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Regulated Informality

Legal Constructions of Labour Relations in Colonial India 1814–1926[1]

The point of departure for this essay is the contemporary decline of public presence of labour in our society and implications this has for reconstruction of labour relations on the one hand and the reshaping of the wider public sphere on the other. The decline of public presence of labour, thereby meaning the precipitous decline in political power of the organised labour movement, does not need to be laboured here – two indicators will suffice for the present. First is the great decline in industrial disputes initiated from the side of workers and the trade unions (i.e. strikes and man-days lost due to it) since the last two decades, to such an extent that today lockouts greatly overwhelm strikes in the statistics of industrial disputes. Second, it does not need a psephologist to point out that the great industrial centres of India such as Kanpur, Mumbai, Jamshedpur, Calcutta which regularly sent up eminent trade unionists, labour leaders and militants of the labour movement as parliamentary representatives are today strongholds of right-wing parties. Paradoxically this has occurred at a time when the numerical preponderance of wage earners in India is no longer a matter of debate. What explains this precipitous decline of presence of labour in contemporary public life alongside the massive expansion in numbers of wage earners?

A key explanation of this trend commonly given out is that organised labour movement has been rapidly overwhelmed by the massive expansion in the so-called informal sector. Today the so-called informal sector labour force constitutes 93 per cent of the total labour force in India. However, this begs the question – how has the informal sector expanded and why has it remained unorganised? This leads us to the crucial role of the State in constructing labour relations in contemporary India. Currently we are witness to a massive campaign to withdraw the existing protective legislations affecting the 7 per cent organised labour force. It is argued that State protection to the tiny but vocal minority of workforce has perforce contributed to the expansion of the unorganised sector and by deregulation of the labour market (the so-called second generation reforms) in fact, the unorganised sector labour could benefit with increased employment and income.

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This argument rests on, in my view, a fallacious identification of informal sector with absence of State regulation.

The history of State intervention in labour relations in India is commonly traced back to the late colonial period (1926) with the legal enactment recognising the Trade Union. It is assumed that prior to this date, a state of laissez-faire prevailed as far as relations between capital and labour were concerned. Further, by focusing on State legislations since 1926, it is again assumed that history of informal labour relations is of relatively recent vintage. Contrary to this common understanding, in this essay I investigate the genealogy of contemporary informal labour relations well into the early nineteenth century colonial India. My aim in this essay is to delineate the processes by which labour relations were constructed by colonial State action, especially through legislative intervention in nineteenth century colonial India. I will argue that in the process of such construction, labour relations were deeply impressed by pervasive informality, which has shaped subsequent developments in the post-independence India.

It might appear paradoxical that the informalisation process that I describe appears to be the result of State action, since by definition informal sector is marked by absence of or minimisation of State regulations. This definition of informalisation, (and cognate terms) stressing its distance from State regulation has had a singular success in the burgeoning literature on informal sector since 1970s. It is for instance shared widely by both the so-called 'miserabilist' and 'evolutionist' perspective on the informal sector – the former view denouncing informal sector as low wage sector of last resort and the latter celebrating its dynamism and vigour.[2]

This formulation of the issue of informality, informalisation or informal sector emerges primarily on two counts: first due to the identification of informal sector with self-employment and secondly because of the commonly held conception of informal sector as an underground or illicit sector. When wage employment and wage relations in the informal sector is at all taken into consideration it is conceived primarily as occurring in the absence of labour laws

2 See for instance, the original formulation of the informal sector conception in ILO's 'Employment, incomes and equity: A strategy for increasing productive employment in Kenya', ILO, Geneva, (1972) and Keith Hart's essay 'Informal income opportunities and urban employment in Ghana', *Journal of Modern African Studies*, (1973) that uncorked the informal genie. A particularly strong elaboration of the celebration of absence of State intervention is to be found in de Soto, H., Ghersi, E., and Ghibellini, M., (1986) *El Otro Sendero. El Barranco*, Peru: Instituto Libertad y Democracia; De Soto, H. (1989) *The Other Path: The invisible revolution in the Third World*, New York. As regards the so-called miserabilist view see Paul E. Bassinger, The ILO and the Informal Sector: An Institutional History', ILO, Geneva, (2000), which traces the mutation of the informal sector concept from an original positive connotation.

or outside the purview of State regulations. Following from this is the commonsensical formulation that informal labour relations are in effect due to excessive State regulation of the labour market. In this view, the State appears as an external agent regulating what is otherwise a spontaneous relation between employers and employees (capital and labour). Regulation then appears as transaction costs that both employees and employers would naturally seek to avoid. Informal labour relations and State regulation then appear as opposed to each other while at the same time the relation between capital and labour appear as natural and spontaneously generated by the market.

Apart from the ahistorical nature of this conception (since informal relation between capital and labour appears as a timeless natural form rather than a historically specific structure of relation subject to change) it also is in some sense self-contradictory. There is no substantive definition of informal relations except as negation of formal relations and any historical exploration of the informal labour relations has to begin by explaining the emergence of formal structures of regulation. Therefore, a circular reasoning is involved in explaining informality in terms of absence of regulation. (Informal will always follow or emerge along with the formal – then how is the whole prehistory of the formal to be explained – what preceded formal relations?)

The way out of this circularity can be found in Marx's critique of classical liberal position premised on the absolute separation between the labour process on the one hand and the political realm of State and law on the other. By showing the intimate links even the common basis of both in the relation of exploitation of labour, Marx effected a theoretical short circuit between the realm of private domination to which the labour process is continuously relegated by classical liberal thought and the domain of public regulation and the State. It is the correlation between these two domains, which allows us to think of the fundamental ways in which the State was involved in the creation and regulation of the 'spontaneous and natural' character of informal relations of labour and capital.

In order to explicate the position outlined above I shall begin by stating the following propositions pending their historical demonstration which follows in the subsequent sections:

(a) First, the significant difference is not so much between the informal, natural and spontaneous relation between labour and capital and the world of formal and State regulation as between different modes of regulation implied in informal and formal relations. And the difference is no longer in the absence of regulation on one hand and the full presence of regulation in the other but between the tendency towards *privatisation of* regulation in one case and the tendency for greater public regulation in the other. It must be added here that once we adopt this proposition both formal and informal relations are no

longer a self-sustained whole but imply a combination of different forms of regulations.

(b) Second, more important than the distinction between the 'formal and informal sector' or modes of regulation, etc., is the distinction between the realm of juridical freedom and contract and the domain of production where despotism of capital reigns. So formal equality can always coexist with informal domination. Marx characterised the former, i.e. the realm of contract as that of liberty and equality and Bentham the latter realm, hidden abode of production as where the buyer of labour power struts about and following him is the seller of labour power with a meekness that shows that he has come to sell his own hide.

