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Female Outrages in Railways: The De-Synchronisation in Judicial Management, Safety and Security in the Colonial Indian Railway

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Abstract

This article deals with the problems and processes related to female outrages in railways and along with its judicial management in nineteenth century colonial India. The insufficiency and apathetic attitude of railway judicial management revealed such contradiction and dilemma is the central argument of the article. In this article I will discuss the legislation procedure and the role of the chief justice interpretation on this case. This paper undertakes a comprehensive analysis the role of the Indian Association Committee and the nature of the judicial procedure to provide justice. This article also suggests the role the railway police in regarding to judicial procedure. However, several problems of legislative procedure co-existed with the efforts of the judicial management of railways in nineteenth century colonial India. This article would be revealed how the railway authorities took necessary steps to overcome these judicial problems. Nevertheless, impressive attitude to this problematical issue would be discussed. Such related aspects as the etc are all important evidence of this flexibility.

Key words: Female outrage, Railway safety and security, judicial activities, Indian Association Committee, High Court, Chief Justice

Introduction

Railways are a significant part of the transportation in the colonial India. Safety has been one of biggest concerns in the colonial railway system. Railway safety is also concerned with the protection of life through rules and regulations. Such legislation was promoted and needed to enable the companies to accomplish the object of their pledge.¹ Female outrages in railways were one of the most horrendous incidents in colonial India. This incident also raised certain issues of inadequacy in railway administrative management along with the inefficiency of its judicial activities. However, colonial railway safety and security question had a deep impact on the railway management. It was observed that railway station master and railway police had implemented preventive measures of the outrage. The Indian Association Committee played an important role in providing justice in the middle of the nineteenth century. This article will fully explore the process of official enquires and decision taken by the railway authorities. However, the paper would examine the judicial activities and Indian Association Committee's role to locate the actual

preventive measures of the outrage incidents. In this process, it will try to discuss the nature of judicial procedure and policies and its outcome.

I

Female outrages in railway periphery were a gigantic occurrence in colonial railways in India. However, such fragmentary acts were seen at that time, which had to be accomplished such comprehensive legislation for colonial railways. Moreover, it can say that legal inequalities in colonial India were constantly debated.ⁱⁱ Therefore, such necessary enquiries were needed for the female outrages in the railway periphery. It is more important to know that how the authorities arrived at such a decision. Elizabeth Kolsky has been pointed out that

“Even though the gap between the promise of equal justice and the practice of something different produced startlingly biased legal decision”.ⁱⁱⁱ

The dilemma was that there was no direct evidence that the outrages were committed without the consent of the girl. The evidence of identification was against the accused persons.^{iv} Apparently, the railway police appealed to the extent that the bail bonds of the accused person should be cancelled.^v It can be pointed out that if such would be arranged by the railway employees in India; such weakness in dealing with these cases was raised. Such question was raised when the railway station master noticed regarding the matter of outrages of women, but station master did not report this case as early as possible. Consequently, the station master had been punished by the authorities due to his activities. It can be precisely pointed out that it was the duty for railway station master to give report to his higher authorities. But there was such lack of transparency in colonial railway management.^{vi}

However, the efficient comprehensive legislation had been provided in order to supplement the efforts of the railway management towards securing easy entry of the passengers in the railway premises and others. It is important to discuss that the role of the railway police appeared to be on the right track. But the role of the state police was so dismal. The women were not under any obstacle, but remained in the police compound, as she had nowhere else to go. There was no liability on the police when an escape person was accused in the case. A question often arises why the police had not taken proper liability for the common safety for the railway passengers. Apparently, it was completely spontaneous, and she should have watched by the police to prevent her from tampering with the evidence. Questions were also raised of the case occurred in railway limits, and such information had to be given to the Railway Police. But the railway police could not have taken this case naturally. Sanyal also has explicated that all the kinds of railway administrative machinery whether of the state or of companies or of Indian states, were brought under the purview of the law.^{vii}

