

Aspects of Law-making in the 1800s

Judicial Despatch to Bengal: 28.4.1824

Administration of Justice in Kumaon (Bengal Judicial Letter: 1.2.1820  
paras 26 & 27 )

B-XIV/1

45. The information which you have procured respecting Kumaon is still very imperfect. Mr Elliott, the Circuit Judge, who held the jail delivery there in April 1819, passed through the country too rapidly to admit of his furnishing a complete report on the state of the Police, and his knowledge of the district appears to be confined to the accounts which he derived from the Commissioner and his records. Those accounts, as far as they go, are highly favourable, but we can not place much reliance on them, unsupported as they are by any detailed reports. We know but little of the extent and circumstances of the population of Kumaon, nor have we any assurance that accurate information of crimes committed in the country is communicated to the Commissioner, or that, in practice, justice is easy of access to those who have suffered wrong.

46. From the proceedings of the Nizamut Adawlut under date 31st May 1819, we find that a prisoner named Beerbhan having been convicted of murder before Mr Elliott, who was appointed Commissioner to try such prisoners as had been committed by Mr Trail in the province of Kumaon, that court confirmed his conviction and in consideration of the peculiar circumstances as set forth in paras 4,5,6,7 of the Commissioner's report, adjudged him to an imprisonment of five years, instead of the punishment of death.

47. Those circumstances as detailed by Mr Elliott, were of a very peculiar nature. It appears that the prisoner in strict conformity with the usages of the province, which had the sanction of the Government that preceded us, had avenged the grossest outrage that could have been inflicted upon him by putting to death the seducer of his wife. Mr Elliott writes that "in all cases of criminal intercourse with a married woman, whatever the caste of the parties, the husband had the right of taking the life of the adulterer. That on such occasions, the husband was deemed infamous, and if in the service of the state, dismissed until he had wiped off the stain on his honour by the death of the seducer...", that not unfrequently "application was made by the husband publicly at the Durbar for permission to avenge himself which was occasionally granted in the form of a Perwannah, that two or three of this species of legal murder termed "Shar Kalna", had lately occurred in the neighbouring province of Dotee...".

48. Mr Elliott in consideration of these facts begged leave to recommend that Beerbhan "be sentenced to a limited period of imprisonment;" a merely nominal punishment we doubt not was in the contemplation of the Commissioner when he made use of the above words, but the Nizamut Adawlut with the evidence before them that the act committed by the prisoner was deemed in the province of Kumaon not only meritorious but indispensable to the preservation of his character, that it had been customary with the preceding governments to dismiss from their service as infamous a man who should have refrained from avenging so great an insult, passed sentence of five years imprisonment on Beerbhan who, when he put the seducer of his wife to death, was perfectly uninformed that he offended against any law of the new ruling authority. Had the inhabitants of the province of Kumaon been warned beforehand of the

1821-27 (M 766 + M Index)  
pages 308-315 of No. 6. of Judicial Despatches to Bengal.

leading principles of our criminal code as laid down in the Regulations, it could not be expected that they could at once be brought to consider as criminal, that, which they had been taught and always accustomed to consider as a sacred duty, nor could it have been just in principle or politic in tendency to inflict upon the first offender (supposing him to have been aware that he was acting illegally under the new Government) against a law so abhorrent to the feelings of the inhabitants the heavy punishment of imprisonment for five years in addition to the period he had been confined previous and subsequent to his trial. It is only because the term of five years will have elapsed before this Despatch can reach India that we do not order the immediate release of Beerbhan from imprisonment. It is to such non-advertance to the prejudices and feelings of the natives, to such unsparring enforcements of immediate conformity to entirely new rules of law, utterly at variance with all the prevalent notions of right and wrong that the discontent and disorganised state of society in many of our older possessions in India is too often traceable. Laws (even granting them to be indispensably good in the abstract) may nevertheless be perfectly inapplicable to this or that people, may indeed work great mischief instead of good if applied, and in India we too often find, that the natives take the law into their own hands whenever the Regulations in force either do not afford or positively deny what they have been accustomed to consider their right. To effect a change in the habits and notions of a people is a work demanding such time, till such change is brought about, to expect a sudden transition and conformity would be unreasonable, to compel it unjust. Legislation must be suited to the circumstances of a country; if the latter be entirely overlooked, the Regulations will be worse than a dead letter, they will spread dissatisfaction and foster affrays. We have so frequently on former occasions dwelt on the necessity of your making the institutions and customs of the natives the basis of your Regulations that we need not add more in this place. We shall in a separate Despatch give you instructions for your future guidance in the administration of the Police, and of both Civil and Criminal justice in Kumaon.