(c) Third, it is important to take into account the role of law, which ensures not just the appearance of equality in the public domain and domination in the private, but also creates the very division of public and private.

With this wider perspective on legal regulation I propose to study the process by which privatisation of regulation of labour was constructed by colonial State action.

Informal labour relations in Indian labour historiography

Before I move on to the more substantive part of the paper I will take issue with the ways in which informal labour relations have been conceptualised in the historiography of labour in India. To begin with, it must be conceded that practically all of the written works on labour history have concentrated on the large industries and mines and plantations: very little is known of the vast majority of workers who worked in smaller workshops, handicrafts, domestic industries (or the whole range of occupations in informal sector). The focus on 'large' and 'modern' industries has also occluded knowledge about labour relations predating the late nineteenth century – establishment of cotton mills in Bombay, jute mills in Calcutta and the beginning of the railways in the 1850s have been conventionally held to mark the beginning of modern India's industrialisation. Despite some excellent studies on various aspects of labour control, labour protest, relation between nationalism and labour movement, etc., not enough is known of the emergence and operation of the legal framework of regulation of labour relations.

What then are the main ways in which informal labour relations have been framed in Indian historiography?

Two issues that regularly crop up in often opposed standpoints in labour history: (a) the relative importance of the 'indigenous' conditions and modes of regulation of labour and the formal procedural and legal forms of regulation enunciated by the colonial State, and (b) the distance between legal regulation and its implementation on the ground. Two main standpoints can be discerned here. Professor Peter Robb in a wide ranging (and often rambling) survey of labour history of India has insistently focused on the Indian 'continuities' in regulation of labour in colonial India.[3] In his estimation three elements of what he terms 'Indian' relations of production were pre-eminent – first the pervasive presence of intermediaries exercising effective control of labour (jobbers, maistries, and babus), second the persistence of 'indigenous beliefs and expectations' of labourers forming the 'core of repeated behavior … by definition stronger than other transient forms' (meaning thereby caste and religious identities segmenting the labour market), and third persistence of personal ties of dependence engendered by localised matrix of social power (which are replicated in the 'modern industrial settings'). Pitted against this formidable 'internal' structures of control, regulatory modes introduced by 'capital' and 'colonial State' based on abstract principles of market discipline and English Law has had little chance of success. Colonial State regulations were not merely externally imposed categories; they also were forced by circumstances of Indian relations of production to partake of elements of Indian society. There was thus a yawning gap between the legal regulation and its enforcement – the law did little to change the ways labour was managed or the 'informal coercion' on the ground. Thus, Professor Robb not surprisingly concludes, 'colonial and capitalist influences were *surprisingly marginal* … in their impact on South Asian consciousness and behaviour.'[4] His view on continuities of indigenous – now equated with 'informal' – mode of regulation of labour across the colonial State appears as a reaction to the idea of colonialism and colonial State marking a sharp break with earlier social forms of regulation and to a certain post modern and post colonial studies trend that gave undue weight to the impact of the colonial State. Instead, we have here a colonial State struggling against and being overwhelmed by indigenous and informal modes of control.

3 Peter Robb, 'Introduction: Meanings of Labour in Indian Social Context', *Dalit Movements and the Meanings of Labour in India* (Delhi: Oxford University Press, 1993).
4 Ibid., p. 66.

Starting from an opposing standpoint from (what was still) within the Marxist perspective, Professor Dipesh Chakrabarthy posed the question as to how far abstract rule-governed relationship embodied in bourgeois legal thought found expression in the modes of regulation of workers of jute mills in Calcutta in the early twentieth century.[5] He found pervasive presence of middlemen and a workforce steeped in hierarchical culture controlled more by personalised authority than impersonal rule bound procedures. This informal mode of labour control he locates in the pre-capitalist cultural milieu in which the enterprise and the labour force operated. So he concluded that since the crucial ingredient of egalitarian culture was missing in Indian labour relations, class solidarity and working-class consciousness failed to emerge.

The congruence of viewpoints on informal mode of labour control from opposed standpoints is striking and the reason is that, both these viewpoints adopt an abstract ideal typical schema of transition to which Indian developments never approximate. But by concentrating on the 'Indian cultural context' to explain the persistence of 'informal modes of regulation' what has been missed out are key areas of innovation and transformation wrought in labour relations under colonial capitalism.[6]

Michael Anderson, historian of labour law of India, in his important survey of the legal framework of regulation in 19th century India was struck by the absence of any systematic juridical ideation on labour.[7] There was he argued a powerful tendency to occlude the issues of labour subsuming it under the overarch-

5 Dipesh Chakrabarthy, *Rethinking Working Class History,* (Delhi: Oxford University Press, 1989).
6 Recent historiography on labour has moved away from this perspective substantially. Rajnarayan Chandavarkar's work on Bomabay labour and Chitra Joshi's work on Kanpur focus on the management strategy and workers' agency, respectively, to explain the so called 'informal labour relations' within the factories.The link between the factory sector and the informal sector rather than their absolute separation is also argued in their work. Rajnarayan Chandavarkar, *The Origins of Industrial Capitalism in India: Business Strategies and the Working Classes in Bombay 1900–1940,* (Cambridge University Press, 1989) and Chitra Joshi, *Lost Worlds: Indian Labour and its Forgotten Histories,* (Delhi: Permanent Black, 2003). For a strong argument emphasizing the discontinuity in modes of labour control across the colonial divide and the role of colonial State in altering labour relations and weakening the pre-colonial patterns of labour mobility and solidarities see Prasannan Parthasarathy, *The Transition to a Colonial Economy: Weavers, Merchants, and Kings in South India 1720–1800,* (Cambridge: Cambridge University Press, 2001). For a nuanced argument that poses the problem of continuity and change across the colonial divide in labour relations in terms of compatibility of pre-colonial and colonial regulatory modes see Ravi Ahuja, 'Labour Relations in Early Colonial India, Madras 1750–1800' in: *Modern Asian Studies,* Vol. 37, No. 2, October 2002.
7 Michael Anderson 'Work Construed: Ideological Origins of Labour Law in British India' in: Peter Robb (ed.) *Dalit Movements and the Meaning of Labour in India,* op. cit.

ing image of a putative organic social order, labour if conceptualised at all was through the lens of land, caste and family ingredients of a pre-colonial framework of regulation. Over the nineteenth century only episodically did labour emerge as a distinct sphere deserving of State regulation around specific conjunctures where State legislation was demanded on moral and political grounds (such as on issue of slavery, or debt bondage, etc., or under specific needs of particular groups of European employers or under international pressures). What Anderson finds surprising is the 'stubborn refusal of the legal establishment to recognise worker welfare a object of State concern'. Thus legal recognition of labour remained 'haphazard and ad hoc' lacking in a coherent social vision?[8] Colonial labour policy if it existed at all, was mired in the contradiction between an ideology of free labour and legal paternalism. This adhocism gave way after the 1920s when a more systematic labour legislation process emerged as a result of war, Russian revolution and the need to contain the challenge posed by the labour movement.

