

RELIGION, SECULARISM AND LAW

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Setting the Contexts

This paper builds on research results, which have been available for intellectual scrutiny for more than two decades now. Of these, two are of crucial importance. One: Western culture is the child of the internal dynamics of the Christian *religion* and, therefore, we cannot understand this culture or its institutions if we do not develop an understanding of what religion is and how and why Christianity is a religion. Two: if the Semitic religions are examples of what religion is, then India has never had any 'native' religions. That is, I believe that cultures exist without having 'native' religions and that India is one such culture. This is the first context.

The second context. The western institutions of law depend non-trivially upon the presence and existence of religious (and even theological) ideas to make much sense to a people. Where religions are absent, there, in such cultures that is, introduction of these legal institutions lead to their deformation in ways that the 'creators' of such institutions would not have been able to imagine. Here, the following fact is presupposed: British colonialism introduced the western institutions of law in the Indian culture. We need not look at the desirability or otherwise of this phenomenon: the need is to understand the nature of western legal institutions properly before we judge their 'value' to Indian culture and society.

The third context. Even though both the phenomenon colonialism and its act of introduction of legal institutions in India are centuries old, no student of culture, whether Indian or Western, has raised the question of the relationship between Law and Indian culture in any serious way. The reasons for this neglect are many and what interests me is its effect now: it is left to an amateur to raise these questions. Being neither a trained lawyer nor a jurist, a philosopher by training is going

to raise themes about law and religion the way he sees it in his capacity as a student of culture. Despite the nature of such an encounter, there is a noble hope guiding this endeavor: perhaps, this will be the beginning of the kind of research so sorely needed today.

Theme 1. On Truth and Falsity in Law, Religion and Culture

Whatever their merits in other spheres of social interaction, the notions of truth and falsity play an extremely crucial role in Law. There are laws intended to punish falsity even if those are specific in nature (e.g. laws governing forgery and creation of false documents and currency), there are punishments for lying in certain circumstances (perjury, for instance) and the testimony of eye-witnesses is crucial in different kinds of trials. 'Bearing false witness' is a religious prohibition in Christianity (and Judaism) and is considered a heinous religious transgression. The notions of truth and falsity are not theoretical terms in the sense that they do not carry a technical meaning as defined in some specific branch of Law or in the sense that they are specifically jurisprudential terms.

Legal language works with normal meanings of these words as they are connoted by these natural language terms. In order to understand their semantic scope then, we need to look at their meanings in natural languages and their common history.

The Oxford English Dictionary provides us with two core meanings of the term 'falsity'. On the one hand, being the opposite of truth, it carries the following meanings: insincerity, deceitfulness and is of a counterfeit character. On the other hand, possessing such character, it also involves treachery and fraud. When the word 'false' is used as an adjective, apart from being 'wrong and erroneous', it carries the meanings of being mendacious, deceitful and

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treacherous. Equally, the notion of 'truth' carries meanings like 'faithfulness', 'fidelity', 'loyalty' and 'constancy'. These meanings are also carried over into the notion of 'trust', leading to the suggestion that 'truth' and 'trust' are intimately connected to each other.

These association of meanings have their roots both in Christianity and the impact of its theology on the Latin language. The Latin word '*Falsum*' (lie or falsehood) has 'deceit' as its core meaning; lying involves (at its core) the intent to deceive and thus implies untrustworthiness. Because the impact of Latin on the languages of continental Europe is more pronounced, the core meaning of '*falsum*' of (Latin Christianity) has completely seeped into the natural languages of Europe, English included.

Compared to these core meanings, there is also another set of meanings of 'truth' and 'falsehood'. This is better called the 'philosophical' conception of truth instead of the 'Aristotelian conception of truth', because it is mainly among philosophers that the notion of 'truth' is defined entirely in terms of the 'accuracy' or 'correctness' of descriptions. Here, 'truth' and 'falsity' are seen as properties of natural language sentences or of propositions (depending on one's philosophical proclivity): only some or another sentence or proposition can be true or false. Of course, these two meanings are not divorced from each other; very, very often, they go together: someone who speaks false sentences is also considered untrustworthy and his behavior is seen as being deceitful. Consequently, when one speaks of 'falsity' in Law, one intends both sets of meanings.