Judicial Despatch to Bengal: 3.1.1827

Kumaon: Administration of Justice in newly acquired countries (Bengal Judicial Letter: 10.4.1823, paras 11-21)

75. From the various documents to which you have referred in the paragraphs noticed in the margin, and from the statistical report on Kumaon recorded on your Political Consultations of the 20th June 1823, we have learnt with much satisfaction that the present arrangements for the administration of justice in that province have been as successful as could have been reasonably expected. To the chief local officer you have entrusted much discretionary power, which, as long as it continues in such hands as Mr Traill's may confidently be expected to be used with prudence and moderation. This information is very satisfactory to us, as we can have no wish to make any unnecessary changes in the existing arrangement, and for obvious reasons we can not be prepared to give you detailed instructions as to any ulterior or permanent system of management for Kumaon or other districts similarly situated. We have repeatedly apprised you that we look forward to the general administration of justice being so far modified and improved as to render it more adequate to the wants of the country; in newly acquired countries however, until this indispensable object shall have been more fully accomplished, we must make the best temporary arrangements that circumstances will permit for protecting the people in their rights.

76. For the permanent security of person and property, it is obviously essential that the business of civil and criminal judicature

should be conducted with proper securities for their due observance; till this is accomplished the protection of the people must depend less on operation of general principles, than on the character of the individual who happens to be placed over them, or on some other circumstances merely accidental. The time during which it may be necessary to keep any newly acquired territory under a system so undefined we can not at this distance precisely indicate. At the early introduction of our dominion and for a considerable period afterwards, it will be expedient to govern the country by modes somewhat arbitrary under occasional instructions passing directly from the Governor General in Council to the local officers. But, when our power has been firmly established, and the people are generally impressed with the necessity of yielding an implicit and immediate obedience to public authority, there seems no reason for delaying any longer to introduce more regular administration of justice. Then the first object will be to establish appropriate rules of procedure taking care to secure to the inhabitants in as great a degree as possible the enjoyments of their rights and carefully preserving to them such of their ancient laws and customs as may be fit to be maintained consistently with that purpose. The rules for the conduct of the functionaries should not only be framed with every

( The reply on this point:                    attention to the ends for which they  
see para 184 et seq of the                    are devised, but should be expressed  
12th July 1827 W.P. )                    in an intelligible form of language,  
and when any particular parts of the Regulations in use throughout  
the rest of the provinces are adopted for the new territory, a precise  
reference should be made to those parts instead of directing in  
general terms that the spirit and principles of the Regulations  
shall be the guide of the Public affairs.

77. We observe with satisfaction from Regulation 21 of 1825 that you had transferred the tract of country denominated Deyra Doon and the pergunnah of Chandnee to the jurisdiction of the Commissioner in Kumaon. This arrangement will afford an opportunity of framing such a system for the permanent administration of these districts as may after ample experience be found to be most consonant to the feelings, usages and understanding of the people for whose benefit it is intended.

78. There are various districts or places where justice is administered by persons under your authority, but not subject to the general Regulations in force throughout the old provinces. We desire to be furnished with a list of those places, including such a statement of their situation, extent, revenue, population, and of any interesting particulars illustrative of the condition of the people as you may be able to supply, with copies of all general instructions of your Government regarding the administration of justice which are considered to constitute the existing rules for guidance of the principal superintending officers. You will require from each of those officers an account of the manner in which judicial business is performed in the territory under him, and especially of the description of persons employed, the rules and principles on which they act, the securities which are provided for the due performance of their duties, and the degree of protection of person and property afforded to the people by their means, compared with that which they enjoyed under the Native Governments. We are also desirous of being enabled to contrast the situation of these districts in regard to such protection with that of our other territories which are subjected to the provisions of the general judicial system. We desire that periodical reports may be transmitted by the principal officers to the judicial department of your Government and that they may be made the subject of distinct communications to us.

Later notes of replies received to the above paras as entered in margin of the concerned pages.

+ copy

**NOPLAHS**

**Judicial Despatch to Madras: 16.4.1845**

6. In all the cases above recited even that in which the life of a Nayr is supposed to have been taken away at the instigation of persons of his own religion, the murderers are represented as having been under the influence of the most violent fanatical zeal. In one instance seven of them, in another ten, did like martyrs without shrinking from the fate which they had brought on themselves. This state of feelings is attributed partly to the progress of a sect of Mahomedans, professing extreme tenets, who have recently appeared in different parts of India, and partly to a persuasion encouraged among the followers of that religion that it is about to regain its ascendancy. In each of the cases under review however, the fanatical feeling is believed to have been brought into action by circumstances such as form the motives of mankind in general. It is only with such motives, and with the conduct arising out of them, that Government can attempt to deal.....

B-XIII/2

Two main leaders were 1. Munjairy Alphan Keerikul: teacher of the use of the gun, and 2. Coonjee Coya Tengul Syed Hassan.

from Beard's Collections No 121506 (vol 2327), 167 pages, (1848-9) pages 10-4 replying to Madras Judicial Letter of 23.7.1844.

Subject is again referred to in Nos 123321-2 (vol 2345) All 61 killed in September 1849. Referred Madras Judicial Letters of 14.9.1849 and 26.9.1849. Report received with Madras Judicial Letter of 6.12.1849. Collection 537 pages. Report pages 45-102, by Magistrate dated 12.10.1849. causes 61-88, Minutes: Governor Pettinger 475-9, D. Elliott 483-509, Resolution 517-37. replied Draft n No 238 of 1850.

First occurrence Mad Jud Letter: 22.4.1841 (Jud Despatch: 28.7.1841) Nine Noplahs killed for killing two Brahmins.