While I am in sympathy with the elements of Anderson's nuanced position on the character of colonial legal regulation in the nineteenth century I also have serious problems with his framework which identifies formal regulation of labour only with 'worker welfare', the absence of which signified an 'incoherent social vision'. An alternative narrative of legal development in colonial India will make it elear that regulation of labour was not just episodic but in many ways much more pervasive than figures of 'legal enforcement or disputes' may indicate. In so far as the legal rhetoric of welfare was concerned, colonial labour policy had it in ample measure, one could even say that it was the wedge that allowed the State to unleash particularly harsh repressive direct regulation of labour. Finally, a major flaw in the framework is not dissimilar to what we have seen earlier as the dominant tendency in labour historiography in general – it lies in the rather stark opposition and mutual exclusion posited between 'abstract formal law' and 'informal modes of control'. Given the pervasive presence of the latter the former appears as mere gloss – regulation then becomes either a 'mask' or un-implementable.

8 Ibid., p. 91.

Legal construction of labour relations in colonial India – criminalisation of free labour

How did the colonial State view the issue of regulation of labour in the nineteenth century?

Focusing for the moment on the statutory modes of labour regulation we may distinguish four interrelated strands within it emerging in three different temporal conjunctures. The first is a set of regulations dating from the early nineteenth century (the earliest one located by me are in the year 1814) ending in 1859–60 with the promulgation of the Indian Penal Code and an important piece of legislation, the Workmans Breach of Contract Act or Act XIII of 1859. The coverage of these sets of regulations varied but they affected a wide range of labouring activities including domestic labour, contract labour, skilled artisans and also in some instances the disguised labour forms such as contract cropping practised for cultivation of indigo.

A second interrelated legislative process was linked to the grand design of legal codification beginning with the Indian Law Commission in 1837 under Macaulay and ending in the 1880s with the last Law Commission (the 4th one). This legal codification drive came to a halt in the 1880s in the face of opposition both within India and in Britain to create a superordinate body of substantive and procedural law that was often at great variance with ground reality. Within this grand design, there was an attempt to place regulation of labour relations which would have transcended the piecemeal legislation on labour. However, this attempt failed as colonial labour policy lurched between 'civil' and 'criminal' conception of labour contract and finally ground to a halt with the rejection of a comprehensive draft Master and Servants Law in 1879. Exploration of the reasons for the hesitation and ambiguity inherent in the codification drive of the colonial State will throw important light on the process of colonial State intervention in shaping labour relations. I have however not attempted to do that in this paper.

The third strand of labour regulation consisted of a body of exceptional legislation directed specially at the plantation labour in Assam. Beginning in the 1860s, these extraordinary legislative efforts aimed at a comprehensive regulation of both the long distance mobilisation of labour force and its control at the place of work. The history of the making of these laws will throw light on the interaction between state regulation and informal management of labour. This exceptional legislation came to an end in 1926 along with abolition of all the legal vestiges of the Penal Contract laws initiated since 1860.

A fourth strand of legislation which began with the Indian Factory Act of 1881 is conventionally taken as the origin of formal labour regulation – a series of such Acts derived primarily from the British Acts sought to regulate employment of women and children in large factories, hours of work and some safety measures for protection of workers which had begun to dot the landscape of Indian cities by the late nineteenth century. This legislative initiative which was rather ineffective till the end of the war began to gather momentum in the 1920s when a slew of labour legislations were added focusing primarily on large industries in the factory sector. These legislations emerging from a different context and having a different set of aims, and covering in the main the large industrial establishments ultimately provided the sinews of a 'non-criminalised' mode of control of labour. This legislation is excluded from the purview of the paper.

Early labour legislation 1814–1860

The first issue to occupy the colonial State in the earliest stages of its rule was that of Indian slavery. It is now accepted that the main impetus for the debate on Indian slavery was in response to the growing abolitionist sentiment in Britain and the terms in which the debate was carried on were borrowed from that context. Various regulations prohibited the sale and trafficking in human beings in India the first one being Regulation X of 1811 which prohibited importation of slaves into British India. However, a key element in this debate was the conceptualisation of free labour in opposition to those who were enslaved. British attitude to slavery threw into sharp relief their adherence to the contractarian ideology and the free labour model. Yet the irony of this formulation (innate as it was in the contractarian form itself) was that theoretically there was nothing to prevent the most blatant form of servitude after one gave 'voluntary consent' to such a contract.[9] Contractarian ideology based on the model of free labour had become the dominant model of British attitude towards juridical free labour and provided the one element of the 'legal culture of work' (a term I have borrowed from legal

9 Gyan Prakash provides evidence of the peculiar legal formulation by which the early colonial judicial officers enforced contracts of servitude (often of 90 years or more generally sixty years duration) since they were 'voluntarily entered into', while disallowing sale and purchase of chattel slaves. Gyan Prakash, *Bonded Histories: Geneologies of Labour Servitude*, (Cambridge: Cambridge University Press, 1990). The East India Company continued to hold slaves till late 1830s in Malabar. Dharma Kumar, *Land Caste in South India*, (Cambridge: CUP, 1965). For an illuminating insight into the contradictions of contractarian ideology specially with regard to slave contracts, see Carole Pateman, *The Sexual Contract*, (Polity Press, 1988).

historian Chris Tomlins) that the British introduced in India.[10] However, what is interesting is the other element of the legal culture of work that was simultaneously introduced into India, that which criminalised breach of contract by the workmen. Supported by a long-standing legal tradition by which masters regularly prosecuted servants for refusal to work before Justices of Peace in both industrial and rural counties of England the Master and Servants laws formed very much a part of the 'legal cultural baggage' that the British carried with them. No less than 109 statutes have been discovered in England from 1278 onwards the most famous being the Statute of Labourers of 1349 and the Statute of Artificerers of 1562. It might be recalled that during the late eighteenth century, a particularly strong draught of penal legislation was introduced in England.[11] The application of these principies in India did not have to wait long. The earliest legislation that I have found dates to 1814 April as a Calcutta by-law. Enacted at the behest of sundry English manufacturers, coach makers, cabinet makers and furnishers and other traders, the by-law sought to curb the persistent habit of the native labourers and their contractors of abandoning work after having agreed to perform them at a certain rate or wage. Worse still, they often took and demanded advance as is 'customary' and failed to complete the task. They, it was further alleged, refused to begin work at the time required by the employers and frequently took holidays. 'The Hindus follow the Mussalmans to their festival and the Mussalmans the Hindus to theirs'. Since there was no redressal in the Petty Causes Court, and the Supreme Court being too expensive, the manufacturers of Calcutta demanded that Justices of Peace apprehend the defaulter punishing them with two months imprisonment on the model of the Merchant Seaman's Act, which was regularly used in Calcutta by the masters of the ships in apprehending deserting seamen.[12] Unfortunately we do not have enough information about the use of this by-law; however, its replication in subsequent laws, sometime ad verbatim, indicates a fairly successful career.

