

From Cornwallis to Ripon (1793-1885): A Study of British Legal Interventions in Bengal

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Lord Cornwallis (GG 1786-1793) and Lord Ripon (GG 1880-1884) are two important references in studying Bengal's colonial history in terms of land law. The former imported the English concept of private property in Bengal through the introduction of the Permanent Settlement in the land system in 1793. Cornwallis's regime saw the 'corn' of British empire deeply embedded in Indian soil and about hundred years later, it got ripened during the tenure of Lord Ripon in the early 1880s. Both Cornwallis and Ripon brought landslide land reforms that reshaped the social, political and cultural life of Indian people. Amongst others, they used land law as an instrument of colonial expansion. Therefore, a study of their regimes offers significant clues to understand the nature of early British colonialism in Bengal and beyond.

There is a view that the British did not consciously start the colonial process in India. The East India Company's (EIC) success encouraged the state to enter into the scenario. A school of thought led by PJ Marshall (1968) claims that until 1784, there was no conscious or consistent British policy for political conquest in India. Marshall argues that the growth of territorial empire in India was neither planned nor directed from Britain, it was the initiative of the EIC operating in India which decided the course of action. Some other scholars, PJ Cain, for example, argues that the expansion of British empire was an outcome of "gentlemanly capitalism". Contrary to these views, Sekhar Bandyopadhyay (2004) found that both the state of England and the Company were interconnected to pursue England's diplomatic goals. The Company received its legal status from royal charters and their relationships were mutually beneficial. The foundation of the Company's empire in India was the subject of political discussion from the early 18th century and it became very transparent when the Regulating Act 1773 ensured that the Company needed to perform as a 'delegated sovereignty'. The Company's possession and power were taken care of by the British government through successive legal interventions like the Charter Acts 1813 and 1833. In 1858, the Company Administration was formally abolished following the great Sepoy Mutiny 1857 and the Crown (Queen Victoria) formally took over the power declaring the Government of India Act 1858.

In this historical setting, I will examine the major legal interventions made by the British in Bengal in particular and India in general to understand the nature of coloniality introduced by the East India Company. I will make a contrast between Lord Cornwallis and Lord Ripon, two significant representatives of English colonialism in India. I will also comment on how this exercise still holds relevance in understanding the present Bengal society, law and politics.

Issues of Land Ownership in Vietnamese Constitutional History and Chinese Constitutional History – A Comparative View

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The land is an extremely valuable resource for each country. That role has been solemnly affirmed in the constitution - the basic law of the country of Vietnam: "*Land is a special national resource and an important resource for national development*" (Clause 1, Article 54 of the Constitution of the Socialist Republic of Vietnam 2013). For a country where many people depend on agriculture, such as Vietnam, land is an important resource. Therefore, building an appropriate regime of land ownership, management, and use has always been of special concern by such countries. As a result of integration and cultural exchange between countries, the land ownership regimes of those countries will naturally exert influence on each other. As a transition country with many similarities with China, China's experiences, and lessons on land ownership in the development of the constitution have certain references to Vietnam. The article examines the constitutions of Vietnam and the People's Republic of China¹ to see the similarities, differences, and effects of the constitutional history between the two countries regarding the issue of land ownership.

¹ In this article, we are limited to understanding the land ownership regime in the constitutions of the People's Republic of China (from 1949 to present). We do not discuss the constitutions of China before 1949.

Land Law in the Feudal Period of Vietnam

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There is a Vietnamese saying that “Tấc đất tấc vàng” - “An inch of land is an ounce of gold”, which means that the land is the most important means of production for a country that has attached great importance to the agricultural economy like Vietnam since the feudal period. Along with the process of expanding the realm, the Vietnamese feudal dynasties gradually established sovereignty and implemented territorial and land management policies. By examining history written by the Imperial court and feudal laws (The Royal Court’s Penal Code and Vietnam’s Royal Laws), we can see that there are two forms of land ownership in Vietnam: public ownership and private ownership, in which public ownership plays a key role. However, due to the impact of historical factors and dynasties’ policies, private ownership of land tended to increase from the 18 th century onwards. Therefore, the Vietnamese feudal Emperors issued a variety of the most effective regulations for land management such as: land registration, entity rights and obligations, bureaucracy responsibility in land management, commendation or punishment for land-related offenses. The above policies of the Vietnamese feudal dynasties throughout history aimed at maintaining and defending the foundation of the absolute monarchy and the rights of the owners.

Legal History of Right to Property **“Journey from a Fundamental to a Constitutional Right”**

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The Constitution of India was framed with visualization that every citizen must own a piece of land not only as a means of sustenance but also as a zone of security from tyranny and economic oppression. With the said view, the framers bestow their citizens the fundamental right, right to property. *Article 19(1)(f)* guaranteed the rights of all citizens to acquire, hold, and dispose of property and *Article 31* provided constitutional safeguards against the exercise of the state's power of eminent domain, reflecting the provision of *Section 299* of the *Government of India Act, 1935* and the *Universal Declaration of Human Rights, 1948*.

Every right has a corresponding duty, and the duty implicit in this right was that it should be so reasonably exercised as not to interfere with similar rights of other citizens. The saga of legislative manipulation of the right to property begins with this duty because this right is often derided as the 'least defensible' right in a socialist democracy. After a series of amendments and judgments, the Supreme Court in *Keshavananda Bharthi v. State of Kerala; AIR 1973 SC 1461* held that property wasn't part of the basic structure, and *Article 19(1)(f)* Right to Property didn't pertain to the basic structure of the Constitution.

Ultimately, the right to property ceased to be a fundamental right and become only a Constitutional right. The 44th Constitutional Amendment marks the deletion of *Article 19(1)(f) & 31*, Right to Property as a fundamental right, and addition of *Article 300-A*, which provides that "*no person shall be deprived of his property save by authority of law*". The removal of property from the list of fundamental rights doesn't affect the rights of the minorities and the right of persons holding land for personal cultivation and within ceiling limit to receive market compensation at the market value will not be affected. The property, while ceasing to be a fundamental right, however, is given express recognition as a legal right. The paper reflects the legislature's attitude towards basic human rights and the right to property as a fundamental right while upholding the sanctity of the directive principle against the concentration of wealth is an arduous task.