

Empire, Law and History: The British Origin of Modern Historiography of South Asia

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Abstract:

Exploring the purpose, means, methods, tools and process of the beginning of modern trends in the writing of South Asian history or historiography at the end of eighteenth and beginning of nineteenth century, the paper analysis thematically the relations between Empire, law and history. It concentrates on the point that it was the Imperial British need for the understanding of customary and religious laws and rules to establish an efficient imperial administration which converted 'ahistorical' Indian society into 'historical'. British administrators legal researches to make administration free of indigenous Maulvis and Pundits' exploits led to the beginning of a new phase in the understanding and writing of South Asian history and later debate on the administration and status of British Indian Empire found its argument from history a systematic narration of which initiated the modern phase of Historiography of South Asia and necessitated the introduction of 'history' as an academic discipline to influence the minds of new generation of Indians, Hindus as well as Muslims.

Keywords: Empire; Law; History; British Rule; Historiography; South Asia

I. Introduction

Constructed on two thematic assumptions that pre-nineteenth century Indian society was historical and modern historiography of India owes the debt of its origin to the British, the paper evolves around the view that what is now called the Indian history in written documentary form, with modern paradigms and models, came out of the problem how to make imperial authority acceptable for the Indian masses during the later part of eighteenth century and first half of nineteenth century. Exploring the relation between the British Empire, Indian law and Indian history, it concentrates on the point that it was the British imperial need for the understanding of indigenous customary and religious law which led to the origin of modern Historiography of India. British administrator-jurists played the foremost important role in the modern construction of Indian past through a systematic and disciplined historiography. Whether it was simply a problem of colonial conquests or the problem to conquer and control the minds of the people for the establishment of imperial authority, are important questions. Post-colonial discourse is focused on the point that Imperialism always focuses to control the minds of the people to make the empire permanent and system of law serves as a primordial tool for that. Therefore it is also a common belief that what is even now called the history of India, is mainly the construct of British Imperial mind (Marshal, 1970), mainly by the administrator jurists.

This is the context which provided modern India with an historical identity. Therefore, the Indians owe the debt of Indian Renaissance, Bengali Renaissance and Indian nationalism to the British contribution to the Indian studies (Kejariwal, 1988) and that is why, Ranajit Guha, the founder of 'Subaltern Studies Group' is of the opinion that the emergence of modern Indian historiography was the result of legal researches of British imperial administration of India (Guha 1988, 5).

The argument is constructed exploring the views on ahistorical nature of Indian society. The initiation of the modern historiography of India/ South Asia at the nexus of eighteenth and nineteenth century is approached through an analysis of relations between historicization of European thinking and growing British Imperialism in South Asia. On this basis, the British administrators' views on the relations between imperial authority, indigenous laws and history are explored. The final section of the arguments deals with the selected administrator jurists' researches on indigenous legal aspects which led to the legal historiography and writing of general history of India and South Asia.

II. Ahistorical India and Modern Historiography

One popular historian of India, Romesh Chandra Majumdar, describing the general belief about the Indians' sense of history writes that 'historiography [in its modern sense] was practically unknown to the Hindus at the beginning of the nineteenth century' (Majumdar, 1971, 7). However, for Mitra and Bhandarkar, Indians' ancestors' neglect of the past did not mean the denial of Indians' sense of history, altogether. The curiosity of the people for the past and logical need of understanding what is around in the society 'historically' was satisfied by the stories of legends (Mitra, 1875, 1; Bhandarkar, 1985, 1). That is why for Ashih Nandy, pre-modern Indian society was 'ahistorical', having a rich past but a little sense of history in modern terms (Nandy, 1995). By the beginning of nineteenth century, a growing consciousness of history, not as record or source for understanding the past, but as a systematic and sophisticated narrative of past, seems to be taking place among the Indians especially Bengalis. One nineteenth century Bengali nationalist Bankimchandra, foreseeing the importance of historiography in modern system of knowledge sent a call to the Bengalis in the beginning of the second half of nineteenth century: 'We have no history! We must have a history'. The Subalterns have taken up the same phrase as their agenda (Arnold & Hardiman, 1999, 3).

