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FRENCH TRAVELERS AND ADVENTURERS TREATISE: JUDICIAL SYSTEM IN THE ORIENTAL AND THE OCCIDENTAL WORLDS

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ABSTRACT

The Judicial system of India and France was highlighted by French travelers and adventurers who traveled in India during the seventeenth and eighteenth centuries. Their records became significant source of information to compare and contrast the judicial system of both the countries. This article makes attempt to give a these voyagers treatise on judicial system of the oriental and occidental worlds. In which significant French travelers such as Francois Bernier, Jean Chardin, Anquetil Duperron and Comte de Modave wrote extensively about the positive and negatives of the judicial system of both countries. Several first hand French sources [translated and untranslated] have been referred in this article in order to make a comprehensive review of judicial system of India through French prospective.

Keywords: French travelers and adventurers, Judicial system, Oriental and Occidental worlds, Voyagers.

INTRODUCTION

The judicial system in the oriental and occidental worlds during the seventeenth and eighteenth centuries has been a theme of contestation among the historians. French travelers and adventurers' records gave a valuable insight over this theme. They have asked several questions regarding the existence and condition of the judicial system in India during their course of voyage. The objective of this article is firstly to analyze the Bernier's view of Mughal judicial system was criticized by Anquetil Duperron and lastly to understand the changing conditions of judicial system in the seventeenth and eighteenth centuries through their French travelogues and memoirs. Many first-hand French primary sources are been utilized in order to comprehensively understanding the occidental travelers's prospective of Indian judicial system.

ANALOGY AND DISPARITY OF THE JUDICIAL SYSTEM OF ORIENTAL AND OCCIDENTAL WORLDS

There was no single French code of law for administering justice. The king was often declared to be the foundation

of justice. In reality, different customs in different areas continued and different ordinances since the 16th century multiplied the number of laws. In the countryside and in certain cities, the tribunals were under the influence of the lords (Ray, 2004). At the base of the French judicial hierarchy there were 70,000 seigniorial courts. Conflicts over jurisdiction and rivalries between government institutions abounded, exacerbated by the successive creation of new and often venal offices which greatly increased the cost and slowed the process of administration and justice (Price, 1993). The failure of the king to summon the Estate General from 1615 to 1789 and the absence of a representative and consultative institution at the national level seriously weakened the relationship between the monarchy and its subjects (Tambiah, 1999). The sale of offices by the French kings to lords gave these office holders the right to judge and collect revenue, as also a sense of independence over their area of jurisdiction. The judges of Parliaments in France had no cause to love Louis XIV, since he had deprived them of all say in the affairs of state, but with a strong king there was nothing for it but obedience. The less important officers, i.e., those concerned with the collection of taxes and the

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administration of justice in the lower courts, were deprived of much of their power by the growing importance of the intendants (Lough, 1961).

This deteriorating state of the French judicial system was at the back of Bernier's mind when he described similar pathetic condition of judicial administration prevailing in India, though he never clearly mentioned this. Nevertheless, looking at the contemporary situation in both countries, it seems that Bernier's writings on the despotic Mughal judicial system implicitly sought to criticize the dismal judicial system under Louis XIV. Bernier wrote that "India did not altogether destitute of good laws," if "there is no possibility of enforcing them into observance", as "provincial tyrant were nominated by the visir and king," or they "had sold the place to governor". He pointed out that these "Governors are absolute lords...he is in his own person the intendant of justice, the parliament, the presidial court, and the assessor and receiver of the king's taxes" (Bernier, 1994). Drawing contrast with the situation in France, he stated, "In France the laws are so reasonable, that the king is the first to obey them: his domains are held without the violation of any right; his farmers or stewards may be sued at laws and the aggrieved artisan or peasant is sure to find redress against injustice and oppression. But in eastern countries the weak and injured are without any refuge whatever; and the only law that decides all controversies, is the cane and the caprice of the governor" (Bernier, 1994). From this contrasting picture drawn by Bernier, it would be appropriate to conclude that it was a form of veiled warning to Louis XIV regarding the deteriorating conditions of the French judicial system.