Moreover, the accused person was arrested; the legislative procedure was so irregular and insufficient. The offence was unbailable, and this procedure was irregular, as had been reported to the District Magistrate. This legislative procedure had great impact on the railway management system in colonial India. It can be also pointed out that, great difficulties were felt on the account of the existence of various fragmentary acts from the beginning of the railways. This made the problem of the approaches of the law towards the various crimes of the railways in colonial India quite perplexing and complex. Adequate

approaches on the various railway crimes had not been addressed in many parts of the eastern India and the consequences of this might have reached alarming consequences in the future year. Therefore, the case was referred from lower court to the High Court, together with the entire list of records. However, the Magistrate did not give a statement of the facts, but it referred to the governments the opinion of the witness of the complainant.^{viii}

Hitherto there had been little incompatibility regarding the facts. Therefore, the complainant had prepared statements which it was not facile to unify with each other, or with the evidence of other persons.^{ix} There was a fear of discussing the evidence because it was sub judice, the matter providing the decision before High Court.^x Sanyal also argued that benevolent autocracy was needed for the time being, and consequently legislation allowed remaining in abeyance.^{xi} There was certainly some imbalance in the statements prepared by the complainant at several times and in several places. It can be pointed out that this imbalance had an impact on the judicial activities of railways.^{xii} When the accused person's accusation became known, the Railway Police officials appealed that the bail bonds of the other two accused might be cancelled, and they were locked up.^{xiii}

It can be pointed out that such question was raised regarding the judicial activities. The question was at once arisen, why so serious a case was bail allowed. It is clearly significant that the Magistrate of district gave instructions to the Government Pleader to apply to the Sessions Judge to cancel his order admitting the accused to bail. It was most inadvisable to allow the accused person any opportunity for absconding. The prudence was allowed by law was wrongly practiced, and that the bail should not have been allowed. Every endeavour was revealed to arrest accused person. It was pointed out that the Magistrate did advice Government Pleader to appeal to the session Judge to cancel the order admitting the accused person to bail. Bearing in mind the conduct of the accused person, it was appeared with most ill-judge to consent other accused persons any convenience for escaping.^{xiv} Apart from the concerns of the Magistrate therefore the medium of the native papers flourished these incidents of outrages. However, although rules were needed for the Bengal Police to submit special reports in the case of serious complaints against Europeans, but no such responsibility was unequivocalness the Railway Police.^{xv} Magistrate prepared enquiries into the accusations by plaintiffs before the pledging Magistrate as to her being tempted away by a female recruiter.

The role of the Committee of the Indian Association was to provide justice in nineteenth century colonial India. The Committee of the Indian Association submitted their observations for the consideration of Government. This Committee was interested of justice. The action of the Government in directing the Legal Remembrancer to look through into such case, and the efficiency of the officers were examined, and there were released of their duties. It was probable that the case for the prosecution would not have been laid before the High Court with that completeness which its significance claimed. It is significant that there the decision of the Chief Justice mandate was the unsuited approval of public opinion. Regarding these cases, the authorities heard too often of such unjust and oppressive actions. It had resolved to stamp such evils out by dealing out strict justice to the offenders. Elizabeth kolsky has been pointed out that "colonial lawmakers were deeply troubled by and conflicted about the problem of British brutality but were stymied in the

ability and willingness to act. The judicial consequence of these colonial inversions where unequal laws were redefined as equal and appropriate, given the special conditions in the colony were not lost on critics of the system and practice of the law produced discriminatory decision'.^{xvi}

II

It is also important to note that the Chief Justice gave a cautious consideration to the facts of the case, and it revealed circumstances which the Committee respectfully submitted and sought the serious attention of the Government. Outrage cases of this kind were not by any means infrequent and were not individual cases in important stations. It is painful to think what may have been the state of things in railway stations on the East Indian Railway lines which were less effectively organised. The Chief Justice delivered a painful interpretation upon the administration of the East Indian Railway authorities so far as their arrangements for the protection of passengers against outrages of this kind were concerned. It was not discussed as 'not singular occurrences', what guarantee was there that outrages of a less gross character might not be repeatedly committed with equal or even greater redemption? The Committee of the Indian Association earnestly appealed to the government to make such arrangements 'the recurrence of such a state of things impossible'.^{xvii} The Government took such measures after a cautiously consideration of all the facts of the cases. The Government in the outrage case carefully acknowledged its duty to give protection to female railway passengers.