III. Historicization of Thinking

The conversion of 'ahistorical' South Asian society to 'historical' (historicization of thinking) in modern sense by the beginning of nineteenth century owes its debt to the late eighteenth century 'historicization of thinking' in the European west and contemporary European-Imperial interests in India. Gottlob is of the opinion that increased significance of experience of change in the understanding of world around in European mind and 'efforts to investigate the culture and society of India [by imperial masters] intensified at the same time, therefore influenced each other strongly (Gottlob, 2005: 2).

It were the oriental and romantic interests of western intellectuals, developed through a tradition of education of western classics of language and literature from the ancient and medieval history of Greeks and Romans, which were being considered the foundation of customary and religious laws in the West (Jones, 1781; 1791) The

democratic nature of classical state, a sense of individuals' rights and a love for liberty had developed a sense of sanctity of constitution, especially among the English which had promoted the appreciation for the American War of Independence 1774-1778. (Bhatti& Khan 2009). Therefore the experience of change was being conceived as a 'notion of linear, irreversible and global process of evolution' by western intellectuals. (Gottlob, 2005, 4) The emerging sense of historicism was supporting and strengthening this notion and vision of past and history for historiography. Therefore, history had emerged as a philosophy taught by 'the accumulated experience' and 'wisdom of all ages and all nations' than merely a sort of knowledge to collect examples from the human past. Yet it could only be approached through the study and analysis of the development of language and literature, even to grasp the nature of 'religious laws' (Jones,1807, I,156-7; III,1-9). That is why legal pursuits of western intellectuals were closely linked with past to preserve the historical continuity and cultural diversity of customary law. The interaction of western imperial mind with the people and culture of the region which is now called South Asia gave rise to the consciousness of what is termed 'historical' and 'history' among the Indians.

IV. British East India Company Administration and Indigenous Law

The British East India Company (BEIC) administration had two types of juridical interests. **First:** as representative of the company, the administrators had the authority to conclude treaties with the native authorities who had to take the form of law, regulating the relations between the parties and break of such treaties was liable to harsh punishment. The BEIC used such treaties to achieve its end of expansion of its control on Indian territories. However, the validity of such treaties was subject to the armed strength or weakness of signatory powers and was usually implemented by force. **Second:** the prime concern of the BEIC administration, after the assumption of growing civil authority in Bengal by 1757, was the administration of revenue. Therefore the BEIC had dual authority of administration and judicature. In this capacity, they had to work for the interpretation, formulation and promulgation of laws, especially relevant to the administration of revenue. Until the last quarter of eighteenth century, the company's administration carried different experiments to deal with the collection of revenue and to settle the disputes in matters of the land management, revenue collection and property rights, actually forming one problem.

For the British the problem of land management was actually the problem of 'power', 'authority' and 'rule'. By continuing the traditional 'Mughal Mansabdari System' of laws, the British could not break the authority of the Mughal nobility and could not concentrate power into their own hands. On the other hand, Indian culture was alien to the new western concepts of individual property rights.

Contrary to the imperial claims to provide justice to masses, the period of administrative experiment from 1757 to 1784 under the BEIC created worst type of example of corruption and exploitation on the part of British administrators which attracted the attention of the home government to the issues (Bolts, 1772). Warren Hastings recommended the solution to the problems of revenue administration in the adoption of the principle that Indian should be governed by their own laws (Bond, 1861). Therefore Parliamentary Act of 1781 recognized the Hindu and Muslim customs of inheritance and contracts as laws to settle the disputes in India among Indians on the English model of customary law and Christian model of Church Law.

V. Imperial Administration of Power and Justice, Hindu Pundits and Muslim Maulvis

The decision was an indicator of the limitations of BEIC's administrative and juridical authority, as they were alien to the local languages which could give them access to the understanding of historical tradition of local customs of the region. It also made the BEIC administrators dependant of Muslim Maulvis and Hindu Pundits in matters of the administration of justice, especially of revenue and family affairs.

