

Ambiguity of Law (18th Century India)

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I. HYPOTHESIS

The legal framework in the 18th century was ambiguous for people.

II. INTRODUCTION

Indian legal system as modelled on the basis of common law system, meaning judge made precedent oriented law, was not a sudden outcome of a prevailing circumstance, rather the land had went through numerous socio-political and cultural influence thereby becoming a melting pot of varieties. It is as an outcome of these interactions that, the legal system developed. Needless to mention, colonial imperialistic British Rule had dealt a death knell to the indigenous quintessence of the land, had modified under the garb of codification the *lex loci* of the subcontinent. As a consequence thereof, a situation of deadlock prevailed between the initial laws and the British legal system as administered by the English East India Company.

III. EVENT TIMELINE

The Great Mughal Aurangzeb had expanded a huge empire running across the length and breadth of the country, his valour and cruel policies might have alienated him from the masses but on the other had he had achieved a lucrative expanse of his power. It was a centralised empire with little scope of local autonomy. However in 1707, with the death of Aurangzeb, the centrifugal forces began emanating from the centre thereby dissipating the central stronghold, and encouraging local or regional autonomy in many cases. Bahadur Shah's succession had entailed huge losses in terms of men, money and materials, and even after he got the throne, his position was less recognised with regional rebels ever ready to defy his authority. The first ambiguity of law arose when the legal provisions or the legal set up of the Mughal Empire, found itself bereft of the signatory authority of the Sultan or precisely when the regal authority of the Mughal Empire dissipated into hands of the regional Nawabs.

Secondly there was a rising tide of Rajputs in western India along with the Sikhs, who were believers of a separate faith that had been meted out extreme cruelty by Aurangzeb, and had now militarily organised themselves into uprooting the Mughal rule from Delhi. The constant invasions that they organised on Delhi created a state of utter lawlessness and chaos. The southern India had a new administrative force invigorating the masses, it was the Marathas who consistently denied Mughal domination and sought to create their own

independent statehood. This further added to the existing legal ambiguity as the local masses were confused between the existing legal framework and the new revolt and new laws which came along with. In case of Rajputs, they stopped paying tributes to the Mughal King and decided to expand their own dynasties as centres of local autonomy thereby defying the central authority of the Mughal Empire. They had their own set up of laws which were intricately woven with *Dharmashstras* and other scriptural authorities of Hinduism. Rajput kingdoms were strong central authorities dotted on the western precincts of the Mughal Empire. Hence not only did the absence of a *unified commonality of law* made its mark but also a poignant *ambiguity of law* made its inherent presence during this phase.

Thirdly¹, there was a significant development of Nawabs, who embarked on their own principalities, the most famous of them being- Nawabhoods of Bengal and Avadh. In case of Avadh, there was an open defiance of the Mughals, a constant struggle with the Rajputana, and in their own areas there was absence of sound governance. The situation was indeed ominous as there was a centrifugal shift from the original legal framework, and subsequently there was no successive centripetal authority to re-establish the uniformity once again. The political forces emanating from the centre or rather the erstwhile centre seemed to fail in attaching the required power to enforce an uniform system. In case of Bengal a slightly different trend was noticeable. It was in Bengal that Nawabs secured their position with the constant help and assistance of the Landlords or Zamindars whose principalities had an equally vast and prosperous expanse. One example was that of Natore or the Rajshahi in present Bangladesh. Murshid Quli Khan and Alivardi Khan were some notable rulers. Ambiguity of law began spreading its roots in Bengal when the Nawabs who were essentially the *Diwans* of Mughals took it on themselves to declare independence of their states and titles. However they were short sighted and underestimated the sinister force of the English East India Company who might have arrived as traders but had no intention to depart bereft of the complete statehood. Fuelled by self interests and complacent under their own regal titles, the local rulers stayed ignorant of the impending danger to an instabilised and segmented political scenario.

IV. THE FOREIGN POWER

A *charter* was given in 1600 by which the English started trading in the eastern parts of the world – in India as well. When they arrived as traders they definitely got involved in interacting with the people, as a result thereof they needed rules to stay in peace and continue with their business operations. The fundamental question that became obvious was the issue of law- whether the indigenous laws would be applicable on the British merchants or should they be given sufficient jurisdiction so as to formulate their own laws under the parental laws of the land.

¹ <https://www.zum.de/whkmla/sp/0910/jinhyuck/jinhyuck3.html> last seen on 28/02/19

Alongside this dilemma, certain political developments were pertinent during this time. While the English established Fort William in Calcutta, the region of Calcutta was essentially three villages of *Calcutta, Sutanati and Govindapur* on which Aurangzeb allowed the *Company's zamindari*, and it was the genius of these ambitious Englishmen that they started consolidating their hold on Calcutta in the east, Madras to the south and Bombay to the west, thereby elevating them to the status of presidency towns.

