

*Lakshmi Subramanian*¹

**CRIMINALISING THE SUBJECT:
LAW, SOCIAL REFORM IN COLONIAL INDIA²**

Abstract

The paper discusses the idea of a colonised subject that emerged out of the legal process and the social realities that gave it a social context. The colonized subject was at times reduced to a criminal category — and at other times even excised out of history; in either case, the process embodied the complexities and ambiguities of the role of law in the process of colonial power and its state project. This essay seeks to point to some of these instances and in the process make a case for revisiting the social history of law, or in other words for assessing the relationship of law to wider social relations. The colonial state had to compete with other sources of traditional authority and entitlement about the right to take life of oneself or of others. The paper refers to some specific instances of state intervention and of defining criminality, but not to project a sense of the exceptional about Indian society but to draw attention to precisely those areas of ambiguity that made colonial law a complex project fraught with tensions and ambiguities. The failure to condemn certain practices outright and the tendency to conflate religion with custom and tradition had the effect of pathologising India as the site of permanent difference and of condemning the Indian subject to an always deferred state of reform and improvement.

¹Professor of History Ph.D Lakshmi Subramanian, Centre for Studies in Social Sciences, Calcutta. E-mail: lakshmi@cssscal.org

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Key words: colonial India, law, subject, criminalization, sati, thugs, devadasi

Streszczenie

W artykule omówiono pojęcie podmiotu skolonizowanego, które wyłoniło się w toku procesu prawnego oraz z rzeczywistości społecznej, która nadała mu kontekst społeczny. W niektórych przypadkach podmiot skolonizowany sprowadzono do przestępcy, w innych wymazywano wręcz z kart historii. W obu przypadkach proces ten odzwierciedlał złożoność i niejasność roli prawa w procesie wykonywania władzy kolonialnej i w przyjętym projekcie państwa. Autor stara się wskazać odnośne przykłady i dowieść, że warto ponownie spojrzeć na społeczną historię prawa, lub też, innymi słowy, ocenić stosunek prawa do szerszych relacji społecznych. Państwo kolonialne musiało współzawodniczyć z innymi tradycyjnymi źródłami władzy jak i walczyć o prawo do odebrania życia sobie lub innym. Artykuł odwołuje się do konkretnych przykładów interwencji państwa i określania przestępczości. Nie ma na celu dowieść wyjątkowości sytuacji społeczeństwa hinduskiego; chce raczej zwrócić uwagę na te obszary niejasności, które sprawiły, że ustanowienie prawa kolonialnego stało się skomplikowanym projektem, naznaczonym napięciami i niejednoznacznościami. Brak otwartego potępienia niektórych praktyk oraz skłonność do łączenia religii ze zwyczajem i tradycją doprowadziły do patologizacji Indii jako miejsca trwałych różnic oraz do skazania Hindusów na życie w stanie oczekiwania na odkładaną naprawę i reformy.

Słowa kluczowe: Indie Kolonialne (Brytyjskie), prawo, podmiot, kryminalizacja, sati, thugowie, dewadasi

Introduction

This essay is in part informed by an appreciation of a number of important writings on social histories of law in colonial India, both its discursive aspects as well as its practical application and partly by my on-going research interest on outlaws at sea, the category of pirates and predators and their representation framed within the alternating grids of natural law and sovereign law. The unifying thread connecting these two concerns is provided by the idea of a colonised subject that emerged out of the legal process and the social realities that gave it a social context. The colonized subject was at times reduced to a criminal category—and at other times even excised out of history; in either case, the process embodied the complexities and ambiguities of the role of law in the process of colonial power and its state project. This essay seeks to point to some of these instances and in the process make a case for revisiting the social history of law, or in other words for assessing the relationship of law to wider social relations.