The problem was not too severe in matters of Muslims as under the Mughals, the Muslim laws had already taken a definite form to resolve the problems of the Muslim community and traditionally the authority of the state and administration of justice was, at the end of eighteenth century, still in the hands of the Muslims. The British had already observed this system of administration since their contacts with the Mughals in the late sixteenth century. On the other hand, a long and linked with the present history of polemics between Islam and the West had developed a much stronger consciousness of Muslim laws and customs among the British. High level British administrators such as William Jones had secured their jobs in the BEIC due to their having working knowledge of Persian and Arabic.

However, the problem was more complex in matters of Hindu law for the British. The Mughals had left the administration of justice in the hands of traditional local mandatories with which the British had a very little interaction prior to the assumption of authority in Bengal. On the other hand, language of law and people were different and language of law was monopolized by the Brahmins who had an introvert social tradition which did not allow any non-Brahmin to learn the language of law: Sanskrit. Therefore, the British were not much familiar with the Sanskrit language to understand the nature of Hindu law. Still more important was the fact that there was a variety of customs and rituals observed as religious and social laws on the bases of variety of deities followed by Hindus. An indigenously justified understanding of all such deities and, customs and rituals attached with the following of these deities was too much difficult for the British. Therefore, Warren Hastings in 1773 constituted a committee of eleven Pundits under the headship of Nathaniel Brassey Halhed (1751-1830) to work on the preparation of a digest of Hindu Law to facilitate the functioning of BEIC administration in matters related to justice. It was published in 1776 under the title of *A Code of Jentoo Law*. However the efforts failed to win the popular acceptance either of the BEIC administrators or of Hindu public due to two problems:

First that the BEIC administrators failed to collect accurate information on Indian land management techniques. The British accused 'native agents' of deliberately refusing to transfer the techniques and withholding the intelligence for the collection of land revenue from their new masters (Guha, 1988, 5).

Second that the process of compilation of what a minimum of Sanskrit legal literature collected was a complicated one which had made the efforts useless. The Sanskrit texts were orally translated into Bengali and from Bengali into Persian and then from Persian into English. The process failed to communicate the meaning of Sanskrit legal texts into English (Teltscher, 1999, 197).

In this context, BEIC's assumption of administration of law and justice and

establishment of Bengal Supreme Court in 1784, led to the specialized efforts to resolve the problem. At the time, European population in India, having a superiority complex and the British East India Company administration, were facing a harsh criticism for mal-administration of the Indian affairs, corruption and lawlessness by public at home in Britain. The exploitation of indigenous population through the interpretation of indigenous law on the part of British *Nabobs* (lord) was the burning question of the times (Spear, 1963).

The Bengal Supreme Court began his work very devotedly and analyzed critically the then existing structure of administration of justice under BEIC. Chief Justice of Bengal Supreme Court Sir William Jones (1746-1794) realized that legal codes for the administration and provision of justice were in complete disarray, therefore he began his efforts to compile a more authoritative text of *Halhed's Code* and get it attested 'as good law' by court Pundit.

Jones was convinced that Hindu Pundits and Muslim Maulvis were corrupt and untrustworthy and were used to give corrupt opinion (Majeed, 1992, 19; Cohn, 1985,293). He suspected that 'affidavits of every imaginable fact [could] be easily procured in the markets of Calcutta' (Jones, Works, III, 14) as an article of trade manufactured by Pundits, forged by traders and sold on the streets 'at reasonable rate' (Teignmouth, 1804, 264). Jones was of the opinion that Pundits' fabrications subvert not only British authority and Hindu legal tradition, but the textual corruption having the authority of religion, lead to the moral corruption and injustice (Teltscher, 1999, 196). By the preparation of an authentic digest of Hindu and Muslim law from historical sources, Jones was expecting that BEIC administration could not only be able to come out of the exploits of the Pundits and Maulvis, but also could liberate the common Indians from the tyranny of the Pundits and Maulvis (Guha,1988, 7). That was the cause of British legal researches through Indian history.

VI. Indigenous Law and History

With this bent of mind, Bengal Supreme Court began its work with the assumption that Hindu Law was no longer evolving currently and could be codified from any point of past through history and could be fixed for all time to come in the future (Derrett, 1968, 250). By then India had a legal authority known with Muslim political identity and Persian nobility, demanding oriental concern with Arabic and Persian literature as the basis of religious and customary laws and history, which BEIC administration readily had. However, they were ignorant of the language of Hindu religious and customary law, Sanskrit.