V. CHARTER OF 1726 - FURTHER CONFUSION

The charter of 1726 provided for the establishment of a corporation in each presidency town. The charter is considered to be an important landmark in the history of legal system in India as it introduced the English laws into the country. The Charter of 1726 made Mayor' Courts at all the three administrations that is Madras, Calcutta and Bombay in this manner, out of the blue, building up a uniform legal framework. The 1726 charter sought to rectify previous systems of courts as established under the charter of 1687, but ironically the new system gave rise to more ambiguity in the first place –

This was primarily because the Courts were established with authority from the England, a distant land which was yet to confiscate power in India; secondly the working of the court was based on English law that was far from being akin to the *lex loci*. The Court administered justice to people but the basis of it was flawed or to be precise ambiguous as to why would the people of the land follow it and under what authority would they become binding on the masses subject to different administrators.

There were several cases² that were tried in these courts because they existed as a sort of judicial authority of the new foreign race which had almost penetrated into the precincts of the country and by means of mercantile interests had already closely associated themselves with the people of the land.

Arab Merchant's Case:

An Arab Merchant acquired a suit the Mayor's Court for the recuperation of the important pearls which were affirmed to have been escorted from him by a man who spared him from the consuming pontoon at the shoreline of Gujarat. The Mayor's Court counselled the Governor in Council. The Governor maintained the purview of the Mayor's Court. It recommended the Mayor's Court not to attempt the case as the respondent had been recently enlisted for theft in regards to a similar event and absolved.

The Mayor's Court overlooked this and announced the suit. This was switched by the Governor.

Hindu Woman's Case: (1730)

A multi year old kid (Hindu) left his mom and started to live with his relatives, since his mom wound up

² ramanujam,preethiadministration of justice in madras, bombay, calcutta (1600-1726)

Roman Catholic in Bombay. The mother recorded a suit for the guardianship of the kid in the Mayor's Court. The Court requested the relatives to hand over the kid to his mom. On an objection documented by the leader of the station, the Governor in Council held that the Mayor's Court had no capacity to choose instances of religious nature or position debate of the locals. The Governor expelled the Mayor from his office.

Pagoda Oath Case:

In Madras, Hindus gave proof in the Court on Bhagwad Geetha Oath. Two Hindu Merchants were put to imprison by the Mayor's Court for declining to make the pagoda vow which they said was in opposition to their religion and the guidelines of the mansion. This made the Hindu Residents incensed and they approach the Governor to meddle. So Governor discharged that vendor on parole. In the meantime the Court was coordinated to pay respect to the religious customs and services of the locals.

VI. DYARCHY AND LEGAL CONFUSION

1757 witnessed a remarkable change in the political scenario of Bengal and the whole country as a whole as Nawab Siraj ud Daulah of Murshidabad was defeated by Lord Clive and therein took over the province of Bengal as well. Next the political expansion turned into another war – Battle of Buxar (1765). As the British gained control over the Nawabs of Avadh, Hyderabad and Bengal, the Company refused to take over the administration of the provinces and rather they took up the Diwani function- the function of collecting the revenue or taxes from the people. As a result of this, legislative and executive revenue functions got completely separated. The law was supposed to be formulated by the ruler or the titular head who had ironically lost the most important power to rule, the body of administration was as if bereft of its most important organ. In such a scenario high levels of taxation was imposed on the farmers and very little thought applied to the fertility standards of land or the productive capacity of the lands, and hence there were droughts which procured no extra relief as well. This prevailing diarchy was detrimental to agriculture and ultimately resulted in the Great Bengal Famine of 1770. The entire scenario was a culmination of the question of law-which law to follow and how do people estimate the statutory authority of law, if the heads of administration were questionable in their capacities.

VII. REGULATING ACT AND INFAMOUS TRIALS

Regulating Act³ was the main direct obstruction made by the British government in the issues of India. Its motivation was to make a stride towards expelling the political power from the hands of an exchanging organization. The Act likewise gave explicit measures to set up another managerial system. The leader of the

³ Anwar, Shakeel, The Regulating Act, 1773: Key Features

organization's Calcutta plant, who used to be the Governor of Bengal, was made the Governor-General of all the Indian domains of the organization.

There were steady squabbles between Warren Hastings, the primary Governor General, and the individuals from his Council.

*The trial of Nanda Kumar*⁴ was furthermore a prominent indication to the deteriorating legal condition. Nanda Kumar, erstwhile Governor of Hugli under Nawab Siraj-Ud-Daulah in 1756, had filed a case against Warren Hastings accusing him of charges of bribery in the Council. As he was able to produce proofs, Hastings was found guilty. In the next phase, Hastings accused Nanda Kumar of conspiracy and forgery to give him a befitting punishment. The case was lodged with the Supreme Court and the trials began, it continued for 8 days long with no adjournment till he was found guilty and executed. There was a fierce questioning of witnesses and the entire process was swiftly manipulated, providing little chance for the people to grasp it.

VIII. CONCLUSION

THE STUDY clearly shows how 18th century bore a witness to decentralisation of authority, fragmentation of power and dissemination of the prowess of law. With continuous internal squabbling and a preponderant external threat, the legal system of India as existed was lost and with the colonial domination, a new system was to take its place that was still unknown to the people who had been obliviously subjected to it already.

⁴ Gandhi, b.m, landmarks in indian legal and constitutional history.