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Peripheral Outlaws: Resistance and Agency amongst 'Criminal' Groups in Colonial India

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The notion of 'criminal tribe' - a pejorative term - was introduced in colonial India to control and punish certain 'dangerous classes' of the Indigenous population who were mobile, as the British associated mobility with criminality. Commencing from around 1865, one can discern deliberations amongst variegated subdivisions of colonial bureaucracy regarding the conceptualization of the idea of 'criminal tribes', targeting the livelihoods¹ of so-called 'bandit groups' and gender nonconforming communities.² These deliberations encompassed a variety of subjects and materialized in the inception of the Criminal Tribes Act (CTA) in 1871³. In this article, I examine the logic and effects of the categorization of 'criminal tribes' and show how the colonial oppression of targeted communities added to and altered the mode in which they were already peripheral in precolonial times. At the same time, I contend that the criminalization of these communities' livelihoods and the colonial idea of pan-Indian 'dangerous classes' had effects long after Independence. Drawing attention to the different roles that various actors played in the materialization of the CTA, I analyse the lived realities of officials in colonial bureaucracy, the local elite landed gentry, the upper caste communities, the moneylenders, and the communities included in the act. Finally, I consider how the two diverse types of groups of Indigenous outlaws listed in the two parts of the CTA shared a common trajectory while negotiating with and subverting the classification. While there has been extensive research on the distinct communities included in Part I and Part II of the CTA, this inquiry demonstrates how their experiences were intertwined.

¹ I use the concept of livelihoods to conceive and discuss the various social and ethnic communities classified under the CTA. Historian David Arnold (2006) argues that such communities were classified within the act because they did not conform to the colonial pattern of settled agriculture and wage labour. The CTA brought forth several sanctions on the groups included in the act, including restrictions on movement, recurrent attendance in the police station and being searched any time without a warrant.

² 'Gender nonconforming communities' (GNCs) is used to refer to a plethora of identities including the *hijras*, *zenanas*, *khwajasarais*, and *mukhanas*, who over eons have used variegated denominations to identify themselves. Incidentally, the term 'gender nonconformity' was earlier used by scholars like Dutta (2012), Dutta and Roy (2014), and Sanyal and Majumder (2016).

³ Various pieces of legislation made since 1871 in India were collectively called the CTA. In the decades before the Criminal Tribes Act was promulgated, India saw great political and administrative upheavals. Tribal communities and rural masses engaged in various rebellions, protests, revolts, and uprisings, including the Revolt of 1857. All this led to a plethora of legislations, rules and regulations, one of which was the CTA. The Criminal Tribes Bill, which later became the CTA, was initially introduced in 1871 by T.V. Stephens, a British official. There were subsequent amendments to the act in 1883 and 1897. Rana (2011) provides a detailed account of the political, socio-economic and legal contexts under which the act was promulgated. Part II of CTA was repealed in 1911.

This article is based on in-depth archival research undertaken in 2018-2019 at the National Archives of India and *Abhilekh Patal*, the online archival website of the Government of India. The advantage of archival research is that documents often act as a repository of past events and particular actors, illuminating individual roles in the unfolding of phenomena (Stoler 2009). Stoler (2009) notes that the archives provide a great deal of insight into how the process of documentation, enumeration and registration by the colonial administrators gave rise to specific social categories. Although such documents in no way provide complete representation, they contain important fragments of the lives of marginalised, gender nonconforming people. While studying the documents, one has to be aware of the fact that the process of production of rules and laws for gender nonconforming individuals was an 'unruly and piecemeal venture' at best (Stoler 2009: 1). Important fragments of gender nonconforming persons' lives might not be represented at all in these documents. Furthermore, elements that did not fit in the colonial imagination of hijra criminality may not have made their way into these documents, either. Stoler explains that 'as such, these archives are not simply accounts of actions or records of what people thought happened. They are records of uncertainty and doubt in how people imagined they could and might make the rubrics of rule correspond to a changing imperial world' (ibid.: 4).

The paper seeks to engender nuanced insights through archival documents that shed light on vital fragments of the life-worlds (Husserl 1989) of a variety of communities: First, those who undertook the procedure to document and pass legislation like the CTA; second, those whose life-worlds were significantly altered by the legislation; third, those coexisting with/alongside the second group.

Needless to say, trying to understand the social locations and roles of diverse actors through documentary analysis and interpretation is a challenging procedure.⁴ Yet, as a repository of past events, archival documents facilitate interpretation of the socially conditioned choices of diverse actors and offer a great deal of insight into how colonial administrators generated specific social categories and realities through the official procedures of documentation, enumeration, registration and legislation (Stoler 2009).

Locating the Concept of 'Criminal Tribe'

The capricious nature of defining a concept is substantiated by the notion of 'criminal tribes', as the nomenclature could connote both a caste community and a gender nonconforming community engaged in different culturally embedded occupations. Though it is often quite difficult to figure out which communities were classified as 'criminal tribes' and why, the CTA, which had two parts, mainly emphasised two major livelihood segments of the Indian society.

Part I of the CTA addressed communities such as the Baurias⁵, Sansis and Harnis⁶ that were categorised as 'hereditary criminals' (Major 1999, 661). The colonial officials argued

⁴ One of the criticisms of using archival data is that such documents might miss out on important fragments of the lives of communities.

⁵ In various documents, the Bauria ethnic community is referred to in different ways (e.g. Bowreeah, Bawaria, and Baraiya).

⁶ Sansis are an ethnic community originating in Rajasthan, who later spread to other parts of India like Haryana and Punjab. Baurias belonged to the states of Haryana, Punjab, Rajasthan and Uttar Pradesh.

that these groups subsisted through 'banditry and plundering expeditions' despite having 'legitimate' occupations such as pastoralism, hunting, cultivating, transportation, and trading, which included bartering and selling objects like wood, medicine, glass beads, gemstones and animals (Kapadia 1952). Most social and ethnic groups incorporated in Part I of the CTA were indispensable to the local social structure and were bound by pecuniary, socio-cultural ties with the local elites, zamindars,⁷ chiefs, and the landed gentry.⁸ Many of them even had interpersonal economic and conjugal liaisons with settled landowning communities, such as the Jats (Nigam 1990a). Although some groups do appear to be 'plunder/robber-police', as the anthropologist Piliavsky (2015, 336) suggests, this was not the case for all criminalised groups. The labour and livelihoods of these communities were much more diverse than is suggested. While for some groups, a 'nomadic lifestyle' was the major reason for identification, others were held culpable on ludicrous charges such as 'unproductive use of land and forests' (Hinchy 2019b). As historian Hinchy (2019a) argues, a hidden agenda of the colonial administration behind the CTA was to dismantle indigenous policing systems.

