

The Transformation of Legal Structures in Colonial India: From Pre-British Fluidity to British Codification

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Abstract: This paper examines the transformation of India's legal landscape during British colonial rule. The transformation signalled a shift from fluid and diverse pre-colonial traditions to rigid codified systems. The fluidity can be ascribed to a complex interplay of religious laws, rulers' wills, local customs, and regional practices. Hindu and Islamic legal traditions coexisted alongside various customary laws, creating a multifaceted legal environment. British administration initiated standardization and codification, to negotiate this maze in order to administer justice in an unfamiliar context. The study explores the motivations behind this transformation, its implementation process, and the lasting impact.

Keywords: India's legal landscape, British colonial rule, religious laws, rulers' wills, local customs, regional practices.

INTRODUCTION

In 2024, the implementation of the *Bhartiya Nyaya Sanhita*, along with two other criminal justice codes, was celebrated as the dawn of a new era in the decolonization and modernization of India's criminal justice system. These criminal laws are seen as reflecting contemporary Indian values, social realities, and constitutional principles rather than remaining tethered to colonial objectives of control and suppression. The paradigmatic shift from *dand* (punishment) to *nyay* (justice) with free citizen at its centre instead of colonial subject was the hallmark of this new era of criminal jurisprudence in India. Notwithstanding the claims and counterclaims made by the ruling dispensation and the opposition respectively it provides an opportunity to revisit the shaping of the legal structure in colonial India. This paper seeks to examine the transformation in the legal system with advent of British colonialism.

Colonial rule marked a profound transformation of India's legal landscape. Legal traditions marked by fluidity and diversity gave way to rigid codified systems. The departure from traditions which had evolved over centuries was relatively sudden and guided essentially by imperial concerns and motives.

The fluidity of pre-colonial legal principles is attributable to a complex interplay of religious laws, rulers wills, local customs, and regional practices. The relative importance of each source allowed for interpretation and adaptation to specific contexts and communities. Hindu and Islamic legal traditions coexisted alongside various customary laws, creating a multifaceted legal environment in India.

The arrival of British colonial powers in India initiated a fundamental shift in the legal paradigm. The need to administer justice in an unfamiliar, alien context led them to replicate the familiar principles prevalent in England. The standardising and codifying processes were largely driven by these instincts, aimed at creating a more uniform and predictable legal system across Indian territories.

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This study examines the transition from the fluid, pluralistic legal structures of pre-colonial India to the more rigid, codified system implemented under British rule. It explores the motivations behind this transformation, its implementation process, and its lasting impact on India's legal landscape. By analysing this shift, we can gain insights into the broader implications of colonial legal reforms and their enduring influence on postcolonial legal systems.

British as the Patron of the Sastras:

Examining the legal systems of precolonial India reveals a variety of law sources, each with overlapping jurisdictions and varying significance, sometimes even conflicting with one another. This interplay results in significant fluidity within the principles and structures that govern dispute resolution, challenging certainty and uniformity.

When the British East India Company assumed the responsibility of collecting rent as deputies of the Mughal emperor, by virtue of the diwani rights granted to it, the prevailing fundamental law was Islamic law. Hindu subjects under the Mughal emperor were entitled to be governed by their own laws and customs, except in matters related to criminal, fiscal, and constitutional administration. In the resolution of conflicts among Hindus, Brahmin legal experts were often consulted because of their specialised knowledge. In most cases, disputes were resolved through traditional methods without recourse to the Mughal judicial system.

Bernard Cohn explores a diverse array of traditional dispute resolution mechanisms in the Benares region, grounded in three principles: 'supernatural intervention, naked use of force, and the rhetoric of compromise'. He provides vivid details of the methods used to invoke supernatural intervention. Brahmins were often entrusted to perform *dharna*: ...the Brahmins would threaten to take poison, cut open their stomachs, or dash out their children's brains if they did not get their way in a dispute'. The curse of a fasting Brahmin's death would often force the adversary into a settlement. Conditional oaths, like swearing on a child's head, were frequently used and valued as a method of resolving boundary disputes among equals. However, Cohn clarifies that naked force was used more frequently in dispute settlement than the 'spectacular' methods mentioned above (Cohn, 1987, p.465). Resolving conflicts through arbitration in panchayats was another significant approach: 'The effort in panchayats was to find a solution (without) sever(ing) ties.... through long talks and informal pressures on the contending parties' (Cohn, 1987, p.466).

