of a Presidency could order Kelly's removal. To meet this difficulty, an order was issued by the Government of India under the statute, directing Kelly's removal to Bombay and from thence to England. The government of Bombay was at the same time requested to reinforce the order by means of a similar order issued by it on Kelly's arrival at Bombay. This was duly done and Kelly was safely despatched home.[55]

Despite this, doubts remained regarding the legality of the entire proceedings. Under section 471 of the CrPC the Punjab Government was not enabled 'to direct the person concerned to be confined in a place beyond the limits of the Punjab and its Dependencies'. Moreover, owing to the fact that Kelly was not sentenced to imprisonment, he could not be removed to Bombay by virtue of an order by the Governor General in Council under the Prisoners' Act (V of 1871). Thus 'it was open to doubt that Kelly on arrival in Bombay was in "lawful custody", and if this was not the case, it was not competent for the Government of Bombay to issue an order for his removal to England'. Indeed, the Legislative department of the Government of India subsequently recommended changes in the CrPC and the Prisoners' Act to meet these problems in future.[56]

---

[55] Home, Judicial, A, May 1885, Nos. 379-399
[56] Ibid.

Kelly's deportation despite the fact that he was reported to be 'sane' and in the face of various legal hurdles indicates the reluctance of the colonial government in India to take any step which might endanger the life or health of any European subject. Further evidence of this propensity may be cited by referring to the case of John Cassidy. Private Cassidy of the 2nd Gordon Highlanders was brought before the Chief Court of Punjab for trial in July 1903 on charges of murdering a punkha coolie called Umar Din. Subsequently the jury found that at the time of causing the death of Umar Din, Cassidy was 'by reason of unsoundness of mind incapable of knowing the nature of the act or that what he did was wrong or contrary to the law.' He was therefore acquitted and ordered to be lodged in the Punjab Lunatic Asylum. However in view of 'the unsuitability of the Lahore hot weather climate for a European under detention' the Governor-General in Council directed his removal to the Asylum at Bhowanipore.[57] In July 1904 the Visitors to the Bhowanipore Asylum recommended to the local Government of Bengal that Cassidy though now 'sane' should be sent to England as 'a further confinement in this climate' was 'likely to be seriously detrimental to his health.' The Government of India on being referred to on the matter by the local government gave its approval to the deportation of Cassidy and he was ultimately sent home.[58]

Both Kelly and Cassidy were examples of criminals who had earned the insanity reprieve, who had subsequently recovered their sanity while in custody and were nevertheless removed to England on grounds of their ill-health. However Europeans who had been convicted for their crimes could also be repatriated if they lost their mental balance while serving out their sentence in the prison. An example was James Coghlan whose death sentence was in 1910 commuted to penal servitude for life after he was reported to be insane. While being held at the Punjab Lunatic Asylum, Coghlan forwarded a petition to the Viceroy requesting him to transfer him elsewhere. He stated that

> This climate does not agree with me. I suffer much from malarial faever (sic) and the heat of the summer causes me to suffer from great

[57] Home, Medical, A, October 1904, Nos. 125-129
[58] Ibid.

> prostration. The Superintendent of this asylum can testify as to the injurious effects of the extreme heat of Lahore upon my health. Trusting Your Excellency may be pleased to grant my petition and send me home at an early date...[59]

The Superintendent of the Punjab Lunatic Asylum indeed agreed with Coghlan that his disease was 'likely to be greatly aggravated by residence in the heat of this climate'. While forwarding Coghlan's petition to the Deputy Commissioner of Lahore, he strongly affirmed that the latter might 'derive much improvement from a transfer home' where he could obtain 'much greater comfort and many ameliorations of his confinement' than it was possible to give him in Lahore.[60] The colonial authorities accordingly swung into action and Coghlan was deported.[61]

It can be readily observed from the instances cited above that it were the express recommendations of medical officers which formed the foreground against which the deportation exercise of European criminal lunatics. Without doubt, it was the deep-seated conviction regarding the potential harm that may be done to a mentally ill compatriot through prolonged stay in this country that made these recommendations more acceptable and legitimate. Yet, medical advice to the effect gave to the task of deportation a unique urgency and immediacy. Once a medical officer pronounced the Indian climate as unfit for a European insane, it became difficult for the colonial executive to refuse the plea for deportation. This is not to say however that the colonial executive was always enthusiastic about sending home European criminals who had barely escaped punishment on grounds of insanity. As will be shown in the next section, the colonial government in India increasingly displayed considerable misgivings both regarding the insanity reprieve as well as the subsequent act of repatriation. These uncertainties were partly in response to the adverse public opinion that was being generated to successful insanity defence in cases of White violence against Indians. They could also to some measure be attributed to a desire on the part of government officials at the highest level to regulate interracial

[59] Home, Medical, A, March 1911, Nos. 108-110
[60] Ibid.
[61] Home, Medical, A, October 1911, Nos. 35-41

violence in a more strict fashion. The medical narrative and colonial agenda thus did not necessarily coincide.

A 'Scandalous Miscarriage of Justice'[62]

By the end of the 20th century, the increasingly vociferous indigenous press was convinced that the insanity plea was just another way in which justice was denied to Indians who had suffered at the hands of the Europeans. It was strong in its denunciation of both the colonial officials as well as the medical 'experts' who testified in these cases. The press coverage surrounding a notorious trial in Bengal in 1900 involving Private Michael Sullivan accused of murder of an Indian tailor Gunput Kissore may be cited as an instance.

According to eyewitnesses, the accused, Sullivan, a soldier in the Royal Irish Rifles, walked into the tailors' shop located at Fort William on the morning of 19th July 1900 with a rifle in hand and shot the master tailor in the presence of his brother and another servant. Before the committing magistrate, the prosecution brought out the pertinent fact that Sullivan had, in fact, a motive for committing the murder. The brother of the deceased, Rogoo testified that he had been assaulted by the accused a few months previous to the incident for which an inquiry had been called. Gunput had given evidence against Sullivan in this inquiry which resulted in the latter receiving 14 days' imprisonment with hard labour. [63] The defence counsel however pleaded that the prisoner had been of unsound mind during the time of commission of the act. The magistrate dismissed the appeal and committed the prisoner for trial.

It is interesting to note that in the intervening period before the case was brought before the High Court, the Government Solicitor wrote to Messrs. Pugh and Company, solicitors for the accused, stating that if they desired to have the prisoner medically examined, the Government was willing to let them have the services of two or three of

[62] The Indian Mirror, 24th August, 1900, Press Extract, Home, Public/Assault, B, October 1900, Nos. 113-117

[63] *Indian Daily News*, 21st July, 1900, Press extract, Home, Public/Assault, B, October 1900, Nos. 113-117

the Presidency doctors, and if they wished any medical officer of their own to join the former, arrangements could be made. The defence accepted the offer with the result that the prisoner was examined by a team of government medical officers.[64] During the trial at the High Court, cross-examination of the accused convinced the presiding judge Justice Pratt that Sullivan was of unsound mind. A special jury was empanelled which on the basis of the testimony of the medical officers unanimously decided that he was incapable of making his defence on grounds of insanity. The trial was postponed sine die.[65]

However, the matter was by no means over. Barely six months later, Visitors to the Bhowanipur lunatic asylum where Sullivan had been admitted reported that he was now 'sane and capable of making his defence.'[66] Consequently, the trial was resumed in the High Court before Justice Sale. The defence counsel this time produced numerous witnesses as well as medical 'experts' to build up a case that Sullivan had a history of epileptic fits and a tendency 'to sudden outburst of violence'.[67] The jury therefore returned the verdict that 'the prisoner had committed the act with which he was charged but was "not guilty" by reason of his unsoundness of mind.'[68]

The umpteen twists and turns in the Sullivan case were eagerly followed by the Indian press and the verdict raised stringent criticism from all quarters. The case in a sense came to be seen as a fitting example of the 'discriminatory' judicial practice which allowed Europeans to escape punishment for acts of violence against Indians. As the *Indian Mirror* vehemently declared,

> The general feeling will, of course be that there has been yet another scandalous miscarriage of justice...We are afraid that soldiers, who deliberately kill "native", have yet another door of escape open to them.[69]

---

[64]The Statesman, 23rd August, 1900, Press extract, Home, Public/Assault, B, October 1900, Nos. 113-117
[65] Ibid.
[66] Home, Public/Assault, B, June 1901, No. 61
[67] The Englishman, 22nd May, 1901, Press Extract, Home, Public/Assault, B, June 1901, No. 61
[68] The Englishman, 23rd May, 1901, Press Extract, Home, Public/Assault, B, June 1901, No. 61
[69] The Indian Mirror, 24th August, 1900, Press extract, Home, Public/Assault, B, October 1900, Nos.113-117

The *Bengalee* in its coverage of the trial was even more bitter in its condemnation of the turn the events had taken.

> We have no hesitation in saying that the verdict has been received by the Indian public with profound surprise and disappointment. The confidence of the Indian public in British justice is being shaken in cases like these where European soldiers are the accused and natives of India are the aggrieved parties.[70]

Indeed, indigenous public opinion appeared to be convinced that Sullivan was shamming insanity in order to evade punishment for his offence. As the *Bengalee* declared,

> The murder itself was deliberate and planned as a reasonable man in the full possession of his senses would plan it. There was a reasonable motive for the deed. That motive was revenge. The Durzi had got Sullivan punished. Do madmen proceed in this deliberate, rational and systematic way? If Sullivan was mad when he committed the deed, there was indeed, method in his madness...[71]

Nor did native opinion accept the 'neutral' status of the medical witnesses who appeared in the case. Not only were aspersions cast on their 'expertise', they were also widely viewed as being complicit with the colonial regime in protecting Europeans from the consequences of their crimes. The *Amrita Bazar Patrika* for example expressed wonderment how the medical men 'by examining the prisoner for a few minutes on only three days could discover insanity in the man...' while Major J. Brown in whose Company Sullivan was a Private had 'never noticed anything peculiar about his behaviour or mental faculties...' during his one and a half years' observation.[72]

The *Bengalee* raised similar doubts stating that

---

[70] The *Bengalee*, 24th August, 1900, Press extract, Home, Public/Assault, B, October 1900, Nos.113-117
[71] Ibid.
[72] The *Amrita Bazar Patrika*, 24th August, 1900, Press extract, Home, Public/Assault, B, October 1900, Nos.113-117

> The doctors may say what they like. We know doctors often talk nonsense. But if a man was shamming madness, a formal examination would never help to discover the fraud.[73]

It is of course important to note that unlike other cases of insanity defence considered so far, the Sullivan trial presented an instance where it became difficult to deny that the accused in question had a clear motive for committing the murder. Despite this, his action was judicially deemed to be irrational and devoid of any vindictive feeling. As such, it presented an easy target for an indigenous press bent upon proving the case that the colonial government was not interested in bringing justice to the Indians. Nevertheless, the contemporary news reports were quick to point out that Sullivan was just one more name in the long list of British criminals who had earned the insanity reprieve on the basis of medical evidence.

The *Amrita Bazar Patrika* thus noted,

> We remember two other cases in which two soldiers murdered two poor natives and became stark mad. One occurred at Satara, Bombay in 1883 and the other at Meerut, North West Provinces, in 1898. In the first case, Private Martin Dwayer was charged with the murder of an Indian woman and in the other Private Whelan bayoneted a punkha coolie to death. Both were sent home at the cost of the public...[74]

In effect then the Sullivan case was seen not as an exception but rather as an example of the general 'leniency' displayed by the colonial judicial system with respect to racial violence directed against the Indians.

Adverse public reaction however did not go entirely unheeded. On the contrary, such criticism in the press made many sections of the colonial officialdom extremely self-conscious as far as the insanity defence was concerned. As has been already noted, an undercurrent of sympathy for compatriots who lost their bearings in an alien land was

---

[73] The *Bengalee*, 25th August,1900, Press extract, Home, Public/Assault, B, October 1900, Nos.113-117

[74] The *Amrita Bazar Patrika*, 24th August, 1900, Press extract, Home, Public/Assault, B, October 1900, Nos.113-117

widespread. Yet this concern often had to compete with the equally pressing desire to uphold the sanctity of rule of law. For instance the verdict in the Sullivan trial itself generated serious unease within government circles as is evident from the official correspondence on the subject of his deportation. In 1903, Visitors to the Bhowanipore Asylum pronounced him to be 'sane' and recommended that he be transferred to England 'in the interests of his health'. The local government of Bengal however stressed that it was 'most undesirable' that 'except on the strongest of grounds, any indulgence should be shown to a soldier who in a fit of insanity has killed a native of this country.'[75]Viceroy Curzon when informed of the issue was even more forthright in expressing its disapprobation noting that,

> This man committed a deliberate murder for which in any country but India he would have been hung. He feigned insanity and got off on that score. But he was not insane at the time and is not insane now...Having elected to stand upon the ground of insanity I do not think that the prisoner can now escape on the ground of recovered sanity...[76]

Indeed the colonial government was caught in an acute dilemma on the issue of deportation. Recovery of European insanes was a concern while sending them home. Yet, a recovered criminal lunatic was also distinctly problematic proposition for the government officials in India by validating the concerns of Indians regarding the insanity plea. For instance, the discharge of Coghlan from the Dundrum Lunatic Asylum in 1915 four years after he was deported created a flutter in official circles. The Government of India conveyed to the Secretary of State its disquiet on the subject stating that

> It is obviously undesirable that European criminals sent home from India under the provisions of the Colonial Prisoners' Removal Act, 1884, should meet with appreciably more lenient treatment than they would have received in India in common with other European and Indian prisoners, and if, as appears to be the case, the authorities in the UK have the power to order the premature discharge of certain classes of such prisoners without our knowledge or consent, we apprehend that it may be necessary

[75] Home, Medical, A, November 1903, No. 31
[76]Note by Lord Curzon, dated 20th October, 1903, Home, Medical, A, November 1903, No. 31

for us to exercise considerable caution in availing ourselves of the powers under the Act. [77]

Clearly then, there were limits to which empathy for European criminal lunatics could be carried forward and the colonial executive in India was reluctant to unduly hinder due process of law on this count.