The second part of the CTA amalgamated a host of identities categorised as 'deviant sexualities' (Sharma 2000; Hinchy 2014; Khan 2015) that were referred to as 'eunuchs' by the colonial officials. The term 'eunuchs' was an English-label colonial category and not a social group. As 'eunuchs' were considered 'professional sodomites', the British legal system sought to curtail their presence in public life (Hinchy 2019a, 2). The British declined to accept that several gender nonconforming categories were socially recognized in South Asia for more than 3000 years (Vanita and Kidwai 2000). Hinchy (2014) and Khan (2015) argue that many broadly known gender nonconforming identities that were categorized as 'eunuchs' in Part II of the CTA, such as *khwajasaras*, *hijras* or *zenanas*, held indispensable positions within the social, political and cultural spheres of the Indian society until the eighteenth century. Despite not abiding by the socially dominant norms of heterosexual procreation, they were prominently visible in Indian public life (Ghosh 2019). Yet, the British expected a gradual extinction of gender nonconforming communities. Ironically, the administration labelled the gender nonconforming communities as 'wandering people', due to their short-distance travels to nearby villages for *badhai* collection (Hinchy 2019). As the British associated mobility with criminality, they panicked about all those 'wandering' and thereby brought the two communities under the single category of 'criminal tribes'. Though the CTA was applied mainly in the North-Western Provinces (NWP),¹⁰ Oudh, and Punjab, anyone 'wandering' or following the cultural practices of the *hijras* throughout

Harnis were from Punjab. While they all had their individual languages, the common trait that bound them under the CTA was that they did not conform to the prevailing ideas of mainstream livelihood for the British, such as agriculture and wage labour.

⁷ Zamindars refers to landowners and revenue collectors who leased land to tenant farmers and collected taxes for the British government.

⁸ Landed gentry denotes a social class of landowners who could entirely live from rental income.

⁹ *Badhai* collection refers to the custom of *hijras* blessing and undertaking ritual performance in wedding and birth ceremonies and receiving payments in both cash and kind.

¹⁰ The CTA was mostly applied in North India upon its inception. By 1876, it had been extended to the Bengal presidency and by 1911 the Madras presidency, thereby incorporating the entirety of India under the jurisdiction of this law. After several amendments spanning almost a decade, the *hijras* were incorporated in the Criminal Tribes Act, 1924.

the country was suspected and booked under either CTA or Section 377.¹¹ Additionally, the category called 'eunuchs' were branded as 'kidnappers and castrators of children' (Hinchy 2019b, 2). By doing so, gender nonconforming groups were denied their cultural significance in Indian society.

Referring to the Indian context, historians, sociologists and socio-anthropologists (Kapadia 1952; Nigam 1990a, 1990b; Fourcade 2003; Abraham 2014) argue that the concept of 'criminal tribes' was a colonial construct. It was brought forward as a consequence of the official discourses, which also matched the broader objective of the civilizing mission of colonialism. Nigam (1990a, 163) argues that the phrase 'criminal tribes' connoted objects without history, 'essential types' who helped in the corroboration of power of the colonial discourse (Nigam 1990b, 257).

Against such a frame of reference, other historians contend that there was an over-exaggeration of the idea that European knowledge about the East was constitutively distorted (Ahmed 1991). This article neither substantiates that the idea of 'criminal tribes' was entirely a colonial construct nor validates that a 'criminal tribal' identity was indigenous to the subcontinent. While I do not provide an either/or answer to this debate, I will offer some critical nuances that should be considered. I contribute to the literature by demonstrating that while the colonial administrative did perceive these social and ethnic groups differently, they were considered peripheral in both pre-colonial and colonial society. I do this by posing questions arising out of an analysis of archival material gathered from the National Archives of India New Delhi between February and June of 2019: On what foundation were miscellaneous sections of the population categorized into an unsocial¹² category of 'criminal tribes'? What were the shared threads in conceptualising the criminality of these livelihoods? What were the social hierarchies, historical circumstances and cultural conditions in which the communities were categorized? Why did the local rulers and Indigenous elites not issue such sanctions? How were such social and ethnic groups perceived and documented by the colonial officials? What were the different 'solutions' brought forward to deal with such communities? And finally, how did communities counteract, subvert or deal with the CTA?

While there has been research on the individual communities included in Part I and Part II of the CTA (referred to as 'hereditary criminals' and 'deviant sexualities'), there is a lack of consideration regarding how their experiences were intertwined. This article attempts to fill in this gap by providing a comparative analysis of the two different subject positions at stake. Such comparison shows both how the process of classification of outlawed subject populations was extremely nuanced and how new modes of resistance and agency were generated in the process of interacting with, negotiating, and subverting the classification.

¹¹ Section 377 is a section of the Indian Penal Code (IPC). It was introduced in 1861 (modelled on the Buggery Act of 1533 in Britain). Along with the CTA, it was used to persecute gender nonconforming acts. The section was only recently (2018) scrapped by the Supreme Court of India.

¹² I use the term 'unsocial' in this context because the category of 'criminal tribes' was superimposed on diverse groups of populations.