In this context, the East India Company, under Robert Clive's leadership, assumed the responsibility of governing Bengal. It is apparent that they may have felt insufficiently prepared and lacked the experience to undertake this substantial task. Clive's formula of 'dual government' with the native administration's continuance on the forefront with the company in the background must be placed in this context. Clive's correspondence with the Court of Directors, whereby he argues for 'masking the company's sovereignty, attests to this unpreparedness (Cited in Stokes, 1959, p.1). In its initial years, the East India Company adopted a policy of minimising intervention in indigenous affairs in India.

Warren Hastings overturned the policy of non-intervention, thereby affirming British sovereignty and accountability. Adjudication was a crucial element of administration, and Hastings was keen for British officials to assume the responsibility of administering justice. District Courts were established with English officers as judges. When British officials ventured into the field to consolidate their administration, it was nevertheless 'a journey into the unknown.' At each stage, they encountered semi-feudal rights and duties that resisted any interpretation using familiar Western concepts (Cohn, 1997, p. 59). Young Englishmen looking for a 'career in the east' had no more than seventy to eighty hours of legal training at Haileybury (Cohn, 1987, p 473-74).

Limited training was imbricated within broader understandings of the Indian state system prevalent in England. The British conceptualisation of the Indian state model centred around two concepts: despotism and theocracy. Historians and company officials, such as Alexander Dow and Robert Orme, popularised the despotic model. This model posited that in India, no law existed beyond the arbitrary will of the despot. In the preface to his translation of the 'History of Hindoostan' by Muhammad Qasim Ferishta, the court historian of the Deccan Sultans, Dow notes:

'The history... presents us with a striking picture of the deplorable condition of a people subjected to arbitrary sway, and instability of empire itself, when it is founded neither on law nor upon the opinions and attachments of mankind' (Dow, 1772, p. xiii). Robert Orme writes: 'Government was seen as based on no other principle than the will of one (the Mughal), the law was based upon his will..' (Orme, 1805, p.437). Hence, the East India Company had to establish a legal structure in a vacuum.

Warren Hastings and his Orientalist associates countered the despotic model by propounding a theocratic model of Indian state. Hastings believed that Hindus 'had been in possession of laws which continued unchanged from remotest antiquity.' Brahmins, or 'professors of law, were repositories of these laws; hence, they were held in high esteem, akin to worship. This deep-seated respect was so pervasive that even Muslim rulers did not disturb it during their rule. This fixed 'body of laws, codes ... overtime... had become corrupted by accretions, interpretations and commentaries' (Cohn, 1997, p.26). Orientalists believed that this collection of religious laws needed to be discovered and compiled for easy reference

by British judges. This search for unified principles of justice in Hindu religious texts changed the structures of dispensing justice in India beyond recognition.

English judges with limited training in legal affairs and even less familiarity with alien subjects needed the guidance of native experts. *Pandits* and *Maulvis* were attached to the courts to assist English judges by interpreting the respective religious laws and codes. The Administration of Justice Regulations, 1780, made *sastris* responsible for reporting laws and sentences that followed. However, the consultations were limited to the listed subjects only. The new system which guaranteed clear winners and losers, as opposed to the precolonial compromise-based arbitration, attracted native litigants in hordes.

The theocratic model was based on the mistaken assumption that ancient Hindu law was a unified body. Instead, there was a possibility of multiple, divergent interpretations of every legal question under consideration. There were rumours that some *pandits* had been issuing *vyavasthas* favouring the wealthier party involved in the dispute (Derett, 1968).

The corruption in English courts at the behest of *Pandits*, whether exaggerated or real, became a catalyst for the compilation of digests comprehensible to European judges. There was a need to familiarise officials with and simultaneously explore ancient Hindu laws as ever present. Sanskrit colleges were founded in Benares and Calcutta. There was an acknowledged need for a standardised and approved list of textbooks to train *pandits* in British legal systems. Derett notes a compilation of texts used in Calcutta, including works such as *Manu*, *Mitakshara*, *Dayabhaga*, *Daya-krama* (*sangraha*), *Daya tattva*, *Daya Candrika*, *Dattakamimamsa*, *Vivida-cintamani*, *Tithitattava*, *Sudhitattava*, and *Prayascitatattva*. However, Southern texts were absent, and the differences between Benares and Mithila were not considered (Derrett 1968).

Hastings called upon eleven *pandits* to create a digest, initially named *Vivadarnava setu*, meaning a bridge over the sea of litigations, which was later renamed *Vivadarnava bhanjana*. The subjects covered in the *Vivadarnavasetu* reflect what Hastings anticipated would be necessary for mufassil courts: debt, inheritance, civil procedure, deposits, sale of a stranger's property, and so on. The sequence of chapters and the emphasis placed on each topic do not align with anything found in *sastric* texts, indicating that the committee was likely following a list of topics provided by Hastings or his advisers (Derrett, 1968).