Scholarship on law in colonial India has rightly emphasized its instrumentality in validating the imperial project. Bernard Cohn's work provided extremely useful insights into the modalities of colonial knowledge production, of which law was one (Cohn 1996). Other legal anthropologists notably Mattison Mines have focused on the performative and procedural aspects of legal cultures and their implications for legal subject-hood and self-definition (Mines 2001). We have also the path-breaking work of Radhika Singha (1998) and Lata Mani (1987) who examined the terms of legal discourse that converged around individual subjects like the female sati and communities like the Thuggees of Central India. Subsequently we have also had a series of important interventions relating to legislation affecting the status and entitlement of communities like Devadasis (Jordan 2003; Parker 1998) all of which have fore-grounded the significance of looking at the workings and antecedents of colonial law afresh

Recent work on law in the context of empire has begun to identify how it worked as a complex site of social practice and dialogue elements of which assumed particular urgency in relation to specific communities and to their practices. The choice of the criminal subject for purposes of this paper is largely to cover important ground as far as the question of the monopoly of state violence is concerned. I stay with the idea of the criminal subject for it was on the question of perpetrating violence that the colonial state had to compete with other sources of traditional authority and entitlement about the right to take life of oneself or of others. I will use the opportunity to refer to some specific instances of state intervention and of defining criminality, but not to project a sense of the exceptional about Indian society but to draw attention to precisely those areas of ambiguity that made colonial law a complex project fraught with tensions and ambiguities. Law making was a cultural enterprise in which the colonial state struggled to draw upon and depend on existing normative codes of rank, gender and status even as it struggled to redefine them.

Legal initiatives under the Early Colonial State

British rule in India for the eighteenth and the first half of the nineteenth century was largely the history of the English East India

Company that assumed political power over the subcontinent. The process of conquest was a protracted one lasting nearly a century in the course of which a number of important social and administrative interventions were affected. These included the management of criminal justice, which until 1861 when the Code of Criminal Procedure was enacted, was a complicated exercise given the extraordinary diversity of local practice and customary usage. In theory, Mughal criminal law continued to be the principal source of law although in practice; the Company found itself grappling with ambiguities and loopholes arising from myriad forms and sources of legal authority, from local contingencies and their own political imperatives.

Initially the British believed that the existing institutions could be aligned to British based legal institutions and also assumed that a unified Muhammadan law could be slotted into the colonial system. These assumptions did not always work although it was only later that major changes were introduced. For the most part in the period of transition politics the sources of authority remained dispersed and the new power the English East India Company had to negotiate a range of social transactions that underscored the fragility of its political position and that stood in the way of endorsing their appreciation of criminal liability and what they considered as the appropriate standards of justice. This was in striking display in 1800 during a case of murder in Surat city when a senior banker who happened to be the principal collaborator of the English authorities and stepped forward to bankroll their conquests was found guilty of having aided and abetted a gruesome case of murder following a private interrogation but was let free on payment of fines and on the obligatory performance of ritual expiation. This curious case demonstrated the unwillingness of the English to go against the social elites and also their naive faith in the scriptural interpretation of older legal texts by Brahmin interpreters. Also the location of the case was important as it was set in western India where the English power was late in coming and consolidating its rule (Subramanian 2004).

The dilemma of the early colonial state derived from trying to balance the norms of justice as understood by the authorities and the realities of the situation they encountered in India. Theoretically as Radhika Singha demonstrates, the British definition of criminal liability conceptualised a realm of juridical power that was based on indi-