The efforts to teach oriental languages and to disseminate the oriental knowledge had already begun. William Jones of Bengal Supreme Court focused all his attention to the learning of Sanskrit language. He also used his official influence on the company's officials to motivate them for the learning of Sanskrit language as the basis to understand the Hindu Law. Jones applied his classical European and oriental themes of language, literature and law to the understanding of Sanskrit language and literature, through which he could develop an approach to the understanding of Hindu law. His letter to his friend Earl of Spencer II shows his devotion and excitement to achieve this end. He wrote:

I now read both Sanscrit and Arabick with so much ease that native lawyers can never impose upon the courts, in which I sit. I converse fluently in Arabick with the Maulvis, in Sanscrit, with the Pandits and in Persian with the nobles of the country (Cannon 1970:742).

Jones had no doubt in his mind that laws are sacred for the Muslims and Hindus and find authority from the religious texts which could be interpreted in the context of a fixed time span in the past known for the compilation of religious texts. His translations of Hindu and Muslim legal texts such as *Al-Sirajiyah: or, the Mohammedan Law of Inheritance; Institutes of Hindu Law: or, the Ordinances of Menu* and *Digest of Indian Laws* were compiled, translated and interpreted in the historical context keeping in view the lives and times of the avatars and prophets. Simultaneously, Jones was of the view that for a proper understanding of legal system, the understanding of religious system was necessary. This view linked him with the study of Indian mythology, especially during the time of the compilation of religious text *Manava Dharmasastra*. For, he prepared treatises such as *Chronology of Hindus* and *On the Antiquity of Indian Zodiack*. It led Jones to a more comparative analysis of Indian mythology in the form of *On the gods of Greece, Italy and India* (Jones, Works II, 1807). The study of ancient Indian mythology impressed upon Jones mind greatly. He compared the system of Indian mythology with that of European and was convinced that India was the heir of a civilization of highest level. Now Jones intended to guide the policy makers, apologize for his own conduct of the affairs of justice as a judge and to develop a harmony between the rulers and the ruled on the moral ground of classical relations between the Indians and the Europeans. It diverted his attention from Arabic and Persian language and historical literature to Sanskrit literature and ancient history of South Asia. Within a short span of his legal researches on Hindu laws, he concluded his views that European ideas about India were very vague therefore need to be reformed through the study of ancient history.

In this context, history appears to be synonymized with customary law. Jones wanted twenty four million British Indian subjects to benefit from his ideas at least by giving them their own laws, explored out of their own past. As Jones primary concern was the administration of revenue which was closely connected with the nature of laws of ownership, therefore, Jones focused on developing an understanding of the nature of government and structure of laws of ownership through the Muslim history (Jones, 1791). He had already prepared *An Essay on the law of Bailment* in England (Jones, 1781). Rejecting the Bernier, Montesquieu and Dow's theories of absolute oriental despotism, Jones speculated that Indians could not have flourished, if the despot had to be the owner of all property, and people had no experience of private property. The Indian princes never had been above the law, nor they pretended to have unlimited legislative powers. They were always under the laws believed to be divine or customary with which they never claimed any power of dispensing (Jones,1792,xii). He argued that during the Muslim rule the provinces were governed according to the Muslim laws. However, the Muslim rulers recognized the authority of the Hindu laws in matters between the Hindu litigants. On the rights of property, he observes:

...by the Mughal constitution, the sovereign be not the sole proprietor of all the land in his empire, which he or his predecessors have not granted to a subject and his heirs; for nothing can be more certain than that land, rents and goods are in the language of Mohammadan lawyers, property alike alienationable and inheritable...No Musalman prince in any age or country would have harboured a thought of controvert these authorities.(Jones,1792, 9)

Therefore Jones advised the BEIC that the Indian should be governed according to indigenous laws on the model of benevolent and enlightened despotism. For Jones, 'a system forced upon the people invincibly attached to opposite habits would in truth be a system of cruel tyranny' (Ibid). Therefore, 'as a judge in the company's administration, Jones was interested in the administration of justice according to the local norms, customs and rituals, which was almost a settled principle of justice in Britain' (Bhatti & Khan, 2009). As all ancient literature forms some sort of religious belief, moral code and legal system, therefore it provide foundations for all modern developments, reflecting continuity in human history and law. Thus relations between mythology, religion and rituals supported by history promote a voluntary obedience and following of law and leadership by common people.