The first workman and journeyman's by-law of 1814 April was followed by a special by-law on domestic servants which similarly punished recusant servants

10 Christopher L. Tomlins, 'Freedom Bound: Migration Servitude and the Legal Culture of Work in Early British America', in D. Hay and P. Carven (ed.) *Master, Servants and Magistrates: Britain and the Empire 1562–1955,* (University of North Carolina Press, Chapel Hill, 2004).

11 There is now a growing body of literature on the enormous impact the Master and Servants statutes enacted in Britain had on the legal conception of labour relations all over the Empire. See for instance the pioneering work of Doug Hay and Paul Craven in Hay and Craven (ed.), op cit. Also see Robert Steinfield, *Invention of Free Labour: The Employment Relations in English and American Law and Culture, 1350–1870,* (University of North Carolina Press, 1991).

12 Bengal Judicial (Criminal) Consultations No. 36 of 14 April 1814 (West Bengal State Archives).

who left their master's employ in 1814 November.[13] In 1816, another by-law explicitly punished combination among worker and journeymen to raise wages or conspiracy to do so.[14] In 1819 the Bengal Regulation VII was enacted which punished breach of contracts by workers and artificers in the rural areas of Bengal where by this time a fair number of European planters, and landowners as well as merchants had settled. Imprisonment of one month and two months on repeating the offence was prescribed for deserting workers. This also applied to domestic servants who deserted without notice. Magistrates were given summary powers of the Justice of Peace. The Bengal initiative was followed in Bombay where a similar regulation criminally punishing breach of contract was promulgated in 1827. Interest from Madras and Malabar was also strong from where demands for regulation of domestic servants, workers on plantation, etc., came up regularly from European manufacturers and planters. With the setting up of the Indian Law Commission in 1837 under Macaulay, this provisional penal regulation making was stopped pending the discussion and promulgation of the great Indian Penal Code.

The draft Penal Code of 1837 dampened the fervour of the European population since Macaulay refused to support criminal prosecution of domestic servants as practised by the European households in the Presidency towns. It might be noted that in England domestic servants were not criminally prosecuted for breach. Macaulay was following the English precedent and was against legal innovation in this regard. It is then that we find several representations made by European officials as to the great difficulty they find in controlling breach of contract by the domestic servants. Among some of the most frequently committed misdemeanours were 'leaving the employ of masters suddenly without arranging for substitutes' or leaving the master's food uncooked, clothes unwashed and coachmen tending to their own dogs and such rather than the master's horses, wet nurses exposing children to danger, the cleaners of toilets (mehatars) leaving their master's privy dirty, etc. A further misdemeanour regularly practised by the servants apparently was their combining to prevent other servants from taking up employment in their former master's house (from which they had been dismissed or had left on their own).[15] The European household was critically dependent on the native servant for its reproduction for both their material and symbolic domination of the subject population. The demand for bolstering of already extensive

13 Bengal Judicial (Criminal) Consultations No. 51–55, 13 December 1814 (West Bengal State Archives).

14 Bengal Judicial (Criminal) Consultations No. 36, 6 December 1816 (West Bengal State Archives).

15 Legislative Consultations No. 6–10 November 1838 (National Archives of India hereafter NAI).

powers of chastisement they possessed by legal curbing of servant's wilful behaviour (such as running away without informing), kept on coming up even after the colonial State, following Macaulay, hesitated and finally decided to not enact any special criminal breach Act for domestic servants.

The making of Act XIII of 1859 or the Workman's Breach of Contract Act

In the 1850s the thinking as regards labour was concerned had become as follows: while mere breach of contract was to be not punished criminally and only civil procedure was to be followed, certain excepţional situations could be imagined where they could be criminally prosecuted, as, abandoning of disabled by their nurse, or of English ladies by palanquin bearers or more commonly when workers deserted after receiving advances. While the debates over the making of the Indian Penal Code carried on for the best part of 23 years, it was often not possible to keep on hold the demand for specific Acts to meet the needs of particular interest groups. The by-laws of Calcutta governing manufacturer and labourer relations was suspended because of changes in municipal and policing functions of local bodies and Justices of Peace. In 1852, the Police Act took away policing functions of the Justices of Peace. In the absence of any new enactment, it seems the relation between manufacturers and labourers was again thrown into some confusion.

It is in this context that the Calcutta Tradesman's Association, the premier body of European merchants and traders, sent a petition to the government's legislative council in July 1858 demanding that a simple criminal breach of contract law be enacted to prevent workers from deliberately breaking their contracts of engagement after receiving advances from employers as there was no law to prevent such act and the workers knew that civil procedure would be impossible for recovery of advances. 'Knowing the inability of the masters, the workers regularly abandon contract or higher wages and also combine to raise their wage demand, which they have to perforce accept.'[16] The tradesmen demanded simple summary procedure for prosecution so that the worker could be brought back to perform his work or repay his advances failing which he would imprisoned. The select committee of the legislative department readily accepted the argument that the taking of advances and failure to perform the contract could be seen as 'tinged with fraudulence'. So, while penal provision may not be applied to mere breach of contract fraudulence qualified for its application. According to the law,

16 Papers connected with Act XIII of 1859, in Legislative 1859 (NAI).

on complaint by a master that a workman, journeyman or artificer had taken advance and agreed to work on a contract on terms specified either orally or in written form and had failed to perform the contract, would be ordered by a magistrate to perform the unfinished work, or repay the advance as required by the employer and failure to do either will be punished with imprisonment not more than three months. In the first instance the law was enacted for the Presidency towns but could be extended to any part of the country by the orders of the·government. The Act was very quickly extended in 1863 to Assam and before that to all parts of Madras, and by the 1870s, to almost all parts of India. Till the time it was finally abolished in 1926, Act XIII of 1859 remained in a sense the master contract governing employment relations in colonial India (the issue of special labour legislation for plantation is taken up later). Before I discuss the extent to which Act XIII fulfilled the functions of regulating employment relations, let me recapitulate the major findings of this study of early labour legislation.

