

BENGAL RENAISSANCE AND ITS IMPACT ON THE COMMON LAW SYSTEM

Written by Aishik Chakraborty & Rahul Purkayastha***

** 1st Year BA LLB Student, School of Law, Christ University, Bangalore*

*** 1st Year BA LLB Student, School of Law, Christ University, Bangalore*

ABSTRACT

The Bengal Renaissance is a movement by the Bengalis which is characterized by a social awakening in the field of art, culture, science, intellect and society (as a whole). The movement was carried out from the nineteenth century to the early twentieth century, which is during the period of British rule in India. Bengal and its neighbouring areas are where the movement was largely carried out.

The movement questioned the existing state of affairs in the society that is the orthodox rituals and customs prevailing in the society, which were mainly framed by the upper-class Brahmins. It focused mainly upon regaining the respect of women in the society. Among other things, the movement questioned the dowry system, the caste system, the practice of sati, Brahmin supremacy and a few other vague religious practices. The contact between certain sympathetic British officials and missionaries on one hand and the Hindu intelligentsia on the other made the movement possible.

As a result of this movement and also due to the British invasion, the educational system of Bengal, as a whole, underwent a drastic change during the 19th century. The educational reforms saw the establishment of educational institutions like the Asiatic Society(1784), Fort William College(1800), Serampore College(1817), Hindu College(1817), Sanskrit College(1824) and others which were mainly meant for the elite class Bengalis to educate them according to the European idea of education, learning and value judgement.

As we all know, India has a common law legal system whose infrastructure bears the influence of British colonial rule. It is a system of law based on recorded judicial precedents. The company was granted charter by King George I in 1726 to establish “Mayor’s Courts” in Madras, Bombay and Calcutta (now Chennai, Mumbai and Kolkata respectively). Judicial

functions of the company expanded substantially after its victory in Battle of Plassey and by 1772 company's courts expanded out from the three major cities. In the process, the company slowly replaced the existing Mughal legal system in those parts. This paper aims to show the evolution of "Common Law" in India with respect to Bengal Renaissance or rather the impact of Bengal Renaissance on the evolution of common law in India.

INTRODUCTION

The province of Bengal has always been one of the most fertile and strategically important provinces of the Indian Subcontinent. If we look at the position of Bengal it is located at the eastern frontier of the country bordering Arakan present day Myanmar and the tribal lands of North East in the Eastⁱ. It was since time antiquity an important center of trade and commerce of the subcontinent and two of the most important ports and cities of the subcontinent were located in the region and also the region was quite an important regional power and was known as Gangaradai in the Greek Records and it is often believed that Alexander the Great stopped short of conquering India due to the great military and economic prowess of the province which was at that time the strongest power in India recent archaeological evidence in the site of Chandraketugarh suggests that this site was the capital of the empire and was one of the greatest cities in the world during 300BCE roughly the time of Alexanders conquest. The two ports of Tamralapita present day Tamluk and Chittagong played an very important role in the region's economy the importance of Tamralapita as a port can be gauged from the fact that Megasthenes mentions the port and even other Greek Scholars mention the port as an important port and describe it as one of the greatest ports in the Indian Subcontinent if not the Ancient World . Even the port of Chittagong is considered an important port and was widely used as a transit point between the Chinese and the Western World and was mentioned by Fa Hien as one of the big cities of the Subcontinent. Also, Bengal continued to be one of the most important centres of trade and commerce right up to the 11th century AD when it was ruled by various forces including that of the Palas and that of the Sens. It came under Muslim rule for the first time when Bakhtiar Khalji a slave of the Khalji dynasty conquered Bengal and made it a Muslim province. Subsequently, Islamanaization of Bengal took place and the eastern part of the province became overwhelmingly Muslimⁱⁱ. After that in the 15th century Bengal became a hub of trade and commerce in which traders from all parts of the world came and traded

among the most prominent of these was the Portuguese who basically controlled the trade in the two great ports in the province Chittagong in the east and Sonargaon in the westⁱⁱⁱ .