visible sovereignty and its 'claims over an equal abstract and universal legal subject' (Singha 1998: VIII). What this meant was that legitimate violence was the sole prerogative of the state and that it could not be refracted by any other authority. There was also a practical dimension to British discomfiture. British magistrates and judges often argued that Islamic law (which they used for criminal justice) looked too narrowly on the consequences of criminality and on the claims that were made for compensation. This preoccupation ran counter to the idea that the criminal act was injurious to public interest and that the punishment had to be meted out in those terms (Singha 1998: IX). No other consideration could dilute this imperative of upholding public good. However, as circumstances developed, this idea was difficult to enforce and the Company authorities found themselves contending with other claimants to legitimate authority rendering the process of making law fraught and tortured and producing unexpected subjectivities not to speak of defining certain subjects and communities as criminal and freezing those categories. Compromises became inevitable as concessions were made to rank and endorse new modalities of evidence gathering to punish and prosecute certain communities configured as criminal. Here, instead of the principle that guilt came from individual responsibility, it was deduced from membership of a criminal community; Singha's work in fact suggests that an unequal application of the laws was not the only issue but that these laws were an aggressive abbreviation of judicial procedure which gave the stamp of due process to crude devices of policing and prosecution (Singha 1998: 199–226; Schwarz 2010).

As early as 1772, the British in Bengal began to introduce changes in the judicial administration arguing that the existing system of policing and justice had broken down. The principal defects in the system were identified as venality—i.e. to say that punishments were calibrated to profit motives and not public interest and that personal dishonour was often used as an instrument of shame. Also they were critical of Islamic law where there was provision for blood money and pardon which made capital punishment almost impossible. The early colonial state rectified these anomalies by the judicial plan of 1772 but what is interesting and important for us to remember is the contradiction that emerged almost immediately. While on the one hand the state defined its commitment to an equal and uniform liability of the

law, it also gave in to the pressure to retain judicial discretion in the form of a special criteria for conviction or for acquittal. This is what made the project so ambiguous conceptually. The government found itself in a position where it had to draw upon those very sources of conflictual traditional authority to make its judicial claims intelligible and acceptable to the subject population which in another context it was trying to marginalize (Singha 1998: 24–25, 38–42).

The constraints that stood in the way of early colonial management of the judiciary were partly because of their reliance on existing practices which they could not afford to dispense with entirely and because they added to its inefficiency by relying on legal fiction. For instance, there was from the very beginning the thorny question of capital punishment and of whom the right to inflict it belonged to. Under the Islamic system, the victim's family could exercise the right to pardon the perpetrator which in principle was anathema to the English as it confined murder within the private sphere of civil law. Between the late 1770's and early 1790's attempts were made to eliminate private prosecution as practised according to the *sharia* and to prohibit the right of a victim's family to pardon the perpetrator. These were not easy to enforce and the English fell back on maintaining a legal fiction of older rules. As Michael Mann demonstrates, qazis and muftis did not establish the modified legal practices in their *fatwas* forcing the British judge, while maintaining the right to inflict capital punishment to convey the impression that the case and ruling had been based on traditional legal rules and practices. "The fatwas had to be submitted after the trial was closed, under the pretence that an heir to the plaintiff had been present" (Mann 2004: 39). Thus what Mann suggests forcefully is that "Technically no new legal system, but rather a frame of theoretical constructs that transformed real cases into fictional ones, was established".

Select Case Studies: a Reflection

Some of these contradictions and anomalies in procedure as well as those arising from parallel sources of authority, have formed the staple of the writings on law and social reform. Singha's work has been especially illuminating in this regard. As she demonstrates, among the

many problems that the Company faced were to do with ‘anomalies’ in the law of homicide and the privileges some members and groups in Indian society enjoyed of taking life. Judges encountered a bewildering array of opinions—of Indians blaming destiny for their fates, of invoking other sources of authority—religion, patriarchy and patronal right in self-exoneration and also of volition of the victim and which complicated the question of punishment, its intensity or its abandonment (Singha 1998: 80–85, 90–93). Did some enjoy greater rights to take life—did some have the moral right to take one’s own life were questions that continually cropped up. The issue of death by volition, especially in the case of high caste women—the practice of sati—was particularly contentious. As it happened the practice of sati was legislated against as a criminal act in 1829 but not without a debate or indeed a prehistory of deliberations about exemptions and exceptions.

