

Research report

"Trade, Politics and the English Mayor's Court: Law and Trading Practices in the 18th Century Bay of Bengal"

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The project intended to look at the dynamics of the relationship between law and trade in 18th Century Indian Ocean, with particular emphasis on the Bay of Bengal or the Eastern Indian Ocean. I was interested in looking at the legal-mercantile culture emerging in the English East India Company's coastal enclaves of Madras, Bombay and Calcutta. Various historical works have already challenged the theories of "Asian trade revolution" or that of the Euro-centric world system of Niels Steensgaard (Streensgaard, 1974) or Immanuel Wallerstein (Wallerstein, 1979) respectively. Authors like Patricia Risso (Risso, 1995) or K.N. Chaudhuri (Chaudhuri, 1985), have shown how the European takeover of the Indian Ocean trade was never so absolute, violent and sudden. In other words, the myth of the onslaught of the 'more organised' and 'stronger' European companies had been undone. However, it is impossible to overlook the changes in the mercantile culture of the Indian Ocean during this period. My hypothesis was that the formation of the early colonial British Indian state was also closely linked with the shift of mercantile culture. The changes in the mercantile culture or the formation of the early colonial state were not mere results of the coercive impact of the Company's political dominance. I propose that the emerging political-economic milieu was the product of a dialogue between the indigenous and the colonial. Law and the Courts of Law emerged as crucial mediators and *contact zones* in this process of interaction.

The generous funds that I received from The History Project and I-NET helped me to work in the archives in four Indian cities.

- Tamil Nadu State Archives (TNSA)- Chennai
- Maharashtra State Archives (MSA)- Mumbai
- West Bengal State Archives (Bhawani Dutta Lane)- Kolkata
- National Archives of India (NAI) - New Delhi.

In the course of the work, I was primarily looking at the Mayor's Court Records at Madras/TNSA (1689-1798); Mayor's Court Records at Bombay/MSA(1726-1790) and the Home-Public Proceedings at the National Archives of India/NAI (1780-1809). The search for early colonial legal records at the West Bengal State Archives was unfortunately less encouraging than the other archives. The Mayor's Court records of Calcutta had been supposedly preserved at the records section of Calcutta High Court. But lack of infrastructure, organization and red-tapism did not allow me to see much of it. Therefore the understanding of the legal culture of the Bengal sphere has been primarily based on the Home-Public proceedings at NAI. The petitions of the merchants to the Governor and his Council at the Fort William, managed to provide some insight regarding the shift in the mercantile and judicial culture of the period.

I was more precisely looking at the following series of records at the respective archives:

1. TNSA:

- a) Pleadings at the Mayor's Court (1689-1788)
- b) Mayor's Court Minutes (1727-1780)
- c) Wills, Probates and Letters of Administration at the Mayor's Court of Madras (1740-1788).
- d) Pleadings against the Mayor's Court (1760-1798)
- e) Records of the Court of the Recorder (1802-1806)
- f) Insurance and Ship register books.

e) Judicial Department Sundries.

f) Revenue Department Sundry Books.

Period of work: 15 weeks.

2. **MSA:** Miscellaneous- High Court Records- Mayor's Court records (1770-1804).

Period of work: 5 weeks

2. **NAI:** Home Public Consultations/Proceedings (1760-1809)

Period of work: 10 weeks

My readings suggested three possible directions for understanding the correlation between law and trade in the years of paradigm shift in Indian history.

a) **Dialogue in the Contact Zone: Mayor's Court and Shift in Identity and Culture:**

A schematic reading of the Mayor's Court Records suggests that the advent of the European Companies in 18th century, led to the demise of the mercantile supremacy and free existence of various trading networks in the Indian Ocean arena. The court records would show that the number of cases involving the non European merchants kept rising throughout the concerned period. This suggested a tacit acceptance of the British norms. However, a close reading of the pleadings and the proceedings at the Mayor's Court revealed a consistent dialogue between the indigenous mercantile groups and the emerging colonial state. These sources also revealed an agency of the local in shaping the colonial regime and its legal structure, contrary to the general concept of a coerced and docile body of subjects.

The Company government began to consolidate its rule through the establishment of fortified port towns in Calcutta, Madras & Bombay. These towns were populated by heterogeneous groups. They were attracted by the promise of good municipal administration and commercial opportunities. These assurances were supported by a model of administration that accommodated indigenous concerns. The governing

principle was broadly based on the notions of impartiality of justice, easy regulations and civic provisions in agreement with the specific conditions of the concerned settlement. Information regarding the local conditions therefore had to be collected diligently to formulate the designs of running the regime.