Bernier listed the "advantages of despotic government: there are fewer layers, and fewer lawsuits, and those few are more speedily decided ...Speedy injustice is preferable to tardy justice" (Bernier, 1994). But in reality, as he pointed out, justice could not be administered without giving bribes and presenting false witnesses, though justice administered among poor classes only as they did not have any means of corrupting the judges or buying false witnesses. Bernier described the pathetic condition of poor classes in India who could not appeal to the local courts as they were insufficient in power to rectify their problems. He wrote, "there is no one before whom the injured peasant, artisan, or tradesman can pour out his complaints; no great lords, parliaments, or judges of local courts, exists,

as in France, to restrain the wickedness of those merciless oppressors, and the kadis or judges, are not invested with sufficient power to redress the wrongs of these unhappy people" (Bernier, 1994). He tried to bring to light the consequences of extracting power from the local courts as was happening in Louis XIV's provincial courts. In doing so, he sought to indirectly warn the state against the oppression of the French lords: since there were no parliaments or magistrates to champion the cause of the common subjects, these lords manipulated the judiciary to a great extent.

Bernier theory of no laws existed in despotic Mughal state was criticized by Anquetil Duperron. Three important aspects of Duperron's *Legislation Orientale* showing which are in Turkey, in Persia and in Hindustan, the basic principles of the government, one proves, Firstly, that the way in which until one represented Despotism, which passes to be absolute in these three States, can only give of it an absolutely false idea. Secondly, in Turkey, Persia and Hindustan, there was a code of written law that obliged the princes as well as the subjects, and that regulates trade, contracts, successions, etc. Lastly, that in these three states, the private individuals held property both in real estate and goods that they enjoyed freely (Duperron, 1778).

Montesquieu [based on travelers records such as Francois Bernier and Jean Chardin] pointed out the concept of Oriental Despotism in India which was a state of lawlessness, wherein the law was based on the whims and fancies of the ruler or the judge. Duperron criticized this view by arguing that even an all powerful ruler would have an interest in putting his government on a regular footing and controlling his agents through a routine administration; he could thus be expected to ordain that most of the business of the society and the government proceed according to the regular rules (Duperron, 1778). He further believed that laws were the means to ensure the smooth functioning of the state machinery (Duperron, 1778) and stable laws were mandatory for securing people's faith in the government, as even when governed by despotic potentates, most people lived securely under the protection of law, either written or unwritten (Duperron, 1778). Duperron said the society was govern through Hindu or Muslim codes of law respectively thus it was a false idea that Indian states were "ruled by arbitrary will of the prince, or to depict this vast country as a desert without law, given over by its constitution to the brutality and voracity of

the chiefs who govern it" (Duperron, 1778). Montesquieu has criticized the arbitrary exercise of judicial power in Asia, but this view was challenged Duperron, who praised the administration of justice in the Mughal empire: judicial districts, regular courts, judges and a system of appeals were all present as "the course of justice run through the same gradations, which the general reason of mankind seems to have established in all countries subject to regular government" (Duperron, 1778). Therefore, it was certain that emperor ruled according to the laws prescribed in the customs. According to Duperron, there was interdependency between the emperor and his subjects based on the reciprocity of their duties towards each other, it was cited by Bernier and later Duperron that "Aurangzeb speaking to his tutor that...to teach me something important point to the king, which makes reciprocal duties of the Sovereign towards his subjects and the subjects towards their Sovereign" (Duperron, 1778).

Duperron also condemned the idea that ruler governs his subject by his caprice but as it stressed that some sort of rules were mandatory for every social order. He stressed that the idea of absolute authority without constraint was a myth, as he justified his view by showing that "there in Hindustan for the Mohometans as for the Gentil, some customs having forced by the law, written or non-written, that the people know them, that one explain them to him, that he reckoning on the law, that there is a General code, the Koran and its gloss, for the Mohometans, the Vedas, their observation, the Vignanam, for the Hindus, that all the objects which can interest the society among the people as those there, are in these Codes or in these customs, thus in spite that advance M. Dow, no state in India, act only by the arbitrary will of the prince and that in consequence it is the wrong that one describe this vast country as desert without law, delivered by his constitution in some form, in the brutality, the veracity of the chiefs who govern it" (Duperron, 1778). Further "if there is misuse of power, it is the general reproach that one makes and that one almost always made with more or less from reason on all the surface of the globe, at the Courts of justice". Thus, it was proved by Duperron that Quran for the Mughals and Vedas for the Hindus were the basis of laws which were abide by the Mughal sovereign.

Colonel Gentil defended Duperron's stand, describing the government of "Hindustan as monarchical where its first kings were named as Rajas because these princes looked

at their people as their children than as their subjects. He argued that Aurangzeb made sensible laws and it was wrong that several writers called despots the sovereign of Hindustan. He added that one could see in their history such features of justice and benevolence as would be honored by most virtuous sovereigns of Europe. They were not masters of all the land of the empire, nor of the goods of their subjects," (Gentil, 1822). Each individual could have his goods, piece of furniture and buildings, in the absence of legacy, the law regulated the division between the parents as one can see in *Legislation Orientale* (Gentil, 1822).