Maltby's Cry: Hearing the Voices of the Criminally 'Insane'

Hitherto we have noted that the indigenous press was convinced that insanity was feigned by European criminals to escape judicial punishment and even the colonial government was alive to the possibility of misuse of the insanity defence. The unstated assumption here is that being declared 'insane' would in any circumstance be considered preferable to conviction for a criminal offence. This underlying belief was partly due to the fact that 'the insanity plea was inextricably bound up with indictments for murder, when the statutory capital sentence made a vital difference to its meaning.'[78] In England as in India, the use of the insanity defence was most prominent in cases of homicide punishable by hanging. In these circumstances, a successful insanity defence was at the same time a guarantee of life for the accused individual.

Yet, it may be shown that not all individuals were pleased at the prospect of being pronounced as 'insane' and being incarcerated in an asylum even if it meant juridical acquittal. It is important therefore to shift focus at this juncture to the voices of those individuals who were at the centre of this entire issue.

However, an important methodological question is at stake here. How does one interpret the experiences of those who were regarded as insane? Do we dismiss their words as being devoid of any meaning and agenda? Examining this question in the context of 'native' lunatics, James H. Mills has contended that to ignore the experiences

[77] Home, Medical, A, May 1916, Nos. 168-170
[78] R.Smith, *Trial by Medicine*, p. 24

of the mad would be to 'comply with discourse developed in the 19th century in the West which relegated madness to an illness and thereby emptied the state of significance.' [79] Indeed much recent scholarship has tended to emphasise that 'mental illness' is 'socially constructed'. It has been argued that 'the goal of treatment has to do with the maintenance of social order, rather than simply the relief of suffering...' Mental illness is may be regarded as 'deviance' and a 'normalising' approach towards it may be adopted- that is 'to see its so-called symptoms as intelligible, readily yielding up their meaning to those who are willing to side with the deviant.'[80]

The problem for historians in this context is the paucity of records which would give an insight to the world-view of these individuals. In the case of colonial India for instance, the sources at hand are the official documents or asylum which rarely exhibit more than the colonial discourses regarding the subject. However, occasionally the voices of the individuals do get recorded as in the case of T. J. Maltby, a member of the Madras Civil Service. Maltby was accused of killing a couple of palkee bearers in 1879. He was reported to be suffering from an attack of acute mania and was consequently unable to make a defence of his actions before a judicial tribunal. Subsequently, he was sent to England but 'he somehow escaped from the lunatic asylum and fled to Switzerland.'[81]

What is of interest in this episode is the constant denial of Mr. Maltby that he was in any way 'insane'. Indeed, while detained in the Madras lunatic asylum, he wrote a letter to the editor of the Madras Mail entitled, "How to make a Government Lunatic". The letter, some extracts of which are selectively quoted below, is a sardonic description of the steps which may be followed to drive a person 'insane'.

> Fytte the first
> First let thieves rob and ill-treat the patient as this tends to give him confidence in the power and stability of the Government; then starve him, and let him lie under a tree for eight hours in the sun which will give him brain-fever, if nothing better...

---

[79] Mills, *Madness, Cannabis and Colonialism*, p. 146
[80] David Ingleby, 'Mental Health and Social Order', in Stanley Cohen and Andrew Scull eds. *Social Control and the State: Historical and Comparative Essays*, Oxford, Martin Robertson, 1983, pp. 143, 181 .
[81] The Amrita Bazar Patrika, 24th August, 1900

Fytte the second
Lock him up in a bungalow all by himself...Pay no attention to anything that he says...Take his bath away from him. Attend to none of his wishes as regards his property or belongings...Irritate him by treating him either as a fool, or a criminal, a knave or a lunatic. If you can, allow him to imagine himself to be an amalgamated compound of all four...

Fytte the third
The patients' nerves now sufficiently upset, "Shanghai" him suddenly on board a steamer. This process, if it doesn't burst a blood vessel on the brain, will probably give the patient a galvanic or other shock which will prostrate him completely...

Fytte the fourth
If at the end of three weeks of the above treatment the patient is not a full-blown lunatic, kick him out of the Asylum, reproach him with ingratitude for past favours and tell him he does not deserve to be "welded", let alone anything better.[82]

The Official Visitors to the Madras lunatic asylum in their report to the Governor in council cited this letter as evidence of Mr. Maltby's 'disordered intellect'. They pointed out that 'he had in fact received only kindness and considerate treatment since the commission of his offence...' The indirect references made by him to his dismal plight were dismissed as 'delusions'.[83] Yet, Maltby's protests against the conditions of his detention and against his 'insane' status are a clear indication of the fact that not all individuals were willing to make judicial use of the insanity defence. Being 'labelled' a lunatic could also be a psychological trauma; one which led to loss of self-esteem and social status coupled with detention in inhospitable conditions.

Deportation 'home' could similarly have painful consequences for the individual in question. An examination of the official records brings to light various cases where the deportee lost his possessions in transit or was simply unhappy with the forced transfer to an 'alien' land. For instance we come across a letter of complaint written by one deportee W.H. Higgs to the Secretary of State in 1886. Higgs protested that he had been 'sent home entirely without funds or papers' and had 'no friends in England' who could

[82] Home, Medical, B, 1880, Nos. 61-63
[83] ibid.

assist him.[84] In India on the other hand he had property of his own and indeed he made a bid to return to the colony soon after.[85] Similarly we hear of N.J.H.C Chichester formerly a seaman, who was sent to England on the *Victoria* in December 1896 as a pauper lunatic. Subsequently, a complaint was received by the colonial government authorities in England from General Sir M. Walker regarding the treatment of Chichester as a pauper and certain missing effects from his belongings, causing the Secretary of State to order an inquiry.[86]

Higgs and Chichester were both transferred home as civil lunatics. Yet their plight warns us against the presumption that insanes always stood to gain fact, it is from repatriation. In the case of criminal lunatics, to point out that even repatriation to England of 'criminal lunatics' by no means meant 'freedom' for them. Roger Smith has written that with respect to England that 'a warrant of removal to a criminal asylum usually meant a permanent removal. It was extremely difficult to attribute 'recovery' to someone who had shown potential for violence.'[87] While Coghlan seems to have been exceptionally fortunate in this respect, it is difficult to suppose that the procedure for most other criminal lunatics deported from India was any different. They like others were destined to spend their lives as 'pleasure men' in the criminal wings at Bethlem, Fisherton House or Broadmoor.[88] Thus, we may speculate that not all individuals being sent off to England were willing to exchange detention in one asylum for another.

The noteworthy point thus is that we need to search for the voices of the individuals who are in fact the key figures in the entire narrative. If some persons benefited from the insanity defence, others may have believed that they had more to lose. One cannot thus afford to dismiss these individual perceptions as mere delusions of

[84] Home, Medical, A, October 1887, Nos. 82-87
[85] Home, Medical, A, November 1887, Nos. 44-46
[86] Home, Medical, A, June 1899, Nos. 69-70
[87] R. Smith, *Trial by Medicine*, p. 23
[88] The criminal lunatics were supposed to be retained 'at His Majesty's Pleasure'. Consequently they were known as 'pleasure men'. Ibid.

'madmen'. The Catch-22 clause that 'you can't let crazy people decide whether you're crazy or not' cannot be allowed to ring true.[89]

Medicine and Law: Seeing Beyond Collusion

It was pointed out at the beginning of the chapter that colonial medicine in India largely remained state-centric in its nature and aims. Indeed, many of the above examples illustrate how colonial medical narratives sustained successful insanity pleas of British lunatics and provided the grounds for their removal to England. Nonetheless, it would be misleading to suggest that medical officers in India were engaged solely in forwarding the interests of the government. Some attempt has already been made to indicate that medical concerns and colonial anxieties were not always on the same plane. In similar fashion, medical officers whether in the employ of the government or otherwise could be simultaneously pursuing their own individual or collective agenda. It is not the purpose here to trace how the professional concerns of the medical men as a class conflicted with those of the state. Nonetheless some points of friction between the two may be suggested.

For instance, not all officers seem to have been keen on performing medico-legal duties for the government. These were often viewed as onerous and an additional burden to the already multifarious duties entrusted on government medical officers. For non-government doctors they could additionally be a hindrance in private practice. In fact one issue which regularly cropped before the government was that of grant of adequate remuneration to the medical officers for evidence tendered by them in court.

As far as government medical officers were concerned the debateable point appears to have been whether or not medico-legal work should be regarded as a part of their regular work, and whether they ought to be compensated accordingly. Initially the

[89] From Joseph Hellers' novel, *Catch -22*. In this work of fiction the Catch-22 clause specified that anyone who asked to be branded as 'crazy' was no longer 'crazy'. Thus, anyone who agreed to fly more combat missions was crazy. But when he asked to be grounded, he would be considered sane and would thus have to fly more missions.

rules provided for additional payment to medical officers for all such duties. A Government of India resolution issued in 1869 laid down that a medical officer, other than a civil surgeon, when summoned to give evidence touching the result of a post mortem or other examination conducted by him in cases not falling within the ordinary discharge of his duties was entitled to a fee of Rs. 16. Subsequently however in 1881, an Army Circular was issued which lay down that "officers of the Army Medical Department and of the IMS are not entitled to extra remuneration for the performance of any duty prescribed by regulation which may be required by them for proper authority in the interests of Government. This led to confusion whether professional medical duties were to be considered as part of duty 'prescribed by regulation'.[90]

For example in October 1881, A. K. Stewart, Surgeon at Poona Horse complained to the Superintendent of Police about the heavy load of medico-legal duties imposed on him and demanded payment of requisite fees as laid down by the 1869 resolution for these. As he pointed out

> Since my return from field service having been called on by the Chief Constable at Sirur to give written medico-legal opinions in numerous cases of injuries, & c., opinion which, if I had given them in a criminal court, would entitle me to the fee...
> Under the above circumstances I shall feel obliged by your informing if the written medico-legal opinions constantly demanded of me constitute a claim on my part for the fee sanctioned in Government Resolution... as otherwise, such not falling within the ordinary discharge of my duties, I must in future decline to give them, though I shall always be happy to attend at the Sub-Magistrate's or Chief Constable's Courts, and give my evidence there on such matters.[91]

Indeed, the threat to withhold his written medico-legal reports from the government appeared to have had some effect as the Deputy Superintendent of Police stated while forwarding the above letter to the District Magistrate that

[90] Home, Medical, A, September 1882, No. 41-47
[91] Ibid.

> If the Surgeon of Poona Horse declines to give a written certificate stating the cause of any death, &c., his evidence will have to be taken, and the fee of Rs. 16 paid to him; when the certificate is signed and given by the Surgeon, it is used as evidence and his presence is not required.[92]

Accordingly then, it was decided to pay Stewart Rs. 16 for post mortem examination and Rs. 10 for examination and report in other criminal cases. To these would be added batta at the ordinary rates when the Surgeon was required to give evidence in a case.[93]

Private practitioners could be even more insistent in demanding that proper fees be paid to them in lieu of the 'trouble' undertaken by them in making available their expertise to the court. For example in 1880, the local government of Assam forwarded one such case for the consideration of the Governor General in Council concerning one, Dr. Gray. Dr Gray, a medical practitioner in the employ of the Jorhat Tea Company, was in January 1879 summoned as a witness in a criminal case to attend the Court of the Deputy Commissioner of Sibsagar. The court being located at a distance of 40 miles from his home, a day was spent on the journey each way and one day in his giving evidence. Subsequently the Deputy Commissioner offered him Rs. 24 for his expenses which he declined to accept as being altogether inadequate. Instead he made a claim for Rs 116 out of which Rs 20 was for travelling allowance at the rate of 4 annas per mile, and Rs. 96 constituted his fees for three days. Dr Gray stressed that fee for medical attendance on Europeans was 2 gold mohurs (Rs. 32/-) a visit; or per diem. He also stated that for a similar service, a planter would have probably sent him a cheque for at least Rs. 200.[94]

The local government of Assam observed that according to the rules laid down in 1876 regarding payment of witnesses, a European witness was entitled to his fare by steamer or boat for the distance travelled as well as subsistence allowance up to the maximum of Rs. 5 per diem. In this case therefore, the maximum amount which was

---

[92] Ibid.
[93] Ibid.
[94] Home, Judicial, B, January 1881, Nos. 147-151

permissible to be given to Dr. Gray was 15 (since he did not travel by steamer) instead of the Rs. 24 which he had been originally offered. At the same time it affirmed that 'the sum of Rs. 5/- per diem was 'quite inadequate to meet the expenses of a long road journey and leaves nothing whatever to compensate the witness for his loss of time or injury caused to his business by his enforced absence.' It accepted that it was 'impracticable to regulate the remuneration payable to individual witnesses by their ordinary earnings' as had been demanded by Dr. Gray. At the same time, it recommended that the latter may be paid the fee of Rs. 16 that was ordinarily given to medical officers in government employ in accordance with the 1869 resolution of the government. The Government of India acceded to the request.[95]

In 1889, a similar case cropped up in Assam, involving one, Dr. Arthur Powell, called as a witness to testify to the injuries upon Dasarath Kuli of the Kalain Tea Estate. Before being sworn, Dr. Powell stipulated that his expenses and a fee should be paid to him. Babu Jagabandhu Nag, the Magistrate who tried the case, promised Dr. Powell such sum as were authorised under the rules in force. Subsequently the Magistrate ordered the payment of the witness's expense, together with a fee of Rs. 10 and a special allowance of Rs. 4. Some dispute arising on this, the matter was referred to Mr. Kennedy, the then Deputy Commissioner who reduced the amount of sum to Rs 17-8-0 in accordance with the rules, mainly for diet expenses and travelling expenses. Dr Powell however was completely dissatisfied with this result and refused to take anything, thereafter repeatedly writing to the government on the subject pointing to what he termed as a 'breach of faith'. The Local Government of Assam believed that Dr. Powell was not entitled under the present rules to any more than what he had been already granted. However following the precedent of Dr Gray it was recommended that he be given a fee of Rs. 10 as a special case. The proposal was later sanctioned by the Government of India.[96]

If the appeals for monetary payment indicate the unwillingness of some doctors to 'collude' with the colonial authorities for free, the tendency of the later to sanction the

[95] Ibid.
[96] Home, Judicial, A, July 1889, Nos. 123-126

demand may suggest a corresponding recognition of the need for the services of the medical experts. Other developments however tended to render this interaction between medicine and the colonial state more complex. By the 20th century we find that medical experts did not necessarily represent the government in criminal cases. Indians defending themselves in court against the colonial state also made use of them in order to strengthen their cases.