In contrast to these core meanings of 'falsity' and 'truth', there stand their Indian language-equivalents as they are used in Indian culture. Here, there is a clear and fundamental semantic distinction between 'lies' and 'deception'. These are seen as two different acts, even if, in some cases, they include both. That is, one could lie without involving deception and truth does not dovetail with trustworthiness. Consequently, when Indians use English, they use it in the 'Indian' sense, where a fundamental semantic distinction is made between a lie and a deception.

Some further clarifications are needed in order to avoid misunderstandings. Indian language-use tracks the empirical psychology of people closely. One could lie for different reasons: for pleasure, for pulling someone's leg, to embroider a story, as a joke, to stave off anger, to prevent a quarrel or fight, and so on. Consequently, the intention to deceive or 'deceitfulness' is but one of the reasons for telling a lie. Therefore, while one could lie and deceive, there is no necessary semantic connection between these two meanings. In very simple terms: learning to speak in a language in India is also to learn when to speak the truth, when to lie and to know that morality of such an action is also a matter of the contexts of interaction. Neither lies nor truth carry an ethical weight all the time; there is no unconditional moral obligation imposed on people to tell the truth or refrain from lying.

Before we examine the implications of these semantic differences to the field of Law, let us briefly note their respective origins. In western culture, it is undisputable that these basic meanings of 'truth' and 'falsehood' are, in a very clear sense, 'person-oriented'. That is to say, both 'trustworthiness' and 'deceit' denote qualities of people and 'person-like' entities: someone or another is trustworthy or deceitful. They cannot be straightforwardly applied to inanimate things because, in a non-trivial way, they speak about personal qualities and require an entity that is capable of acting intentionally. Given the history of the West, we have two such 'persons': God and the Devil. God is perfectly trustworthy, which is why one believes what He says. God's word can and should be believed because as a perfectly trustworthy being, He does not deceive us. Contrasted to Him, stands the Devil: the lord of Lies and the embodiment of deception. The Devil deceives humankind in all possible ways, including, above all, seducing us to worship him, the false (i.e., deceitful) god as though he is the True (i.e., trustworthy) God. If we believe in the words of the Devil, we are assured of a one-way ticket to Hell, the price for believing in the god of lies. That is also the reason why the Christian creed begins by declaring belief in God, 'I believe in God', but not by declaring belief in the truth of some proposition (or sentence) or another. The history of this Christianity

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is also the history of the semantic content of the core meanings of the notion of truth and falsity in European languages.

By contrast, Indian culture knows neither this God nor this Devil. It has notions about the properties of the world, which, by nature, is transient and impermanent. Therefore, its questions arise from a different set of concerns: Is there permanence in this transient universe? Only that which subsists through time without being subject to the 'deformation' of change (whether that change is growth or decay) is the 'real' or the 'truth'. That which passes away is not the 'false', however: it merely has existence without being 'false'. It is erroneous to believe that the transient is the permanent; in some senses, this wrong belief is 'false'. To believe in a sentence that is erroneous is to have false beliefs. Falsity, in its core meaning, is to be in error. In this sense, the fundamental meaning of 'truth' refers to 'the real' or the 'permanent', whereas the word 'false' connotes 'existence' or even 'transience'. The major differences between traditions like 'Buddhism' and 'Hinduism' revolve around this issue: is there permanence in this transient universe?

Consequently, there are many practices in India, which include the process of child-rearing, that involve learning and being taught to lie or tell falsehoods. (Understood here as not saying 'what is the case'.) One's mother or siblings or grandparents teach the child to lie so that it may not provoke the anger of the father; friends lie to each other as a matter of course and marrying one's child off by telling a 'thousand lies' is considered a morally good thing. That is, one's process of socialization also involves learning to tell lies. Deception is an act of a different kind; it is even conceivable that one can deceive another by telling the truth. Falsity and deception are separated from each other as truth is distinct from trustworthiness. Lying is not an immoral act by nature; in fact, one can be morally praiseworthy precisely because one tells a lie. By the same token, truth-telling is not, in and of itself, a moral act; one could become profoundly immoral because one tells the truth. This internal disjunction between lie and deceit on the one hand and truth and trustworthiness on the other divorces truth-telling and lying from immediate moral judgments - the opposite

of what the western culture thinks. There, lying is a vice and truth-telling is a virtue, in the moral sense.

Again, it is important to note that neither the semantic distinction nor the socialization process puts a premium on lying. There are any number of precepts that recommend truth-telling and discourage the telling of lies. However, as precepts, they are not unconditionally binding on any individual. Nor would be true to say that lies and truth are moral predicates all the time.