The 'Criminal Tribes': Disparate Populations under a Single Category

Generally, it is noteworthy that the 'criminal tribes' were two disparate populations subsumed under a single category. Accordingly, two diverse segments of the population¹³ hailing from varied socio-cultural contexts were incorporated in the Criminal Tribes Act of 1871. Initially, however, there were considerations to keep them separate. This was acknowledged by a host of officials. For instance, C. A. Elliot, the Official Secretary to the Government, NWP, believed that the communities comprising two parts of the CTA had nothing in common and should be handled independently (Government of India (GoI), Criminal Tribes Act (CTA) 1871, 126). Notwithstanding such opinions, the two populations were eventually brought under the same act, as both were considered 'dangerous classes', existing as a menace to the Indian society and uninterrupted colonial governance (GoI, Criminal Tribes Bill (CTB) 1871, 11). In reviewing the extensive documentation about the 'dangerous classes' and the reasoning behind their inclusion in the CTA, one can comprehend a great deal of resemblance in the language of articulation of criminality in both sections. For both 'hereditary criminals' and 'deviant sexualities', criminality is portrayed as a collective defect and innate trait. For example, the CTA Bill states:

It is well known that various tribes exist all over India [...] many of these tribes have no fixed abode, and wander about in parties, or individually to practice their trade [...] Others, though resident in a particular place, with ostensible means of livelihood, live almost entirely by theft. (GoI, CTB 1871, 10)

This statement echoes James Scott's (2010) perspective that colonial officials detested and distrusted nomadic persons. The officials argued that it was indispensable to purge these livelihoods from the subcontinent for the benefit of the Indian population, the state, who sought to maintain and exercise their power, and the 'dangerous classes', who were unaware of the caprices of their livelihoods (ibid., 11). By recognizing the prominence of this narrative in both Part I and Part II of the CTA, it is possible to reflect on how local elites, colonial officials, and the groups included in the act interacted with one another as new and dynamic fields of encounter were created in realms like caste, community and gender.

Conceptualising Criminality: What Explains the Official Colonial Policy?

It has been contended (Nigam 1990a; 1990b; Williams 1993; Fourcade 2003, 147; Schwartz 2010) that the pejorative labelling of such communities in colonial reports as 'criminal tribes' or 'dangerous classes' served to symbolise the delinquency and maladroitness of populations of the Indian subcontinent, and therefore to justify the administrative decisions of the colonial officials. This was despite the fact that many officials of the colonial bureaucracy, such as Mr. Stephen (the Chair at the proceedings of the council of Governor-General of India), 'didn't think that Indian natives were in any way more prone to crime than the English counterparts' (GoI, CTB 1871, 78). Based on the percentages of data collected (GoI, CTA, 1871), Stephen concluded that many parts of the countryside of India had lower crime estimates than their counterparts in England. However, he noted that certain communities who subsisted in India (particularly in the NWP, Punjab, and Oudh) carried out crimes in a manner altogether unfamiliar in Europe (GoI, CTB 1871). An excerpt from

¹³ Part I referred to 'hereditary criminals' and Part II to 'deviant sexualities' (GoI, CTA 1871).

Frederick de L. Booth Tucker (1923), the head of the British Salvation Army, would throw light into this major concern of the colonial administration towards communities labelled as 'dangerous classes':

Crime in most countries is committed by individuals, in India usually by tribes, communities and gangs, who are highly organised and trained in it from childhood as a profession. The entire family and the relatives of an Indian criminal, including the women and children, are usually associated with him in the commission of crime. It is looked upon by these tribes very much as we regard the military profession, and is considered to be both honourable and lucrative. (1923, 158)

Though the lifestyle of 'criminal tribes' listed in Part I of the CTA was complex, several groups of peripatetic communities, agricultural factions and nomadic people were put under the same category. Initially, the authorities tried to extensively identify twenty-five to thirty communities within the NWP and Punjab alone. Later, they tried to further break them down into two groups on the basis of the vocations. People who seldom or never reported to have laboured in the fields were put under the first group, while people perceived to be relying mainly on banditry were listed in the second group. Such a listing did not address the shifting or mixed vocations of groups.

Scholars from various fields have explained how the colonial rulers claimed to be 'scientific' in relating the criminal propensities of specific tribal communities to irreversible heredity, caste system or genes (Freitag 1985). Crime was seen to be a collective community endeavour as opposed to it being an individual endeavour in the West. Accordingly, the term 'professional criminal' was used to refer to a caste community whose predecessors were involved in unlawful activities for a longer period (citation needed). While doing so, they looked into several customs and usages of specific caste-based occupations within their social structure. Thus, if the forefather of a person was found to be 'criminal', he/she was understood to be 'destined by the usages of caste to commit crime, and whose descendants will be offenders against law, until the whole tribe is exterminated' (GoI, CTB 1871, 100). It is, therefore, fair to argue that the colonial conception of criminality in India ties with their conception of Indian society in general, in terms of collective identities like caste, religion or region, rather than thinking of colonized persons as individuals.

Unfortunately, notwithstanding the anthropological differences between caste and tribe, a congregation of 'criminal tribes' was also documented by Lieutenant Colonel A. H. Paterson as 'low caste', characterised by distinctive cultural norms (GoI, CTA 1871, 60-61). They included Bedyas, Mughya Domes or Domras (identified as descendants of the low Chandal caste), Baurias, Dosads (found in Bhagalpore, Tirhoot and Monghyr), Rajwars (found in Gaya), Booyas (found in Monghyr), Yanadis (Madras district and surrounding areas), Bhurs (of Gaurakhpur), Duleras (of Gurgaon identified as the boatmen caste) and others. Notwithstanding the porous and shifting nature of caste identity, the official classification was idiosyncratic. M. N. Srinivas (1962) has argued that the British produced a fixed and distorted image of Indian society as they confused caste with varna. The varna scheme refers to the four rigid and broad divisions of the Indian society (Brahman, Kashtriya, Vaisha and Sudra), and one cannot change his/her varna. By comparison, the position that each caste occupies in a local hierarchy is frequently not clear, as the system permitted mobility.

Similarly, the communities included in Part II were considered 'a despised and degraded class who are found in one or more batches in every town of the NWP' (GoI, Home Department 1870, 2). Incongruously, a diverse range of gender nonconforming groups having diverse vocations, embodiment, gender expression, and social positions were classified under this category. The epistemology of the term 'eunuch' was not ingrained in Indian society (Gannon 2011; Khan 2015). Yet, following the nineteenth century British association between gender nonconformity and 'deviant sexuality', they were defined as non-heteronormative identities who 'often took part in unnatural prostitution' and 'solicited employment by public exhibitions of singing and dancing often dressed as women' (GoI, CTB 1871, 101). Though the British did not find any objection with the heredity or caste background of the 'eunuchs', they put offences like 'abduction and emasculation of young boys', 'transgression of heteronormative ethics' and 'participation in unnatural prostitution' to list them (Preston 1987, 384). Ironically, the narratives of the 'eunuchs' were also used to suggest the 'enviable notoriety of Indian society' (GoI 1873, (December), 6). As a corollary, people wearing women's clothing or dancing in public were suspected as 'eunuchs' and this affected the livelihood of the *hijras* and other gender nonconforming groups.