As a result, the English East India Company's legal regime in the Indian Ocean settlements integrated a range of existing practices of arbitration backed by local states as well as by merchant networks. This integration was facilitated by establishing legal contact with the indigenous groups. Legal contact assisted the exchange of knowledge that helped in the long term formulation of the imperial legal system. The Mayor's Courts at Madras, Calcutta or Bombay appeared as a *Contact Zone* that assisted in this exchange of knowledge (Pratt, 1992). The Mayor's Court of Fort Saint George for example, had first emerged in 1688-1689 with the aim of establishing the Company's control over Madraspatnam with a stable administration and to offset the continuous tension between the Company administrators and the various local groups. The Court of Directors intended to form a system of shared administration in Madras, in which Company officials and merchants could be integrated with the various groups in a common governing organisation. The Directors wanted the Armenians, 'Hebrews', Portuguese and also representatives from the 'Hindu and Muslim castes' to be included as aldermen to create an ideal pluralist platform.ⁱ The community representatives could become 'aldermen and burgesses' and also had a say in selecting the mayor. But the institution initially remained weak and its subjects reluctant to get involved with it. A Royal Charter of 1726 gave the Mayor's Courts in Madras, Bombay and Calcutta, power to deal with civil cases involving British subjects, all Europeans and "natives"

in case they were serving or dealing with the Europeans. However, the local groups also began to use the Mayor's Court in increasing numbers slowly in the course of the 18th century.

These courts started as "courts of conscience", where petty cases would be tried. This influenced the everyday experiences of the inhabitants. Initially, the court allowed the multiple indigenous customary laws and traditions to be used for arbitration under its jurisdiction. This led to an uneasy cohabitation of multiple indigenous norms with English law, creating grounds for conflicts (Arasaratnam, 1987). Reluctance of the Court to include the indigenous population in the system had partly come up due to protests from these groups against hated customs, like, oath taking. The Charter of 1726 further intended to change the identity of the court. It transformed from being a Company institution to a court of the Monarch of England, with all the norms that were then prevalent in an English court. The local groups overlooked this change and even negated the restrictions introduced in 1753 to persist with their use of the Mayor's Court. To gain access to the court, they used several fraudulent methods, like transferring their disputes & effects to Europeans. The indigenous opposition to the court came from the community heads, who wanted to utilize the court in ways that suited their interest. In a petition submitted in 1736, the community leaders demanded the system to be revised in a way that the control of basic arbitration could be retained by them, while colonial tools could be used to ensure the execution of decrees.

The court took a policy of accommodating local customs, even as it aimed to standardize procedures according to the British customs. The intention of establishing the hegemony of English legal culture was rather lucid. The manual on

the methods and forms of proceedings in the Mayor's Court stressed on the general practice of mentioning the primacy and benevolence of the English Monarch and law to the participants during the proceedings, exposing the intentions of constructing a common subject identity among the heterogeneous participants.ⁱⁱ Simultaneously, it also stated its concern to adopt the local practices of the heterogeneous population residing in the enclave.ⁱⁱⁱ For example, the Charter of the Madras Mayor's Court says that to make a procedure neutral, the court would follow a policy of summoning twelve members in jury boards for each case. One half of the jury would be summoned from among the fellow countrymen of the non-British party to ensure that their specific legal culture was comprehended correctly.^{iv} Indigenous communities, especially the stronger merchants, utilised this opportunity to exert influence on the colonial institutions. (Subramanian, 2012).

A chronological reading of the court cases involving the non-European and other indigenous groups revealed a certain temporal shift in the character of the system. Initially, in all the concerned colonial towns, the indigenous merchants tended to use multiple, parallel institutions of arbitration according to their interest. From the courts of local rulers to the customary bodies of specific merchant communities (like the Armenian *Jumiat*) were used for handling disputes. Generally, such arbitration was conducted on the basis of consent of both parties. The Mayor's Court, at least in its initial stage appeared as an addition to the existing corpus of judicial institutions used by the merchants. (Dirks, 2009; Mines, 2001; Brimnes, 2003; Mukund, 2005). The court ran on the simple notions and promise of equity and justice. Although, in theory, it ran with the full paraphernalia of an English court, in reality, it functioned on a concoction of reason, interest, and multiple customary notions of justice, along

with British sensibilities. We have seen that in cases involving non-European actors on both sides, a group of juries from the respective communities were involved by the Court to provide their insight. Generally the verdict of the jury was accepted by the Court. This brings us to the question that why did the indigenous communities flock to the court in considerable numbers. Hybridity of the court and allowance of greater degree of customary individuality to the subjects probably eased the initial exposure of the non-European population to the court. This allowed them to approach the court without compromising their customary norms and identity. However, this sense of hybridity must not be considered as the only reason for the reputation of the court among the indigenous population. A degree of formalisation had been set visibly in the charter of 1726. For example, the court made it mandatory for the litigants to involve a professional attorney who had to ensure that the bills of complaint and other documents met the required structure of the court.^v The formation of a convention regarding the nature of acceptable documents, or the mandatory use of English as the language of the court, along with the requisition of formal and attested translations suggested a move towards homogenisation of culture.^{vi}