The western legal arrangements (including their statutes and laws) presuppose the specifically religious conceptions of 'truth' and 'falsity'. The *ratio legis* of parts of criminal law (for example, those that speak about fraud, false documents, perjury, etc.) explicitly appeal to 'trustworthiness' and 'deceit'. When the British introduced these legal institutions and their attendant laws, they were operating within the ambit of a secularized Christianity, i.e. they were functioning within the framework of a Christianity that had gone secular. Christian theological ideas were provided with a secular garb and what made this intelligible to people in the West was the presence of the Christian original in its culture.

Yet, say, the Indian Penal Code (IPC) is built upon foundations that not only deny the Indian semantic sense but also postulate its opposite as both morally superior and legally defensible. It presupposes '*falsum*' as Latin Christianity conceived it and this is supposed to be better because, well, because Christianity and its child (western culture) know of no other connotation. In such a case, quite independent of normative questions, an entirely unsuspected set of questions comes to the fore: how has the Indian judiciary (and Indian jurisprudence) interpreted this distinction between 'truth' and 'falsity'? Have they followed the Semitic religious distinction or have its judgments reflected the Indian intuitions and ideas on the matter? If the judiciary has followed the British interpretation, it has remained faithful to a religious distinction made by Christianity; in the other case, it must have distorted laws while interpreting them.

Quite apart from these questions, another set of profound issues arise as well: how and in what sense does

one 'acquire' these non-Indian notions, when the native Indian languages postulate totally different semantic connections between these words? Even if we suppose that the 'learned' members of the bench in a court of law have some privileged access to the Christian meaning of these words, what about the lawyers and witnesses who do not have such a miraculous access? What about access of the legislative branch of the state to such notions? What is the nature of laws enacted by such an authority? Should we interpret these laws using Indian notions or should we ascribe to the law-giver some mysterious access to the Christian conceptions as well?

These are but a few of the questions, when we begin the process of doing comparative law as students of culture conceive it. As I said at the beginning, I have yet to come across texts that take these matters seriously, even where they do go to the root of the problem of making western legal institution intelligible in the context of Indian culture.

Theme 2. *Dramatis Personae*: the Witness and the Judge

The first theme has introduced us to the problem surrounding truth and falsity. Let us now look at one of the consequences of this difference to the function of two crucial figures in the court of law, namely, the witness and the judge. To appreciate the implications, however, we need a very broad (even if very crude) outline of the history, as it is relevant to the theme.

Between 1050 and 1250, a two hundred year stretch in the Common Era, the European legal system underwent a remarkable transformation. In continental Europe, trial by Ordeal was replaced by confession under inquisition; in England, it was the beginning of the Jury trial. In the first case, the Judge could appeal to the precise and procedural nature of the law which 'dictated' judgment; in the second case, the judge could refer to peer-judgment to defend his decision. In both cases, the reason for transformation was the same: the reluctant witness, who refused to come forth and testify against a person or persons suspected of committing a crime.

Let us get some grips on this issue. One needed witnesses to accuse a person of some crime or another, and the judge (whether a civil magistrate or an ecclesiastical authority) could then appeal to the legal provisions to pronounce a sentence. But the problem was the reluctance of the witness to come forth and do what was required. There were, to be sure, many reasons for this state of affairs: one chief reason was the scriptural injunction. Being a witness, one risked either lying ('perjury'), an act forbidden by the scripture ('thou shalt not bear false witness') violating which would send the believer on his way to Hell, or risking blood debt, i.e., carrying the blood of another human being in one's hand. Despite many subtle attempts by theologians to solve this dilemma, it remained a huge concern; continental Europe and England took to different routes to solve this problem.

When the British introduced western legal institutions in India, one of the first things they confronted was the performance of witnesses in court. Century after century, the lamentation remained the same: Indians had absolutely no problems in committing perjury in the court. Indians faced no problems in swearing on the Gita, or on the 'holy' waters of the Ganges, or anything else one cared to introduce and yet commit perjury. The British found that it was more realistic and prudent to assume that such 'sworn testimonies' were anything but the truth. In fact, this was one of the primary reasons for introducing English education in India. The British hoped that such an education would help teach the Indians the virtue of not committing perjury in the courts and cure them of their 'repulsive' habit of lying under oath.