So what did these privileges amount to and how did colonial law deal with them? The cases of privilege were varied—these ranged from Brahmin cultivating groups reacting to what they considered excessive revenue extraction and refusing to pay revenue charges by threatening trial by order, *dharna*, (a form of strike and fast unto death) *kurh* (threats of burning a cows/women) etc., even suicide. The threats were grounded in the understanding that Brahmins were seen as an exalted caste and whose death by the same logic was feared and invested with hyper meaning. For the British judge and magistrate especially those located in a city like Benaras, the social pressure could not be overlooked. What was awkward for the colonial state was to detach itself from the patronage it had always extended to the sacred city of Benares and its Brahmins from this act—and because they too were squeamish about shedding Brahmin blood! So while the proclamation of 1789 made it clear that the Company’s court was the only channel of redress, it was not clear how this would translate into practice; a great deal of hesitancy about recommending the death penalty for Brahmin offenders exposed the constraints of early colonial rule. But as far as law was concerned any other form of claiming justice (*dharna* or *kurh*) was denounced as criminal and illegitimate) (Singha 1998: 88–89, 102–105).

Trickier was the case of volition especially in the case of ritualised suicide or sati. The practice of sati was prevalent in some parts of northern and central India and in the province of Bengal forcing

the government to consider its regulation and subsequent abolition. Initially the Company tried to avoid taking a definite stand—the exigencies of rule were pressing and magistrates warned not to interfere in instances of voluntary *satis* except by personal persuasion. The situation became more complicated as time went on; not only was the question of volition difficult to answer, there were reforming voices within the native intelligentsia that pressurised the government to take a stand. As early as 1813 and 1815, the need for greater regulation became apparent as the rite was subject to much greater police scrutiny and management and the more contentious issue of third part interference cropped up. If *sati* was not entirely voluntary and there was third part intervention, what was the government meant to do? On what count could a party be accused of aiding *sati*? There were no easy answers and in most cases, judges tended to fall back on custom, invoking those practices that were seen as permissible. By the 1820's with a section of Indian reformist opinion siding with the government against the practice, the final step towards its abolition was taken. *Sati* was seen as a criminal offence and was legally banned.

In the identification and abolition of the *Sati* as a criminal practice, the colonial state had lived up to its professions as a civilising agency. However as some very significant feminist writings especially by Lata Mani have shown, the debates around *Sati* and the events leading to its abolition did not establish the primacy of the female subject and instead chose to deploy the female body as a site for evaluating and deliberating on tradition and its correct versions. Analysing the various skeins of the contemporary discourse around *sati*, Mani argues that the arguments advanced in favour of prohibiting *sati* were not concerned with its cruelty. Officials in favour of legislating against it were not questioning or even critical of the idea of tradition but instead were concerned with discovering and upholding the right version. In subsequent evaluations of the tradition, it was generally held that colonial subjects were mostly ignorant of their “religion” which was now equated and emphatically associated with scripture. Scriptural knowledge which the colonial administration was in any case predisposed to overvalue, was best understood and interpreted by high caste literati, Brahmins mostly but even here, there was the problem of corrupt interpellation. The knowledge of Brahmin pandits was not innocent or even authentic; on several occasions it was found to be

wanting, corrupt and self-serving. Under the circumstances the colonial state had to embark on its civilizing mission seriously and had to protect one, the “Weak” female subject, against the “artful”, and to give back to the colonised the correct version and the truths of their own “little read and less understood Shaster” (Mani 1987).

Official discourse on sati as Mani has argued rested on three interlocking assumptions: the hegemony of religious texts, a total indigenous submission to their dictates, and the religious basis of sati. These assumptions shaped the nature and process of British intervention in outlawing the practice and were shared by Indian reformist opinion as well. Women were not subjects in this discourse, they were simply sites where tradition could be discussed and debated. The recovery and resuscitation of the right tradition was the imperative—not only did this enable the colonial state to speak in the same language as its elite collaborators—it privileged the scriptures as the only legitimate locus of tradition and had the long term effect of handing over this legacy to the reforming Indian elite. The latter conveniently consigned the women’s question to the inner sphere of sovereignty where the woman was not considered a rights bearing subject but remained a site on which a certain ideological orientation was mapped.