The portion of the judgment of the Chief Justice had been quoted in the Indian Association's letter. However, the opinion of the Chief Justice was that the railway outrage was apparently not an act of singular occurrence as it was unable to trace the evidence.^{xviii} In that case, the complainant's character was accepted as doubtful, and the accused parties got the benefit of the doubt. Unfortunately, it is impracticable to guard against exceptional cases of immorality amongst a staff. The decent behavior of all employees lay in the performance of their duties and anyone who transgressed his duties was punished especially if he was shown to have used his official position in the railways.

However, the matter could be properly investigated on the spot. It is impossible to deal with complaints which were made anonymously, or where the complainant refused to come forward with his evidence and be confronted by the accused. It is doubtless the case that a false sense of shame prevents some perfectly-timed complaints to be put forward, but, on the other hand, it is also impossible to accept such charges without substantial proof as nothing was easier than ruining a man's reputation by such complaints.

However, it can be said that the picture of the outrages of women was inhuman and fearful incident. But the main controversial object was that European or native community were the culprits for the painful incidence.^{xix} The accused persons were with the offences of rape and were often spent a long time in the custody for trial at the next district sessions. There was logical suspicion whether any crime was committed. It was revealed that the woman was an intending party of no high moral character, and that controversy arose over money. Railway authorities were not engaged in the accused offence, and this claim was supported by the both departmental and police enquiries. There were incidents of

endeavouring to screen the other man named, which also obstructed such enquiry. The services of the railway employees had been dispensed with, and they were evidently not desirable characters to keep in the Company's service.

The Committee gave suggestion in this connection for the consideration of Government. The East Indian- Railway Company might employ female ticket-collectors who would alone enter female compartments and examined the tickets of female passengers.^{xx} However, the safety of a large class of the female population of these provinces was a matter which had to be addressed by the Government since it was liable for their protection. The Committee was aware that the East Indian Railway line was under the control of the Government of India. However, it was a matter of great importance that the native public should entertain the most complete confidence in the arrangements which had been made by the Railway Administration for the protection of female travellers. It was to be regretted that the Company did not, of its own coherence, take active measures, by the engagement of counsel to ensure that the occurrence of such outrage should be adequately punished.

The Committee of the Indian Association was confident that the Government of Bengal moved and forwarded the Government of India with a view to the adoption of such measures. Chief Justice in the concluding portion of his judgment was that the evidence in the case revealed a state of things in the station which called for egregious examination on the part of the authorities. Moreover, the public mind might be reassured by the adoption of measures on the part of the Railway Company, which was efficaciously put forwarded the repetition of such a pejorative and woeful incident ridiculous.^{xxi} Everyone concerned must be desirous that such outrages should be rendered impossible. Although their number might be small when compared with the number of travellers; it is very difficult to see what could be further done in this matter. However, the growth of native public opinion constituted the greatest safeguard that could be asked for. Apparently, it is significant that the Chief Secretary, Government of Bengal, together with a communication from the Indian Association about the railway outrage case, considered several points that were raised in the correspondence. Hence, such were the difficulties that the Railway Administrations faced in dealing with the occurrence of these outrages in colonial India.

East Indian Railway authorities did not take steps in this case to prosecute the offenders, either before the Magistrate or in the Sessions Court. It was, however, a matter of huge importance that the native public should have had confidence in the arrangements made by the Railway Administration for the protection of female travellers. However, it was to be deplored that the Company did not, of its own coherence, took effective measures, by the propensity of counsel and otherwise, to confirm that such outrage should be sufficiently punished. Such difficulties were arisen in Railway Administrations in dealing with a matter of outrage incident. However, the judgment and opinion of the Chief Justice was that the outrage was apparently not an act of singular occurrence. In fact, serious fears in prosecution were responsible for the proper framing of the cases. In this context of the version of the Indian Association's letter, we can see that general charges had brought against the Railway.^{xxii}