In fact, in 1917-18, an important controversy arose within government circles over whether or not medical officers in its employ should be allowed to testify on behalf of the defendant in cases where the state was a party. The debate was essentially sparked off by the decision of Lieutenant-Colonel Deare of the IMS to appear for the defence in a case of 'political crime'. Lieutenant Colonel Deare gave his professional advice to the defence counsel of Mahendra Nath Das, the principal accused in the murder of the Malda Headmaster, and also arrived at the Malda Sessions Court to tender his evidence, in the process refuting the opinion of the Bengali Assistant Surgeon who was acting as Civil Surgeon at Malda. This in turn brought into focus the propriety of medical officers of the government being pitted against each other in the court and the possibility that the expert opinion of one of its officers actually weakening the position of the prosecution in a trial. As one official who had been personally present at the trial observed,

> I will not enter into the merits or the demerits of the evidence given by Colonel Deare but by taking up the defence of a political murderer and trying to overwhelm a loyal and honest local officer by his presumably superior attainments, Colonel Deare most certainly placed himself in a very strange position....I do feel that officers of the Government should be most careful in such matters and that it is extremely hard on an acting native Civil Surgeon to find his evidence belittled by a superior officer in his own service.[97]

Following the episode the Government of India circulated a resolution among all the local governments and administrations providing that in future if a medical officer of the government was approached by a private party with a view to giving an expert professional opinion in a case, he shall 'refuse to give any opinion save with the express

[97] Home, Medical, A, May 1917, No. 35 (confdl)

sanction of Government and shall confine himself to informing the person who has approached him that he will be prepared to give evidence provided that a summons is sent to him from the court concerned.' Furthermore, the new rules provided that if a medical officer received the necessary sanction, he was required to 'send a copy of his opinion to Government with as little delay as possible.' Also, if summoned to attend the court, he was to inform the concerned superior officer before proceeding for it.[98]

Essentially, as the resolution emphasised, the objective was to ensure that in cases in which the government prosecuted on a medical opinion given by one of its officers, and the defence wished to call as a witness another government medical officer, whose evidence was likely to conflict with that opinion or, the government could have the opportunity of 'reviewing the case for the prosecution, and of deciding whether it should produce as a witness in court the medical officer who supports the prosecution case.'[99]

The rules however came to be criticised by the Chief Justice and the other Judges of the Bombay High Court who argued that they might 'hamper accused persons and private litigants in the presentation of their cases to the Courts.' They brought to light the fact that in mofussil districts it was 'frequently impossible to obtain any medical expert other than a government servant.' Moreover the expert's testimony available to the government for the purposes of examination and cross-examination would place the private party at a disadvantage in any litigation with the government. The objections raised by the judiciary therefore forced a revision of the previous instructions. The clause regarding conveying the opinion to the government beforehand was done away with. Instead the medical officer was merely to furnish 'a statement of all fees and expenses and all other remuneration' which he received in respect of the matter including therein 'all fees, paid for a preliminary opinion.'[100]

The entire affair thus reveals the growing concerns of the colonial regime that the expert knowledge of its own officers may be used against it. It thus highlights anew how

---

[98] Ibid.
[99] Ibid.
[100] Home, Medical, A, May 1918, Nos. 101-103

a simplistic narrative of complicity between medicine and colonial legal apparatus is far from the truth. No doubt medicine and law came together in a bid to render 'justice' to Europeans mentally broken down by the Indian climate and led into racial violence. Yet, the notion of a joint project, however evocative for the contemporary Indian press seems inadequate for the purposes of historical analysis. Medical officers and the colonial executive could have distinct if not antithetical interests and those of the European insanes in question could be even distinct from either of them. [101]

101

Chapter Two

'Doctoring' Prisons: The Shift Towards Medical Management of Indian Jails

The 19th century witnessed a steady increase in the engagement of doctors with prison regimes. Just as medical men emerged as voices of authority in the law court, similarly their advice also came to be valued in designing a suitable punishment system for criminals. Medical doctors were called upon to supervise the health of prisoners, to render advice on their hygiene and diet and to pronounce on their state of mind. Moreover, they came to be invested with the power 'to declare a prisoner unfit, physically or mentally, for ordinary penal discipline and by so declaring present him with an immediate benefit, while removing him (at least temporarily) from the category of the responsible moral agent'.[1]

Indeed the process of medicalisation intensified in the second half of the century as a more scientistic discourse came up and deterministic theories of criminal behaviour became popular. As Wiener has indicated, 'the scientific world view shifted attention away from acts to contexts, from the conscious human actor to the surrounding circumstances, whether in one's environment or one's constitution.'[2] Nye suggests that there was a Europe-wide 'rise in concern in the 1870s about recidivism, a shift in interest away from the number of crimes committed and toward the nature of the individuals responsible for most of them.'[3] This shift in turn meant that 'an expanding range of social problems seemed to require medical expertise.' Questions like 'Where criminals came from and what they were like' were no longer 'generally addressable'. Rather they now required 'a science and trained experts' to understand them.[4]

---

[1] Wiener, *Reconstructing the Criminal*, p. 122
[2] Ibid. p. 162
[3] Robert A. Nye, *Crime, Madness, and Politics in Modern France: The Medical Concept of National Decline*, Princeton, Princeton University Press, 1984, p.38
[4] Wiener, *Reconstructing the Criminal*, pp. 228, 230

It is significant to note that in colonial India as well there was a corresponding growth in importance of doctors in the prison system during this period. Doctors were not just put in medical charge of jails; rather the entire responsibility of administering the prison was entrusted upon them. Interestingly though, as this chapter will show, the move towards medical management of jails was not conditioned solely by a belief in the special expertise of doctors or the superior knowledge possessed by them on penal matters. Administrative contingency often played a far more crucial role in influencing government policies in this regard. Furthermore, medical doctors themselves were not always keen to occupy the position of penal 'experts' and prison duty was frequently seen by them as an unwelcome task. Medicalisation of prisons in the Indian situation thus took a completely different turn with scientific discourse taking a backseat to specific governmental constraints.

Bringing them in: Medical Officers as Jail Superintendents

From the second half of the 19th century onwards, the colonial regime in India tried to reserve the posts of jail superintendents exclusively for medical officers. Halting steps in this direction were first taken in the 1860s when the local governments of various provinces tried to put medical officers in direct charge of prisons. In January 1862, the Government of North West Provinces confided the management of jails to civil surgeons wherever they were willing to accept the charge.[5] The Government of Central Provinces sought approval of the Government of India on a similar proposal in 1863.[6]

A more decisive moment came with the recommendations of the Indian Jail Committee of 1864. The Committee strongly advocated that as a general rule, 'Medical Officers should be the Superintendents of Jails, and that the management of Jails should be so far constituted a regular service, that special aptitude might be held to possess a claim to promotion in the same line.' 'A specially-qualified Medical Officer should be

[5] Home, Judicial, A, 3rd December 1864, Nos. 2-3
[6] Home, Judicial, A, 4th September 1863, Nos. 1-2

always selected as the superintendent of a Central Jail' while 'a Civil Surgeon, if a European, and possessing suitable qualifications, should invariably have charge of the District Jail.'[7] Following this, the Government of India in 1868 conveyed the view that commissioned medical officers should be appointed in all but exceptional cases. However the very next year, it was forced to reconsider its orders following an appeal by the military authorities and conceded that non-medical men who were suitably qualified may also be employed as superintendents of jails.[8]

The Jail Conference of 1877 did not make any specific recommendations on the subject. However by the time another Jail Committee was set up in 1888, the number of doctors engaged in prison administration had increased drastically. Medical officers were in charge of central jails in NW Provinces and Oudh, the Punjab, Burma and Central Provinces, and frequently also arose to the position of Inspector General of Jails. Only in Bengal where there was a trained service of Jail officers and in Madras and Bombay, did non-medical appointments exist to a large extent.[9]

The 1888 Jail Committee comprising Dr. Walker and Dr. Lethbridge again stressed the need for associating medical officers with prison administration. The Committee made an equivocal declaration that the Superintendents of Central Jails should all be commissioned medical officers. Furthermore, to make the jail service popular the appointment of Inspector General of Jails should also be reserved for Superintendents of central Jails who had specially qualified themselves for the post. The superintendentship of district jails should similarly be allotted only to medical officers. The Committee in fact hoped to create a separate Jail service in which medical officers may serve continuously from the time of commencement of their career. Thus a medical officer was to be selected for the charge of a Central Jail as soon as possible after he completed his preliminary military service of 2 years and acquired a good knowledge of the vernacular.[10]

---

[7] Home, Judicial, A, 23rd June, 1864, Nos. 47-51
[8] Home, Jails, A, March 1893, Nos. 99-127
[9] Ibid.
[10] Ibid.

These suggestions were broadly accepted by the Government of India and orders were issued reserving all the posts of Superintendent of Central Jails in Bengal and half of the posts in the case of Bombay and Madras for commissioned medical officers. Furthermore, it was laid down that in Madras, Bengal, NW Provinces and Oudh, and the Punjab, medical officers who had already served as superintendents of jails would be given preference while making appointment to the office of Inspector General of Prisons.[11]

Medical 'Specialists', Penal 'Experts'

But what made medical men so desirable in the prison department? Did their special skills and medical knowledge promote their candidacy for jail administration?

It is undeniable that the particular qualifications possessed by medical officers were one of the considerations in appointing them as managers of jails. It needs to be noted that the high mortality and sickness in prisons had emerged as a major source of concern for the colonial government by the middle of the 19th century. When the first Prison Committee met in 1836, laxity of discipline and the lack of deterrence were seen as issues of much greater gravity than the health of prisoners. Indeed, the Committee declared with pride that in the great essentials of cleanliness, provision of food and clothing and attention to the sick, the state of the Indian prisons compared favourably with those of Europe and was highly 'honourable to the Government of British India'.[12]

The next few decades however witnessed a change on this front. By 1864, the government was forced to take a serious view of the large number of deaths in colonial jails. A minute by the Governor General on the subject noted that in many cases 'the sentence of imprisonment in India became virtually one of capital punishment'. The death rate in Indian prisons was as high as 7 per cent while in England it was less than 1

[11] Ibid.
[12] Report of the Indian Jails Committee 1919-20, Volume I, Simla, Government Central Press, 1920

per cent. [13] The Prison Committee of 1864 was therefore appointed to mainly look into this matter.

Of course it is important to remember that this concern for prison health and the move towards penal reform was not simply the outcome of latent humanitarianism on the part of the colonial officialdom.[14] As Satadru Sen has pointed out, by the mid-nineteenth century, 'the discourse of modernity had come to equate dirt and disease with political disorder, and colonial administrators saw effective control over sanitation and public health.'[15] Thus failure to control sickness in jails could be seen as a loss of political control in this domain. More significantly, official sensitivity to public criticism of the state of prison health was an important factor. Initially it was public opinion in England which weighed more on the minds of the colonial government. However by the turn of the century, adverse reactions in the indigenous press were equally, if not more, crucial in affecting colonial policies.

Whatever be the actual motivating factor, the fact remains that the need for more effective supervision of areas like cleanliness, ventilation, clothing and, food in prisons came to be widely recognised. But it was not just the health of prisoners which thrust itself into the eye of the government during this time. Instituting suitable labour regimes in the jails, and providing for a disciplinary mechanism which would be an adequate deterrent for the ordinary prisoner were also significant matters of interest. Prison administration was thus increasingly seen as a full-time task requiring special experience and knowledge, a point which was repeatedly pressed home by successive committees. The Jail Committee of 1919-20 for instance regarded the presence of a whole-time expert in every prison to be 'an essential of sound jail administration'. It pointed out that in every British prison and in every American prison other than the county jails there was invariably a governor, warden, or superintendent with 'no other duty than prison

[13] Minute by the Governor General, dated the 2nd March 1864, Home, Judicial, A, 3rd March 1864, Nos. 5-8
[14] This point has already been adequately argued in Anglo-French historiography. See M. Foucault, *Discipline and Punish,* Ignatieff, *A Just Measure of Pain*, et al.
[15] S. Sen, *Disciplining Punishment*, p. 133

administration'. Consequently a similar arrangement should, as far as possible, be made in India as well.[16]

To many in the official circles, the qualifications possessed by medical officers made them best-equipped to handle the responsibility of prisons. No one could speak with greater authority on subjects like sanitation, disease, and diet in the jails. Moreover, their inputs on the physical capability of the body to perform labour or bear punishment were regarded to be crucial in designing penal regimes. Not surprisingly then, the Government of India while accepting the recommendations of the 1888 Jail Committee asserted that

> Medical Service affords the best material out of which a service of trained Jail officers, possessing the requisite scientific knowledge and acquaintance with the laws of health, can be provided.... It is essentially a branch of administration which cannot safely be entrusted to amateurs, and in which it is necessary to require at the outset a good general acquaintance with sanitary laws, upon which experience will gradually gather itself in the course of years.[17]

Similarly Colonel Jackson and Sir Walter Buchanan, members of the Jail Committee of 1919-20 noted that if the principle of individual treatment of prisoners was to be brought into play, then a doctor would be the 'most suitable superintendent'. As they pointed out,

> The ground work, details and whole nature of his training teach him to look on each man as a separate entity; no two patients are alike in mind, constitution or physical strength: there is no greater probability that any two prisoners will be alike.[18]

Furthermore, they stressed that if the theory that regarding 'the greater part mental defect and abnormality play in the production of crime', was to be accepted, then there was 'a strong additional argument in favour of a medical superintendent.'[19]

---

[16] Report of the Indian Jails Committee 1919-20
[17] Home, Jails, A, March 1983, Nos. 99-127
[18] Report of the Indian Jails Committee 1919-20
[19] ibid.