In fact, this state of affairs has not disappeared even though the British have disappeared as colonial masters. As every lawyer and judge knows, such witnesses are dime a dozen: it is the most common picture around the court buildings in India where people congregate looking for a job: any lawyer can hire a number of 'eye witnesses' from among them for specified sums of money. If anything at all is certain in the Indian courts, it is this: 'eye witnesses' lie under oath and commit perjury.

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In fact, as a matter of procedure, the police presuppose this social fact and make use of it in their working: they simply hire ‘eye witnesses’ as and when needed. Let me give an example that is as widespread as it is normal in India. Let us imagine a case where a thief steals a golden necklace from a house, pawns it in some shop or another in exchange for money. The Pawn-broker immediately melts the necklace to recover the gold in it. When apprehended by the police, the latter surrenders the gold to the police, who, in turn, pass it on to a gold smith. He is now entrusted to transform the recovered gold into a necklace. The police produce the ‘new’ necklace as the necklace that the thief allegedly stole. In no court of law, including the Indian courts, can that necklace function as evidence: the thief did not steal that specific necklace which the police introduce in the court. The lawyers suspect and the judge ‘knows’ this for a fact but the necklace is accepted as evidence. The police know too that what they do might not be ‘proper’ but, as many police officers in different parts of India have told me, it is countenanced because they do this to ‘protect the society from criminals’.

This situation stands to reason: lying is neither immoral nor reprehensible in Indian culture. This does not mean that Indians do not value trustworthiness or put a premium on deceit. This is how the West is forced to look at the issue, inspired *completely* by Christian conception of truth and falsity. Unless one assumes that Christianity is the most superior religion and that its injunctions and values are inherently superior to anything else that exists in the world, lying need not be a moral issue. If lying is not a moral issue, lying under oath ceases to be a legal issue. However, perjury is. The question then is: what is the ‘value’ of a legal institution that depends so much on a specific religion that, in its absence, its fundamental tenet fails to make sense or become intelligible?

Of course, one can and does come up with ‘secular’ jurisprudential reasons in support of what is a religious injunction. That does not make it any more acceptable: it is and remains a religious conception, even if it is now dressed up as a secular truth. The point to note, though, is this: this kind of lying does not create either a pragmatic or a moral problem in India. We

can get along perfectly well with each other, even by emphasizing the importance of truth and truth-telling, despite having knowledge of the fact that most of us lie in many circumstances. And that it is also *morally meritorious* to lie in many circumstances.

Because there is a serious possibility of misunderstanding of what I am saying, a few more words are necessary. I am not claiming that all Indians are liars and cheats or even that centuries of such European descriptions are true. To make this point sharper, consider two societies: one where people tell only the truth (understood in the philosophical sense as saying ‘what the case is’) and another where people only lie (again as saying only things that are untrue). Logically speaking, there is no problem of communication nor is there any possibility of misunderstanding in either of these two societies: it is merely an issue of knowing how to frame questions in these societies and how to interpret their answers. In a society comprised entirely of truth-tellers, one can predict their behavior and seek communication with them on the assumption that ones question elicits truthful answers. In the other society, where everyone lies all the time and never tells the truth, the situation is equally predictable: one can communicate perfectly well with them too, by assuming that all their answers are lies and by framing questions in such a way that negations of these lies provide us with the truth. The British did not confront a society where everyone lied habitually or even one where the majority did so. Such a situation would not have created any problem for the rulers. The problem arises because India, like any other society and culture, is mixed in nature: there are people who lie and the same people also tell the truth.

The religious conception of truth and falsity has seeped very deep into the consciousness and language-use of western culture. So deep is its penetration that these predicates are metaphorically extended to things and thoughts as well: science becomes ‘trustworthy’ knowledge; our senses are either ‘trustworthy’ or they ‘deceive’ us in gaining knowledge about the world; Descartes begins his meditation with the possibility that an evil genius deceives us about the nature and existence of the external world and so on. The suspicion that others are out to deceive us goes so deep in

this culture that every passenger in the airports of the US and the UK is treated as a ‘suspect’ and a ‘potential terrorist’, a situation that their so-called ‘security measures’ testify to. This deep suspicion about the world is rooted in the idea that has lived on for more than 1800 years in Europe: the earth is the ‘kingdom’ of the father of lies and deceit. The contrast with the Indian culture in this regard cannot be sharper.