In the CTA, the word 'eunuch' was put into place to indicate three types of gender nonconforming groups: *khwajasarais*, *hijras* and *zenanas*.

- i) *Khwajasarais* were seen as custodians of harems of Indian princesses and noblemen. As Hinchy (2014, 25) argues that 'khwajasarais had a legal status as slaves, but were politically significant courtiers, government officials, military commanders, intelligencers, landholders and managers of elite households as well'. But they were impoverished and dispossessed of political influence under colonial rule (Hinchy 2014).
- ii) *Hijras* were organized groups subsisting through ritual dancing and singing publicly in the streets. According to Kalra (2011), *hijras* prefer to call themselves *trithiyapanthi* or *trithiyaprakriti*, which literally means 'the third gender' or the 'third creation in nature'.
- iii) *Zenanas* were 'eunuchs' not because they were castrated, but because of impotence caused by physical defects since birth or accident or other natural causes. They were seen to be feminine men.

Peripheral Outlaws: Social Locations of Groups Identified as 'Dangerous Classes'

It is interesting to reflect on the social positioning of the outlawed communities. They were entangled in social hierarchies, held specific social status, and were embroiled in vocations within the erstwhile social structure and the distinctive caste and gender roles. I use livelihood as an analytical lens to describe and compare the two kinds of communities included in the CTA.

The colonial officials asserted that the process of identifying 'criminal tribes' was easier since they 'didn't have the habit to deny or conceal their caste' (GoI, CTA 1871, 2). This was because, as the Magistrate of Farrukhabad noted, 'criminal' actions of communities included within the CTA 1871 were sanctioned by public opinion (GoI, CTA 1871, 129).

While the vocations¹⁴ they engaged in were socially legitimised, they were simultaneously considered peripheral within the local social structure. Lineage stories were one of the major ways through which the groups socially legitimized their identity.

For instance, the lineage story of the Burwar community is as follows: the Burwars asserted that they descended from Brahmins.¹⁵ Hence, they adorned sacred threads like the Brahmins before venturing out on their expeditions. The forefather of their clan was Buttoo, who was an illegitimate son of a Kshatriya woman. Owing to his poverty, he married a Bunia woman and began to live by agriculture and trade in cereals. One of his descendants happened to marry a low caste woman, 'and her descendants were called as Burwars, which meant spurious' (GoI, CTA 1871, 13). The Burwars were, therefore, not accorded with respect like the customary Brahmins by the larger society since they defied the rules of caste with a past of illegitimacy and hypogamy.

Similar to the Burwars, the Sunorias too had two lineage stories to reckon with. The first one states that Sunorias were born Brahmins. When Maharaja Ramchandra in the golden age,¹⁶ convened a large meeting in honour of his victory against Ravan, the Sunoria Brahmins who were present were excommunicated by other Brahmins for attending the ceremony (GoI, CTA 1871). The second story goes as follows: Sunorias were descendants of Brahmins that were excommunicated for not attending the sacrifice performed by Brahma (GoI, CTA 1871). In a similar line of argument, Sansis claimed to be of Rajput Kshatriya descent, and the Minas claimed to be of Brahmin descent (GoI, CTB 1871). These lineage stories were likely recorded in the CTA because they largely point out how even in the larger society the status of these communities degraded.

While such lineage stories were common, attaining membership into the outlawed communities was not entirely contingent on ascription. Apart from livelihood ascriptions by birth, low caste groups also had the liberty to acquire membership in such communities. They too articulated such lineage stories and earned a living as a part of the community. For instance, amongst the Sunorias¹⁷, children from low caste communities like Chamars, Telees, Kunjars, and Kachees, were frequently recruited permanently (GoI, CTA 1871). Interestingly, the Burwars had a history of intermarriage with the Chamar community. Out of the seven subgroups of the Burwars, many, such as the Kunkhurs and Bahoopuria, were identified as originating from Dhobi and Chamar castes.

One might contend that the Sansis, Burwars, Minas and Sunorias were like 'discrete castes' who were fairly assertive in articulating their ideologies and alternative hierarchies within the caste system (Gupta 1991). This ratifies the idea that different communities in the Indian subcontinent had diverse evaluations of the caste hierarchy (Berreman 1967). However, this does not negate the reality that members of different castes also considered the element of hierarchy in their interactions. For instance, it has been documented that despite some differences in the protocols and customs of the different no-

¹⁴ Such vocations included travelling tradesmen, herdsman, vagrants, and nomads, to name a few. However, the law provided flexibility to local elites to decide which groups could be included within its scope.

¹⁵ Brahmins have been considered the highest castes in whose occupation was that of priests in temples or at socio-religious ceremonies.

¹⁶ In Hindu mythology, there are 4 *yugs* (ages). The first age, where Rama was the ruler, is referred to here as the golden age. While Rama was the mythical ruler of Ajodhya, Ravan was the mythical ruler of Lanka or Ceylon. Brahma, a Hindu god, is believed to be the creator of this world.

¹⁷ Sunorias resided in several states in the North-Western Provinces. They were divided into multiple groups and had many leaders who guided expeditions for the community.

madic tribes, all of them adhered to common forms of religious ceremonies, which were prevalent amongst the low caste Hindus (GoI, CTA 1871).

Drawing parallels between communities included in Part I and II of the CTA, it is fair to argue that notwithstanding distinct ideologies and notions of hierarchy, the upper castes, landed gentry and money lenders of the areas in which such groups inhabited capitalised on their presence (GoI 1872 (May)). Piliavsky (2015) has shown that for some criminalized groups, this was enmeshed with pre-colonial policing practices. Official records indicated that in certain periods of the year, the men of these communities left their wives, elderly and young in villages, and wandered around the whole of India, engaging in burglaries, particularly cattle thefts. When they returned, they peddled the stolen animals in the village. They remitted a significant part of the proceedings to the zamindars of the villages and used the residual amount for the sustenance of their families (GoI, CTA 1871). One such record thus reads that ‘the Zamindars harbour them, and share the profits of their plundering expeditions. Banyas (moneylenders) support their families during their absence, repaid with high interest on their return from successful raid’ (GoI, CTA 1871, 10).