Certain features, which marked the process of introduction of this body of legislation and its impact, may be noted. First we must note the urban context and early manufacturing activities associated with private European merchants who were the main initiators of the legislative control of labour. They were very much steeped in the 'legal culture of work' of England where workers were regularly prosecuted and imprisoned for breach of contract. I must repeat that to the British officials or manufacturers these were not at all contrary to their belief in the non-interference of State in matters of private regulation of the contract. The appeal to public authority was precisely to very clearly acknowledge the private nature of the contract and the absolute power the masters held in determining its terms. So these first set of initiatives in the formation of criminal breach of contract provisions of law were efforts in the direction of privatising labour regulations based on the ultimate power of the State to criminally prosecute the 'offending' worker. In this regard at least this was a clear and startling legal innovation in the Indian context.

A second feature which makes its appearance in these legal enactments is the reference to the pervasive practice of taking of advances by the native labourers which was often described as 'customary'. It seemed also that these customary advances were not so much a British imposition (to tie down labourers) as an absolutely necessary compromise in face of workers' demand. What the manufacturers often resented was that the workers could succeed in getting their terms and even then refuse to fulfil their contract. It was the practice of free exit from the contract, which the manufacturers wanted to curb with State help by criminalising this practice. In the early period at least the legislations were again very clearly designed to curb the customary and traditional power. By criminalising a customary form of worker resistance to bad conditions of employment,

the penal contract legislation also managed to change the signs that surrounded the advance system. Once signifying worker power and their ability to control their conditions of employment, advances quickly became employers' weapon to tie down workers to low wage or subnormal working conditions. In no small measure, criminalisation of free labour initiated in 1814 was instrumental in this change of sign marking the advance system.

Regarding the coverage and application of Act XIII it is difficult to make any estimation since its use was 'informal' and only with the coming up of a criminal prosecution could one say that the law had been used. Because of summary procedures adopted, even that information is missing from court and judicial records. However, when the Act was sought to be abolished, a certain amount of information about its usage and effectiveness, etc., was known. This information is briefly summarised here. These details have been taken from a set of government papers in 1920–26 which enquired into the question of abolition of the Act XIII.[17]

1. Act XIII was used in practically all cases where extensive system of advance payments existed. To that extent, from being an Act exclusively utilised by Europeans, it had acquired a larger clientele by the 1920s. The most extensive use of this Act seems to have been in the government PWD department undertaking large projects of public works through contract labour imported from a long distance. It was mainly the labour contractors who utilised this Act. It was thus reported to have been extensively used in the construction of New Delhi between 1914–22, in the making of Sucker barrage in Sind in the 1920s, in practically all irrigation works in the Central Provinces and UP, in the making of canal colonies in Punjab, etc. In the Central Provinces where an irrigation work was being constructed by 2500 workers, nearly a third were imprisoned for refusal to work, in Punjab, in Jhelum and Montgomery canal colony it was widely used with figures reaching up to an annual average prosecution of 7000 persons between 1907–15. An official in Punjab noted that mere threat of prosecution under the Act and getting a group of labourers handcuffed from their home in south Punjab was enough for the recalcitrant group to trudge back to their employers in the canal colony.
2. The Act was used in almost all-urban centres in small workshops and factories but the only statistical evidence is available of Madras in 1921–22, already at the very end of the career of the law. From the very brief account it seems that the law was used extensively in about 42 trades. The most important

17 Home (Judicial) File No. 168 of 1922, Home (Judicial) File No. 400 of 1923 and Home (Judicial) File No. 336 of 1924. See also Revenue and Agriculture (Emigration) July 1922 A Prog No. 3–14 (NAI).

trades in so far as prosecutions are concerned are as follows: (a) weaving, (b) silver and goldsmithery, (c) cigar and small cigarette (*bidi)* making, (d) brass smithery, (e) steel trunkmaking in which roughly 40 per cent of all cases were recorded. On an average the advances were two months' wages of these artisans and workers. A few master weavers also seem to have used this Act in India.

3. Large mills and factories do not seem to have utilised the provisions of this Act to a great extent because there was not much use of advance in these concerns. The only exception to this was Ahmedabad where the Ahmedabad Millowners' Association strongly deprecated the abolition of Act XIII on the ground that their members used this Act to prevent the imported workers from running away. However, excepting this reference it is elear that Act XIII was the 'Informal Sector Act' par excellence.
4. Some interesting insights as to the effectiveness of the Act are as follows: The operation of the Act had not in any way reduced the practice of advance, in fact, the Act operated on the basis of the advance system. However, in spite of the Act, the practice of bargaining through the advance by a specific skilled group of workers seems to have continued up to the 1920s. This was reported in the case of the brick moulders in Punjab who apparently specialised in moving from place to place seeking higher advances from competing employers especially during the large-scale building of canal colonies.[18]
5. While the actual use of the Act may have been limited in number of prosecutions, etc., it is quite possible that its effectiveness was never really in the actual prosecutions under the Act as in the threat of its use. Thus, an interesting observation by a lawyer employer of Simia:

> As an employer of labour on a small scale I have never really earnestly used the Act direcdy against any one, however their existence in the statute book and a mere reference to the Act often has considerably smoothened away difficulties and has acted wholesomely on the employed who are often tempted by outside elements.

Irrespective of the extent of its use as evidenced in its prosecution there is no doubt that the central presumptions of the criminal breach of contract agreements seem to have pervaded the general work culture which gave an absolute power to set the terms of employment to the employer, normalised State intervention on behalf of the employer to curb the mobility of labour. Its effect on

18 Tirthankar Ray's account of advance system in carpet making in Punjab in 'Outline of an History of Labour in Tradiṭional Small-Scale Industry in India,' mimeo, VVGNLI Research Studies Series, 2000, V.V. Giri National Labour Institute, pp. 25–27.

the advance system is particularly important as the criminalisation of advance helped in curbing and regulating one important customary power of the workers. We can only speculate as to the impact of the Act on wage levels, but if the curbing of advance system is anything to go by, it is more than possible that the law acted to depress wage levels below the normal market clearing rates. This will become clearer in the following discussion on the history and use of penal contract legislation in the tea plantations of Assam which by 1920 was the largest single employer of wage labour in India.