A somewhat different set of priorities distinguished the campaign against the Thuggees of Central India and who were identified as a criminal tribe. In fact both at land and sea, the first quarter of the nineteenth century saw a systematization of colonial discourse against outlaws and predators whose activities were represented through the lens of criminal behaviour. It is here that I engage with the idea of the criminal subject—an idea that was marked by practices that not only went against sovereign law but also against natural law. It was not as though the process of criminalising the subject was easy or smooth but what is important for us is to identify the ambiguities of the exercise and how these ambiguities produced a situation where the actual potential of law serving as an instrument of transformation remained limited.

In 1836 the Thuggee Act was passed. It ruled that whoever shall be proved to have belonged either before or after the passing of this Act to any gang of Thugs either in the territories of the colonial state or outside shall be punished with life imprisonment and hard labour, that every person accused of this may be tried by any court and no

court may require special permission to do this. The Act was armed with extensive powers and also demonstrated a confidence in identifying communities as criminal (Singha 1998: 217). Such-a construction, however, did not happen overnight and it is to this process that we should direct our attention.

Singha's work explores the ways in which the idea of criminal communities was developed largely to justify coercive authority. It also illustrates the complex interplay between institutional constraints that the colonial administration had to deal with and the social realities on the ground that made any easy translation of legal ideals difficult. Given the challenges, the state discovered not surprisingly that it was far easier to prosecute a prisoner on a charge of belonging to a collective than it was to establish individual responsibility for a specific offence. On the other hand, this dualism could not be pushed indefinitely and distinctions had to be maintained between casual offenders and professional ones who were born to a community or some kind of collective. The state had to constantly ask of itself just how legitimate associations of criminality with collectives could be and how and whether it jeopardised the idea of the rule of law which in theory was what underwrote the colonial state (Singha 1998: 171–185).

Who were the Thugs? What was the material context of the state's campaigns against them? These basic questions cannot be discounted as it was in the context of a particular historical situation and location that the matter assumed a particular urgency. Identified from the early 19th century as thugs or *phansigars* (stranglers) the thugs according to early colonial official reports were groups of predators who robbed travellers of their belongings and also murdered them. They were peripatetic, travelled through highways and arterial routes and occasionally enjoyed the support of local bosses. Their gangs had mixed membership—Hindus and Muslims with a sardar or leaders. They were dressed as ordinary travellers and were found most often in Central India; specifically in the Sagar and Narbada territories that had been the site of serious conflict and military operations for the greater part of the closing decades of the eighteenth century. This was also an economically strategic region—it worked as a transit corridor for the movement of Central Indian opium, a commodity, which the East India Company was trying to monopolise and which effort was responsible for the scaling of military operations as well as of a ratio-

nalising discourse. The militarization of local society in the aftermath and context of endemic warfare produced a situation when marginal and fringe groups were pushed into social banditry and which was given discursive weight by colonial officials like William Sleeman. As Stuart Gordon has observed, “More than any other person, William Sleeman is responsible for the stereotyping of the word Thug” (1969: 410). Thus along with a narrative of thuggery there was a Thug gee and dacoity department put together which systematically played up the conspiracy thesis, justified special judicial practise and arrangements with other local and native states to support the new department’s activities Gordon systematically takes apart the conventional narratives of thuggery and makes the point that thugs were more often than not disbanded military retinues and not as structured as British reports made them out. Initially colonial reports and representations were confused and scattered but eventually were built into a coherent story that fascinated British readers overseas and gave local officials a free hand in dealing with the predatory groups. On the basis of those who turned approvers, a story of thugs as hereditary and bandits with cult like qualities emerged accompanied by orders to arrest collectively—the imprecise definition of the criminal community meant that there was actually greater space for prosecution within the legal framework. Singha’s work presents this process in detail and demonstrates how officials like Sleeman insisted that ordinary tribunals could not work in the situation. In addition to public staging of executions, there were new enactments that were expected to facilitate convictions. A judge unwilling to convict on the capital charge of murder solely on the basis of approvers testimony was expected to be more amenable to sentencing him on the general charge of belonging to a thug gang.