The CTA did not fully outline the reasons for which such communities had to migrate. The British failed to understand that nomadic communities perpetually move as their occupation demanded it and it was ‘a way of life’ (GoI 2008, 12). Official documents (GoI, CTA 1871) noted that members of nomadic communities relied on local Brahmins and money lenders to resolve their financial inconvenience. Additionally, local elites charged heavy interest for any advances of money, which could not be liquidated even by paying double and triple of the principal. Communities with low literacy rates and minimal access to education, such as Burwars, Sunorias, Bewars and Sansis, were particularly vulnerable. (GoI, CTA 1871).

The local elites also contributed to the livelihood constraints of ‘criminal tribes’. Incidentally, many of the convictions of ‘criminal tribes’ were classified under ‘bad livelihood’ sections of the Criminal Procedure Code related to the CTA. Instances of ‘bad livelihood’ were determined by ‘reputation’, especially among local elites. It may, therefore, be argued that the local power structures dovetailed with structures of colonial policing and law beyond the CTA (Singha 2015).

Official documents also claim that many zamindars and talukdars¹⁸ made enormous wealth by levying taxes on such communities in exchange for temporary asylum in their area. Besides, the women of these communities, who stayed back, were employed in the houses of these zamindars in return for little or sometimes no remuneration. To escape such exploitation, oftentimes such communities ran away and settled elsewhere (GoI 1872 (July)), a move that the landed gentry, moneylenders and others of the new area found lucrative. Tempted by these gains many of them even invited such communities to settle in their villages and towns (GoI 1871 (November)).

Like the ‘criminal tribes’ listed in Part I of the CTA, the communities classified as ‘eunuchs’ claimed status and prestige by associating themselves with Indian princesses and noblemen and claiming different associations with mythical figures.¹⁹ The livelihoods

¹⁸ Talukdars were landed gentry who collected taxes.

¹⁹ The development of an association with mythical figures in epics, such as Ramayana and Mahabharata, has been documented a great deal. These narratives and myths aid in making sense of and giving meaning to their lives (Loh 2014).

they maintained were also grounded in religious practices and spiritual belief systems (Khan 2015, Hinchy 2014). Notwithstanding their incapacity to procreate, they were quite visible in Indian public life.

It appears that in certain cases their practices were not only sanctioned by public opinion but they were 'admitted into the fraternity from all castes: Sayyads, Shaikh, Gujar, Juláha' (Rose 1911, 332). For instance, one such pious 'eunuch' was Sahib Jan, who was born into a Brahmin family but went on to avidly practice Islam in later periods of life, eventually leaving the mortal world in Mecca (Rose 1911). Despite the respect and veneration some sections of the 'eunuchs' enjoyed, they also had a lot in common with the communities included in Part I of the CTA. Like the tribes, the 'eunuchs' remained largely at the fringes of the society, and were treated as 'outcastes'. Thus, akin to the lower 'service castes', the 'eunuchs' too were described as 'Kamins' against their upper caste 'Jajman' masters who owned the land (GoI, CTA 1871). They also made payments to the zamindars and talukdars in exchange for the right to safely reside and ply on their profession within the province. Colonial officials, however, objected to the traditional system of the 'kings, naibs, and gurus extracting money from the "eunuchs"' (GoI, CTA 1871, 12). This assessment by the colonial officials also reflects an attitude of contempt on the Indigenous system of governmentality. Hence, the narrative and metaphors were constructed very cleverly to tap Indigenous cultural norms and communities' prejudices. Scholars like Chatterjee (2002) and Hinchy (2014) have shown how certain aspects of 'monastic governmentality' in colonial India – the organization of early modern South Asian polities through teacher-disciple structures – were labelled as forms of 'sexuality'.

The groups included within the category of 'eunuchs' were considered castaways and 'impure', especially by the upper echelons of the society, who associated them with 'deviant sexuality' (Hinchy 2019b, 35). Their rapport with the many low caste communities, however, was vastly different. Arondekar (2009) argues that certain categories of gender non-conforming communities, such as the Khairati, were powerful figures in the sultane and Mughal courts. They held positions of political power, were employed as imperial officials, and could own and dispose of property. Contrary to this, Abbott (2019) finds that in the Mughal successor state of Awadh in the pre- and early colonial period, *khwajasaraís* were increasingly mocked for their supposed effeminacy, bodily difference, and pretensions to normative masculinity. Many lower caste groups (Telis, Rains, Jhiwars) never refused them payment in return for their services, since they did believe in *hijra* the power to bless or curse them (Rose 1911, 332). Archival records also show an amicable relationship between the lower castes, for example, the *sakkás* (watermen), *kunjrás* (vegetable men), and others (Rose 1911). It has been noted that when a *hijra* died, the larger society never stepped forward to participate in the cremation process (Rose 1911). However, there are records of certain low caste communities, e.g., Badhi, who assisted them during such times (ibid., 332).

Thus both the groups included in the CTA were peripheral communities, located on the fringes of the society. Embedded in a highly hierarchical social order, their vocations were predominantly endured, not revered. While their culturally embedded and sanctioned livelihoods were considered unacceptable by a major section of the colonial officials, it was the same vocations that often contributed to the social status, power, living standards,

wealth, and property of the local Indigenous elites²⁰, specifically the landed gentry and the upper caste communities. The critical role that such elites played in covertly helping the administration classify certain groups as 'criminal tribes' should be noted. This is more so as colonial officials also stated the poor reputation of 'eunuchs' among the local elites to supplement their argument.

The foregoing discussion makes it clear that the outlawed communities were engaged in socially legitimised vocations and cultural practices, despite being peripheral within the local social structure. They equally used lineage stories to assert alternative hierarchies and articulate their ideologies. Interestingly, local members of the upper castes, landed gentry and money lenders not only capitalised on their presence by sanctioning 'bad livelihood', they also contributed to the classification of these communities as 'criminal tribes'.