Vivadarnasetu was transformed into the Code of Gentoo Laws after being translated into Persian and then English, with a preface by Warren Hastings. This Code, when translated into German and French, sparked significant interest in Hindu laws across Europe. Warren Hastings, an Orientalist seeking ancient Hindu codes and acting as law inheritor rather than Benthamite innovator, operated within western legal discourse by pursuing generalizations alien to the existing system. Robert Clive and Warren Hastings were a generation of Governor Generals who were tolerant of Indian institutions nevertheless making minor innovations here and there. A major shift from this approach was on the horizon with Lord Cornwallis, who initiated the first departure from the Orientalist principles of governance.

Utilitarianism and Indian Judiciary

Charles Cornwallis, a British Army officer who led troops against the American war of Independence, took over as Governor General and commander-in-chief of British India in 1786. In addition to his role as a colonial administrator, he was a Whig politician who strongly advocated the principle of minimal political power, balanced by its division. He was for 'the introduction of a new order of things, which should have for its foundation the security of individual property, and the administration of justice, criminal and civil, by rules which were to disregard all conditions of persons, and in their operation, be free of influence or control from the government itself' (Vth Select Committee Report as cited in Stokes, 1959).

The Cornwallis code was introduced to create an efficient administrative machinery, improve the company's finances by checking corruption, and ensure a regular surplus of revenue. The Code with Permanent Settlement of Bengal signalled a new era of the anglicisation of administration. The introduction of private property in land was to be upheld by a robust legal system reorganised on Western lines. The changes, such as the separation of revenue and justice administration, introduction of gradation of civil courts, abolition of district *fauzdari* courts, and relocation of *sadar nizamat adalat*, were all tuned towards the establishment of a robust system. Secular laws, duly codified, were intended to supplant the religious or personal laws of rulers and local agents. The principle of the sovereignty of law was explicitly articulated, ensuring that even government officials were held accountable in the courts for their actions in official capacities. Nevertheless, Cornwallis' anglicisation was defensive and limited his 'attitude was essentially one of non-interference in Indian society, once the framework of what he considered a sound system of justice and revenue had been established' (Stokes, 1959, p.36).

Ideational Reverberations of Britain: Innovation vs Preservation

Eric Stokes points out that 'British policy (in India) moved within an orbit of ideas primarily determined in Europe... many of the movements of English life tested their strength and fought their early battles upon the Indian question' (Stokes, 1957, p.xii). If this was the case, then any comprehension of British policy in India must be framed within the context of developments occurring in England, both in terms of ideas and the economy.

The Industrial Revolution transformed the purpose of political domination. Now, rather than serving as a continuous source of tribute—a notion that persisted until the late 18th century—the British presence in India after 1800 was seen merely as a tool to establish the necessary conditions of law and order, which would allow the potentially enormous Indian market to be opened up for British industry. This transformation of economic purpose carried with it a new, expansive, and aggressive attitude. There was an intermingling of commercial and missionary interests which together formed the bedrock of colonial liberalism in nineteenth-century India.

The missionaries of English civilisation openly supported the policy of assimilation. Britain was to 'stamp her image upon India'. The physical and mental distance between east and west was to be annihilated by....transplanting the genius of English laws and education to India. For evangelicals, God's hand was evident in history, particularly in England's conquest of India. This power brought responsibility: evangelising India's heathens. Education and evangelisation can unlock the earth's potential. Consequently, the assimilation policy gained support.

This policy of assimilation was carried out by many officials, including Cornwallis, Bentham, Mill, and Macaulay. Without discounting major contentions and conflicts in theorisation and the implementation of specific policies, liberal ideas of reform bound them together. They differed on the issue and extent of the role of the state; however, the policy of assimilation, through which an enlightened power could mark its stamp on India, bound them all together.

The conservatives in England and the East India Company resisted the policy of assimilation. Officers like Thomas Munro, Elphinstone, Malcolm, Charles Metcalfe were against imposition of anglicized form of administration. They were essentially romantics who wanted 'to take the peasant in all his simplicity, to secure him in the possession of his land, to rule him with a paternal and simple government and so to avoid all the artificialities of a sophisticated European form of rule' (Stokes, 1959, p 13)

They rejected the approach of rebuilding a political society from scratch using abstract principles derived from a foreign tradition. While they acknowledged the theoretical importance of the rule of law and separation of powers, they argued that these concepts could not be directly transplanted into India without modification. These romantics were inspired by Burke's idea of viewing human society as a continuous link between the past, present, and future. They viewed the Bengal system as a rejection of this historical and experiential benchmark. They were not hostile to reform, but their political instincts were traditional and sentimental. They were against the transformation of British rule from a personal, paternal government to an impersonal, mechanical administration.