The crossover of the two legal articulations was not as smooth as it appeared. From the 1770s the court began to assume a much more dominating tone. In a significant departure from the earlier practice that unconditionally upheld the decisions of the indigenous arbitrary bodies or the juries, the court began to scrutinise closely before concurring to it.^{vii} This tendency to rationalise the practices of the indigenous legal customs by comparing them with English morality created a basis for the hegemony of the Company apparatus in the colonial towns. Implicit in this process was the

possibility of transformation of the trading networks, which no longer remained wedded to their own legal culture.

The possibility of arbitration in a space that was apparently neutral from the bias that made the community courts increasingly problematic in cases involving merchants from two different communities was also a pulling factor. The Mayor's Court also acted as a court of appeal. In case of failed arbitration in one of the community courts, the merchants frequently intended to find redress in the English Court. Also, with the passing of the political power to the English Company in these towns, the coercive element of the court became an attraction for the merchants. The coercive tools of the court seemed to be particularly useful for debt recovery & seizure of mortgaged properties. The court also allowed litigants from a vast expanse across the Asian waters to approach the court, if in any way the case was related to the town area in question. For example, merchants from Pegu or Manila frequently approached the Madras Mayor's Court. This was particularly attractive for the itinerant and overseas traders as it provided them with a possible safeguard, even across the seas.

The reading seems to yield results partially close to Lauren Benton's (Benton, 2011) take on Legal Pluralism. However, my work proposes that it is perhaps not entirely correct to understand the dichotomy by her definition of phases of strong and weak colonialism. The legal jockeying and agency of the indigenous elements was certainly a crucial element in the process of the formation of the colonial legal regime. But it is perhaps also important to consider, how the colonial administration found ways to impose hegemony and homogeneity over the more plural pre colonial system. In other words, the dialogue was processed by the emerging colonial state to form a

knowledge base for formulating the *longue duree* imperial arrangement. (Irschik, 1994 & Baily, 1999)

The dialogue did not reflect a seamless narrative of easy acceptance of British norms and change of identity into that of a colonial subject. The process was frequently marked by difficulties and resistances due to the differences emerging from the imposition of English sensibilities. However, the close interaction of the Mayor's Courts with the trading activities in 18th century Indian Ocean, coupled with the changes in the political scenario continued to push the mercantile groups into the institution. This led to changes in the definitions of interpersonal trust and identity of the self and the others involved in the cross cultural mercantile activities. The prevalent notions of property, ownership and inheritance were also adjusted by the exposure. This played an extremely important part in redefining the mercantile culture, networks and interests in the concerned period.

This brought me to the second possible direction of the work- the idea of rationalising law and hegemony.

b) Rationalising Law and Hegemony: In spite of their problems with the imposition of British sensibilities, the indigenous elements continued to approach the court. The strengthening of British hegemony over the political, economic and social sphere, particularly in the latter half of the 18th century caused further complications. Around this period, the English East India Company had consolidated its presence in the coastal enclaves of Madras, Bombay and Calcutta. The situation changed perceptibly by the late 18th century as the practises around the court began to crystallise, eroding the older arrangements that had ensured greater fluidity. Whether these arrangements rested on plural sources of law and judiciary is

something that needs to be considered more carefully. My readings suggested that the indigenous identity was not effortlessly and unilaterally transformed by the English court. The indigenous groups continued to negotiate in the process of transition. In other words, the archives suggest a sustained agency of the indigenous in the formation of their new identity. The voice of the local also played a role in defining their relationship with the emerging state. The hegemonization project of the emerging colonial state was also in a way a part of this dialogue. The indigenous groups consciously rationalised their relation with the colonial institution. In spite of differences and resultant tensions, the merchants calculated the benefits of the courts and other institutions offered by the Company state and tried to utilize them to their advantage. The series of Appeals against the Mayor's Court in Madras and the late 18th century records of the Bombay Mayor's Court revealed various strategies employed by the indigenous communities to safeguard their mercantile interest in the rapidly changing political scenario.