Having considered the witness, let us move on to look at the figure of the judge. Again, relying upon the crude paragraph sketch of the history I provided, one of the basic concerns of law has been to protect the judge. Even though he pronounces judgments, he can either fall back on the verdict of the jury or on the detailed procedural aspects of the law: it is the law that judges and not the person of the judge. Allowing this escape route enables one to free the judge from concerns about incurring blood debt or have the blood of individuals on his hand in specific kinds of trial. In general, it makes room for his fairness and impartiality. In fact, this consideration dictates the role of the judge: he is supposed to be objective, impartial and impersonal. In a very strict sense, he is to obey the law and see to its enforcement. He brings, to put it in its ideal form, very little of his personal conceptions of morality and justice into the picture. Even where his ideas are different from the letter and the spirit of the law, it is his duty to follow the law and confine himself to doing this. He ‘represents’ justice only and strictly to the extent law allows him to be ‘just’. No more, no less. It is the law which can be just or unjust but never the judge as a figure.

In contrast to this stands the Indian judiciary that sees itself as the ‘embodiment’ of justice. Very regularly, especially in the lower courts, the judge sees himself as someone who dispenses ‘justice’, often completely independent of or even oblivious to legal provisions and statutes. It is not merely a question of self-representation of the judge but also how he is perceived by the people who go to the court. They go there seeking justice in the literal sense of the term and, in the figure of the judge, they find such a person. In fact, a ‘good judge’ is someone who metes out justice and punishes injustice. In many senses, he represents what the king was alleged to be in pre-modern

India: justice embodied and personified. It is this attitude of both the public and the judiciary that helps us understand the phenomenon of massive corruption of the judiciary in India: the law is what the judge says and what he says depends on his personal beliefs. In short, it is neither surprising nor abnormal to see a judge acting arbitrarily and capriciously: that is what a judge is.

If we bring these two figures of the judge and the witness together, it is obvious how the western legal institution is different in India from what it is supposed to be. Its difference does not lie in the lack of education of the judiciary or in the illiteracy of the public: it lies in the very nature of this culture, which is alien to the one that introduced western institutions of law. As must be obvious from the foregoing, the problem is not merely one of ‘alienness’. It has also to do with the fact that Indian culture is a developed culture that too has its own notions of justice, truth and so on. When an alien institution is superimposed on an evolved indigenous structure without any awareness of the nature and existence of the latter, distortions and deformations are inevitable. Precisely that has happened in India due to colonial imposition.

Consequently, the presence of western legal institutions in India confronts two different sets of problems. On the one hand, it is neither possible nor is it desirable to abolish these western institutions of law in India. On the other hand, some of the key concepts and institutional roles that India has indigenously developed are at the opposite end of the spectrum than those required by the western judicial institutions. Before we can find some kind of a balance between these two, we need to understand that problems exist which are hardly mentioned in the literature. It is as though one is denying the experience of daily life to embrace an alien experience which can never be one’s own. A comparative study of law needs to address itself to these issues with some sense of urgency.

Theme 3. On the Nature of Juridical fact

I have had occasions to speak about ‘distortions’ and ‘deformations’ in the western legal institution because the alien has been forcibly transplanted on an indige-

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nous organism. It is time to become a bit clearer about what such distortions consist of.

What is a scientific fact? In very simple terms, we can formulate the current consensus in philosophy of science in the following way: when some sentence, which, in a particular context, is taken as an observational statement, then we have a scientific fact. However, we need to know that such ‘facts’ are not theory-neutral. On the contrary. These ‘facts’ are themselves ‘theoretical statements’, which, however, are considered as facts in a given context. When we conduct experiments using, say, Wilsons cloud chamber, we assume that statements about the voltage of the current, instrumental observations of molecular movements, the recording of light rays on photographic plates, etc. as ‘facts’ in the experiment. However, each of these ‘facts’ are conclusions from other hypotheses: about electricity, about molecular movement, about photography and so on. These hypotheses are considered ‘low-grade’ theories relative to the hypotheses under test and we call such statements as ‘scientific facts’. In this sense, the notion of a scientific fact refers to the relative status of some hypotheses in any given context.

