



Comprehending The Colonial Context: Education And Law

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Abstract : The colonial state consolidated its position by introducing western education and law and achieved its aim of expanding its colonial base in the backdrop of a minuscule minority of English educated native elites who acted as bulwarks of the British empire. Education is significance in India since the ancient period. The colonial state along with the Christian missionaries were instrumental in spreading education in India which remained restricted in its reach, and was characterized by wide disparity. The colonial state distinguished between legislative laws as laid down by them, customary laws that were prevalent and followed by different regions and the religious laws, which differed for the Hindus, Muslims and Christians. Law was an instrument of colonialism which was utilized by the colonial state as a coercive force to help secure order and to restructure social relations.

Keywords: Colonial state, Indigenous schools, Modernity, Customary, English law.

The significance of education in India has been aptly described by Dr. F.W. Thomas, “There is no country where the love of learning had so early an origin or has exercised so lasting and powerful an influence as India witnessed.” It is pertinent to note that when the British obtained possession of India, education was imparted by indigenous schools which comprised of the pathshalas, madrassas and gurukuls.¹ These educational institutions were the originators of traditional knowledge systems and therefore played a very formidable role in the Indian

traditional education. These indigenous schools were by and large religious in character and regarded knowledge as a means of spiritual and cultural growth. The official surveys of these educational institutions conducted in various parts of the country at the beginning of the nineteenth century throw significant light on the state of education existing at that time. William Adams in his detailed educational surveys observes that there existed about 1,00,000 village schools in Bengal and Bihar around the 1830s. Further, Thomas Munroe observed in Madras that 'every village had a school'. The government of Madras Presidency conducted a survey of Indian educational institutions in 1823-24. This survey concluded that despite poverty and ignorance, there were about 13,000 schools.²

Table No. 1 : Literacy - A Comparison

Year	Adam's Figures	Census Figures –India		
	1835-38	1911	1921	1931
1. Total Population (lakhs)	4.97	3014	3029	3359
2. Literate adults (lakhs)	0.22	135	158	205
3. Percentage of 2 to 1	4.4	4.4	5.2	6.0
4. Total literate of age above 5 (lakhs)	0.29	159	190	235
5. Percentage of 4 to 1	5.8	5.3	6.3	7

Source: R. V. Parulekar and M. R. Paranjape, "Literacy in India in Pre-British Days" 1940, Reprinted in Shri R. V. Parulekar Felicitation Volume, Bombay 1956, pp. 212-45.

The hierarchical caste system ensured that education was available only for the Brahmins or the priestly class, the Kashtriya or warrior class and the Vaishya or businessman class. The Shudra or the menial workers were a socially marginal section mostly barred from accessing education. Thus, education was mostly restricted to the twice born among the Hindus and the ruling elite among the Muslims. One aspect that was grossly neglected was the education of the girls. Thomas Munroe observed in 1822 that 5,480 girls attended the indigenous primary schools as against 1,78,630 boys. Further, in Bombay, no girl attended the indigenous public schools between 1824 and 1829. William Adams reported in Bengal in 1835 that parents did not favour the idea of giving education to their daughters. The general scenario of the education of girls on the whole was most unsatisfactory because they received no formal instruction whatsoever except for the little domestic instruction that was available to the

daughters of the upper class families. The debilitating custom of child marriage among the Hindus and purdah among the Muslims prevented the spread of education among girls.³

Macaulay's minute ensured that English and western learning was imparted to Indians. The end of the nineteenth century was marked by education spreading among the Indians, by 1890, some 60,000 Indians had matriculated. Further, women's education received a fillip and there were prominent educated women like Sarladevi Chaudhurani, Kamini Roy, Lady Abala Bose and Pandita Ramabai who assumed respectable roles of teachers and doctors.

Table No. 2 : Education of Girls and Women in Pre-Independent Period

Years	Percentage of literacy in women	Primary Schools	Middle Schools	Secondary Schools	Universities & Colleges	Other Institutions	Total
1881-82	0.2	124491	*	2054	6	515	127066
1901-02	0.7	345397	34386	10309	264	2812	393168
1921-22	1.8	1198550	92466	36698	1529	11599	1340842
1946-47	6.0	3475165	321508	280772	23207	56090	4156742

Source : Quinquennial Report-Ministry of Education and Culture publication, Delhi, 1946 – 1947. *Included in secondary schools

The principle agents of women's, as of men's education working at that time were the missionaries, the Indian social reformers who worked either through associations or independently and philanthropic foreigners (mainly British) interested in the cause of women, the British Government and some voluntary social welfare. The colonial ideal of modernity was manifested in the sphere of education. Modernity with its European roots, is seen as a historical process initiated by political, social and technological changes. Closely related to enlightenment, the philosophical movement of the eighteenth century which emphasized on the use of reason. For the thinkers of enlightenment age, rationality, knowledge and truth were the crucial indexes of a modern civilization which is coeval with the idea of progress and development. The term modernity is often criticized as it sets in dichotomy between pre modern and modern societies. It undermines or rather diminishes the worth of certain people, representing them as barbarian and irrational or childlike and effeminate.⁴