The series of regulations from 1773, increasingly curtailed the monopoly rights of the Company. The final blow came in 1813 with a regulation that terminated the monopoly rights enjoyed by them. Along with the commercial changes, the attempts of deviating administrative and judicial concerns from the commercial ones also paved the way for the emergence of a new imperial structure. The changes between 1784 and 1813 considerably altered the British legislative presence and intentions over India. Thus, the end of 18th century marked the process of demise of the Company's system and rise of the long term structure of the British Empire. At this juncture of yet another transition, the petitions against the decisions of the Mayor's Court filed by various local merchants and individuals, did not only reflect their

attempts to preserve the prevalent customs. But they also contained demands for greater legislative and judicial safeguard in the mirror image of the metropole, i.e, London. At several instances, the verdicts of the Mayor's Court would be challenged for not conforming to relevant legislations of the British parliament. Aggrieved parties would often cite cases and verdicts from the Courts in England to reap maximum benefits from the colonial legal regime. This trend of rationalising the law and allowing the expansion of the colonial legal culture in turn also assisted in the crystallization of the imperial regime.

While working on the correlation between mercantile culture, law, trust and identities, I also noticed that the archive had a huge corpus of cases on shipping, freightage, respondentia and insurance. That brought me to my third and final direction of possible work.

- c) **Laws of the sea: Shipping and Insurance:** The Mayor's Court records, as well as petitions to the Governor and his Council at the Fort William contained multiple cases on ship captures, freightage norms, navigation policy, marine security, respondentia loans and insurances. It seemed that due to the intervention of the Mayor's Court on these issues, the maritime trading pattern had been considerably affected. Insurance policies, norms and possibility of redress at the Mayor's Court led to the reconfiguration of the culture of maritime and coastal trade in the sub-continental waters. Territorial claims over sea passages & protection provided by naval convoys also became important considerations for the maritime traders for adhering to the colonial norms. The spilling out of European conflicts into the Asian waters due to colonial rivalries considerably altered the risks and therefore the trading map of the merchants in the Indian Ocean. The English courts in Madras,

Bombay and Calcutta, as the records show, became significant centres for the local merchants to negotiate with the changes and adapt. I am currently trying to construct a more detailed perception regarding maritime trade and the Mayor's Court in a journal article.

In the course of my work at the archives, I was also fascinated by the significant and dynamic presence of the Armenians in the Mayor's Court. The Armenians, given their fascinating diasporic network and well known exclusivist mercantile culture, made a enthralling subject to study in the volatile context of the Indian Ocean in the 18th century. Their close linkage with the network on the one hand and their investment and manoeuvres in the host stations like Madras or Bombay, showed how the pre colonial circulation networks negotiated with the changes of 18th century. A narrative on their agency makes a fascinating case study regarding the role of such circulation networks in the formation of the Imperial structure in the Bay of Bengal and the eastern Indian Ocean. It would also be interesting to see, how this interaction led to the modifications in both the Empire and the Network in the long run.

I have submitted an article titled- "*Armenian Network and the Madras Mayor's Court: Law, Empire and Dialogue in the Eighteenth Century*" to the Indian Economic and Social History Review, with due acknowledgement to funding from the History Project and I-Net. The article is under consideration for publication.

¹Madras Record Office (MRO) Records of Fort Saint George, *Letters to Fort Saint George*, 1692, p. 201.

ⁱⁱTamil Nadu State Archives (TNSA), Public Department Sundries, vol.8, Form and Method of Proceedings in all Civil Suits, 1726.P. 110.[*“It is recommended to the chairman to make honourable mention of the English Government and law that as subjects of Great Britain and Ireland are governed by... it will be proper to enlarge upon His Majesty’s princely goodness...to extend his care and benefit of his laws to his most distant subjects of the British settlements in East Indies.”*]

ⁱⁱⁱ TNSA, Public Department Sundries, vol.8. p.2.

^{iv}*Ibid.* p.109. [*“If a person who is not natural born subject of Great Britain or born of British parentage in India, a Portuguese, Gentue or other native of India-not born of British parents happens to be prosecuted for any capital offence, the jury is to consist one half of his majesty’s subjects and the other half of the subject of the same caste and if a number of six cannot be found who are fellow subjects...then they must not be made of any foreign subjects...”*]

^v TNSA, Public Department Sundries, vol.8. Pp. 4-5.

^{vi}*Ibid.*

^{vii} TNSA Pleadings in the Mayor’s Court, vol.23. GI: 12018. Pp.128-145.[In the proceedings regarding a law suit filed by Aratoon Thadeus Agah Piry Calendar, an Armenian merchant against VemumVeeropah, a Chintz supplier, the process of subjecting the indigenous courts to regulation was clearly visible. The Court continued to acknowledge the indigenous centres of arbitration. But at the same time the poise of supremacy that could legitimise a legal culture made the Mayor’s Court the centre of power in the paradigm of law and jurisprudence in late eighteenth century Madras.]

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