Thus the need of the hour was to build a strong case for a community of bandits and to build a genealogy on the basis of approver reports. This was to be followed by justifying new modalities of evidence gathering and by legislative acts that permitted the state to prosecute and punish the dacoits with ease. Yet the state took full responsibility for maintaining the formal coherence of rule of law by arguing that the approvers’ evidence had to be negotiated through the promise of a pardon, thereby maintaining the fiction of legality. It was this constant balancing between pragmatic and ethical imperatives that made law making and policing in British India always incom-

plete. Note how Singha makes the important point that while it was certainly easier to establish the general charge of belonging to a professional gang than the specific instance of murder, the definition of the criminal community remained imprecise and quite difficult to determine. On the other hand, such imprecision meant that the space for prosecution was fluid and gave greater powers within the legal framework for prosecution (Singha 1998: 216). Thus the various acts that were passed against the Thugs between 1836 and 1843 involved stringent measures against offenders and justified use of approvers' evidence (Singha 1998: 196–197, 216–226). It was in this context that Macaulay came up with one of his brilliant legislative interventions in the form of Act XIX of 1837. At one stroke the act sorted out the many legal problems arising in the trial of thuggee cases while making the point that a dual standard of evidence would not be introduced. The background to this act lay in the vestiges of the Islamic law of evidence, which refused to consider the evidence of persons convicted of a heinous crime as 'worthy of credit'. But under the act the approver could be given temporary pardon and also be counted as admissible evidence. Approvers' testimony became crucial to prosecution—and thus here we have illustration of how social negotiations were central to the making of legislation and the construction of certain criminal subjects. This combined with the public execution of thugs enabled the colonial state to impress on its subjects the strength and spectacle of its authority. As Maireán I Fhlathúin observes not only were the executions carefully orchestrated to look like rituals of social negotiation, but even Sleeman's description of the prisoners' behaviour reinforced the inherent criminality and deviancy of behaviour (Fhlathúin 2004).

A similar set of impulses was evident in the operations against maritime predators or the "Cooley pirates of the Northward", against whom a campaign was mounted around the first quarter of the 19th century. Faced with escalating violence at sea (in the western littoral of the subcontinent) from a miscellany of coastal communities ranging from small time privateers to coastal bosses who flouted the authority of English colours to attack shipping and to independent operators who took to sea and piracy spontaneously driven by desperation or by political will, the Company authorities generated an ethnography on the pirate and on his habits and piratical traits that he had cultivated since time immemorial. Here too, the justification for military

action against pirates rested on a carefully constructed narrative on predation seen as the common enemy of mankind but constantly held in balance with some consideration of contemporary realities that involved customary entitlements and community practices. Unlike as in the case of bandits on land, the politics at sea proved to be more complex as there was no clear consensus about the distinction between dominion and jurisdiction. However, this did not preclude the production of a narrative of predation, of constructing the figure of the pirate as unlawful, rapacious and savage, whose operations had ultimately to be resisted by force. The legal fiction of accommodating their customary entitlements not only proved short-lived but were not really built into a structural arrangement just as the state's professed commitment to policing the seas through an effective convoy was not always adhered to. The result was a systematic campaign against coastal groups whose operations were undermined by the insistence on the use of the Company colours forcing them to predation which only strengthened the anti-piracy discourse of the colonial state. At not time did the Company grapple seriously with the notion of what it meant to operate in the free seas and what the costs of accepting Company protection implied for the local seafarer and petty trader.