AGE OF THE EUROPEANS

By the 16th century the Europeans began to increasingly trade with India and Bengal became one of the hubs of this trade due to the increasing maritime connections and clout enjoyed by the province. The province was the place where all the European powers in the country set up there trading centres in the province with the Danes setting up there centre in Serampore the French in Chandannagore and the British in Calcutta the foreign powers preferred to set up there trading centres in the province as the province was the only place having peace and stability in the subcontinent which was in a state of anarchy and disorder after Aurangzeb's death as the Mughal Empire was slowly disintegrating and collapsing . The collapse became all the more imminent after Nadir Shahs invasion of India and plunder of Delhi which resulted in large scale destruction and dilapidation of Delhi which was the largest city in the subcontinent and the largest city between Istanbul in the west and Edo {Tokyo} in the east. The city was completely plundered by the emperor Nader Shah and the vast treasures of the Mughal empire was plundered and looted this event resulted in the fragmentation of the Empire and prominent regional governors rose up and ruled there provinces as respective independent kingdoms under the vassal authority of the Mughal Emperor. Among the regional governors Alivardi Khan the governor of Bengal who rose to greatest prominence a descendant of a Shia Afghan family he was an able administrator and ruled the province very well and was the person who filled the Mughal Treasury in Delhi. His able administrative policies made Bengal the economic nerve centre of the Indian Subcontinent and it was considered as the most prosperous economic region of the world controbuting as much as 20% of the worlds GDP during 1640s .^{iv}However, after his death Alivardi Khan his sucessor Siraj Ud Daula was not efficient enough to manage the province and as a result of his misadventures his kingdom collapsed and Bengal passed onto the hands of the British led by Robert Clive who defeated Shuja Ud Daula in the Battle of Plassey in 1757. Thus, now Bengal came into the hands of the British and the British Common Law began to be introduced over a large territorial area for the first time in the subcontinent.

In India, the system of common law was first applied during the British Rule. When the British came to India, they brought with them their own system of governance and also their laws. In the initial stage, the Britishers limited their influence to the personal laws of the Hindus and the Muslims and allowed the remaining cases to be dealt by the native laws^v (especially the criminal cases). All the criminal cases were judged by the native laws of the Muslims until Lord Mountbatten became the Governor General and abolished the authority of the native Muslim leaders to decide cases concerning criminal matters. This was done because the local law suffered from many defects and common people did not have any reliance on them.

The concept of stare decisis was also introduced during this period. Stare decisis literally means let the decision stand, under this concept if there is an already decided case similar to the present case then the judgement has to be given according to the decided case. This principle replaced the inconsistent local traditions and laws with reliable and consistent laws that were applicable to the region. During this time the concept of equity was established. Under the doctrine of equity if any person felt that some injustice has happened to him, he can make an appeal in the court of chancery administered by the lord chancellor. For example, if anyone felt that the damages awarded to him through common law were insufficient then he could approach the court of equity and seek redressal. Also, during this period, the concept of justice, equity and good conscience came into being. Under this doctrine, if there is no specific law pertaining to the present case or if the Hindu or Muslim law also did not have any clear solution, then the judgement was supposed to be given by applying the doctrine of justice, equity and good conscience. Considering the literal meaning, it meant that what the judge considered right in the particular case and gave the decision accordingly. The application of common law in India started evolving during the 19th century, when certain laws were being codified and proper courts were established under the Charter of 1861. Before the 19th Century, there was the Supreme Court which was established and also applied the laws of England according to its applicability in the Indian context. However the Supreme Court became very controversial due to its judgements and became very unpopular among the masses due to the Gora Chand Dutt .v. Hosea Case and the very famous Patna and the Nandkumar cases^{vi} the Indians felt that the court was interfering with their personal systems of law and the Upper Caste Brahmins of Bengal who had supported the British felt threatened that the laws were interfering with their practices among them the greatest profounders were Raja Radhakanta Deb the son of Gopimohan Deb and grandnephew of Nabakrishna Deb the scions of the Shohbhabazar

Raajbari who were instrumental in helping the British to win the Battle of Plassey naturally as a result of which the British reserved these reforms made in 1790 . However, the advent of Western Education had awakened the masses and people of the subcontinent especially Bengal which was the first place to receive and get exposed to western education and its people who had lived there entire lives in caste ridden and superstitious society began to protest against it inspired by the writings of western writers like Voltaire , Rosseau and even by the great events which took place in that age such as American Declaration of Independence and the French Revolution . There were various student groups operating in Bengal during that time among them was the Young Bengal Association founded by Henry Lious Vivian Derozio a professor in the Hindu College now known as Presidency University. The movement was quite radical in nature and was aimed at the radical reforms in the society. This movement along with the Brahmo Samaj movement was responsible for bringing the Anti Sati Act in 1829 thus for the first time the British had made a codified law banning an evil practice of the Hindus. Although there were protests from various other eminent figures of the conservative section of the Hindu society such as Radhakantha Deb and the nobility belonging to the Shyambazar rajbari the act was passed through. Thus, for the first time the British brought in regulations in the province. And further Law Commissions were formed in 1833 presided by Lord Macaulay and these law commissions began the immense task of codifying the laws and various coded laws such as IPC were brought in due to the recommendations of the law commission ^{vii}. The findings of those law commissions and various act of coding the laws such as IPC and various act such as the Indian Contract Act 1872 and the Indian Evidence Act 1872 forms the backbone of the Indian Legal system and these changes were also somehow related to the massive changes which the Bengal Renaissance brought in concepts such as rule of law, justice , equality and fairness were brought into the society and these great awakening brought the Indian society into the light of modernity from the vagaries of anarchy and thus Bengal nerve centre of political economic and social activities in India right up to the 1970s^{viii}.