I suggest that we look at juridical facts in an analogous fashion. Under this proposal, a juridical fact is a description of some event, circumstance or act by using some or another legal statute or provision relevant to the event in question. The only duty of the judge is to determine what constitute the legal facts of the case while the lawyers attempt to *transform* some or another description (of an event, a circumstance, or an action) into a juridical fact. That is to say, laws and jurisprudence play the role that scientific theories play in the natural sciences. However, the crucial difference lies here: in a scientific theory, a fact should be deducible (logically or mathematically derivable) from the hypotheses. In the case of law, this relationship is *not deductive* but *transformational* in nature. Even though ‘logic’ and ‘reasonableness’ are involved in the transformational process, the lawyer does not deduce juridical facts from the statutes but changes one kind of description, say death, into another, say manslaughter or murder. (That is why one needs skill here, which requires practicing law.) The judge (or the jury) deter-

mine the success of this transformation. If one looks at juridical facts in this light, one also sees that ‘rhetoric’ in Law does not deal so much with ‘persuasion’ as it does with ‘thinking’. ‘Rhetoric’ refers to the thinking activity (which is actually a problem solving activity) required to transform a sentence from natural language into a juridical fact. The only goal and duty of the judge or the jury is to determine whether or not such a transformation has been successful and whether a juridical fact has come into existence or not. Outside of this, the Judge has no other extra-judicial goal, nor can he have any.

Consider now the situation in India by focusing on indigenous institutions and how they work. Here, I summarize the results of fieldwork undertaken by my collaborators. (The claim is not that this situation is unique to Indian culture but that such methods of solving disputes exist in India.) Confronted by some dispute or another, some or another local authority (considered legitimate by the disputants) tries to resolve it. The basic goal of this authority (whether an individual or a group of people constituted by the tradition in an area) is not just to solve the dispute. Its goal is to reach a settlement in such a way that both the disputants and the community of which they are a part can continue to live peacefully thereafter. Such an authority is the ‘judge’ in the indigenous tradition. This judge, then, has a goal that goes beyond the mere settling of disputes: he has to judge in a way that satisfies not only the disputants but also the community. It is his goal to restore peace, where it has been disturbed by the dispute and the quarrel.

Where such notions of a judge and settling disputes enjoy currency and have seeped into the popular consciousness, there, when disputes enter the courts (the western legal institution) the expectations do not change. Nor does the idea about the role and nature of the judge. I submit that this has happened in India: the judges who sit on the benches have some such intuition regarding what a judge is. Therefore, their goal in these courts of law is multi-determined: apart from judging what the juridical facts are (this becomes the secondary or even the tertiary goal, to the extent it remains a goal at all), the judge has other, extra-legal goals. They consist of finding ‘just’ solutions, restore

imbalance and redress the wrongs. They also include, to the extent possible, the goal of ensuring a peaceful community. It is in this sense that a distortion occurs in Indian Law because of the superimposition of the Western legal institutions.

Of course, this situation leads to another kind of distortion. One of the basic functions of law in western culture is to reduce arbitrariness and capriciousness in settling disputes. Both the formulation and the enforcement of law is standardized and made uniform to prevent excesses and ensure fairness.

However, the imposition of the western institutions actually encourages precisely that arbitrariness which law is supposed to prevent. Now, the figure of the judge can also use the legal institution, which gives him the power to do what he does, to make arbitrary pronouncements because of the culturally specific notion of the judge. Such arbitrariness does not occur in the context of the indigenous cultural institution: there reasonableness prevails because the judge faces the community directly and, in some sense, owes explanations to such a community. In the context of modern courts, however, these constraints which necessitate reasonableness are not present leaving only the individual facing the legal power of the judge-as-an-individual.

This is not all. The extra-legal goals that the judge believes he has are completely determined by his personal preferences. They depend non-trivially upon his notions of 'wrong' and 'right', 'just' and 'unjust' and what he thinks redressing a wrong involves. The law helps him as a guiding principle, as some sort of a heuristic at best, using which he devises his own solutions. The Indian judge uses the western institution to suit his own taste. If this pole constitutes one end of the spectrum, at the other end, there is the tendency of 'following the rules' blindly. Here, there is no possibility for any juridical discussions or for a reflection about the inevitable interpretations of law. The judge 'applies' the rule blindly and without even an awareness of the fact that he is interpreting the law: 'those are the rules'.

In neither of these cases, is it possible to speak of any serious jurisprudential reasoning; no possibility

of reflecting about the shortcomings of law because of which better laws could come into being. Because most litigations in the courts of law occupy these two ends of the spectrum, Indian jurisprudence lacks the quality that their western counterparts have. In simple terms: the modern courts in India encourage arbitrariness precisely because they reduce the same in the western culture.