Propositions and Challenges: Tackling the 'Scandalous' Livelihoods included in the CTA, 1871

In the case of both the tribal and gender nonconforming communities being included in the CTA, the British officials postulated different propositions to tackle the professions they engaged in and these propositions were implemented in many areas, through the trial-and-error method. Though it was officially claimed that the British officials tried to avoid directly persecuting or oppressing such communities, the publication of the Madras Torture Commission Report of 1855 made it absolutely clear that they tried to suppress or manage the issue of torture by blaming native officers. Rao (2001, 4127) argues that not only was the method of torture used frequently to extort confessions or obtain evidence, it was also officially justified as the 'innate propensity of the natives'. The colonial rulers thereby systematically tried to attribute excessive violence to precolonial penal regimes.

Apart from torture, they also initially tried to impede the inflow of such communities into the areas declared as British territory. For example, when confronted with the enormous group of 'vagrant/gypsies' (GoI, CTA, 1871, 3), Major Minchin, the Political Agent of Bhawalpoor, opined that the best way to handle such communities was to prevent them from residing in the British Indian territories. Major Minchin and the Lieutenant Governor of Punjab did not allow the 'criminal tribes' to proceed towards Rajputana, sending them back to Bhawalpoor. Orders were also issued to arrest and deport them (GoI, CTA 1871). Every such community wandering in British territory without any ostensible object, or sufficient means of livelihood was deported under Section 3 of Act 111 of 1864 (GoI, CTA 1871).

In the case of the 'eunuchs', the officials were initially hesitant to implement any legislation, despite the fact that the colonial administration had developed detailed knowledge about such communities through state diplomacy and social engagements. The data suggest that the officials regarded communities like the 'eunuchs' as 'prejudices' of the 'Mohammedans of rank' (GoI 1870, 180). A Home Department document states that 'it's a horrible scandal that persons of this class could live independently, exhibit themselves, publicly ply on their horrible profession and survive by such a means of livelihood' (GoI 1870, 2).

²⁰ The term 'elite' is used here to mean those pre-existing communities who have vastly disproportionate control over or access to resources (Khan 2012).

The change in the colonial administration's attitude was a result of two historical transformations: first, new Victorian definitions of the family and ideas of sexual decency; and second, the strengthening of annexation as a colonial strategy (Hinchy 2014, 420). In the initial round of debates, therefore, the officials agreed not to deal with the 'eunuchs', as they were already 'emasculated, for long following their "callings", and are now unfit for any other profession' (GoI 1870, 3). Following Butler (1997), I argue that the identification of 'eunuch' professions as 'calling'²¹ confirms the argument that the foundation to reject their vocations was to cultivate a gender binary and propagate a desirable idea of sexual identity conducive to the political economy, thereby blocking out gender nonconforming bodies. As a corollary, during the drafting of the act, the officials deemed it fit to exterminate their profession completely. It was also argued that the act was to be made 'stringent' allowing a 'considerable amount of power in the hands of the police over a very large portion of the community' (GoI, CTA 1871, 6). This is because all the groups included in the act would amount to a considerably big and organised populace (GoI, CTA 1871, 6).

With the passage of the CTA of 1871, it became easier to implement a standard legislation on these communities. All the communities included within the act were then compelled to register the names of all their family members and their current means of livelihood. Subsequently, they were provided with a pass (valid for a year) to leave their village in an 'honest' pursuit of livelihood (GoI, CTA 1871, 8). The local elites (zamindars, moneylenders, shopkeepers and talukdars), who extracted wealth and resources from the communities included in the act, were given the responsibility to curb them. They were 'bound to keep themselves informed of the movements and means of livelihood of all members of the tribes residing in, or taking shelter in their villages' (GoI, CTA 1871, 8). They were proscribed from lending money or shelter and had to provide 'immediate information to the nearest police station of the advent to their village of any members of the said tribes who has not been registered, or who has not been provided with a license' (ibid., 8). Furthermore, rules were made to seclude the 'wandering tribes' from the rest of the society into public reformatories. Apart from allocating fixed plots of land for agriculture, the 'wandering tribes' were employed to construct roads, canals, irrigation channels and engage in other public works until other suitable employment could be arranged. This gave the government an adequate supply of free labour to build roads and irrigation channels. However, since compulsory labour was considered an offence by the Penal code, the officials decided to register such labour as 'a duty' (GoI 1874 (January), 131). According to Nigam (1990a, 152), this step seemed to be essential to transform such communities into 'moral subjects' under the military service of the Raj.

The act prohibited the 'eunuchs' from keeping young children below the age of sixteen under their discretion. Even the slightest violation of this rule was sufficient to imprison the person for a period of two years or more, apart from the imposition of fines. Furthermore, anyone found clothed, ornamented, dancing or playing music like a 'eunuch' in any street or public place - including a private house - could be arrested without a warrant. A registered 'eunuch' was even debarred from filing a suit in the civil court (GoI, CTA 1871). The disabilities of the 'eunuchs' were also recorded and no registered 'eunuch' was capable of (a) acting as a guardian to any minor, (b) giving a gift, (c) making a will, and (d) adopting a son (GoI, CTA 1871). Hence, a child kept under a 'eunuch' had to be returned to his parent

²¹ The term 'calling' derives its inspiration from Protestant doctrines which regard 'the fulfilment of duty in worldly affairs as the highest form of the moral activity' that the individual could assume (Weber 1946, 40).

or guardian. In cases where such an arrangement was not possible, maintenance and education was organised for the child (GoI, CTA 1871).

Gradually, the colonial project also expanded to take control of geographical areas dominated by gender non-conforming communities. Thus, in 1856, the East India Company annexed Awadh²² for the failure of the ruler to remove eunuchs from positions of political power (Hinchy 2014). Incidentally, both the Awadh ruler Padshah and the *khwajasaraais* resisted colonial interventions into *khwajasaraais'* work and political influence. Though the colonial policing of 'criminal tribes' was uneven, an anti-*hijra* campaign was prioritized in NWP in the 1860s and 1870s.