It was also ridiculous to deal with complaints which were prepared anonymously, or where the complainant returned to come forward with evidence because of the fear of

confronting the accused. It was unhesitating that the case was a false sense of shame prevents. Sometime complaints were factual, and substantive, which had been put forward. On the other hand, it was not possible to take such charges if not entirely corroborated; nothing was easier than to destroy a man by such complaints. Sanyal also has precisely pointed out that in many cases such lines formed part of through routes and it was evident that civil and criminal jurisdiction for damage or offences under the Act must lie with the government of India. In actual practice, the absence of a convenient machinery to adjudicate upon the complicated question of undue preference in India rendered the legal provision comparatively ineffective.^{xxiii} Horace Bell also pointed out that as a matter of railway policy, any change in railway law should not be promoted by the state just at the time its own railways were about to be opened; while it still stood as the controlling authority over the guaranteed lines. The subject was consequently allowed to remain in abeyance for some time.^{xxiv}

III

Based on the above discussion this paper therefore had tried to analyse the scope of judicial activities and the rules regulations for safety security of the railway passengers in the eastern Indian railways. Any attempt to trace the history of judicial activities for the security of railway passengers in middle of 19th century with the problem of lack of sufficient administrative management. Notwithstanding the rich and complex histories of judicial activities was not tended to perpetual stereotype images of the railways in colonial India. However, some fragmentary images of the railway rules and regulations in colonial period have been noticed. It is also important to note that, evolution of the railway legislation authorities' attitudes towards railway passengers in 19th century colonial India were not unchanging and congenial. It is difficult to elucidate multifarious complication of the British policies towards the railway legislations in India. The explanation to the complexities lays in the British policies vis-a-vis legislations dealing with the railway management in colonial India.

Notes

ⁱ As Sanyal notes, "the first enactment that was accordingly made was one of 1854 which was applicable to railways in British territory only. It gave legal sanction to certain regulations, modelled on those of the British railways, regarding pre-payment of fares, production of tickets, fraudulent attempts, trespass, obstruction, handling of luggage etc and the liability of railways in the carriage of traffic. In 1867 a short Act was passed defining the liabilities of railway servants and rendering penal certain offences committed by them. In 1870 and 1871, two short Acts were passed to meet certain urgent questions including the control and reporting of accidents and cattle trespass. The Act of 1879 was defective as regards the inspection of railways, both before and after opening. A short Act of 1883 was therefore passed, empowering the Governor General in Council to take action for the protection of the public against dangers from inefficient management of a railway and to appoint officers for periodical inspection with this object. The Act IX of 1890 contains with inspection of railways, construction and maintenance of works, railway commissions and traffic facilities, responsibility of railway administrations as carriers,

penalties for infringements of the Act." As cited in Nalinaksha Sanyal "*Development of Indian Railways*", University of Calcutta, 1930, pp. 40-172

ⁱⁱ Elizabeth Kolsky, "*Social Justice in British India*", Cambridge University Press, 2010, P17

ⁱⁱⁱ *Ibid*, P13

^{iv} See in details, "The outrage was committed on the night of the 8th May, and the complainant's statement was recorded by the Sub-Inspector of Railway Police at Asansol the same night: next morning she fully identified the five accused, and was sent down to Raniganj, where her statement was recorded by the Sub divisional Officer, and she was examined by the Assistant Surgeon: the case was then taken up by the police, warrants were issued for the five accused, and they were arrested. On the 17th and 18th May, the prosecution witnesses were examined, and on the 27th May, after examining the witnesses for the defence, Mr. Webster committed three of the accused, viz., DeSouza, Cawley, and Bartlett, to the Sessions, under sections 376 and 354 of the Indian Penal Code; the other two, Alison and Moody, being discharged under section 209, Criminal Procedure Code. The case was eventually tried on the 22nd to the 25th July, with the result already reported. DeSouza had absconded, Cawley was acquitted and discharged, while Bartlett's case has been reported to the High Court, he is being admitted to bail in the meantime by the Sessions Judge." 1896, Police Department May, Proceeding no 20-38 West Bengal Archive, Calcutta