Special labour legislation in Assam

Capital and labour shortages till the end of the 1850s though in existence from 1839 continually plagued tea plantations when a speculative boom in 1860 led to the rapid opening up of gardens and importation of thousands of labourers through native recruiting agencies. 'Tea mania' as it was called, ended in 1865 with a series of bankruptcies and mergers of old gardens and takeovers by managing agency houses. A leaner tea industry was launched on a path of steady growth aided by large importation of indentured labourers recruited through State regulated agencies, from the central Indian uplands and the congested districts of the Gangetic plains. A significant change was introduced in the recruitment and employment of labour in the tea industry in 1882, when the government deregulated emigration and strengthened penal sanctions by a special labour legislation. No less than a million persons (including children) were imported into Assam in the next twenty years under indenture as tea acreage and production and exports experienced spectacular growth. Acreage more than doubled while production tripled as India ousted China as the largest exporter of tea in the world market. What is interesting however is that this expansion took place under conditions when tea prices had slumped to half the level of 1880s by the beginning of the 1900s. After a decade of stagnation and slump the war years saw another surge in the growth of production and acreage.[19]

A second feature of the plantation complex in Assam was the remarkably stable nominal wage level, the so-called statutory minimum wage remained constant for over about seventy years when the indenture system was in operation. It was Rs 5 a month in Assam for adult male labour. This, of course, was the wage of indentured labour yet it was this wage that also determined over the long term

19 See Rana P. Behal and Prabhu P. Mohapatra, 'Tea and Money versus Human Lives: The Rise and Fall of the Indentured System in Assam', *Journal of Peasant Studies, 1992.*

the wages of free labour. This stable wage rate of a bound labour force was crucial for the phenomenal growth of production and consequent profits in favourable years, as it was essential for tiding over prolonged slumps for the plantations. This was one of the effects of the deployment of special penal sanctions of indenture law, which by immobilising a substantial section of the labour force allowed planter control over the labour market as a whole.[20]

The other main effect of the penal contract labour system was, of course, to discipline the labour force over and above the 'discipline' of the labour market. As it happened, the main argument for importation of labour was the alleged absence of a local labour market which could impose the normal market discipline on the labourers. It was argued by the planters and their supporters in the colonial officialdom that in the absence of a normal labour market, the local labourers, i.e. recently freed slaves and the local Assamese demanded exorbitant wages and in any case were not prepared to work regularly on the plantations.[21] At the same time when once imported labour was made available, the planters were the first to demand that the operation of labour market be curtailed. They now argued that what was needed was not just labour in sufficient quantity but 'reliable' labour that did not 'wander about' testing the market. In other words, the planters now demanded a labour force bound to the employer for sufficiently long terms. This then was the origin of the institution of penal contract in the plantations in Assam. The colonial State obliged by introducing a series of special labour laws and institutionalised a system of 'voluntary servitude' that remained in place for nearly a century. A brief review of the origins and evolution of the penal sanctions and their incorporation in the special ordinances and legislations enacted over time would throw light on the paradoxical process by which the contract institutionalised a form of servitude.

In Assam, the legislation of penal contract followed the previous trajectory for the other Criminal Breach of Contract Acts noted earlier. Between 1840–61 there seems to have been *laissez faire* as regards both recruitment and employment of labourers, the period being marked by spluttering growth of tea acreage and production. Labourers were brought in with agreements to labour for three years though there was no legal enforcement of the contracts, simply because there was no statute in place. It was the wave of expansion during the tea mania between 1860

20 Walter Rodney, *A History of the Guyanese Working People, 1881–1905,* (London and Baltimore: John Hopkins Press, 1981) p. 34. In Assam statutory wages were Rs 5.50 for those under special labour laws in the last two years of their indenture. Attempts to raise the statutory minimum wages by 10 per cent in 1901 was resisted fiercely by the planters.

21 See the initial reactions of planters and officials as to the absence of suitable labour in Assam in P. Griffiths, *A History of Indian Tea Industry,* pp. 73, 101–103.

and 1865 that saw the first legislation to regulate recruitment and employment. Occasioned apparently by the massive mortality among the labourers recruited by Indian contractors who were paid a price per head and as 'all parties considered their duty and responsibility discharged when the living are landed and the cost of the dead are adjusted' the colonial State intervened to enforce registration of labourers and sanitary regulations en route to Assam in 1863.[22] It was the combined effect of death and large-scale desertions which led to the institution of indenture contracts in Assam. Between 1863 and 1866, of the 85,000 workers transported to Assam, 35,000 had died or deserted the plantations. From 1861 onwards, planters often had recourse to the newly enacted India Penal Code of 1860, Section 492, which allowed for prosecution of defaulting labourers who had been conveyed over a long distance at the employer's cost. The problem was that maximum penalty under the Act was one month's imprisonment and prosecution terminated the contract. Planters complained that deserting workers willingly courted imprisonment to get out of the contract. Citing instances of immigration ordinances in overseas colonies, planters demanded full scale penal provisions.[23] In January 1863, the Workman's Breach of Contract Act XIII of 1859 was extended to Assam which allowed the planters to prosecute deserting workers who had received an advance. Originally enacted for the Presidency towns of British India, Act XIII enabled magistrates to order performance of the contract from workers who had received an advance payment and had reneged on their contract. This Act too was not considered adequate by the planters as the contract could be terminated with prosecution and imprisonment of a maximum of three months and there was some uncertainty whether the passage cost constituted an advance.

So in 1865, Act VI of 1865 was passed in the Bengal Council which conceded the planter, demand for penal contract and allowed extensive powers of private arrest.

It also allowed for first time contracts of three years with a statutorily fixed minimum wages, a nine hour working day, and a government inspector of labour empowered to cancel the contracts on ill-treatment of the labourers. The most important provisions of the Act were those related to breach of contract by the

22 Statement of Objects and Reasons' prefixed to the Act III of 1863 of Bengal Council in Government of India (GOI), Legislative Department 'A' Proceedings No. 28–36 April 1865 (National Archives of India).

23 For planters' complaints, 'Reports on the Working of Act III of 1863', in GOI, Legislative Department, A Prog. No. 30–38, November 1865. The report clearly demonstrates that planters had resorted to large-scale illegal detention of labourers during 1861–64 and initiated private powers of arrest. Among several suggestions for penal provisions some planters demanded flogging by the government of recalcitrant labourers, a special emigration police to stop desertion and repeated prosecution and return of the labourer to the plantation.

labourers. Desertion was to be punished with imprisonment, as was refusal to work or unlawful absence from work and significandy, planters or any person authorised by them were given powers to arrest absconders without warrant. For the Act to be operative the contract had to be executed before a magistrate in the recruiting districts rather than in the district where labour was to be performed. Thus, time expired labourers (i.e. those who had already finished a term of contract) or local labourers could not execute the contract under the Act; they were either employed without any penal contract or as became the common practice were contracted under Act XIII of 1859 (Workman's Breach of Contract Act). In 1873, recruitment outside the Act but employment without penal contract was allowed under Bengal Act VII of 1873. This innovation was hardly ever used as planters were firmly in favour of a long-term penal contract system.