In response to the modern system of education introduced in the British, Mahatma Gandhi attempted to create an alternative value system for Indian identity which neither accepts nor rejects in totality modernity of the western civilization or the Indian tradition. Mahatma Gandhi

was critical of the modern western civilization with a specific moral view point. In his opinion, the modern pleasures of seeking comfort and merry making were antithetical to human freedom and autonomy. For him, lasting happiness can be achieved by self control not consumerism. Mahatma Gandhi's perspective of understanding classifies the west and the east as embodiments of two different set of values; one representing spiritual and the other material. However, it is pertinent to observe that nowhere does Mahatma Gandhi in his critique of the western civilization exhorts Indians to return to any dark, ignorant past but rather inspires them to seek inner happiness in simplicity, voluntary poverty and a slow pace.⁵

Mahatma Gandhi's conception of education was to train the head, the hands and the heart. This idea of education in Hind Swaraj found realization in the concept of Nai Taleem or basic education. Unveiling his scheme of education i.e. Nai Taleem, Mahatma Gandhi made the following statement:

“See, the work of basic education is the last work of my life. If by the grace of God, it is completed, Hindustan will be totally transformed. The present system of education is useless. My definition of Nai Taleem is that if a person, who has received Nai Taleem, is enthroned, he would not feel vanity of power; on the other hand, if he is given a broom, he will not feel ashamed. For him both the jobs will be of equal importance. There would be no place of vain rejoicing in his life. No student of Nai Taleem should be dull, because each part of his body would be active and he would have nice neuro muscular coordination. When the people would do manual labour, there would be no unemployment or starvation. My Nai Taleem and village industries are mutually complementary. When they both will be a success, we will attain true Swaraj”.⁶

The potential of law to reform the society was recognized by the emerging Indian intelligentsia, who were keen to bring about social reforms, as well as by colonial rulers eager to establish a modern legal system and thereby a positive British image. Though, colonial rulers felt overwhelmed by the plethora of unfamiliar practices and traditions, local customs and usages in addition to the prevalent legal texts, codes and institutions, they by and large did not want to tinker with the religious sentiments of the Indians.⁷

India was symbolised by a diverse and fragmented cultural, religious and political structure in which there was no monolithic Hindu, Muslim, or Christian authority. The laws pertaining to this period were customary, with adjudication within separated communities. Most of these traditions were represented by family or caste panchayats or village panchayats without any interference by the centralized state. Certain debilitating customs like sati, child marriage, polygamy, social prohibitions against widow remarriage, purdah and host of other practices such as the Devadasi system formed a part of the customary laws prevalent in India. The Hindu religious law emerged from the Smritis or commentaries that developed over the centuries to

govern marriage and family relationship which were quite varied, some giving women rights, for eg. to inherit, while others did not. Likewise, the Shariat and the Quran outlined the religious laws of Muslims.⁸

The colonial state differentiated between legislative laws as laid down by them, customary laws that were prevalent and followed by different regions and communities and the religious laws, which differed for the Hindus, Muslims and Christians. British recognised law as the cutting edge of colonialism which was utilized by the colonial state as a coercive force to help secure order and to restructure social relations. In the colonial period, this process was often referred to as the civilizing mission of colonialism. To legitimate this mission, the colonial state imposed western law with the intention that traditional customs and rules would be replaced with those assumed to be more civilized. The colonial state with its legal and institutional innovations, aided by educated Indian elites, reinterpreted the religious texts to bring about reforms in the position of women and curbing the practices of the natives which they found repulsive. However, it was not clear whether the local customs and laws that the colonial state recognized were religious in origin or were merely customs, which over time took on the type of legitimacy that the colonial state came to recognize as religious.⁹

The colonial state knew that english law would be ill suited to the conditions in India and therefore it was necessary to compile law codes more suitable to the Indian people. They found that the best way to realise this was by creating a system of religiously based personal laws by applying Islamic law to the Muslims and Hindu law to the Hindus. The codification of many personal and customary laws occurred throughout the nineteenth and early twentieth century which involved choosing the 'legitimate' interpreters of indigenous systems to the colonial authorities, namely the Brahmins, pandits and maulvis. The Muslim personal laws were created by using a combination of laws from the Shariat, the Quran and the Sunnah. This strategy resulted in their non cognizance of usages and practices, emphasis on written religious texts, and establishment of "law and order" by the British as they deemed fit. Gradually, the conviction that women have very limited rights took roots in the system. For those who were outside the Hindu or Muslim construct, the colonial state imposed predominantly english laws, as in the case of Married Women's Property Act of 1874, which was applicable to the members of the Christian, Parsi and Jewish communities in India.¹⁰

Until 1857, the colonial state emphasised on consolidating its political base, and was cautious about its policy and actions regarding religious beliefs and practices. They altered certain practices, on the grounds of public demand (encouraged by social reformers) and humanitarian considerations keeping in view the woes of women, by enacting certain legislations as the Bengal Sati Regulation Act of 1829, the Caste Disabilities Removal Act of 1850 and the Hindu Widow Remarriage Act of 1856. Post 1858, the colonial state adopted a persistent policy of not disturbing the traditions of Indian society. Attempts were made to codify the law in matters of civil and criminal procedure, transfer of property and law of evidence. The Indian Penal Code and the Indian Contract Act were manifestations of such an aim. Despite this cautious policy, some steps taken by the colonial rulers had a liberal impact on Indian society. It was only after independence that a written constitution guaranteed rights to the citizens and formed the basis of India becoming a welfare state.

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