VII. British Tradition of the Modern Historiography of South Asia

Jones wanted a scholarly revolution in the Indian studies, therefore formed a combined group of Indians and British to work on the more detailed study of the Indian religious and customary law. His more trusted disciple was H. T. Colebrook (1765-1837) who completed his *Digest of Indian Laws* after Jones' death which was later published by the government under the title of *Institutes of Hindu Law or the ordinances of Manu ...comprising the Indian system of duties, religious and civil...* Colebrook later published his *Treatise on Obligations and Duties* in 1818. However it was the Asiatick Society of Bengal and its *Journal* which continued the task of Jones and gave birth to a new tradition of looking at India through the eye on remote age of mythological-customary laws. One of Jones' friends in England, Thomas Maurice (1754-1824) also continued his theme of study of ancient Indian mythology to understand the state of society and laws among the Indians.

Jones set a hierarchical procedure for the understanding of the past of the region, beginning from language and literature to law and history. His assumption that Hindu law could be approached from any point of time in the remote past and could be fixed for times to come, became a general assumption of future British researches on Indian history. In this connection, Charles Wilkins (1747-1836) translated *The Bhagvat-Geeta* into English in 1785 (Wilkins, 1785). Elizabeth Hamilton translated the letters of a Hindu Raja (Hamilton, 1796). There were so many other people who worked on the theme. The missionaries responded to the Jones' views very immediately and took the assumption in a different perspective. Serampore Missionaries, William Ward, John Carey and Joshua Marshman focused on the primitive and savage nature of Indian laws (Ward, 1811; 1817). Therefore they insisted that to make the Indians civilized, the introduction of Christian religion [Law] was necessary. The same plea was used by the Utilitarians to develop their case for the introduction of modern Western and British institutions and system of law in India. James Mill's *History* was written to serve this end (Mill, 1817)

The approach was challenged by the Mountstuart Elphinstone (1779-1859) who served almost forty years in India on the administrative/ judicial posts. During the first phase of his observations, Elphinstone focused on the Multi-ethnic and multi-cultural nature of Indian state and society. Serving in the different parts of India, he came to the conclusion that India was a multi-cultural region and should be governed cautiously, keeping in view the differing customs and laws of different nations (Elphinstone, 1815). Therefore, Elphinstone encouraged the study of the Indian laws and administration

through the study of regional, ethnic and cultural history. The approach resulted in the emergence of classics of ethno-regional histories by John Malcolm (1769-1833), Charles Grant Duff (1789-1858) and James Tod (1782-1835). However, after his retirement, in his *History of India*, Elphinstone totally rejected the Jones' view of static and fixed nature of Indian state, society and law. He discussed at length the evolutionary nature of Indian state, society and laws through the history and impact of imperialism on the Indians (Elphinstone, 1841).

The debate established 'history' as the most popular form and method for the claims to authenticity of arguments as well as for the rejection of arguments, thus for making judgments on Indian affairs. In this context, Mill's *History* had become officially recommended book for the trainees of British East India Company at Hailbury College. It was replaced by Elphinstone's *History* in 1840s. Simultaneously during the process, the history was introduced as medium to influence the colonized Indians at school level. John Clark Marshman compiled first book of history for schools (Marshman, 1842) and after the war of independence for the university students (Marshman, 1863), thus making discipline of history established. He had already published his works relevant to law such as *Guide book For Moonsiffs, Sudder Ameens and Principal Sudder Ameens Containing all the Rules Necessary for the Conduct of Suits in Their Courts* (1832); *Guide to the Revenue Regulations of the residencies of Bengal and Agra Containing all the Unrepealed Enactments of Government in Revenue Matters* (1835) and *Guide to the Civil Laws of the Presidencies of Fort William, Containing all the Unrepealed Regulations, acts, constructions and Circular Orders of the Government and Select and Summary Reports of the Sudder Courts* (1842). J. C. Marshman continued his works on law alongside the history and published *The Darogah's Manual Comprising Also the Duties of the Landlords in connection with the Police* in 1850. The evidence indicates that British's primary concern was the administration of laws, rules and regulation which they sought to be verified through history. Therefore history and historiography served at length the purpose of imperial administration.