Between 1865 and 1882, recruitment of labourers was government regulated while a fairly wide-ranging penal contract system came into existence. In 1882, due to persistent complaints from the planters about high cost of recruitment and inadequate penal powers, the colonial State substantially deregulated emigration and strengthened penal powers. Under Act I of 1882, the duration of the contract was increased from three to five years and could now be signed before a magistrate in the labour districts rather than in the recruiting districts. Further it allowed local labour contracts of similar duration which effectively increased the hold of the planters over time expired labourers. Limitations on the powers of private arrest were slackened further and endorsements and extensions of indenture for unlawful absence from work were made simpler. Deregulated labour recruitment and strengthened penal powers were the basis on which massive importation of labour and subsequent expansion of tea industry took place. The opposition to deregulated recruitment and penal sanctions emerged strongly during this period largely focused on abuses of recruitment. In 1893 the period of labour contract under the Act was reduced to four years and the maximum period of local labour contract (used mainly for time expired labourers) to one year. The main effect of these changes was that the planters increasingly used Act XIII of 1859 now to bind time expired labourers instead of Act VI as it relieved them from the duties of maintaining registers or accounting for their mortality, etc., which was required under Act VI. Till the beginning of the twentieth century, in Assam, two sets of penal contract laws were widely used. New recruitment was largely under the special labour legislation (Act I of 1882 as modified in 1893) while Act XIII was used mainly for old labourers.[24]

24 There was significant difference within Assam as to the extent of use of these two Acts. In the more accessible Surma Valley, Act XIII was predominantly used for both new and old labourers while in the more remote Brahmaputra Valley, Act VI was the clear favourite.

During a period of acute crisis marked by overproduction, high mortality of labour, increased cost of recruitment and rising incidence of labour disturbances – between 1901 and 1908 – there were substantial changes wrought in the penal contract system. Government was forced to intervene and bring recruitment again under regulation in 1901 when a new Act (Act VI of 1901) was passed. Penal powers were substantially reduced in 1908 when private power of arrest was withdrawn from all over Assam. That was a signal for rapid changeover from Act VI to Act XIII all over Assam as without the key provision for private arrest Act VI was thought to invite only more government interference. Finally in 1915 the special labour legislation itself and the system of recruitment under it were completely withdrawn. After 1915 till 1926, planters employed labourers largely under Act XIII of 1859 which Act was modified first in 1920 and finally abolished in 1926.

In this account of penal labour legislation in Assam certain features stand out. First, the formative period of the legislation coincides with phases of rapid expansion of the plantations, i.e. 1865–1901. The primary function of the legislation was to restrict an increase in the wages, that a burgeoning demand consequent on expansion would normally have led to. A second function of the legislation was to immobilise the labourer, thereby regulating competition among the individual planters themselves. Operation of the penal labour contract was thus crucial in fuelling expansion of plantations. Further, long-term penal contracts of five years' duration, ensured predictability and control over labour costs during the period. The most important function of the penal legislation was however in ensuring 'labour discipline' that is to deter the ever-present possibility of workers withdrawing their labour power.

Use and enforcement of Penal Contract Law in Assam

Prosecutions in Assam under the Special Labour Acts (Act I of 1882 and Act VI of 1901) were extremely low. Absolute number of prosecutions increased from about 500 a year in early 1880s to 1,428 in 1895 after which it declined steadily – the rate of prosecutions followed largely the absolute number of labourers under the Act. As a proportion, prosecutions were on the average only 0.65 per cent of the labour force under the Act and never higher than 1 per cent. Convictions as a proportion of prosecution was on the other hand pretty high – 80 per cent on the average and 75 per cent of convictions ended in imprisonment. Under Act XIII, the absolute numbers of prosecutions were always lower than those under Act I and Act VI till the last years of 1890s after which prosecutions under it increased rapidly

as those under Act VI declined rapidly. Even so the rate of prosecution remained always much below 1 per cent of the total numbers employed under the Act.[25]

Indenture laws in Assam at first blush seem to have had a rather underused machinery of enforcement given the relatively low prosecution rates. This was reflected too in the composition of the offence. Between 1882 and 1908, no less than 95 per cent of all convictions were for desertion. The bulk of the other offences were for enticement of labourers to desert the services of their employers and were used largely against leaders of groups of workers who were arrested while attempting to leave the plantation. Further, what is interesting is the complete absence of any offence related to actual performance of work in the Assam laws (e.g. refusal to begin work, neglect to amend work or disobeying orders of overseer, etc.).

Privatised enforcement

Low rates of prosecution and absence of convictions for performance of work might suggest that the indenture laws were relatively less important for labour discipline in Assam, or were not rigidly enforced. Do they indicate that the labour regime on the plantations in Assam was relaxed? On the contrary, I would argue that the labour regime on the tea plantations was extremely brutal and intense. What however marked the Assam labour regime was what I would call a privatisation of the enforcement of contract, i.e. there was far greater involvement of private planter power in disciplining of the labour. This was not a result of the persistence of practices in contravention of the legal provisions of indenture but rather flowed directly from the provisions of the indenture law.