^v See in details, "Mr. Windsor has seen the commitment record, and from his report, paragraph 10, I gather that all five accused were at large on their own recognizances up to the date of commitment: after commitment Mr. Webster ordered that the three who were committed to the Sessions, viz., DeSouza, Bartlett, and Cawley, should enter into a fresh bond in their own recognizances (apparently of Rs. 250), together with one surety each of Rs. 250. The required bail was furnished by Bartlett and Cawley, but DeSouza asked for time, which was allowed till the following day. On that day, the 28th May, Mr. Webster made over charge to Mr. Jackson, and proceeded on leave to England: as he was engaged in making over charge in the treasury, DeSouza appeared and asked for further time till the afternoon train came in from Asansol, and Mr. Webster allowed him till 4-30 p.m. DeSouza did not appear again, and in the hustle and press of making over charge, the matter appears to have been entirely overlooked, and DeSouza's failure to give bail was not reported to Mr. Jackson till the 3rd June. A warrant was issued forthwith, and the necessary proceedings for the arrest of DeSouza have been taken, but he has not been seen since the 28th May. According to the newspaper report, when DeSouza's disappearance became known, the Assistant Inspector-General of Railway Police (Mr. G. D. Graham) applied that the bail bonds of the other two accused might be cancelled; and this was done, and they were locked up." 1896, Police Department May, Proceeding no 20-38 West Bengal Archive, Calcutta

^{vi} See in details, "similar outrage was committed by an assistant station-master of that station, and the matter was brought to the notice of the station-master, who only laughed and joked the aggrieved husband. He of course reported the matter to the police but did not consider it was duty to report to his immediate superior. The station-master promptly reported to the local authorities, but in this case, he forgot about the express order contained in general rules and regulations of Indian Railways. The charge was proved

against the delinquents. But the assistant was not punished in the next day. Do you not consider that he should have been suspended then and there, and the station-master been punished for not reporting the case, and for joking? There was no proof that the station-master did not tell the aggrieved husband anything. The Inspectors did not attempt to collect any evidence to the charges brought against him by the aggrieved husband." 1896, Police Department May, Proceeding no 20-38 West Bengal Archive, Calcutta

vii Sanyal pp 97

viii Ibid, West Bengal Archive, Calcutta

ix See in details, "On the evening of the 8th May, the complainant, Rajabala Baishnabi, a married girl of 14 or 15, who had left her husband to follow some Coolly recruiters some months before, arrived at Asansol station by the train No 5 up, which is time to arrive there at 7-40 P.M. Here tickets were examined, and she is having no ticket, was taken out of the train by Bartlett, Ticket Inspector, one of the accused and made over to a chowkidar. After the train had gone, at 8-5 P.M., the woman was taken into the booking office or some such room, where there were four of the accused and a fifth man. Complainant was asked whether she had any money, and when it was found that she had none, she was told to be gone. She quitted the room and was going to leave the premises by a wicket close by, but was stopped by Alison, who told her to go up to the end. of the platform and leave the premises by that route. She obeyed, and having gone a short distance on this direction, she came upon a number of khalasies or coolies smoking, who asked her to sit down and join them, which she did." Amrita Bazar Patrika, 25th October 1894, West Bengal Archives, Calcutta

x See in details, "The story, as far as I can judge, however, is this. As she was sitting with these men, three (or two) of the accused came up, and one of them, Bartlett, said, "Look at this girl; we turned her out, and here she is again." They then offered to show her the way (or said she had to go to jail), and she followed: as they went along two (or three) others joined them, and while going, as far as I can understand, very much in the direction which Alison had originally indicated, they took her to the quarters of De Souza. Arrived there, according to her statement, doors and windows were closed, and four of the men in succession forcibly ravished her, the others on each occasion remaining outside the room. She maintains that on the way to the house she attempted to cry out, but the accused, or some of them, placed their hands over her mouth. She also swears that she endeavoured to cry and scream while in the room, but that a hand was always placed over her mouth; and she also has stated that she was intimidated; and was told that if she made a disturbance she would go to jail." 1896, Police Department May, Proceeding no 20-38 West Bengal Archive, Calcutta