VIII. Conclusion

Affirming the subjective nature of historiography or the writing of history, the arguments reflect a mutual dependence of history and law on each other. An 'ahistorical society' provides a larger space to imperial powers or colonizers to construct the past of 'colonized people' according to their own purposes, methods and tools, mostly related to the administrative and revenue laws, therefore, history becomes subject to law and administration. On the other hand law finds its legitimacy from the customs and religion, which always connect it with some point of historical time and space. The British's basic concern in India with the administration of revenue according to indigenous customary and religious law, and distrust on the intentions of indigenous jurists (Maulvis and Pundits), led to the promotion of a policy of encouraging British officials for the exploration of the past of Indian people, Hindus and Muslims alike. The policy developed by Bengal Supreme Court became a currency for the success of British administration. Almost all histories of India written by the British on modern paradigm from the end of eighteenth century to the middle of nineteenth century seem to be the outcome of the legal researches of British administrator jurists in the Indian past. The primacy of 'historical method' in the understanding of indigenous customary and religious law and in the British debate on Indian administration necessitated the introduction of history as an academic discipline. Thus modern historiography of India appears to be a by-product of British administrators' legal researches.

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The historiography of architecture in South Asia is therefore significant as a tool to understand political processes. Several studies on architecture in South Asia are limited to debates about built forms and their chronology, and not as reflections of society at large. An architecture of independence: The making of modern South Asia: Charles Correa, Balkrishna Doshi, Muzharul Islam, Achyut Kanvinde. While the British might have been highly critical of eighteenth- and nineteenth-century South Asian life, the activities and publications of organizations such as the Asiatic (formerly Asiatick) Society held that "the arts and sciences of ancient India were of the highest standard." For the orientalists who held this view, the source of such knowledge resided in so-called ancient texts. Many modern historians argue that it is unacceptable to say that colonized peoples did not have or would not have developed their own entirely valid forms of government, laws, and infrastructures without the influence of the British Empire. Furthermore, many historians argue that you cannot examine the British Empire without examining the more shameful aspects of Britain's past. Britain was heavily involved with the Transatlantic slave trade in the 17th, 18th, and 19th centuries. The British Empire also stripped many colonies and indigenous peoples of their land and vibrant cultures, f Contemporary South Asia, Vol. 10, Issue. 3, p. 441. CrossRef. Google Scholar. Howe, Stephen 2001. Samuel Johnson and the Making of Modern England. CrossRef. Google Scholar. Metrics. Book description. The Ideological Origins of the British Empire presents a comprehensive history of British conceptions of empire for more than half a century. David Armitage traces the emergence of British imperial identity from the mid-sixteenth to the mid-eighteenth centuries, using a full range of manuscript and printed sources. By linking the histories of England, Scotland and Ireland with the history of the British Empire, he demonstrates the importance of ideology as an essential linking between the processes of state-formation and empire-building. The British Empire was the biggest empire in world history " and there's a reason why it was nicknamed the "empire on which the sun never sets". At its height, the British Empire covered nearly a quarter of the globe, dominating some twenty-three percent of the world's population. That seems like quite a lot of territory and renown for a tiny little island on the corner of Europe. It's time to get to grips with the British Empire: with how it originated, weakened and fell, and how it changed the world that we live in now. You might know that New Spain comprised of territories in the Americas, the Caribbean and even as far away as Asia and Oceania. Thereafter ensued a string of petty attacks by the Spanish. Nothing that could be called combat; more like costly annoyances. The historiography of the British Empire refers to the studies, sources, critical methods and interpretations used by scholars to develop a history of Britain's empire. Historians and their ideas are the main focus here; specific lands and historical dates and episodes are covered in the article on the British Empire. Scholars have long studied the Empire, looking at the causes for its formation, its relations to the French and other empires, and the kinds of people who became imperialists or anti