From the standpoint of these arguments then, the case for associating doctors with prison administration was a strong one. Indeed medical intervention in prisons was important for the colonial regime for other reasons as well. David Arnold for instance has suggested that jails were one of the few 'enclaves' in 19th century India where colonial medicine made its presence felt. He has argued that the jails, barracks, hospitals and dispensaries were some of the arenas where Western medicine had access to Indians and Indian society. It was through these 'privileged sites of observation and experimentation that Western medicine developed its wider understanding of disease in India'.[20]

Yet, it is significant to point out that while hardly anyone doubted that doctors were necessary for looking into the medical aspects of prisons, opinion on employing them as administrators was far more divided. While the need to have 'experts' for managing jails was widely felt; not everyone agreed that these had to be 'medical' experts. Despite their professional credentials, the ability of doctors to be in executive charge of jails was constantly questioned. Rather, it was felt that any one who possessed sufficient knowledge and experience of the working of a prison could develop as a 'penal expert'. The recommendations of various committees on the issue and the support received by the colonial administration at the centre ensured that the number of medical superintendents of jails steadily increased. The debate however never entirely died down and dissent on the topic continued to be voiced by various local governments for a long time.

Medical Superintendents: To Be or Not to Be

It may be remembered that when the administrative responsibility of jails was first entrusted to medical officers in the early 1860s, the step was taken only experimentally. The Government of India sought a report from the respective local governments on the results of this measure.[21] Thereafter, as we have seen, the incorporation of medical men

[20] Arnold, *Colonising the Body*, p. 61

[21] For instance, the Government of India sanctioned the proposal of the Central Provinces on condition that 'at the expiration of the twelve month of probation a report on the operation of the scheme in respect both of administrative efficiency and financial economy should be furnished...' See Home, Judicial, A, 4th September 1863, Nos. 1-2

in the jail department received regular support from the Government of India right up to 1893 when firm orders were issued in its favour. The proposal was however equally steadfastly countered by certain local governments, particularly that of Madras and Bombay.

For instance, one objection raised by the Madras government was that it faced a paucity of commissioned medical officers and could not spare them for jail appointments. In view of this fact, the Government of India made an exception in its favour in 1868, and Madras therefore continued to have non-medical men holding the superintendentship of central jails long after provinces like Central Provinces and North West Provinces and Oudh had made the shift. For example in 1877, of the permanent officers selected for the charge of the six central jails and the presidency jail, five were military officers, one civilian, and only one medical.[22]

Another point of criticism was the lack of time faced by civil surgeons to perform jail duties. A. G. Cardew, entrusted with the task of enquiring into various questions raised in the report of the 1888 Committee, was emphatic that this fact made civil surgeons completely unsuited to the responsibility of managing district jails. They usually had 'a Municipal dispensary, a Branch dispensary, and Police hospital to visit, and the whole civil population of the station and district to look after' and thus could not give the time for 'the efficient and economical working of a jail.' Moreover, as District Medical Officer the Medical Superintendent had to make 'prolonged tours, often lasting over a month at a time'. During his absence, the jail was in charge of an Assistant Surgeon, who at other times had no connection with it, and hence knew little about its rules or management. Jail administration consequently suffered.[23]

In order to substantiate his point, Cardew gave the example of the District Jail in Bellary where the executive administration 'showed many signs of the Medical Officer's inability to exercise sufficient control.' Among other things 'no attempt at economy by

[22] Home, Judicial, A, June 1877, Nos. 130-164
[23] Report on Jail Administration in Madras, Home, Jails, A, March 1893, Nos. 99-127

means of keeping sheep, grinding oil, or reducing the expenditure of fuel' had been made. There was little check on the consumption of rations purchased with the result that 'the cost of rations per head in Bellary in 1890 was higher than in any Central Jail, except Trichinopoly'. Also, there was 'no separation of reconvicted prisoners', and 'the Main-gate Register was so imperfectly kept as to be useless.'[24]

The combination of executive and medical functions in one man was also criticised on the ground that it placed an inordinate power in the hands of the jail superintendent.[25] Cardew for instance asserted that the separate existence of a superintendent and a medical officer had an advantage in the sense that the medical officer could 'check any tendency on the part of the superintendent to overwork his prisoners', and the Superintendent is able to 'counteract any liability of the doctor to pamper or allow malingering among convicts.'[26] In similar vein, many witnesses before the Jail Committee of 1919-20 contended that the presence of two officers, gave the prisoners 'a better chance of fair treatment'.[27]

However, the principal argument against engaging doctors as jail superintendents was that medical skill was not the sole requirement for looking after a jail. A more important consideration was administrative ability. Doctors may have knowledge of sanitation but not all of them possessed the managerial skill necessary for administering a prison. Restricting the choice of jail superintendents to medical officers may then deprive the government of the services of men who were more efficient. Cardew for instance, stressed in his report,

> I do not see why a Medical Officer should not make as good a Superintendent as any other man of equal intelligence and good education,

---

[24] Ibid.

[25] Satadru Sen has pointed out that in the case of the penal settlement in the Andamans, a balance of power between the Medical Officer and the Superintendent functioned as a system by the central government in Calcutta could exercise control over the local regime in Port Blair. See S. Sen, *Disciplining Punishment,* p. 20. It is important to note however that as far as the prisons in the mainland were concerned, the possibility of friction between the superintendent and the medical officer became a strong counter-argument in favor of combining the offices in the same man.

[26] Report on Jail Administration in Madras, Home, Jails, A, March 1893, Nos. 99-127

[27] Report of the Indian Jails Committee 1919-20

> but there is no apparent reason why, other things being equal, a Medical Officer should make a *better* Superintendent.[28]

He thus suggested that appointments to the Jail department could be made from other departments such as the Police, a recommendation which appealed to the Madras government.[29]

In fact, far from accepting that medical officers were innately appropriate for the jail department, the local government of Bengal was emphatic that they would require a period of training before they could be 'safely entrusted with the charge of a Central Jail'. It noted that medical officers were not necessarily 'the only, or the most, suitable men to carry out the discipline...needed in great jails' and unless they had 'a gift in this direction', their 'special qualities as doctors' were 'likely to be somewhat wasted.' It thus lamented the lack of such a provision for training in the1889 report of the Jail Committee.[30]

Significantly, the local governments were not the only ones which took this view of the matter. The Secretary of State in his correspondence on the subject with the Government of India was also doubtful about the necessity of the step and asked the government to reconsider its orders. As he stated,

> Experience in other countries does not, so far as I am aware, make it probable that administrative capacity, which is the most important qualification for the post, will be more frequently found in medical officers than in any other class; and it should be possible occasionally to give non-medical officers the necessary special training.'[31]

Indeed, the above objection was not an easy one to meet as far as the Government of India was concerned. For instance, in its reply to the Secretary of State, it admitted that medical superintendents were 'no better than carefully selected and trained non-medical

---

[28] Report on Jail Administration in Madras, Home, Jails, A, March 1893, Nos. 99-127 (my italics)
[29] ibid.
[30] Home, Jails, A, March 1893, Nos. 45-50
[31] Home, Jails, A, October 1893, Nos. 32-36

superintendents' such as had previously held charge of central jails in Bengal.[32] Further, it did not find it expedient to accept in totality the recommendation of the 1888 Committee regarding the reservation of the post of Inspector General of Jails for commissioned medical officers. In this context too it conceded that the post of Inspector General demanded administrative capacity 'which may be wanting in an officer who has proved himself to be an admirable Superintendent of a jail.' Instead of unqualified reservation in their favour, medical officers were only to be given preference in making appointments to this particular office.[33]

It seems then that the Government of India found it difficult to maintain its own position that medical officers with their scientific background were best qualified to handle jails. Indeed when pushed into a corner so decisively it was forced to cite administrative contingencies and military necessities defend its policy. Among others, these as we shall see, included the difficulty in finding another cadre of officers who could in effect be handed the responsibility of jails, and further the need to provide quasi-medical posts for medical officers in time of peace so as to be able to maintain a larger cadre to meet any emergencies.

Administrative Contingency, Military Necessity

We have noted previously complaints being made regarding overworked civil surgeons and their inability to pay adequate attention to prisons. Ironically though, medical management of jails was initially sought to be introduced because civil surgeons were presumed to have more time to spare than the judicial magistrates who had been hitherto in control. The multifarious responsibilities entrusted on the latter meant that they were unable to exercise a close supervision of jail activity. In contrast, the medical officer, as the Government of Central Provinces pointed out, visited the jail in his medical

[32] ibid.
[33] ibid.

capacity daily and therefore had greater opportunities for becoming 'intimately acquainted with the economy of the jail'.[34]

In fact, the issue was also noticed by the Jail Committee of 1864 which reported,

> When it is considered how various the avocations of the Magistrate are; how impossible it is that he can devote more than a fraction of his time to his Jail duties; how frequently he is changed; how often absent in the district, it is only to be wondered at that Jails under Magisterial management are as good as they sometimes are. No sustained discipline can be carried out as long as the Native Jailor is the principal Jail authority, which he must virtually be when the supervision is so nominal a one as that of the Magistrate.[35]

The Committee thus urged the importance of looking out for 'a body of men who may be relied upon to keep up a supply of qualified Superintendents' and pronounced the Medical Service as 'most likely' to meet this demand.[36]

It seems plausible to suggest then that prison work was originally handed out to the medical officers partly by default. Indeed one of the main reasons why they came to be favoured by the Government of India as jail administrators was the absence of any other cadre of officials who could be handed the responsibility. As we have noted, Bengal was the only province which had a separate service for jail officers. In other provinces, there was the need to recruit them from other services, and in this context medical officers appeared to present the most suitable alternative partly due to their presence in every district. Thus the Government of India pointed out in 1893 to the great difficulty of 'constituting and maintaining on an efficient footing small services in special branches of work' and the ease with which medical officers could be utilised for the purpose.[37]

The question of economy also intervened in the decision to medicalise prisons. The necessity of providing a doctor for performing medical duties in each jail was

---

[34] Home, Judicial, A, 4th September 1863, Nos. 1-2
[35] Home, Judicial, A, 23rd June 1864, Nos. 47-51
[36] Ibid.
[37] Home, Jails, A, October 1893, Nos. 32-36

unquestioned. Yet, it was also recognised that separating medical and executive charges was likely to be much more expensive for the government. In such a scenario, not only would the government have to hire a jail superintendent, it would also have to pay an allowance to the medical officer performing jail duties. The Jail Committee of 1919-20 for instance stressed,

> We suppose that it can hardly be disputed that, granted the possibility of securing the services of two first class men, one for the administrative charge of a jail and the other for the medical charge, it is better to have two men than one. It is undoubtedly diff to find combined in the same individual the varied gifs(sic) generally required of the superintendent of a large jail in India... But though the provision of a separate superintendent and a separate medical officer, both of first class qualifications, thus represents the ideal, we clearly recognise that under Indian conditions it is not practically obtainable, except at an expenditure which must be regarded as prohibitive. [38]

The Committee thus recommended that the system of recruiting superintendents of central jails from the IMS and of giving them combined executive and medical charge ought to be continued.

The need to increase the cadre of medical officers in order to meet any unforeseen military contingency was however the key factor behind the decision to reserve jail offices for medical men. In 1887, barely a couple of years before the Dr. Lethbridge and Dr. Walker submitted their decisive report, it was brought to the notice of the government that in the event of the occurrence of any sudden and extraordinary emergency, the military would require as many as 220 commissioned officers of the IMS, including a reserve of 15 per cent necessary to meet casualties. Of this total number required, 52 would be provided by the regiments and the rest would have to be provided by the civil department. [39] After duly consulting all the local governments, the Government of India surmised that only around 40 per cent of the medical officers in civil employ could be

[38] ibid.
[39] Home, Medical, A, October 1887, No. 92

withdrawn for military duty. [40] Thus an additional 45 commissioned medical officers would still be required to reach the desired figure.[41]

It was suggested that the strength of the medical establishment could be raised most economically by keeping certain quasi-medical appointments in the civil department exclusively for the commissioned officers of the IMS. Of these, posts in the jail department were considered the most suitable for reservation. As the Officiating Surgeon General Dr. Walker pointed out in an official note,

> The first class of appointments which afford a legitimate number of reserved appointments are the appointments connected with the management of jails. In some provinces these appointments are reserved to a greater extent than in others, but I think that it can be shown that the reservation of the whole will not only serve to remove partly the military difficulty now confronting the Government, but will, without adding to the pub expend as a whole provide the Local Governments with *as efficient a machinery for the management of their jails as it is possible to secure.*[42]

Consequently he proposed that among other offices, those of Inspector General of Jails in Madras, Bengal, the NW Provinces and Oudh, and in the Punjab as also the Superintendentship of all Central prisons in Bengal and Madras must be reserved for medical officers at all times.[43]

Clearly, doctors were brought in at this juncture mainly to resolve a military need, yet the measure was also sought to be justified on grounds of efficiency. The

---

[40] It was pointed out that at least 60 per cent of the medical officers in civil employ must be retained, first for the charge of large and imp centres of population where the civil administration would be seriously crippled both judicially and in a medical point of view, by the withdrawal of the civil medical officers; secondly for the machinery of the education of Medical subordinates, Warrant officers, Assistant Surgeons and Hospital Assistants; and thirdly, for the medical and military administration of Local Governments. See Note by Dr. Walker, dated 6th May 1887, Medical, A, June 1887, Nos. 93-109

[41] Home, Medical, A, October 1887, No. 92

[42] Note by Dr. W. Walker, dated 6th May 1887, Home, Medical, A, June 1887, Nos. 93-109 (my italics)

[43] Besides these jail appointments, Walker also proposed to reserve the Port Health Officership at Calcutta and the Superintendentships of the Botanical Gardens at Howrah and Saharunpur. These were to totally account for 22 out of the 45 additional officers required. The remaining 23 medical officers were proposed to be provided for by increasing the proportion of the medical charges to be held by commissioned officers which were at that time filled by uncovenanted officers, but to which commissioned officers had the preference. ibid.