This is not the only level where distortions occur. They occur at the level of formulation and promulgation of the law itself. To appreciate this distortion, we need to keep in mind that one of the basic ideas in both politics and law (in western culture) is that the laws of a country are formulated to protect and further the general interests of society. To the extent possible, Law tries to reconcile the particular interests of individuals and groups with the general interests of the society. Neither law nor politics is meant to further the particular interests of any single community, group or individual. That is to say, laws are not meant to protect or further corporatist interests. There is always a trade-off in both politics and law between the special or particular interests of specific groups and individuals and the general interests of the society. Such a trade-off, however, must obey one condition: the general interest cannot be sacrificed to promote a particular interest.

Such general interests cannot be constituted by aggregating the particular interests of any given group of individuals, even if and where that group constitutes the majority. When laws partially protect the specific interests of a group or sets of individuals, they are admissible only in so far as such laws either protect or further the general interests of society as a whole. Otherwise, democracy would be completely identical to mob rule or the tyranny of a group (whether it is the majority or the minority) over the rest of society. In such cases, laws become the expression of the interests of some or another group in power or of a group (or sets of groups) capable of currying favors with the lawmakers.

For such ideas to make sense, we need to have a conception of the notion of 'interests', whether it is an institutional interest or interests that are either particular or general in nature. Western culture has developed

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this notion primarily because of its religion, namely, Christianity. It speaks in terms of individual interests of the human being (salvation), the institutional interests of the Church (to be the guardian of God's will on earth and to guide its flock) and, by extension, the interests of the State. It also speaks of the general interests of a community of believers, namely, the Christian *ecclesia*.

In India, the contrast cannot be more striking. The notion of 'interest' makes no sense here given, among other things, the absence of any vernacular equivalent of the word that even remotely comes close to the meaning of the word 'interest'. The absence of the word is striking because Indian culture does not have a vocabulary to make any sense of any kind of discourse on *interests* - whether institutional, private, public, general or social. If this the case, what is the *ratio legis* of laws promulgated in India? The answer is predictable: laws are made in order to favor some specific groups, individuals and institutions. Legislations are meant to explicitly favor specific groups (say, the reservation policy that favors only particular groups in society), this or that caste group, widows and orphans, cricket players, and so on. In short, Law favors those able to buy the lawmakers or those groups whose votes the politicians need badly.

Of course, the absence of vocabulary indexes the presence of conceptions of person and society that are different from those espoused by Christianity. Though this is not the place to argue the idea, it needs emphasizing that both philosophical anthropology and psychological science simply endorse ideas formulated originally by Christian theology. It can be shown that political science and law in western culture presuppose the truth of these religious conceptions. It can also be shown, quite independent of whether India has 'native' religions or not, that Indian ideas about personhood are not even remotely similar to those current in the West. The question is this then: what happens when the laws framed within the ambit of religious ideas of the West are forcibly imposed on a culture

which thinks completely differently about persons and society?

At the least, the following distortion is also equally inevitable. When the State promulgates laws that only favor and further corporatist interests, citizens of such a polity use such laws mostly retributively. That is, seeking personal vengeance becomes the major if not the sole goal of the citizenry, when they take to the courts. Such is also increasingly the case in India: one goes to the court in order to punish one's real or alleged enemies. The so-called 'atrocities' cases, or cases involving 'dowry' or 'domestic violence' are beginning to become increasingly common and widespread in India not because the law finally allows redressing acts of injustice but because one merely seeks to punish one's enemies or one's husbands. Most such cases are fake but they fulfil the goal of seeking personal vengeance. Or, again, one goes to the courts seeking only personal gains, which the laws encourage. In other words, the institutions of western law in India encourage just the opposite of what such laws are meant to: a vengeful, spiteful and 'selfish' citizenry. Instead of promoting a cohesive society, such laws encourage divisiveness and conflict in society. If this is not a perversion, what else is?

Of course, such laws are enforceable because they are approved by a majority vote in the relevant parliament. The majority is not and cannot be motivated by the general interests of the society as a whole, while approving such laws. Its reasons too are as narrow as the reasoning of an individual who contemplates his own benefit. Consequently, these laws have totally perverse goals, and their effects are also equally perverse. This is as far as one can be from what Law is in western culture.

Conclusion

The objective of this paper is to generate discussion by formulating some issues that I find crucial to a study of the relationship between law, culture and religion. We can move forward only if we begin to look at the problems in a different light.