TESTIMONIES OF FRENCH TRAVELERS AND ADVENTURERS OVER INDIAN JUDICIAL SYSTEM

Some French travellers of seventeenth century testified to the existence of good judicial system in India, but they seemed to lack the capacity to discern the reality of the poor state of judicial system in India during their course of travel in India. For instance, Hiriart believed that the lawsuit in India were simple and do not cost much time (Roncière, 1905). Malherbe presented a respectable picture of the courts of Akbar and Jahangir where strict punishments, such as crushing the condemned under the feet of elephants, was meted out for severe crimes. This seems to be related to contemporary French political interest for the restoration of Henry IV's reign as monarchic power in order to punish the rebellious French aristocrats (Holtz, 2012).

General rule of justice in India was believed by the travelers to be 'an eye for an eye' or somewhat equal punishment, although there were some disparities in accordance with place and time. Martin de Vitre defined the theoretical legal rules prevailing in India, "They care closely according to their law and custom for the theft...that it is one cut their one hand for the first time, they return there, one cut their feet and other hand. To the adulterous men one cut their disgraceful part and to the women the nose or well hollow their eyes" (Vitré, 1604). If someone kills somebody it is necessary that he died of the same way or is put under the elephants or put in front of tiger (Vitré, 1604).

There was an immense appreciation by the French travelers for the Mughal judicial system of speedy justice. Describing the judicial system and officers of Surat, Thevenot wrote, "Governor of the town judges in civil matters and commonly renders speedy justice: if a man sue another for a debt, he must either show an obligation, produce two witnesses or take an Oath: If he

is a Christian, he swears upon the Gospel, if a Moor, upon the Alcoran (Quran) and if Heathen (Hindu) sears upon the cow... The Hindus take oath laying their hands on a cow, and if they were proven wrong then they will eat the flesh. Regarding the criminal cases, he wrote that the governor of Surat did not interfere in the criminal cases, but an officer named Cotoual (Kotwal) took care of it. He ordered the criminals to be punished in his presence, either by whipping or cudgeling, and that punishment was meted out many a time in his house and sometimes in the street at the very same place where the condemned had committed the crime" (Sen, 1949). But neither the civil nor the criminal judge could put anyone to death, a right that the king only reserved. Thus, "when any man deserves death, a courier is dispatched to know his pleasure, and they fail not to put his orders in execution, so soon as the courier is come back" (Sen, 1949). The Kotwal toured through the city thrice in night in order to prevent any disorder and stationed guards at several places. He was accountable for any robbery committed in the town, but he found cunning ways to evade punishment for any delinquency. If a robbery was committed and the Kotwal suspected all the people of the house, they were given physical punishment like beating with a whip until the criminal confessed the crime or the things stolen were recovered (Sen, 1949). The Faujdar was to ensure the security of the country and be answerable for the robberies committed therein.

Tavernier also commended the smooth and quick system of justice that he witnessed in some parts of India. Referring to the judicial administration of Mir Jumla, the commander-in-chief of the king of Golconda, he wrote that the Nawab "engaged examining a number of criminals, who had been brought before him for immediate punishment. It is the custom of this country not to keep a man in prison; but immediately an accused person is arrested he is examined, sentence is pronounced on him, and it is then executed without any delay. If they accused is found to be innocent he is released at once; and whatever the nature of the case may be, it is promptly concluded" (Tavernier, 1889).

French travelers noticed a bizarre means of using a cow for giving justice to the Hindu who convert to another religion and later repent to come back to its native religion. Boullaye de Gouz said "If the Hindu repent himself to be made Christian, Musulman or Jewish, he comes to find Brahman and the head of his caste and shouts for mercy if do not cowardly and apostasy they

receive him, and order him sometimes between other penitence to make fast a cow three or four days and give it a certain quantity of barley and after the cow digested it and returned, to hang the excrement and to eat it, as if the barley which passed by the entrails of the cow was able to clean the body and the heart to him" (Gouz, 1657). These religious means and custom were used to give justice to converts, although it was criticized by French as they had a rational and scientific mind.