The act not only allowed the colonial authority to prosecute and repress a vast group of marginalized communities, but it created vulnerabilities for members of these communities, who became victims of inter-caste and inter-community clashes due to suspicion, doubt, and allegation. Loss of livelihood and consequent hunger exposed several members of such communities to commit petty crimes (GoI 2008). There are also several examples of women becoming victims of police torture once they or their men were suspected of being engaged in 'criminal' activities. According to Hinchy (2020, 1669), 'gender power dynamics also shaped criminalized peoples' interpersonal, embodied interactions with British and Indian colonial officials on an everyday basis'. The members of the 'wandering tribes' were argued to be 'broken men and fallen women' (Solanki n.d.). The metaphor of 'fallen women' not only sunk their dignity, it also contributed to additional harassment. Even after the repeal of the CTA in 1952, the vulnerability and continued exploitation of women and children from families identified as 'criminal' under Part I of the CTA raises serious questions on the oppression of marginalized communities around gender and sexuality (Agrawal 2018).

These questions also allow us to find similarities in the recursions of the act on groups listed under both Part I and Part II of the CTA. The CTA also left widespread and deep socio-psychological impacts in Indian society (The Hindu, 2008). Thus, the Habitual Offenders Act, introduced in 1952, imported the stringent heritage of the CTA into the Indian Penal Code (Hinchy 2019b). Similarly, Section 377 of the IPC, modelled on The Buggery Act, 1533 of Britain, criminalised 'unnatural' offences of sexual minorities in independent India (Hinchy 2019a, 53). It is evident that several years even after the repeal of the act, 'criminal tribes' faced stigma and poverty (Hasan 2020). Hence this section demonstrates how the colonial oppression of these communities added to, and altered, the mode in which they were already peripheral in precolonial times.

Embodied Subjects: Negotiations and Subversions by Communities included in the CTA, 1871

The colonial rules, thus framed, acted as a great measure to constrain members of the communities included under the CTA. Yet, they did not succeed in eliminating the traditional livelihoods of many communities for a variety of reasons. Such communities developed a variety of modalities in order to defend their livelihoods. It should also be recognised that within the particular Indian provinces that the CTA was implemented, implementation varied between communities and periods. For example, Part II of the CTA

²² Awadh is a region in the state of Uttar Pradesh in India located between the rivers of Ganga and Yamuna.

was not enforced in Punjab. Some cities also drew up rules, but they were apparently not implemented. I shall discuss instances of resilience of communities listed in the act considering such variations.

Thus, to begin with, the Sansis located in reformatory settlements were encouraged to cultivate land. But due to poor quality of land, they started returning to their prior vocations. In Sialkot district, the district police officer reported: 'the land of the Adian village is so bad that a crop could hardly be raised on it, and it is scarcely a matter of wonder that the Sansis there take to crime whenever they can' (GoI. 1872a (October), 120). Thus, efforts to convert these communities into agriculturalists failed miserably.

Another time-tested method that many communities employed to escape the expropriation by zamindars and money lenders was desertion and migration to a new area. While around 6000 Baurias were counted by the authorities in 1865, only 500 could be traced by 1872. This had happened because most of them escaped and settled somewhere else where they could not be located (GoI 1872 (December)). Similarly, during the process of roll call at Jhansi, the commissioner found that more than 329 registered persons of the Sunoriah community went missing and remained untraced for years (GoI 1873 (December)).

I demonstrate using archival records how in some cases the tribes also attempted to bring forward new modalities of banditry that were challenging to recognize (GoI 1873 (December)). For instance, the Burwar community devised new methods to dispose of their stolen goods without being noticed. While earlier they used to bring back all the stolen things for sale to their villages, later they brought back only cash and jewels and disposed of the rest at half price before returning for roll calls to their village. Furthermore, they bribed the zamindars of the village with rich shawls, and jewels as a result of which the latter did not expose them to the colonial officials. Apart from that, many communities, such as the Bituchis and Minas, received shelter in Rajputana states, under the minor native chiefs e.g., the Raja of Kunjpura Karnal.

Simultaneously, many of these communities continuously upgraded their dialects in such a way that the colonial officials could not figure out their language of communication. Children were taught these 'code words' from a young age. This language differed even within the sub-communities of the same group, making it extremely difficult for the officials or locals to figure it out. The colonial officials tried to extract a list of several such slang or *bole*²³ which was reluctantly revealed by the groups (GoI 1871 (November)).

Another manner of protest was direct confrontation with the police when community members were about to be rounded up and sent to the jails. For example, on the occasion of marriage in a Mina²⁴ household, the police officials received information that a powerful leader named Hatheera Mina had come to join the ceremony. The ceremony was graced by hundreds of other Minas who had come from other states in order to witness the union. When the police resorted to action, there 'was an outrush of Minas on the police' which 'terminated in the police being beaten off with a *chowkeedar* (gatekeeper) being killed, one constable severely, and one constable slightly wounded' (GoI, CTA 1871, 150). On another occasion, the police surrounded a household to arrest a Mina whom they viewed as trou-

²³ Phrases used within such groups to convey hidden meanings to members, specifically as code words to stop local officials from finding out their motives and intentions.

²⁴ The Minas mostly reside in Rajasthan and Madhya Pradesh.

blesome. The head of the household 'told them to go away, or there would be disturbance and they wouldn't allow anyone to be seized' (ibid., 151). When the officials refused to leave, the Minas fought back with swords and sticks. In many cases, as in Shahjahanpur, the entire village would come forward to resist the authorities and protect the Minas.

Finally, there were other loopholes in the implementation of the legislation. For instance, in the initial days when the act was implemented, jails became overcrowded. Thus, the officials documented that 'it will be useless to find security for so many members, and quite impossible to find accommodation in our jails' (GoI, CTA 1871, 42). Many officials were unsure about incurring the high 'costs of reforming the tribes since the setting up of reformatory villages and employment of guards was quite expensive' (ibid., 42). Therefore, if members of these communities ran away, officials would not initiate a search.

Similarly, in the case of the 'eunuchs', the officials faced hurdles due to different strategies employed by them to counter the legislative measures. Much like the communities included in Part I of the CTA, the communities classified as 'eunuchs' often took to desertion or used code languages to maintain secrecy (Hall 1995). In case a 'eunuch' was declared dead or missing, the name was erased from the list with the permission of the Magistrate (GoI 1872b (October)).