xi Sanayal, pp97

xii See in details, "If she would be gone disagreeing as she assured, it became hard to believe that she was taken along for any distance with a hand over her mouth; and again, her accusation. Notwithstanding, she said before the pledge Magistrate, that she was taken to be locked up. Apparently, she was attacked/seized and bustle about into a room, where she became too terrified or too tired either to grant any substantive prevention or to enhance an active menace." Ibid, west Bengal Archive, Calcutta

xiii Hitavadi Newspaper report, 25th October 1894, West Bengal Archives

^{xiv} 1896 May Police Department, Proceeding no 23-25, West Bengal Archive, Calcutta

^{xv} Rule 13, Chapter XVIII of Police Code, read with Rule 25, Chapter IV, clearly lay this obligation on the Railway Police.

^{xvi} Kolsky, P24

^{xvii} 1896, May Police Department, Proceeding no 20-38, west Bengal Archive, Calcutta

^{xviii} See in details, " However, though Asansole only figures on the black list sent herewith on one previous occasion in six years, the one case, namely, that in 1891, was of a very similar character; a native female passenger complained of having been outraged by 4 of the native staff, of whom 3 were native ticket-collectors. Even these two cases in six years scarcely establish a want of proper supervision at Asansole, both being acts of gross immorality committed by men in their own quarters and off duty. Railway staffs are which in the Traffic Department alone numbers some 12,500 men (about 660 are Europeans and Eurasians, the rest natives)." 1896, Police Department May, Proceeding no 20-38 West Bengal Archive, Calcutta

^{xix} See in details, "similar outrage was committed by an assistant station-master of that station, and the matter was brought to the notice of the station-master, who only laughed and joked the aggrieved husband. He of course reported the matter to the police but did not consider it was duty to report to his immediate superior. The station-master promptly reported to the local authorities, but in this case, he forgot about the express order contained in general rules and regulations of Indian Railways. The charge was proved against the delinquents. But the assistant was not punished in the next day. Do you not consider that he should have been suspended then and there, and the station-master been punished for not reporting the case, and for joking? There was no proof that the station-master did not tell the aggrieved husband anything. The Inspectors did not attempt to collect any evidence to the charges brought against him by the aggrieved husband." Ibid, west Bengal Archive, Calcutta

^{xx} See in details, "Hence, that the number of offences against female modesty on railways was exceedingly small. During the six years referred, the number of passengers on the East Indian Railway had been nearly 95 million. Significantly, there was no precise information to hand as to what proportion of these travellers were females ; but, remembering that a large number of women would be travelled at times of *melas*, and it would not be seemed an excessive estimate to assume that 4 per cent, or four millions were females." 1896, Police Department May, Proceeding no 20-38 West Bengal Archive, Calcutta

^{xxi} Ibid, west Bengal Archive, Calcutta

^{xxii} See in details, "The Assistant Inspector-General, Government Railway Police, Howrah, and the Deputy Inspector-General, Government Railway Police, Allahabad, to have their records carefully searched since the 1st January 1890, and to submit a statement showing every case brought to the notice of the Police of misbehaviour on the part of the railway staff towards female passengers, giving date, place, brief particulars, and action taken. I enclose copies of the statements furnished by these officers and of the covering letters under which they were received, viz., the Assistant Inspector-General, Government Railway Police, Bengal Division, No. 4362, of the 6th November 1895, and the Deputy Inspector-General, Government Railway Police, North-Western Provinces and Oudh, No.

2706 of the 19th October 1895." 1896, Police Department May, Proceeding no 20-38 West Bengal Archive, Calcutta

^{xxiii} Sanyal, PP175-185

^{xxiv} See in details in Horace Bell, "Railway Policy in India", Rivington, Percival, London, 1894