Government of India while accepting the recommendations of the Jail Committee of 1888 on the subject in fact mentioned as much, emphasising that it was desirable 'to provide posts which can be held by commissioned medical officers in time of peace, so as to enable a large reserve of these officers to be furnished in time of war'.[44]

It appears then that the growing influence of a scientistic discourse was not the main reason which led the colonial government to favour the incorporation of medical officers in the jail department. No doubt the professional qualifications of doctors could be an asset in managing prisons more scientifically. These were however no guarantee for efficient administration. This risk notwithstanding, specific administrative constraints and military contingency compelled the Government of India to reserve offices exclusively for medical officers.

Willing Doctors, Unwilling Prison Administrators

It is interesting to note that while various circumstances compelled the Government of India to step up the recruitment of medical men in prisons, the officers in question were often less than enthusiastic to take up the responsibility. Undoubtedly some of the medical officers made their careers out of the experience gained while serving in jail offices. They took an active interest in the running of the prisons under their control and emerged as keen advocates of different varieties of penal reforms. Yet, a vast majority of other doctors were reluctant to be associated with the jail department. Not only was there a paucity of willing candidates, but even the existing officials could find prison duty, medical and non-medical, repugnant.

The Jail Committee of 1864 for instance cited 'insufficient medical inspection' as one of the causes of increased mortality in the prisons. It took note of the disturbing trend whereby medical officers did not fully recognise their personal responsibility for the

[44] Home, Jails, A, March 1893, Nos. 99-127

treatment of sick prisoners and relied on the report of the native subordinate in order to forego 'personal inspection of the Jail Hospital'. Accordingly it recommended

> That frequent, and in case of epidemics, or a sickly season, daily inspections of prisoners by the medical officer and the officer in charge of the jail should be considered obligatory. And the treatment of the sick in Jail Hospitals should be distinctly understood to be the personal duty of the medical officer, not to be delegated by him, under any circumstances, to a native subordinate.[45]

Indeed the Committee's assessment was based on solid ground. Cases of mismanagement or neglect of prisons by doctors came up with regularity. For instance, a report on the Jail at Ootacamund filed by Acting Inspector General of Hospitals J. Shaw in 1863, accused the medical officer in charge of the prison Asst Surgeon General L. W. Stewart of 'laxity of supervision'. It was stated that the latter visited Jail only once a week instead of daily. Furthermore, he had been remiss in monitoring the diet of the prisoners. During the course of an inspection it was observed that several of the convicts on the sick list were being administered a diet far in excess of the prescribed quantity. Shaw also reported leniency in the extraction of work from the prisoners. He opined that the number of men who reported sick was unusually large and that 'were regular work exacted, the number of sick men would generally be less'.[46]

Stewart's 'omissions' betray a lack of interest on his part of the work which was assigned to him. His disenchantment with his job is also evident from the letter he addressed to the local government demanding remuneration for the 'extra duty' which had taken up a large portion of his time and which was 'never intended to be gratuitously performed'. He cited the case of Bengal where the officer in charge of all native jails received 100 rupees per mensem and asked for the same rule to be applied to him. Not surprisingly however, in view of the unfavourable report received regarding his conduct, his particular request was refused.[47]

---

[45] Home, Judicial, A, 3rd March 1864, Nos. 5-8
[46] Home, Judicial, A, 9th November 1863, Nos. 10-12
[47] Ibid.

It may be pointed out that Stewart had been entrusted only with the medical charge of the Ootacamund Jail. It is reasonable to suppose that doctors who were expected to perform both medical and executive functions could be even more disinclined. As the Surgeon-Major General with the Government of India, W. R. Rice noted in 1894 that 'ordinarily medical officers, especially young medical officers, dislike joining a Jail department or becoming Superintendents of Central Jails. Officers who have confidence in themselves in their practice of the regular line of the profession will not do so...' Rice asserted that as a rule a medical officer in jail service was 'a good deal of a failure in professional work'. He lived, 'as a rule, too far from the civil station to encourage persons to constitute him their medical attendant'.[48]

Besides, social isolation and loss of professional esteem, jail duty also created other difficulties. The charge of a jail was an onerous responsibility involving a considerable amount of work; indeed the superintendent was expected to spend 'all his mornings in the jail and greater part of the evenings', and he was to be 'readily available at all hours of the day'.[49] The work itself as we have noted could be distasteful to some officers while others 'felt tainted by the criminal associations of the prison.'[50]

The need to make the jail service more attractive thus soon emerged as one of the most important considerations before a colonial regime committed to increase medical involvement in prisons. One of the important ways in which this was sought to be done was through increased remuneration. Doctors had been offered an extra allowance for the administrative responsibility of jails from the very beginning. For instance, in the North West Provinces, the Civil Surgeon who had charge of, and magisterial powers in, the Jail; drew an allowance from Rs. 50 to Rs. 100 per mensem as allowance to cover the expense of a small office establishment.[51] Subsequently the pay of commissioned medical officers in administrative charge of central jails came to be governed by a Home Department Resolution of 1871. According to this, the pay scale of a superintendent of a first class

[48] Home, Jails, A, March 1893, Nos. 99-127
[49] Home, Medical, A, March 1882, Nos. 19-20
[50] Arnold, *Colonising the Body*, p. 102
[51] Home, Judicial, A, 4th September 1863, Nos. 1-2

jail containing 1000 or more convicts received Rs. 700-50-950, while that of a second class jail was Rs. 550—50-700.[52]

The remuneration due to Jail Superintendents was however considerably increased following the report submitted of the 1888 Jail Committee. It was recognised that the prizes of the Jail Department were 'not perhaps on an equality with those in other branches of the Medical Service' and better pay was one method by which officers could be induced to join it a young age. Consequently, it was ruled that commissioned medical officers who remained in charge of central jails after 18 years' service should receive pay rising by yearly increments from Rs. 950 to Rs. 1200. Simultaneously, the salaries of civil surgeons administering district jails were also increased.[53]

Simultaneously, the Government of India also held out other prospects for doctors. Superintendents of Central jails had been initially denied the right to private practice as it was thought that this would hinder the performance of their assigned work.[54] However, now the Governor General in Council conceded that central jail superintendents could practice provided the local government was satisfied that it did not interfere with their duties.[55] Additionally, medical officers in jails were to have substantial claims to the post Inspector General of Prisons, the provision of official residence free of rent, and freedom from frequent transfers as inducements.[56]

Significantly however, while incentives such as the possibility of greater pay could resolve the problem of attracting medical officers initially, they were not entirely sufficient in retaining them in the jail department. To cite just one example, we hear of Captain R.H. Maddox who was appointed as the Superintendent of the Presidency Jail in Bengal early in 1902 after 'a prolonged period of arduous and responsible work in connection with plague in the district of Saran'. Captain Maddox was apparently the mistaken belief that the salary of his appointment was Rs. 900. Immediately after joining,

[52] Home, Jails, A, March 1893, Nos. 99-127
[53] Ibid.
[54] Home, Medical, A, March 1882, Nos. 19-20
[55] Home, Jails, A, March 1893, Nos. 99-127
[56] Ibid.

however, he found that his pay scale was only Rs 700-50-950, and further, 'the work was uncongenial'. Within two months of taking charge he requested to be permitted to revert to the general line.[57]

In fact, the problem of high turnover in jail service was so acute that in 1901, the Government of India had to pass orders in order to prevent officers from making a convenience of the department. Government rules gave medical officers the option of leaving the department within two years of entering it. This provision was necessary so that the potential candidates did not get deterred by the prospect of long years of jail service without any option of escape. It was found however that many officers tried to enter the jail service mainly to get a higher salary for 2 years and then reverted back to civil employ trying to gain precedence in obtaining a civil surgeoncy over others who had not similarly opted for the jail appointment. Consequently it was decided to attach a penalty to such a move by laying down that an officer would have to go to the bottom of the Provision list on reversion.[58]

Indeed on the whole, the government continued to face difficulty in obtaining suitable candidates to man its prisons. In 1901, it was decided to further improve on the scales laid down earlier by the previous Jail Committee. Consequently, it was proposed that jail superintendents of central jails should be permitted to reach the pay of Rs. 1200 by annual increments of Rs. 50 to begin with after the completion of 13 years' service in the department.[59] Similarly, in 1903, the Government of India recommended an increase in the remuneration of allowances for the charge of district jails.[60] Yet, jail service continued to be viewed in an unfavourable light by many medical officers.

To sum up, medical presence in prison administration became significant over the course of the 19th century with the Government of India steadily advancing the claims of

---

[57] Home, Jails, A, February 1903, Nos. 9-10
[58] Ibid.
[59] Home, Jail, A, August 1901, Nos. 28-30
[60] The Government of India proposed a salary of Rs. 250 p.m. for the charge of 1st class jails having 700 or more prisoners, Rs. 200 p.m. for 2nd class jails, Rs. 150 p.m. for 3rd class jails, Rs. 100 p.m. for 4th class jails, Rs. 75 p.m. for 5th class jails and Rs. 25 p.m. for 6th class jails. See Home, Jails, A, July 1903, Nos. 28-37

doctors to manage jails. One reason for this was of course the belief that medical officers with their special educational qualifications could more readily deal with problems like sickness, sanitation and labour in colonial prisons. Yet, this particular claim was a deeply contested one opposition to it coming from various local governments as well as from within the official circles at the highest level. The discourse regarding scientism thus made limited progress, and indeed most doctors were themselves unenthusiastic about the idea of emerging as penal 'experts'. In the final analysis then, administrative convenience and the military need to increase the cadre of commissioned medical officers became the key factors in engaging doctors in jails administration.

Chapter 3

Health and Discipline: The Role of Medical Officers in the Prison Regime

In the previous chapter we have seen that the number of medical personnel involved in direct jail administration steadily grew over the years. Furthermore, the incorporation of doctors in prison regime resulted more from administrative exigency than from any desire to infuse science in jail management. It would be pertinent however to examine how the medical officers themselves viewed their new role as prison administrators. To what degree did their scientific background influence their actions and thinking on penal matters?

In this context, it is important to note that by the late 19th century, the regular principle of disciplinary imprisonment was being discredited in Europe. There was 'a dramatic decline of interest in the "separate system" as a cure-all for crime.'[1] As Wiener has pointed out in the case of England, the combination of a more uniform and rigorous penal regime with an expanding role for medical doctors came to uncover 'growing numbers of prisoners who, through mental or physical deficiency or other causes, seemed not to be amenable to the intensified penal discipline meant to deter and moralise.' Around the prison then there grew up a number of 'nonpenal incarcerative institutions' for juveniles, 'middle-class habitual drunkards', lunatics and imbeciles. The medical discourse of the period tended to focus on the notion of 'weak-minded and weak-bodied criminals' in need for cure.[2]

The influence of these currents in the case of colonial India during the same period was however limited. No doubt there were voices which stressed the importance of reformatory influence on prisoners. Yet, moved by a particular construction of Indian

[1] Nye, *Crime, Madness, and Politics*, p. 38
[2] Wiener, *Reconstructing the Criminal*, pp. 315, 320, 321

society and its people, the overweening commitment of the colonial regime throughout this period was on deterrence rather than on reform. Significantly, many of the doctors who came to occupy the position of jail superintendents did not differ appreciably from this broader colonial view. In many ways, once medical officers became a part of prison system, their thinking tended to be conditioned more by the administrative contingencies they faced on a daily basis rather than by their professional background. Thus, in this sense, their shift from doctors to pure administrators was complete.

Reforming Influence vs. Discipline: The Struggle for Balance

The colonial government in India was constantly faced with the dilemma as to the whether the objective of imprisonment should be to reform the criminal and rehabilitate him, or simply to deter him from committing the crime again. Undoubtedly, the choice was not of the nature of 'either-or'; most colonial administrators agreed that prison regimes should theoretically attempt to attain both these aims at once. Yet, the balance in colonial prisons in India tended to shift towards deterrence.

For instance, labour regimes in colonial prisons tended to be mainly punitive in nature. Scholars like Satadru Sen have postulated that 'the ideology and the practice of work were both central to the penal system in colonial India.' Indeed the situation was not just peculiar to British India; nineteenth century Anglo- American social reformers and penal professionals also tended to equate idleness with crime and viewed work as a means of reforming criminals. At the broadest ideological level then, all work in colonial prisons was rehabilitative as the former was aligned with 'morality, civilisation and law', while idleness meant 'barbarism and vice'. Yet, in actual practice, labour in prisons was intended to be both 'a form of punishment' as well as 'a fundamental aspect of reform'.[3] And in fact, in the face of the large number of short-term prisoners and the need to tighten discipline in jails, the former aspect ended up receiving more importance.[4]

[3] S. Sen., *Disciplining Punishment*, pp. 86-87

[4] Sen points out that the rehabilitative nature of labor was more pronounced in the Andamans than on the mainland as in the former, the state could have control over 'a relatively stable convict population for extended periods'. Ibid. p.86

Thus we find that the first Prison Committee of 1836 while highlighting the lax discipline in the Indian jails 'advocated the building of central prisons where the convicts might be engaged..."in some dull, monotonous, wearisome and uninteresting task".'[5] Similarly the Prison Committee of 1864 lamented the lack of deterrence afforded by Indian prisons as was indicated by the number of prisoners being largely in excess of that for which prison accommodation had been provided. The Committee's recipe for improved jail discipline also included a labour regime which would be largely punitive in nature. As it pointed out,

> It must be always kept in mind that the Law intends imprisonment to be a punishment, and therefore the first thing to be looked to in labor is, not that it should be remunerative, not that it should keep prisoners in subjection...but that it should render a residence in Jail a matter of dread, apprehension, and avoidance.[6]

Apart from labour, improved superintendence and punishment of the recalcitrant were regarded as significant for making jail sentences more deterrent. On the other hand, education of prisoners as a means of reform continued to be given short shrift almost throughout the 19th century. Thus the 1864 committee viewed it as an aid to discipline 'by employing the time after the conclusion of labor' which would otherwise be occupied in idle conversation. Yet, it also stressed that nothing further than 'elementary instruction in reading, writing, arithmetic and the keeping of village accounts' was to be aimed for.[7] Similarly the Jail Committee of 1888 stressed that education of adult convicts would be of 'little value' and all attempts at education should be limited to juveniles.[8]