Thus, what stands out in the story of colonial legal interventions is the obvious disconnect between rhetoric and policy, the half-hearted and tentative nature of the law making enterprise, the intent of which was almost always watered down by the need for social adjustment, by administrative and financial considerations. Without discounting the importance that the new legal structure and practices had for large sections of the subject population, anchoring them to certain basic ideas of rights and responsibilities, it is also important to factor in the gaps that remained in the Anglo-Indian legal interaction, which was continually undermined by invocation of custom, tradition, scripture and community entitlements. On the other hand the same legal machinery was deployed to reinforce certain notions of family and sexuality and thereby to criminalize certain practices and certain communities without undertaking the necessary redressal mechanisms. This lacuna was especially visible in the case of the legislation directed against a community of hereditary practitioners called devadasis, whose status and practices came under the scrutiny of the colonial state and the reforming nationalist elite.

Devadasis, the colonial state and the reforming judiciary

Devadasis or female ritual specialists associated with Hindu temples represented a group of hereditary temple servants, who were dedicated to the presiding deity, and who performed as part of a quotidian cycle of ritual worship. They enjoyed a particular ritual and ontological status within the Hindu moral order; as those married to the deity, they were seen as ‘nityasumangali’ or eternally auspicious women who escaped the odium of widowhood. They were supported by extensive land grants from their associate temples and excelled in a range of artistic activities, especially music and dance and were members of what was known as the *cinna-melam* or small orchestra in temples. They did not conform to conventional practices of marriage and could form sexual and emotional alliances outside marriage. Some of these alliances resembled domestic arrangements associated with marriage, others represented a form of concubinage. Ritual status combined with their artistic accomplishments catapulted the community to a specially privileged status especially under the rule of Vijayanagara and its successor states of the seventeenth and eighteenth century. The community was multi-layered—there were ritual specialists attached to specific temples, some to courts and others to individual patrons. The community’s male members seem to have been engaged in the occupations of temple music playing a certain repertoire of instruments (Subramanian 2006: 115–141).

The community was characterised by very specific practices that gave it a distinct corporate identity. While it was difficult to look for caste like features, there were a range of practices and customary entitlements that gave them a very distinct profile which was reinforced by what members of the community called a way of life. The community for instance was in the habit of adopting girl children to augment its strength. Again, those attached to temples were supported by land assignments and also had an absolute right to the property they inherited unlike the life interest in property other women enjoyed. In other words, they could sell or mortgage property. Another feature of the customary law among the community was that daughters inherited in preference to sons and devadasi relatives inherited in relation to non-devadasi ones.

The latter decades of the nineteenth century saw the transformation of the community's social and economic situation and that set the stage for a major change in the legal status of the community and the practices it pursued. The change in status amounted to what Parker and Jordan have suggested a criminalizing of the devadasi subject; Jordan's work speaks very explicitly of how a sacred servant was transformed into a profane prostitute and how in this process, the messy interface of colonial criminal law with customary laws played a major role (Jordan 2003; Parker 1998). As Jordan observes, "The legal status of the devadasis became ambiguous because of the tension between a tradition affirming civil law and an aggressively modern criminal law; by the application of brahmanical law to them; and beyond that, efforts on the part of some of the justice to reform society through the interpretation of the law." (Jordan 2003: 38).

Anglo-Indian law, as Kunal Parker mentions has generally been understood as conflicting between two forces—individual within British law and the community within Indian personal law. The best embodiment of British public law was the penal code which we talked about in the context of thuggee and which was increasingly sought to be deployed in purging India of its excesses including dancing girls. Between 1800 and 1860 devadasi customary law was recognised as the basis for deciding on issues of inheritance adoption and property ownership. The courts also recognised and supported the practice of dedication especially by those attached to temples. However, these concessions became increasingly suspect for a variety of reasons. Adoptions for instance were seen not to enjoy brahmanical sanction while the Penal code prohibited the prostitution of minors which meant that the question of dedicating young girls to temples became a fraught one. Following the heels of a major shift in reformist opinion about marriage and domestication, about sexual chastity and monogamy, the Anglo-Indian judiciary sought to radically redraw the boundaries of what was permissible and to define dedication as prostitution and adoption as abduction, both criminal offences. According to Kunal Parker, the so called criminal intent behind dedication was a pure "judicial invention" and what the colonial state was doing was to bring about a major change through judicial reformism, something which they could ill afford to do openly (Jordan 2003: 42).