CONCLUSION

The paper has dealt with how the Bengal Renaissance influenced the British to bring in changes in the legal structure of the country and how these changes form the basis of the legal structure in the country. It has also shows the province was the only place of stability and peace in the

Indian Subcontinent and had emerged as the greatest centre of trade and commerce in the subcontinent and how the flourishing trade and commerce in the province attracted the Europeans and how even how the province became a centre of war between the English and the French the two great European Powers . It also shows how the English emerged as the greatest power in the subcontinent and then brought in the concept of western education into Bengal and this allowed a new intellectual class to flourish in the province which allowed new social changes to take place and this social change also brought in a great change. When the rule of East India Company ended and the official crown's rule started, the first evidence of the common law was seen with the advent of Indian advocates and pleaders present in the courts in order to consider the issues related to Hindu and Islamic laws. Legal decisions and statutes based on India multiplied through the 1800s. By the beginning of the twentieth century, books were made on the compilations of Indian laws and procedures consisting of hundreds of pages. Also, during that period, there was an active participation of Indians in the legal profession as vakils, indigenous pleaders or as lawyers who were educated from abroad. Indians were allowed to run most of the offices and none of the positions were reserved solely for the British officials^{ix}. Indians with proper qualifications were allowed posts in colonial civil service and due to the process of 'Indianisation', many Indians were given places in the governing system of the colony, during the early 1900s. Indians were also allowed in the judiciary by then. The Indian freedom movement was also gaining pace during that point of time which compelled the Britishers to continue with their policy of appeasement, which they applied time to time.

After Independence in 1947, a Constituent Assembly was formed to draft the constitution which came into force in 1950. The Constitution cherished the idea of Common law. India had a long history of common law dating back from the time when British took control of India. The Indians themselves had been applying common law in their official capacity all these years i.e. during the time of the British rule. The legal structure established by the constitution of India is based on the concept of precedents. The Supreme Court was declared as the highest appellate authority. In the meantime, the Hindu law was codified. Thus, India adopted the colonial judicial procedure after independence by making a few changes that would make it more suitable in the Indian context.

REFERENCES

- ⁱ Barua, B. (1939). RELIGIOUS HISTORY OF BENGAL IN THE PRE-PĀLA AGE. *Proceedings of the Indian History Congress*, 3, 461-461. Retrieved April 28, 2020, from www.jstor.org/stable/44252395
- ⁱⁱ MAJUMDAR, R. (1968). A FORGOTTEN EPISODE IN THE MEDIEVAL HISTORY OF BENGAL. *Annals of the Bhandarkar Oriental Research Institute*, 48/49, 187-192. Retrieved April 28, 2020, www.jstor.org/stable/44158645
- ⁱⁱⁱChakraborti, P. (1984). PATTERN OF BENGAL'S OVERSEAS TRADE UNDER THE MUGHALS—A SECOND LOOK. *Proceedings of the Indian History Congress*, 45, 375-383. Retrieved April 28, 2020, from www.jstor.org/stable/44140218
- ^{iv} Gourlay, W. (1919). THE NEED FOR A HISTORY OF BENGAL. *Journal of the Royal Society of Arts*, 67(3462), 288-298. Retrieved April 28, 2020, from www.jstor.org/stable/41347924
- 4 Joireman, Sandra. (2006). The Evolution of the Common Law: Legal Development in Kenya and India. *Journal of Commonwealth and Comparative Politics* 41.10.1080\1446620406008316
- 6 William Dalrymple, *The Anarchy: The Relentless Rise of the East India Company* 107(Bloomsbury Publication ed. el .1st edition)
- ^{vi}Chakraborti, P. (1984). PATTERN OF BENGAL'S OVERSEAS TRADE UNDER THE MUGHALS—A SECOND LOOK. *Proceedings of the Indian History Congress*, 45, 375-383. Retrieved April 28, 2020, from www.jstor.org/stable/44140218
- ^{vii} Bhattacharjee, J. (2005). THE FIRST PARTITION OF BENGAL (1874). *Proceedings of the Indian History Congress*, 66, 1022-1029. Retrieved April 28, 2020, from www.jstor.org/stable/44145915
- ^{viii} Galanter, M. (1972). The Aborted Restoration of 'Indigenous' Law in India. *Comparative Studies in Society and History*, 14(1), 53-70. Retrieved April 28, 2020, from www.jstor.org/stable/178060
- ^{ix} Cross, F. (2007). Identifying the Virtues of the Common Law. *Supreme Court Economic Review*, 15(1), 21-59. doi:10.1086/656027