Of course not everyone eschewed the subject of reforming prisoners. The issue was considered particularly urgent in the case of juvenile delinquents with there being strong criticism of the practice of allowing them to mix with ordinary criminals. For instance, Mary Carpenter, an important voice on penal reform in England emphasized the

---

[5] Report of the Indian Jails Committee 1919-20, Volume I, Simla, Government Central Press, 1920
[6] Home, Judicial, A, 23rd June 1864, Nos. 47-51
[7] ibid.
[8] Home, Jails, A, March 1893, Nos. 99-127

importance of introducing reformatory and industrial schools for India on the lines of the English system. As she pointed out,

> So great is the certainty of every young person being made worse by being sent to gaol, that the substitution of whipping for Juveniles is appointed by a special Act. It is well known that this does not produce even a deterrent effect; the boys return again and again, more and more hardened. [9]

She suggested therefore that no young person under 14 should henceforth be sent to prison, but that all who commit acts for which they are now legally punished, and all wandering without proper guardianship should be sent to a Government industrial school under the general provisions of the English Industrial Schools Act.[10]

Apart from juveniles, the idea of rehabilitation of adult prisoners was also raised in government circles, and indeed idealised by many colonial officials. For instance, A.P. Howell, Officiating Secretary to the Government of India, in a note on prison discipline in 1874 argued that the colonial government in India should follow the example of the metropolis in making a clear distinction between short-term and long-term prisoners. In England, prisoners with a sentence of less than two years were sent to a county or borough jail where the treatment was 'exclusively penal and deterrent during the entire sentence'. For long-term prisoners however, the punishment was so designed as to be both deterrent as well as reformatory with confinement initially in one of the convict prisons at Pentonville or Millbank, and subsequently in a public works prison.[11] Howell stressed that a similar system should be adopted in India as well with district jails dealing

---

[9] Paper Read by Mary Carpenter at the Congress of the Social Science Association, Glasgow, October, 1874, Home, Judicial, A, July 1876, No. 174

[10] Ibid.

[11] Long-term prisoners in England were first sent for nine months to one of the convict prisons, Pentonville or Millbank, where they were placed in separate confinement, and 'excepting the periods allotted for prayer and exercise... engaged in some hard work, industrial or remunerative'. At the expiration of this period they were passed on to a public works prison where they were to work on large public works. During the entire sentence, 'the man's moral and religious education was looked after'. The third phase was when the convict was conditionally released on ticket of leave but kept under supervision of the police. Note by A. P. Howell on Jails and Jail Discipline in India, dated 20th July 1874, Home, Judicial, A, July 1876, No. 174

with 'casual crime' and central jails reserved exclusively for 'hardened or trained criminals'.[12]

Significantly however these recommendations were rejected by citing the peculiarity of the Indian situation and the Indian people which the colonisers had to face. Native convicts were widely perceived to be intractable and not amenable to reform. Thus E. C. Bayley countered Howell's arguments by postulating that the 'moral conditions' in India were completely different from those which prevailed in England. The majority of heinous offenders in India were unlike their English counterparts not habitual offenders. Rather they included persons who had been 'betrayed into crime by some sudden provocation, or by some overpowering and isolated temptation.' The few habitual criminals that did exist were criminals 'by birth' and thus knew 'no wrong in crime'. Besides, even the non-habitual Indian offender was 'a man of very vague moral perceptions and ordinarily of little education'.[13] Bayley thus asserted that

> The Indian criminal population is, on the one hand, to a far larger extent than in England, not a population thoroughly vitiated by crime; on the other hand, that even this better class is far less amenable to moral influences generally than a large proportion of habitual criminals in England is...the comparatively small habitual criminal class in India is on a part almost entirely with the very dregs of the habitual criminal class in England, and even, if possible, normally less open to good influences.[14]

In Bayley's view then reformatory discipline was not really possible in India. Rather the true problem of Indian jail discipline was to make it 'really deterrent in all classes without unduly affecting the health of the prisoners or inflicting any cruel severities.'[15]

It is pertinent to note that behind the claims regarding the intractability of Indian character was an admission of the limits of colonial power in the prison environment. As scholars like David Arnold and Satadru Sen have indicated, resistance was a key feature

---

[12] ibid.
[13] Note by E.C. Bayley on Mr. Howell's Note on Jails and Jail Discipline in India, dated 25th January, 1875, Home, Judicial, A, July 1876, No. 174
[14] Ibid.
[15] Ibid.

of colonial prisons. Prisoners attempted to thwart the disciplinary order imposed on them on a daily basis and the colonial state had to struggle sometimes to control the native subordinates it had employed.[16] In this sense, the emphasis on discipline within the prison was a matter of administrative exigency.

Whatever be the reason, the fact remains that making jails deterrent continued to be a prime objective for the colonial government in India throughout the second half of the 19th century. Thus the Jail Committee of 1919-20 could declare with some regret,

> It is certain that Indian prison administration has somewhat lagged behind on the reformative side of prison work....It has a little lost sight of the effect which humanising and civilising influences might have on the mind of the individual prisoner and has focussed its attention on his material well-being, his diet, health and labour....In consequence while the results of the Indian prison treatment are admitted generally to be deterrent, they are not generally regarded as reformatory...[17]

It is important to point out that medical officers who were appointed as jail superintendents generally attempted to work within the same paradigm of deterrence and discipline. The responsibilities of a jail superintendent as spelled out in the legislative acts and jail manuals of various provinces were multifarious. According to the Prisons Act of 1894 a Superintendent was to 'manage the prison in all matters relating to the discipline, labour, expenditure, punishment and control'. He was to submit to the Inspector General of Prisons all bills of expenditure with proper vouchers of audit, report all escapes and recaptures, send returns of prisoners sentenced to transportation, and periodically inspect all property of the government in his charge.[18] As officer in charge of medical work related to the prison he was fully responsible for physical and mental fitness of a prisoner. His opinion was sought before subjecting any prisoner to penal labour or corporal punishment, and he was required to visit any prisoner kept in separate

---

[16] See David Arnold, 'The Colonial Prison: Power, Knowledge and Penology in Nineteenth-Century India' in David Arnold and David Hardiman, eds. *Subaltern Studies VIII: Essays in Honour of Ranajit Guha,* New Delhi, OUP India, 1994. Also S. Sen, *Disciplining Punishment.*

[17] Report of the Indian Jails Committee 1919-20

[18] Home, Jails, A, March 1893, Nos. 99-127

confinement. On the death of any prisoner, he was to record all particulars about the nature of illness and details of post-mortem examination. Additionally, he was responsible for matters like sanitation and diet in the prison. The combination of medical and executive charge in a single individual meant that the friction that existed between the two in England did not exist in the Indian situation. Furthermore, the opinions of jail superintendents with a medical background on a subject like jail discipline did not differ greatly from those of their non-medical counterparts.

Jail Offences and Punishment: The Case of Whipping

Since deterrence was a crucial objective in Indian jails, designing suitable methods of punishing jail offences was of the greatest importance. The law on the subject was contained in four different enactments, Madras, Bombay and Bengal having local acts while in other Provinces, the general Prisons Act, XXVI of 1870 applied. These laws differed as to the offences specified, the punishments which may be inflicted, and the authorities competent to inflict them.[19]

Generally prison offences were related to either breaches of jail discipline or refusal to do work. For instance, the Prisons Act XXVI of 1870 listed eleven offences four out of which were related to any attempt to infringe the labour regime, and the rest included transgressions like 'wilful disobedience to the regulations of the prison', 'assault or use of criminal force by any prisoner', 'indecent or disorderly behaviour' and 'conspiring to escape, or to assist in escaping'.[20] The punishments permitted included those which could be inflicted under the authority of the jail superintendent and those which required magisterial powers. As per the Act XXVI of 1870, the former included 'imprisonment in solitary confinement for not more than seven days', close confinement for not more than three days without reduction of diet', 'corporal punishment not

[19] Subsequently, following the recommendations of a Conference of Jail Experts held in 1892, a comprehensive Prisons Act of 1894 was drawn up to bring about some degree of uniformity in the rules relating to offences and punishment. This is also noted elsewhere in this chapter.
[20] Home, Judicial, A, January 1882, Nos. 113-197A

exceeding thirty stripes with a rattan', and to prisoners not sentenced to rigorous imprisonment, hard labour not exceeding seven days'.[21] Reduced diet was also included as a form of jail punishment in other legislative acts.

It is noteworthy that corporal punishment was for much of the second half of the 19th century one of the most important means of punishing jail offences. The use of bodily violence against natives though regarded as necessary was however also problematic. As Stephen Pierce has pointed out in the context of flogging in Northern Nigeria, corporal punishment was regarded by the colonial regime as a traditional form of penalty. Thus despite being inherently 'repugnant' to the colonisers, it was still considered necessary to meet 'the peculiar demands of establishing colonial rule over primitives'. Yet the spectacle of flogging also threatened 'the image of colonialism as a humanitarian undertaking' and 'threatened scandal'.[22]

Indeed corporal punishment in colonial India had a long and controversial history. In 1834, Lord Bentinck passed a regulation abolishing whipping and substituting it with imprisonment. This was followed in 1835 by a general order ending its use in the Indian regiments in the Company's army. These measures must be placed in the context of the growing unease regarding the public spectacle of flogging. Whipping was considered to have no reforming effect and instead presented a 'brutalising exhibition' for the public. In the army a further consideration behind abolition of corporal punishment was the need to attract 'respectable recruits'.[23]

Corporal punishment was however restored to military discipline in 1845 and to criminal justice by Act III of 1844.[24] It was listed as one of the forms of punishment in the Indian Penal Code and in 1864 the Whipping Act was promulgated. It is important to note that the need for the penalty of whipping was justified on ground that jail

[21] Ibid.
[22] Stephen Pierce, 'Punishment and the Political Body: Flogging and Colonialism in Northern India', in Stephen Pierce and Anupama Rao eds, *Discipline and the Other Body: Correction, Corporeality, Colonialism*, Durham, Duke University Press, 2006, pp. 188, 190
[23] Radhika Singha, A Despotism of Law: Crime and Justice in Early Colonial India, New Delhi, OUP, 2000 (paperback), pp. 250-251
[24] Ibid. p. 251

accommodation in India was inadequate and jail discipline in general ineffective. Whipping was regarded as a cheaper alternative to imprisonment. Moreover it was recommended as 'a means of preventing the contamination of the young offender in jail.'[25] Significantly, colonial constructions of Indians being immune to the reformatory influence of prison were also crucial in this context. As the Government of Bombay noted in its response to a query by the Governor General in Council prior to introducing the Act,

> It must be very doubtful whether the description of prison life given by a released convict to his companion in his own village, can really present any formidable aspects... It must be borne in mind that that mass of criminals with whom our Courts have to deal are men altogether deficient in a moral sense, and on whom no punishment which does not inflict actual pain, can exercise any perceptible influence.[26]

Despite these arguments in its favour the continued use of corporal punishment remained awkward for the colonial regime. Use of the lash in prisons did not carry the problematic connotations of spectacular punishment.[27] Yet, the infliction of corporal punishment on prisoners coming from the 'respectable' classes was a continuing concern particularly in the wake of growing criticism from sections of the Indian opinion. For instance, Whipping Act (VI of 1864) was accompanied by a slew of petitions from various native organisations protesting its introduction. Thus the British Indian Association wrote to the Governor General in Council,

> Flogging...is a barbarous punishment, incompatible with sound and enlightened principles of penal jurisprudence, and ineffective either in the way of reformation or example. Whatever the advantages of corporal punishment... a man who has once been subjected to corporal punishment loses all self-respect, and is afterwards restrained from the commission of guilty actions only by the physical terrors...[28]

---

[25] Ibid. p. 252

[26] Legislative, A, December 1862, Nos. 10-48

[27] It is perhaps for this very reason that the 1834 regulation while 'abolishing the infliction of corporal punishment by courts or officers exercising magisterial powers did not exempt convicts sentenced to labour in irons from such moderate corporal punishment as was necessary for the maintenance of discipline in jails.' See Home, Judicial, A, January 1882, Nos. 113-197A

[28] Petition of the British Indian Association to the Governor General in Council, dated 15th February 1864, Legislative, A, April 1864, Nos. 12-14

Not just public opinion in India but the fear of a backlash in the metropolis was also an issue of great anxiety to the colonial government. Whipping, as has been pointed out earlier, put under cloud the discourse regarding the humanitarian nature of colonial rule. Left unregulated it carried the danger of degenerating into torture. Thus we find that debates in the House of Commons on the subject in the early 1880s provided the context for the concern to institute various regulations and statistical monitoring to check its rampant use. As the Secretary of State noted in his correspondence with the Government of India,

> A strong feeling prevails in this country against whipping as a punishment....But though I am compelled to concur with Your Excellency in Council in thinking that, under all circumstances, corporal punishment must still be retained in India, its retention should at all times be regarded... as a necessity which every advance of the people in civilisation must be expected to lessen... [29]

A Question of Proper Procedure

Stephen Pierce has indicated that 'flogging threatened scandal in two ways at once'. Besides 'spectacular brutality', procedural irregularity in inflicting flogging also posed a problem.[30] It was this second aspect which particularly caught the attention of the government in the case of whipping in jails. Thus an attempt was made to create a mesh of procedural controls.