The votaries of British administration as a paternal power tried to implement their ideas of preserving the simple, primitive village community through the introduction of *ryotwari* and *mahalwari* systems of revenue collection with attempts to codify customs. The *mahalwari* system was implemented in Punjab after its annexation by the East India Company in 1848. There were attempts to rule Punjab not by innovation but by preservation. As a result, *Wajib-ul-arz* (village administration papers) and *Riwaj-i-ams* (tribal customs) were prepared from the 1850s onwards. Numerous digests and manuals on customary laws emerged, driven by the belief that native governance should be rooted in age-old traditions. C L Tupper's Punjab Customary Law, published in 1881, became a landmark text compiled as a ready reference for European Judges.

In contrast to Orientalists, who regarded sastras as the source of authentic legal knowledge and viewed customs as deviations, in Punjab, customs were considered primary. Section 5 of the Punjab Laws Act of 1872 attests to this understanding, clarifying that the religious laws of Hindus and Muslims were to be adhered to only when they aligned with and had been integrated into customary practices (Punjab Laws Act, 1872).

In his discussion of the codification of customs in Punjab, Neeladri Bhattacharya reveals intriguing facts that complicate this seemingly straightforward and novel project of governing the natives through their own customary laws. He highlights the issues associated with this type of codification, noting that the quality of enquiry for codification was subpar, questions were framed in terms unfamiliar to the respondents, and answers often extended beyond the enquirer's frame of reference (Bhattacharya, 1996).

The village records were stereotyped, and at times, answers were orchestrated during verification which summarily defeated the purpose. The village elders, particularly the headmen, were seen as custodians of wisdom on

immemorial customs, just as Orientalists saw *pandits*. The reliance on village elders served a dual purpose: alongside the discovery of customs, it also helped the British establish control over their subjects. After the 1857 rebellion, British officials went in 'search of *chaudharis* and *muqaddams* and instituted them where none existed' (Bhattacharya, 1996).

Rural power relations were restructured and shaped by the process of codification. The coparcenary community was further consolidated with all those outside *bhaichara* recorded as tenants. Lower-caste and non-agricultural communities are now denied property rights according to the law. Customs were shaped by the codification process, as all customs declared void by courts lost legal existence (Bhattacharya, 1996).

Whether British colonial administrators acted as revivers of a decayed system or as the vanguard of a new one, whatever their immediate motivation or grand project guiding their policies in India, they fundamentally transformed the socio-political-economic structure of Indian society.

CONCLUSION

The change in legal systems in colonial India was a big shift. It went from a flexible and varied system to a strict and written one under British rule. The change had big effects on Indian society and its laws. Before the British came, India had many different legal systems, like Hindu and Islamic laws and local customs. These systems were flexible and could change to fit different communities. When the British arrived, they slowly started to change these legal systems.

The British way of managing law in India changed over time. At first, the East India Company did not interfere much. But later, it took control and responsibility. This led to the creation of District Courts and British officials became judges. These officials often did not have legal training and did not know local laws and customs.

The British conceptualisation of the Indian state oscillated between despotic and theocratic models. Efforts to codify Hindu laws, such as the creation of the Code of Gentoo Laws, aimed to establish a more uniform and predictable legal system. However, this process often misinterprets or oversimplifies the complex nature of Indian legal traditions.

The developments and debates in England had a massive impact on the colonial policies in India. These pulls and pressures particularly after the Industrial Revolution fundamentally altered the socio-economic structure of Indian society. The evangelical movements had a significant impact on governance of the colony.

British administrators varied in their policies, with some guided by ideas of assimilation through innovation, while others were influenced by romantic notions of preservation. Assimilationists advocated for the widespread adoption of British systems, while others preferred to retain local customary practises. The preservationists nevertheless also altered rural power dynamics and customs in the process of codification of customs.

Ultimately, regardless of the immediate motivations or ideological underpinnings, the British colonial administration fundamentally transformed India's socio-political-economic structure. This transformation of legal structures from pre-British fluidity to British codification left an indelible mark on India's legal landscape, the effects of which continue to influence the country's legal system in the postcolonial era.

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