The keystone of the penal contract system in Assam was the provision of private power of arrest granted to the planters. It was introduced right from the beginning in the earliest indentured law in Assam in Act VI of 1865. Initially the provision was introduced as a concession to the planters to combat desertions in the 1860s and as a consequence of the absence of sufficient number of magistrates in the remote parts of the province. Yet even before the Act was passed, planters seemed to have set up their own establishment for detaining and capturing absconders. This blatantly illegal form of labour control was legalised by the granting of private power of arrest to the planters. The sympathetic commissioner of Assam had compared the position of the planter in Assam to that of a master of a ship in high seas and had recommended magisterial powers for the plant-

25 Prabhu P. Mohapatra, Assam and West Indies: Immobilising Plantation Labour', in D. Hay and P. Craven (ed.), *Master, Servants and Magistrates Britain and the Empire 1562–1955*, op. cit.

ers.[26] The horrible excesses including practice of severe corporal punishment by the planters were brought to light in a commission established subsequent to the passing of the 1865 Act and led to some limitations on the right to private arrest in the Act of 1873.[27]

Planters were allowed to arrest without warrant an absconder if found beyond ten miles of the nearest magistrate. This limitation was relaxed further in the interest of the planters to a five-mile limit in Act VI of 1882 and remained in place till it was withdrawn in 1908. The private power of arrest was exercised not just by the planter but by any person authorised by him. Legally it was applicable only to those labourers who were indentured under the special labour legislation. In 1904, the commissioner of Assam was shocked to discover ferry masters, boatmen and station masters in railway stations exercising the power of arrest at the behest of the planters.[28] Private power of arrest could be exercised only by an elaborate private machinery of watchdogs, watchmen and informers, etc. 'Coolie catching' culture had been part and parcel of the recruitment of labour but under the penal contract became part of the labour regime. This apparatus was not merely used to prevent 'absconding' but was turned inward in the regulation of the labour relations on the plantation itself in compelling labourers to work or in punishing short work and other breaches of contract. It was the existence of this private machinery of labour control that obviated the recourse to indenture law except when in prosecuting deserters.[29] Even in the case of desertion the number

26 Letter of Commissioner of Assam to Secy. GOB, 6 October 1864 in ibid.

27 *Papers Regarding Tea Industry in Bengal*, p. XXII. Several planters openly admitted that they practised flogging to compel workers to adhere to the contract and some even suggested that they would cease to do so if the government took over the practice of corporal punishment. See letters *of W*. Stoddart, C. Eglinton and A.R. Spier, managers of tea estates in Assam and Cachar in ibid., pp. 45, 151–152.

28 'Coolie is detained at every ferry he comes to; he cannot obtain a ticket and I have lately discovered that the station masters are subsidised by the planters to arrest on suspicion in their interests. Managers exercise their power of arrest whether the coolie is under Act VI, under Act XIII or under no Act at all.' Bampfylde Fuller, Chief Commissioner of Assam to Curzon, Governor-General 2 September 1903, and 4 January 1904, Curzon Collection MSS Eur. F 111/204 in India Office Library (IOL).

29 One planter had already in the early stages of the institution of penal contract indicated the futility of exclusive reliance on courts to enforce discipline. 'At the present time if we were to send every coolie that ought to be punished before a magistrate, about one-third of our coolies would be in court daily as complainants, prisoners and witnesses.' The same planter had suggested that planters be allowed to legally institute fines for minor offences rather than be forced to send the coolie to the court. Letter of C.A. Alexander to Deputy Commissioner Cachar in *Papers Relating to Tea Industry in Bengal*, *p. 148*.

of persons who were arrested and brought back to the plantation without being prosecuted was numerous and never entered the statistics.[30]

Superficially the low rates of prosecution were trumpeted about as an index of satisfactory labour relations on the plantations. This privatisation of enforcement of contract resulted in blurring the limits of legality. Though planters were forbidden to physically assault labourers on pain of severe fines and other punishments, there were several instances of such acts with probably only the worst cases ever being found out during the late nineteenth century. Protests by the emergent nationalist intelligentsia against arbitrary exercise of power by the planters were dismissed by the colonial State as exaggerated. The prevalent idea within the officialdom was that, 'the tea planter as master of a large and irregular labour staff must enforce discipline by occasional severe measures which need not be looked into too closely, because these are substantially just and for the general good of the coolies.' A typical official attitude regarding use of private methods of discipline by the planters was exemplified by the Deputy Commissioner of Darrang. While reporting on complaints of frequent caning of labourers on the plantation he wrote:

> As a rule the coolie is not caned unless he has committed some offence for which the punishment would be far more severe if he were tried and convicted before a court of law … and the coolie as a rule is not an undue sufferer from these illegal actions.[31]

Yet flogging was common in the 1870s as admitted by many managers themselves and even in 1894, a delegation of tribal headmen from the recruiting districts witnessed a young woman being flogged for having wrongly plucked four leaves instead of three in her basket. Another official wrote that the labourers themselves exaggerated when they designated every form of 'punishment however mild and done for coolies' good, *as fatak* (literally meaning confinement or jail). The wide currency of the term '*fatak*' among the labourers to designate both the form of punishment as well as the plantation system and penal contract system as a whole was reported in 1904 by the chief commissioner of Assam. The power of private arrest was applied not only to the new recruits under the indenture Act but was used against time expired and Act XIII labour too, providing the planters the power to immobilise practically the whole labour force.[32]

The penal contract in Assam I have argued was enforced largely through private agencies, which accounts for the low recourse to the provisions of penal

30 *Assam Special Report*, paras 238 and 239.

31 Ibid., p. 239.

32 Fuller to Governor-General in GOI Emig. A Prog. Nos. 12–14 December 1904.

law itself. But I must repeat that this privatisation of enforcement was not a deviation from the norms of penal contract or indenture law, rather it was a direct consequence of the provisions in the law itself namely that of the private power of arrest without warrant. The main effect of the penal contract legislation was, of course, in putting down wage levels but it acted too in allowing extremely unhealthy gardens to retain their labour force thus in effect increasing the mortality rates as labourers were prevented from fleeing these gardens. Elsewhere I have argued that indenture system and penal contract legislation were substantially transformed between 1901 and 1908 when the high cost of cheap labour plunged the industry into an acute crisis of overproduction and declining profits. Penal contract and the power of private arrest was now considered by the colonial State as the most important cause of the high cost of recruitment and low natural reproduction of the labour force which plagued Assam. It had ensured low living wages but the tendency towards overexploitation of the labour force resulted in high mortality and labour resistance in the form of desertion and increasingly violent protests, riots and disturbances.[33] The last vestiges of the special laws were abolished in 1915 and the penal contract system that remained in force in the plantations was only based on the Act XIII which as I have noted earlier was finally abolished in 1926.

In this paper I have tried to explain that the major forms in which informalisation of regulation of labour relations occurred in India in the nineteenth century and early twentieth century was through a tendency towards privatisation of modes of regulation. I have explained too that this happened with the active intervention of the State. I have also argued that the main effect of this informalisation process can be charted out in the tendency towards depression of wage levels for bulk of the workers in India. The relation of this mode of informalisation with the emergence of State-based regime of industrial relations beginning from the 1880s but more stridendy in the late colonial period deserves a separate exercise. But it might not be too wide off the mark, if we imagine that the system of regulation based on criminalisation of free labour backed by privatised power of enforcement cast a long shadow on the subsequent developments in the industrial relations system in India.

33 Behal and Mohapatra,'Tea and Money versus Human Lives', pp. 156–158, 168–170.