In many cases, the officials could not separate young boys being kept by the 'eunuchs' as they were residing there willingly, and were not coerced into the trade. This revelation often was quite shocking to the officials pondering over the reasons for voluntary participation in the profession (GoI, CTA 1871). In one case, they interrogated a young uncastrated 'eunuch' Fyeman and her *guru* (guide in the profession) Mollah because they noticed signs of 'unnatural sexual activity' upon physical examination of the former (GoI CTA 1871, 117).

Fyeman said that she had been living with Mollah since her mother left her. Mollah had always been kind to her and never coerced to learn the tricks of the trade. She voluntarily learnt them by wearing women's clothes and anklets through imitation. Mollah, along with Fyeman and another 'eunuch' named Elish Jan, sang songs and went about from place to place to perform at weddings and betrothals to earn their livelihood. On being questioned whether it was her *guru* who forced her to engage in unnatural sexual liaisons, Fyeman revealed a different narrative altogether. She described that the unnatural sexual activity was a result of molestation by a *ghariwan* (cart driver) who took advantage of Fyeman multiple times in the absence of Mollah. But when Fyeman brought the matter to the notice of Mollah, the latter thrashed the molester and drove him out of the locality. Mollah, on the other hand, stated that Fyeman joined the band willingly and she treated her like her own child (GoI CTA, 1871). Under these conditions, the colonial officials could not impose the law to separate the 'eunuch' from the adopted son or even trace cases of forceful castration or surgery of young 'eunuchs' by the older ones.

It is worth arguing here that the process of initiation into the 'eunuch' community was not always through painful invasive techniques. Non-invasive initiation rituals included a clothing (*chadar odhna*) and a feeding (*mir buchri ki khichri*) ritual, which symbolically rendered men impotent for life (Rose 1911). Hence, even without castration or surgery, a new incumbent could have joined the community and bypassed the legal stipulation. These differences also justify the existence of varied vocations amongst the community members. The colonial officials also failed to notice occupational and ritual differentiation among the gender non-conforming communities (Ghosh 2019).

Communities like the *khwajasarais* and *jankhas*,²⁵ who were employed to guard the womenfolk and the harems of the Nawabs, underwent invasive surgeries as a part of the initiation rituals (Rose 1911). Others, such as the *zenanas*, carried out prostitution. The *hijras* facilitated birth and marriage rituals and earned their livelihood by dancing and singing. The Khojas were low caste married effeminate men with children who lived by dressing up as women and facilitating birth and marriage rituals like the *hijras*. Sometimes they hired *hijras* to dance and perform on their behalf while they played the drums (Rose 1911). All these were viable professions that allowed a large group of people to earn their livelihood.

Therefore, despite the implementation of the legislation to bring down 'eunuch' populations, in many places, officials recorded an increase in the number of *hijras* (Rose 1911). Having failed to 'control' them, the officials argued that 'if they return, they will be brought back under the rules, if they didn't, no action would be taken against them' (GoI 1873 (December)).

Conclusion

To conclude, it is important to note that CTA was neither implemented in the whole of India, nor were the meanings associated with the notion of 'criminal tribes' fixed. Yet, it led to widespread vulnerabilities of several marginalized communities identified as 'criminal tribes'. The construction of this complicated category and subsequent policing led to a rise of suspicion, stigma and allegations in the mindset of the larger populace which continued even after Independence.²⁶ Vulnerabilities of women of families classified under Part I and gender nonconforming people classified under Part II of the CTA bear testimony to the strengthening of patriarchal and heteronormative ethos in India after Independence. At the same time, many sections of 'criminal tribes' had good relations with low caste Hindus. The unity of those at the periphery often contributed to their sustained resistance and negotiation. This paper identifies parallels between the two sets of communities listed under Part I and Part II of the CTA, a topic on which further research is still needed.

It is salient for us to note that 'criminal tribes' also exercised their agency and came up with innovative modalities to foster their livelihoods. Moreover, they kept returning to their old ways of performing their professions. It must also be noted here that their social location and position in the caste and class hierarchy allowed them relatively slim chances to radically shift to a new occupation in a caste-laden society. This was equally true in the case of the 'eunuchs' who were constrained to follow their cultural practices in public life. The measures of the act, therefore, majorly acted to restrain such communities rather than offering significant alternatives.

These communities, despite having their own lineage stories of an ancient respectable past, had constrained life chances in an extremely hierarchical society. Their livelihoods were nurtured and sustained in the form of a vicious circle to multiply the wealth, power and status of elites in the society. Notwithstanding such constraints, such communities negotiated, subverted and came up with novel methods of defence, survival, and continua-

²⁵ The *jankhas* or *Zennas/Zannans* are referred to as 'effeminate' or 'impotent' men or dancing boys (Hinchy 2019a, xi).

²⁶ While the CTA was repealed three years after Indian independence, it was replaced with Habitual Offenders Act 1952 and many of the communities persecuted under CTA were booked under this new law.

tion of their livelihoods. Incidentally, Part II of CTA was repealed in 1911 when the officials found that the 'eunuchs' became clever enough to evade the police and devise survival strategies (Hinchy 2019). Following Gandee and Gould (2020, 7), I argue that such instances of resistance and defence clearly reflect the agency of the 'criminal tribes' 'as a way of interrogating the complex relationship between the "margins" and the state', which is not analysed by the scholars of the Subaltern Studies.

In such a context, I argue against Rosenfeld's (2017, 3) statement that 'the legal status of behaviour—whether it is defined as a crime—lies not in the content of the behaviour itself but in the social response to the behaviour or to the persons who engage in it'. The practices of the communities included in the two sections of the CTA, 1871 were not penalised within the local social structure and the transformation that took place as a result of CTA was not unilinear or unidirectional. The creation process of the identity of 'criminal tribes' was multidimensional, with a range of actors playing different roles: officials, local elites, such as the landed gentry, upper castes, and moneylenders, and last, but most importantly, the communities included in the CTA, who, throughout this process, did not quite remain the same selves as before.

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