As has been indicated above, different laws prevailed in different provinces as far as jail discipline was concerned. Each of these lay down different limitations regarding the infliction of this punishment. Generally corporal punishment was not to be inflicted on female prisoners. Furthermore, it was always to be carried out in the presence of a Superintendent and only after the medical officer gave a statement regarding the fitness of the prisoner to undergo it. Actual ground rules for whipping however varied greatly. For instance, the Bengal Jail Manual provided for the use of rattan to inflict a maximum

[29] Home, Judicial, A, May 1882, Nos. 288-290
[30] Pierce, 'Punishment and the Political Body', p. 190

of thirty stripes. The Madras Act V of 1869 on the other hand provided for punishment using cat-o'-nine tails, the maximum going in case of certain offences to a hundred and fifty.[31]

Bringing about some degree of uniformity in the rules prevalent in different provinces was therefore a perpetual concern of the Government of India. Constancy of regulation was thought to be the best way of ensuring that punishments were not handed out according to the idiosyncrasies of jail superintendents. Yet, it was also recognised that some measure of local discretion in this context was inevitable. Indeed the recommendation of the Prison Conference of 1877 to enact a consolidated Prisons Act was abandoned by the Government of India on this very ground.[32] Such an Act came up only in 1894 and lay down specifically the conditions under which whipping could be inflicted. [33]

Apart from legal framework, the other way in which the colonial state sought to exercise its control over the meting out of punishment was through the maintenance of proper records. Statistical detailing of all prisoners was in any case a major concern for the colonial regime, the jail being one of the few domains which permitted observation and collection of information about the 'natives'.[34] In case of corporal punishment the filing of returns was regarded as an essential component of jail discipline. Not only did it ensure that every punishment inflicted by the subordinate prison staff was reported to the superintendents, it allowed the government to keep track of the working of the superintendents themselves.[35] Thus jails where offences were not recorded for

---

[31] Home, Judicial, A, January 1882, Nos. 113-197A

[32] The Government of India stated that 'experience shows, provision for the many varieties of local practice can only be made in a general Act by rendering it permissive to an extent which, in the present case, would deprive it of all claims to be considered a uniform code of prison law'. Home, Judicial, A, January 1882, Nos. 113-197A

[33]The Prisons' Act, 1894 provided that whipping must be inflicted with a light rattan, the number of stripes not exceeding thirty. Further, it lay down that 'no punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical officers or medical subordinates'. Home, Jails, A, March 1893, Nos. 99-127

[34] This has been amply demonstrated by Arnold, *Colonising the Body*. Mills makes a similar argument about asylums in *Madness, Cannabis and Colonialism*

[35] Regulating the infliction of punishment by the subordinate staff was in particular a major concern of the government against the backdrop of frequent complaints regarding arbitrary exercise of powers by them.

considerable periods were believed to have 'bad discipline or unauthorised forms of punishment.'[36]

In 1882, the Government of India instructed that a quarterly return would in future be submitted by each Inspector General of Jails to the Local Government or Administration to which he was subordinate showing for each jail details regarding the infliction of corporal punishment. The move, as we have noted above, came in the wake of increased anxiety regarding whipping in the early 1880s in England. Thus it was decreed that wherever the local government found that 'an excessive recourse to whipping' was apparent, the officer in charge of the jail was to be put upon his defence, and required to submit an explanation. 'Any abnormal excess or sudden increase in the number of corporal punishments' was to be taken to indicate 'something wrong in the management of the jail.'[37]

It is important to remember that while statistics were important for revealing 'mismanagement' they also carried the risk of proving to be embarrassing for the government. This in turn meant that there were limits to the desire of the government for procuring information. For instance, the Secretary of State on being informed of the preparation of returns suggested that information should also be obtained regarding the severity of the corporal punishment inflicted, as indicated by the number of stripes and the instrument employed, and 'the number of prisoners who died or were admitted into hospital within... two months from the infliction of punishment'.[38] In response, the Government of India pointed out that including in the periodical returns the latter figure would lead to 'erroneous deductions and undesirable impressions', mainly because of 'the great frequency of admissions into jail hospitals for ordinary fever and bowel complaint of a trivial character'. Consequently the Government modified the returns to

[36] This was an observation made by the 1888 Jail Committee. See Home, Jails, A, March 1893, Nos. 99-127

[37] Home, Judicial, A, January 1882, Nos. 113-197A

[38] Home, Judicial, A, May 1882, Nos. 242-245

show the number of cases in which death or illness was 'directly or indirectly the effect of corporal punishment'.[39]

The Quest for Alternative Forms of Punishment

One obvious reason behind the colonial obsession with procedural detail was the fear of abuse of the power of whipping by the jail superintendents. Indeed the government anxiety on this count frequently showed itself to have a solid foundation. For instance, when the Government of India examined the jail statistics for whipping in various provinces for the six years to 1880, it discovered in many instances 'an increasing report on the part of the Jail superintendents to this form of punishment'.[40]

It is noteworthy that the trend towards increased usage of flogging was taking place at the precise time when medical presence in prisons as superintendents had become considerable. It is difficult to assess outright whether medical men or non-medical men as superintendents were more inclined to favour corporal punishment. The variations on this count are large enough to discard the possibility of any broad generalisation.

For instance, both Bengal where non-medical men held sway in jail appointments and Central Provinces, where the opposite was true, there was a substantial increase in the percentage of prisoners flogged to the daily average strength of prisoners. In Bengal the figure increased from 22.01 per cent to 50.35 per cent while in the Central Provinces the same figure increased from 23.15 per cent to 33.57 per cent over the period from 1874 to 1879. North West Provinces and Oudh where medical officers had long held jail superintendentships also did not show a decline in percentage of prisoners flogged, the corresponding numbers for the same period being 9.97 per cent and 15.08 per cent. On the other hand, Madras which had been long opposed to medical involvement in the

[39] ibid.
[40] ibid.

prison system, reported a drop in the same figure from 23.16 per cent in 1874 to 19.08 per cent in 1878.[41]

As far as the absolute number of whipping is concerned, this figure increased throughout this period in most of the provinces. Based on statistics alone then, it seems safe to contend that medical involvement in the penal regime did not mean a turn towards more humanitarian treatment of the native body. At the discursive level as well, both medical as well as non-medical superintendents were not disinclined to use whipping to maintain prison discipline wherever proper. Indeed, where the medical officer was also the superintendent, he enjoyed inordinate authority in matters of punishment. Not only did he order the infliction of the penalty, he also decided on the physical fitness of a prisoner to undergo it. Where medical and executive offices were separate, the available statistics obviously do not reveal the frequency with which medical officers overruled the punishment ordered by the superintendent. Yet, the overall increase in the number of floggings does not indicate any overweening conservatism on medical grounds in this regard.

Thus we find that despite the strictures of the colonial government to restrain the use of the whip, many medical officers continued to be espouse its utility in Indian conditions. For instance, in the case of Madras it was reported in 1880 that the rules for regulating penal diet had been revised so that Jail superintendents could 'avoid resort to flogging.' However, many officers including medical ones were opposed to the measure. Surgeon-General Cornish for example, declared that

> Experience in regard to natives of India tends to show that jail discipline can be enforced with less corporal sufferings and danger to life by punishing the back rather than the stomach.[42]

[41] Home, Judicial, A, January 1882, Nos. 113-197A
[42] ibid.

On another occasion, but in similar vein, Dr. Dallas, the Inspector General of Prisons in Punjab asserted that flogging could not be altogether done away with as a punishment for breaches of jail discipline. As he pointed out,

> There are...men who are such utter animals that nothing but physical pain and suffering can exercise any influence on them. On other hand, there are prisoners in whose case flogging would simply destroy all chances of enforcing discipline. To discriminate in the matter must...be left to the Superintendents...[43]

The continued preference for whipping over other penalties must be attributed to a large degree to the lack of other suitable alternatives for enforcing jail discipline. The principal substitutes for flogging, as we have indicated above, included penal diet, separate or solitary confinement, and some form of penal labour. However, each of these posed problems of its own kind.

Solitary confinement for example was ruled out mainly due to the lack of adequate jail buildings for the purpose. Cost-cutting continued to be a significant aspect of penal reform in the second half of the 19th century and thus the construction of separate cells was dismissed by colonial officials as impracticable. Regarding penal labour, the greatest difficulty lay in the fact that most jail offences were in any case related to idleness or refusal to work. As the Inspector General of Jails noted in a letter to the Government of Bengal,

> The general impression in the Department appears to be that the varieties of penal labour now available in our jails are sufficient if it could be made possible to insist on the prisoners doing them as a punishment. It is little use ordering a stubborn prisoner to the oil-mill if he will not do the work.[44]

As far as penal diet was concerned, the most important reservation apprehended by the government was regarding the risk it posed to the health of prisoners and their capacity to perform work. The Secretary of State for example, while commenting on the

---

[43] ibid.
[44] ibid.

subject of increased mortality in Indian jails in 1882 asserted that as a general rule 'there should not be any interference with the diet scale when once it has been fixed at its proper limits in such as will keep the prisoners in health and no more'.[45] Yet, in a surprising twist to the story, not all medical officers agreed on this count. When consulted on the issue in 1882, a large number of the medical officers of various provinces contended that a reduced diet did not result in any ill-effects on the health of prisoners as long as proper precautions were taken.[46] Criticism of penal diet as a substitute for whipping was made on entirely different grounds. It was pointed out that the punishment was ineffectual by itself unless combined with solitary confinement. For instance, the Inspector General of North West Provinces noted that

> There is almost a consensus of opinion that for the hardened offender who spends most of his time in Jail, and who knows its ways, and has means of surreptitiously procuring food from our meanly paid servants, nothing but the whip is of much use.[47]

Radhika Singha has indicated that medical officers when called upon in the 1830s and 40s to engage in discussions on health of prisoners did so 'within an agenda to improve prison discipline'.[48] It seems from the above discussion that once they were appointed as jail superintendents, this propensity only increased. As prison administrators, medical officers were in a unique position to be well-acquainted with the exigencies of jail discipline and these came to be an important consideration for them when they engaged with debates on whipping.

Jail Dietary: Medical Interventions and Debates

Hitherto, we have analysed the manner in which medical officers engaged with the task of jail discipline, both in their administrative and their executive capacity. It will

[45] Home, Judicial, A, May 1883, Nos. 63-111
[46] The precautions to be taken while putting a prisoner on reduced diet varied from one province to another. In general though, they included assessment of the fitness of prisoner to undergo the penalty by a medical officer, and the monitoring of his health and weight during the period of punishment. Ibid.
[47] ibid.
[48] Singha, *A Despotism of Law*, p. 268

now be seen how they engaged with two other closely inter-related subjects which occupied the attention of the colonial regime: health and diet of prisoners. Unlike the maintenance of discipline which was generally seen as an administrative task in which medical intervention was incidental, health and dietary were matters which more specifically required professional knowledge. Various critical issues dogged the colonial regime when it came to the question of feeding the Indian prisoners: 'the relationship between discipline and diet, about the extent to which caste and religion should be recognized within the prison, and about the importance of food as a factor in labor productivity and the physical condition of the Indian population.'[49] Medical officers with their familiarity with themes like the nutritive value of various food items and the energy requirements of the human body emerged as authoritative voices in all these debates.

The prescription of jail dietary in India was left to respective Jail manuals and thus varied widely not only between different provinces but between different prisons. Such local variations were in fact considered necessary in the face of widely differing circumstances and habits of the people in different parts of the country. Gradually attempts were made towards laying down certain minimum standards in this context. Yet, it was also suggested that 'the ingredients forming the diet-scales should be chosen with reference to the ordinary food of the labouring classes of the population in the districts where the jails were situated' and thus regional differences continued. [50] This in turn meant that medical officers had considerable scope for experimentation and to display their scientific prowess in devising an appropriate diet for the prisoners under his control.

In fact, as Arnold has indicated there was 'much heated debate and acrimony between medical and prison officers around the 1850s and 60s about most suitable diet for Indian prisoners. As medical men took over as superintendents of jails however the points of tension shifted. They were now placed on the defensive by the government whenever there were instances of excessive sickness and mortality in the prison under

[49] Arnold, *Colonising the Body*, p. 110
[50] This was a recommendation of the Jail Committee of 1888. Home, Jails, A, March 1893, Nos. 99-127

their charge. Medical officers in their turn were quick to criticise any attempt by the government to push forward a particular dietary pattern for Indian jails.

For instance, the diet scales proposed by the Jail Conference of 1877 and generally approved by the Government of India as being suitable for adoption were for instance criticised in several instances for being harmful to the health of the prisoners. In 1881 there arose a major controversy over a letter written by Dr. Lethbridge, the Inspector General of Jails in Bengal to the editor of the *Times* on the subject. In view of adverse reports in the English press regarding the state of prisons in the province, the Government of Bengal asked Dr. Lethbridge to communicate to the public 'the real facts and figures'. The latter ventured to suggest in his letter that the increase in mortality had been mainly the result of the insufficient dietary prescribed by the 1877 Conference and further that this diet had been adopted at the behest of the Government of India. [51]

The Government of India immediately took exception to this action of the Inspector General which unwarrantedly placed it in a bad light. Official correspondence on the issue stressed the point that no specific orders had in fact been issued and the Government had in fact left the decision of enforcing the Conference diet to the discretion of local governments. As one file noting on the subject stated,

> It seems...that Dr. Lethbridge has endeavoured to screen himself by a misstatement. Even if his statement were correct, it would none the less be distinctly unbecoming for a Government official to enter into recriminations in a public journal with the Government which he serves.[52]

In response, Dr. Lethbridge was moved to apologise for the mistake he had made in stating the facts regarding government orders. At the same time however, he pointed out that the Conference had made grave errors in calculating the nutritive values of different grains. Further, he stressed that 'by initiating the idea of change and uniformity,

[51] Home, Judicial, A, November 1881, Nos. 45-48
[52] ibid.

and forwarding the Conference's report...with approval and recommendation, the Government of India practically settled the question of the adoption of the new scale.'[53]

The entire episode thus highlights the friction that could emerge between medical officers and government authorities on questions relating to the health of prisoners. It is important to remember though that the lines of conflict were by no means permanent. Medical opinion on the subject of the most appropriate diet was widely divergent. Thus we find that the most stringent criticism for Lethbridge and defence of the Conference diet came from J. M. Cunningham, the Sanitary Commissioner with the Government of India. In a detailed memorandum submitted to the Government of India in 1882, Cunningham asserted that there were no apparent connection between the increased mortality in the jails in Bengal and the introduction of a reduced diet as per the recommendations of the Conference of 1877. He pointed out that while the altered diet was introduced in March 1879, the total mortality in many of the Bengal jails during the first three months of that year were considerably in excess of what they were in the first three months of 1880. It was evident then that 'the cause or causes of increased mortality had commenced to produce very decided results before the new dietary had even been commenced.' Further, the increased mortality among the prisoners in various provinces was 'coincident with a largely increased mortality among the general population.'[54]