The French adventurers of the eighteenth century highlighted some changes in the judicial system in India in the eighteenth century, pointing out that due to weak governance, it always lacked efficiency. For instance, Law de Lauriston mentioned that the Moullahs (mullahs) had the right to inspect the religious affairs: "Cady had the civil cases, Quatwal had the criminal cases and all three show up to the Daroga of Adalat or superintendent of the justice who resided in the near the Soubahdar, but on which the Viceroy do not have the authority. The emperor had himself the authority to examine the conduct of Daroga of Adalat and was also given the account by the commissioner adhoc that he made to pass from time to time in each soubah" (Lauriston, 1913). Lauriston raised a question that how the people in this state of government could be happier for long as this state of happiness was for a brief period because the government was bound to change. According to him, there was no court of justice in the country and the one who was powerful to protect the weak was the repository of the law. Due to anarchy after the death of Aurangzeb the judicial system began to decline (Lauriston, 1913). Lauriston claimed to have seen a book of civil rules and maxims of the Jats, written in their language and thought that the Marathas, the Rajputs and other Hindus had the same rules, but he was not sure if these rules carried the force of law. Further, the civil judges were appointed by the government. The criminal cases were judged according to the customs transmitted by tradition and the correct them according to the circumstance and the need of the time (Lauriston, 1913). Comte de Modave underscored the corruptness of the system of justice in India during eighteenth century. He wrote, "the administration of justice is all the more simplified that the lawsuits are very rare in a country where there is not, strictly speaking, any propriety. One finds in the big cities one or more several judges which settle summarily all the disputes. Each pleads oneself his cause and provides his witnesses and his other means of

defense. These debates for the majority are so easy to enlighten that for little that the judge has equity, it can hardly be mistaken in his decisions. The evil is that they are very prone to be left corrupted and that, for the smallest interest, they give up the right of a party to favour that known to earn them. The examples are extremely common. The legal or capital executions are so rare in Hindustan that one could be able to say that they are there almost without example. During the stay that I made in Delhi and Agra I did not know that only one man had being put at death in the terms of the sentence of a judge. However, one often hears there of murders and flights. It is necessary consequently that the law lack of force and the judges of vigilance. It is true that the mutilation is not rare there. One sees many people without nose, ears and wrists. They are public robbers who passed under the sword of justice. These kinds of punishments can be ordered by all those which have some authority. A chief of troops inflicts them in his camp without giving an account of it to anybody. But the police force of the big cities is infinitely softer or, if one wants, more enduring" (Modave, 1971).

Further, he compared the abusive judicial administration of villages to a relatively better one in some cities. He wrote, "It mainly in the villages that are made the greatest injustices. The Cothual or the havaldar who is the chief is usually a miserable without honor and equity. They sell their judgments with most extreme impudence. But sometimes also they are severely punished by him when the complaints arrive to such a number that the Master is constrained to take knowledge of it. But to return to the big cities, in spite of the negligence of the police force, one lives there with very safety and peace provided that one is established in the most populated districts, by name in those which are inhabited by large merchants" (Modave, 1971).

On the private judicial system, Modave wrote, "The weakness of the government in Hinduostan is so large that those which the law cannot protect make justice in themselves for little that they have means and authority. One makes to stop without way those of which one has to complain and one treats them at home as one wants, provided that one does not make them die. I used myself of this right of jurisdiction, some private individuals of Agra had favoured a flight that one of my servants had made to me and they had helped him to hide his escape. They were stopped and on their premises led at home where, after having made them fustigate, I retained

them several days in the irons. I slackened them since to the plea of a banian. Many powerful people misuse this right" (Modave, 1971). Modave further mentioned that the capital punishment was rare but mutilations were rather frequent in the villages. The abuses were common and the people of cities could hardly hope to receive the protection of the police force. Punishments were constantly sought to be made less severe and sometimes the culprits remained unpunished (Modave, 1971). Such sign of weakness in the judicial administration became quite pronounced in the eighteenth century.

CONCLUSION

The French travelers and adventurers made constant comparison between the judicial system of France and India. Bernier showed a concern for miserable state of judicial system where the justice was given through the caprice of the despotic sovereign. This view as challenged by Anquetil Duperron who shows the existence of proper laws in Mughal world, which was based on Quran for Muslims and Vedas for Hindus. Bernier through his comparative analysis judicial system of India with France, wanted to give veiled warning to Louis XIV absolutist tendencies which should be check in order to establish a judicial workable system. The adventurers of eighteenth century showed a deteriorating condition of judicial system probably because of weak successors of Mughal in northern India. Their central argument being that a hereditary nobility, the right to private property and legal protection for all social classes were all, in the long run, beneficial to both the people and the state, whether in France or India. Essentially, what were compared in their accounts were not just the Mughal regime and France under Louis XIV, but two civilizations: Oriental (including the Ottoman and Persian monarchies, encompassing the whole of the Middle East), and the European; the first was declining despite its proverbial fertility, the latter was prosperous thanks to the existing legal limitations on the exercise of absolute royal power.

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