The devadasi question burst into the open partly because of the pressures that the community face in terms of flagging economic resources forcing them to avail of court adjudication to defend their property rights and temple related claims and partly because there was a growing shift in middle class notions of marriage, sexual chastity and inheritance. Thus according to Kunal Parker, the de-recognition of adoption by devadasis was not a consequence of the Indian penal code alone, but was the result of Hindu reform around marriage. By the end of the nineteenth century a new set of ideas converged around marriage and even chastity and of reclaiming the degraded members into the Hindu fold and of systematically criminalizing the community of devadasis and their practices.

From about the 1870's, the ambivalence of the status of devadasis came to the fore in the various case submissions entertained by courts in British India. Various justices argued against the custom of adopting and dedicating minors, which was a 'manifestly evil tendency as that which devotes children, while still infants to a life of infamy' (Jordan 2003: 47). The courts by and large found the status ambivalent and the government whether at the state or at the central level did not wish to ban the institution altogether thereby indulging in unnecessary interference. On the other hand the Indian elites were much more anxious to press for abolition of the practice; this was especially evident in the debates in the Madras Legislative Council in the 1920's Also as Parker points out the reforming judiciary and the local elites more than the colonial state was determined to abolish the practice. Underpinning this initiative was a reformulated understanding of marriage and a new patriarchy and conceptions of companionate marriage instantiated in law. Thus as his work demonstrates the community began to be increasingly demonised as harlots engaged in criminal practices such as abduction and dedication, the act of which foreclosed the possibility of a marriage.

The process of outlawing the practice and the institution was a long drawn one manifest in a number of cases and partial amendments to the Indian Penal Code and Act of criminal procedure. The state was by and large reluctant to sanction a major overhaul and it was from about the 1880's that the drive became more visible. There were partial amendments and suggestions that tried to extend protec-

tion to minors and to prove the criminality of intention behind every act of dedication. By the 1920's the movement picked up as it was taken up by various constituencies of social reformers who spoke on the need to separate the artistic resources of the community from its other practices. Legislators like Muthulakshmi Reddy spoke stridently against the practice and maintained that partial amendments like raising the age of dedication was not enough. As it happened it was not before 1947 that the Bill prohibiting the devadasi dedication practices was passed but even before this the community had been divested of its older status and entitlements and lost control of their repertoire as well. There were instances of some sporadic resistance but to little effect.

Concluding Impressions

Law and governance were central to the British colonial project in the eighteenth and nineteenth centuries. Both in form and in practice, law making or enforcing was not easy. Nor was it possible to predict the responses of the colonized subject population. While substantial sections of the indigenous population responded favourably to the new tenets of rule of law and the British system of adjudication and in the process reconstituted their self-hood and subjective expectations, there was also the countervailing tendency to invoke tradition and parallel sources of legitimacy as a counter to the law of the land. The ambiguity was not one-sided either; the colonial exercise of upholding the rule of law and in theory and constructing criminal subjects was shot through with contradiction as we have seen. Both the diffidence demonstrated by the early colonial state in confronting the Brahmin banker in 1800 and its decision to overlook his crime and prescribe punishment in accordance with scripture as well the resolve to criminalise communities and medley groups stemmed from the rationale and imperatives of power. On the other hand, the failure to condemn certain practices outright and the tendency to conflate religion with custom and tradition had the effect of pathologising India as the site of permanent difference and of condemning the Indian subject to an always deferred state of reform and improvement.

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