Cunningham was therefore of the opinion that dietary was not the most important cause of sickness and mortality in jails. His argument that the health of prisoners was open to general influences such as famine and epidemic outside the jail effectively acquitted the colonial government of all blame in this respect. Indeed, based on his report, the Government of India concluded that as far as jail dietaries were concerned, in all provinces sufficient attention was not paid to 'the duties of check and supervision by the superior officers in charge of jails'.[55] Accordingly, it instructed the local governments to take note of the matter stating that

---

[53] ibid.
[54] Memorandum on Indian Jail Diets in Relation to the Health of the Prisoners by J.M. Cunningham, dated 10th January 1882, Home, Judicial, A, February 1882, Nos. 44-49
[55] Home, Judicial, A, February 1882, Nos. 44-49

> It is not to be supposed that improved dietary will of itself ensure the good health of the prisoners.... It should be the special object of the officers at the head of the Jail Departments to see that the Jail Superintendents are not content with a merely mechanical and uncritical discharge of routine duty, but that they bring to bear upon the administration of the prisons under their charge that intelligent and watchful interest which the Government has a right to expect from officers in their position.[56]

Differences among medical officers did not just allow the executive to pass on the liability on the former as happened in this case. Professional disagreements could also lead to a position where the executive authority was in effect placed in the position of an arbiter. To give just one example, in 1880 following a serious outbreak of scurvy in the Central Jails of Amraoti and Akola, a change in diet was recommended by the medical officers in charge, Apothecary and Surgeon Hume. Dr. Hume was of the opinion that the diet was deficient in fatty matter and in albuminates. Consequently, he suggested that the diet should be modified by increasing the amount of dhall by 2 ounces, that of chillies by 1/8th ounces, and of linseed oil by ¼ ounces. These changes were accordingly introduced in the jails. Subsequently, Surgeon Little, the Officiating Sanitary Commissioner attributed the outbreak of scurvy chiefly to the inadequate and monotonous character of the diet. Further he contended that the above changes made were insufficient and recommended a completely different diet scale based on the experience of jails in the Madras presidency. [57]

It is significant to note that in the case of contending dietary scales thus being put forth before it, the onus for decision-making fell on the executive. Government officials made these decisions mainly on the basis of administrative expediency or on the basis of practical experience. For instance, in this particular case, the local government observed that there had been no sickness since Dr. Hume's diet had been introduced and a short experience showed that its effect on the health of the prisoners was 'likely to be

---

[56] ibid.
[57] Home, Judicial, A, October 1881, Nos. 284-288

beneficial'. It promised to submit a report at the end of the year on the issue and if any defects be disclosed then, Dr. Little's suggestions would be used as a remedy.[58]

Executive officials could also refer to the contrary opinions of other medical 'experts' to reject the suggestions of a particular medical officer. For example, in the above case, in 1883, Dr. Hume made further proposals for modifying the diet including elements like abolition of the issue dry mangoes, and increase in the quantity of oil from ¼ to ½ an ounce. With regard to the first, the Inspector General of Prisons, Major Lane pointed out that dried mangoes had been prescribed as an anti-scorbutic on the recommendations of Dr. Walker, Inspector General of Jails, North-West Provinces. Consequently he favoured their continued supply in jails particularly when tamarinds or other substitutes were not available. Similarly, Lane stressed that the quantity of oil was in keeping with Dr. Lewis's memorandum on dietary prepared for the Government of India and was thus advisable. Interestingly, Surgeon Little also agreed with Major Lane on both these counts.[59]

It seems then that in the case of jail health and dietary, the lack of a consolidated medical opinion opened the space for executive action. Government authorities could thus encroach upon domains which in other circumstances would have been exclusively reserved for the 'experts'.

[58] Ibid.
[59] Home, Judicial, A, February 1882, Nos. 21-29

Conclusion

The second half of the 19th century witnessed a steady increase in the involvement of medical personnel in the criminal justice system. At a time when Western medicine was still struggling to make a mark on the wider Indian society, the role of doctors in the penal regime became prominent. Doctors came to be associated with not just the process of conviction of criminals in the law courts but also in the execution of judicial sentences in prisons.

Significantly, as this work has shown, this process was not the result of vociferous demands by the medical men themselves for more authority in penal matters. Undoubtedly, many doctors made a mark in the sphere of penology approaching the field with interest and enthusiasm. Others however were more intent on sticking to regular medical practice and viewed their penal forays as disruptive of their normal professional lives. Thus medical officers had to be offered financial and other incentives to undertake medico-legal work and to accept jail superintendentships. Indeed, despite various inducements, tasks such as management of prisons and rendering medical evidence continued to be unappealing and distasteful to many of them.

The process of medicalisation was also not simply a consequence of the growing authority of science at this time. The colonial regime of course hoped to gain advantage from the specific qualifications possessed by medical officers in penal work. Medical testimony played an important role in criminal cases especially in the wake of colonial distrust of native witnesses. Similarly, the incorporation of medical men had utility value for colonial jails afflicted with problems of sickness and high mortality. Yet, science figured only marginally at the discursive level when it came to the question of appointing medical officers as prison administrators. Instead, considerations of administrative expediency and military contingency became more important. Medical officers were deemed suitable to take up jail responsibilities in the absence of any other suitable cadre of officers for the purpose. The need to provide posts for them in times of peace so as to

be able to provide a larger number of doctors in times of military emergency was also an important factor.

This in turn brings us to the question of the relationship that was forged between medical officers and the colonial regime in the penal context. How did medical men respond to the responsibilities thrust upon them? Did they actively collude with the state in promoting its interests or was the interaction marked by friction and differences of opinion? This work has shown that the association of medicine and law in the Indian context was far more harmonious than has been shown in the case of Europe. Medical officers of course resisted the very fact of becoming involved in the penal set up. Yet, it is testimony to the dependent status of Western medicine on the colonial state that their numbers continued to increase despite their reluctance. Once they were a part of the penal regime most of them tended to work within the paradigm of state imperatives, indeed transforming in the context of prisons, from doctors into pure administrators. Thus in the matter of corporal punishment, jail deterrence and discipline came to be accorded a greater priority than humanitarian concerns. In criminal cases involving White violence against natives, the collaborative role of medical experts was evident in their support to the insanity claims of the accused and further, in their recommendation of the deportation of European prisoners on health grounds.

It would be simplistic to suggest that medical officers and the colonial executive always acted in tandem on all these issues. The points of tension could be multifarious in nature. Thus colonial officials, particularly those at the highest levels, were apprehensive about the public backlash of the acquittal and deportation of European criminals. By the middle of the 20th century, controlling the expert knowledge of medical officers for its own legal use became a matter of concern as well-off Indians also began to seek their services in trials. In jails, criticism by medical officers of the dietary regimen prescribed under government regulation could cause the colonial state to jump into a state of nervous anxiety. Nonetheless, at a broader level, conflicts in the colony were more muted than elsewhere. There was definite sparring between medical officers and the government; a full-fledged battle was however generally avoided.

Select Bibliography

Unpublished Sources

Home Records of the Government of India, NAI, New Delhi

Published Sources

Reports

Report of the Indian Jails Committee 1919-20, Volume I, Simla, Government Central Press, 1920

Articles

Arnold, David, 'European Orphans and Vagrants in India in the Nineteenth Century', *Journal of Imperial and Commonwealth History*, Vol. 7, No. 2, 1979, pp. 104-127

Bailkin, Jordanna, 'The Boot and the Spleen: When Was Murder Possible in British India?', *Comparative Studies in Society and History*, Vol. 48, No. 2, April 2006, pp. 462-493

Burney, Ian A. 'A Poisoning of No Substance: The Trials of Medico-Legal Proof in Mid-Victorian England', *The Journal of British Studies*, Vol. 38, No. 1, January, 1999, pp. 59-92

Cole, Simon A., 'Witnessing Identification: Latent Fingerprinting Evidence and Expert Knowledge', *Social Studies of Science*, Vol. 28, No. 5/6, Special Issue on Contested Identities: Science, Law and Forensic Practice, Oct-Dec 1998, pp. 687-712

Eigen, Joel Peter, 'Intentionality and insanity: what the eighteenth-century juror heard', in W. F. Bynum, Roy Porter and M. Shephard eds, *The Anatomy of Madness: Essays in the History of Psychiatry* Vol. II, London, Tavistock Publication, 1985

---------- 'Lesion of the Will: Medical Resolve and Criminal Responsibility in Victorian Insanity Trials, *Law and Society Review*, Vol. 33, No. 2, 1999, pp. 425- 458

Ernst, Waltraud, 'Idioms of Madness and Colonial Boundaries: The Case of the European and 'Native' Mentally Ill in Early Nineteenth-century British India' *Society for Comparative Study of Society and History*, Vol. 39, No. 1, January 1997, pp. 153-181

Keller, Richard, 'Madness and Colonialism: Psychiatry in the British and French Empires, 1800-1962', *Journal of Social History*, Winter 2001, pp. 295-326

Killingray, David, 'The "Rod of Empire": The Debate over Corporal Punishment in the British African Colonial Forces, 1888-1946', *The Journal of African History*, Vol. 35, No. 2, 1994, pp. 201-216

Landsman, Stephen, 'One Hundred Years of Rectitude: Medical Witnesses at the Old Bailey, 1717-1817', *Law and History Review*, Vol. 16, No. 3, Autumn 1998, pp. 445-494

Lupton, Deborah, 'Foucault and the medicalisation critique', in Alan Peterson and Robin Bunton eds, *Foucault, Health and Medicine*, London, Routledge, 1997

Moran, Richard, 'The Origin of Insanity as a Special Verdict: The Trial for Treason of James Hadfield (1800)', *Law and Society Review*, Vol. 19, No.3, 1985, pp. 487- 519

Perrot, Michelle 'Delinquency and the Penitentiary System in Nineteenth-Century France', in Robert Forster and Orest Ranum eds, *Deviants and the Abandoned in French Society*, Selections from the Annales: Economies, Sociétés, Civilisations, Vol. 4, Baltimore, The Johns Hopkins University Press, 1978

Pierce, Stephen 'Punishment and the Political Body: Flogging and Colonialism in Northern India', in Stephen Pierce and Anupama Rao eds, *Discipline and the Other Body: Correction, Corporeality, Colonialism*, Durham, Duke University Press, 2006

Scull, Andrew, 'Madness and Segregative Control: The Rise of the Insane Asylum', *Social Problems*, Vol. 24, No. 3, February 1967, pp. 337-351

Sen, Satadru, 'Policing the Savage: Segregation, Labor and State Medicine in the Andamans', *The Journal of Asian Studies*, Vol. 58, No. 3, August 1999, pp. 753-773

Spierenburg, Pieter, 'Punishment, Power, and History: Foucault and Elias', *Social Science History*, Vol. 28, No.4, Winter 2004, pp. 607-636

Ward, Tony, 'Law, Common Sense and the Authority of Science: Expert Witnesses and Criminal Insanity in England, CA. 1840-1940, *Social and Legal Studies*, Vol. 6, No. 3, 1997, pp. 343-362

Wiener, Martin J., 'Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England', *Law and History Review*, Vol. 17, No. 3, Autumn 1999, pp. 467- 506

----------'Murder & the Modern British Historian', *Albion*, Vol. 36, No. 1, Spring 2004, pp. 1-11

Zinoman, Peter, 'The History of the Modern Prison and the Case of Indochina', in Vince Rafeal ed. *Figures of Criminality in Indonesia, the Philippines and Colonial Vietnam*, Ithaca, Cornell University Southeast Asia Program, 1999

Books

Allen, *The Law Relating to India and the East- India Company*, London, Wm H. Allen and Co., 1855

Arnold, David, *Colonising the Body: State Medicine and Epidemic Disease in 19th Century India*, Delhi, Oxford University Press (OUP), 1993

Carnduff, H. W. C., *Military and Cantonment Law in India*, Calcutta, S. K. Lahiri and Co., 1904

Chevers, Norman, *A Manual of Medical Jurisprudence for India*, Calcutta, 1870

Cohen, Stanley and Scull, Andrew eds. *Social Control and the State: Historical and Comparative Essays*, Oxford, Martin Robertson, 1983

Ernst, Waltraud, *Mad Tales from the Raj: The European Insane in British India 1800-1858*, London, Routledge, 1991

Foucault, Michel, *Discipline and Punish: the Birth of a Prison*, transl. by A. Sheridan, London, Penguin Books, 1991

---------- *Madness and Civilization*, London, Tavistock, 1971

Garland, David, *Punishment and Modern Society: A Study in Social Theory*, Oxford, Clarendon Press, 1990

Harrison, Mark, *Climates and Constitutions: Health, Race, Environment and British Imperialism in India*, New Delhi, OUP, 1999

Ignatieff, Michael, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*, USA, Pantheon Books, 1978

Mills, James H., *Madness, Cannabis and Colonialism: the "Native Only" Lunatic Asylums of British India 1857-1900*, New York, St. Martin's Press, 2000

Nye, Robert A., *Crime, Madness, and Politics in Modern France: The Medical Concept of National Decline*, Princeton, Princeton University Press, 1984

Pick, D., *Faces of Degeneration: A European Disorder*, Cambridge, Cambridge University Press, 1989

Sen, Satadru, *Disciplining Punishment: Colonialism and Convict Society in the Andaman Islands*, New Delhi, OUP, 2000

Singha, Radhika, *A Despotism of Law: Crime and Justice in Early Colonial India*, New Delhi, OUP (paperback), 2000

Smith, Roger, *Trial by Medicine: Insanity and Responsibility in Victorian Trials,* Edinburgh, Edinburgh University Press, 1981

Stokes, Whitley, *The Anglo-Indian Codes*, Vol. 1, Oxford, 1887

Wiener, Martin J., *Reconstructing the Criminal: Culture, Law and Policy in England 1830-1914*, Cambridge, Cambridge University Press, 1990