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Conference Report: "South Asia's Legal Landscapes: Legislation, Litigation and Social Realities"

By *Sarah Holz*[*] and *Tanja Herklotz*[**]

The legal landscapes of South Asia provide a diverse picture, where state law coexists and is intertwined with normative orders shaped by religion or culture, and where written law goes hand in hand with customary legal practices. Legal pluralism is alive and highly visible in the metropolises as well as in the rural areas of the subcontinent. This raises a variety of questions and challenges for scholars and practitioners of law, amongst others: Who are the actors involved in decision making processes? What levels of hierarchy and interaction exist between these entities? How does written law differ from the realities on the ground? Do such diverse systems provide for equality before the law and, at the same time, fulfil international standards? How can human rights, religious and cultural practices and the State's socioeconomic objectives be best accommodated in a pluri-legal system? And - when engaging with these questions - which terminologies and concepts can be meaningfully transferred from Western to South Asian contexts and where do the limitations lie?

With these broad questions in mind a group of young scholars working at the intersection of law, social sciences and South Asian studies attended the 17th Humboldt India Project (HIP) Workshop on 5 February 2016 at the Humboldt Universität zu Berlin (HU), to present and discuss their research projects. The Humboldt India Project is a workshop series that brings together the South Asia specialists of HU and various other research centres in Berlin and beyond. It was conceived by Professor Michael Mann (Chair Holder South Asian Studies at HU) and has been hosted for years by HU's Institute for Asian and African Studies. HIP intends to document, inform and initiate a cross-sectional and interdisciplinary dialogue and exchange about South Asia projects in progress in different academic institutions and faculties. The workshops provide a platform for PhD candidates, postdoctoral researchers and fellows and young researchers to present their work, whether finished papers or works in progress. The presentations are typically followed by an extensive group discussion, in which European and South Asian scholars from different disciplines participate and provide critical scrutiny of the thoughts presented and contribute to a fruitful exchange of ideas.

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The workshop in February 2016 was unique as it was a first time collaboration between HU's Department of South Asian Studies and the Department for Public Law and Comparative Law. Entitled "*South Asia's Legal Landscapes: Legislation, Litigation and Social Realities*", the workshop brought together an interdisciplinary cohort of presenters and participants from different areas of specialisation including South Asian studies, law, religious studies and political science. Prof. Michael Mann, host of the workshop, and Prof. Philipp Dann (Chair Holder Public Law and Comparative Law) gave comments, provided the presenters with input, asked questions and offered constructive remarks after each presentation.

The workshop opened with a presentation on "Legal Enclaves: India's Special Economic Zones" by Maxim Bönnemann[1]. After providing an insight into the legal and administrative structures of the Special Economic Zones (SEZs) in India, Bönnemann posed the question as to why the SEZ has been so successful in India and the Global South. He highlighted that beyond the mere economic returns, SEZs create a web of "legal enclaves", incorporating what he terms "islands of modernity" into the broader legal landscapes of South Asia. Bönnemann argued that the discursive terrain of this legal operation is founded on two legal specificities of South Asia: Firstly, an orientalist representation of Asian law as "backward" continues to shape investors' governance until today. Secondly, unlike in the Global North, the idea of "legal enclaves" unfolds in a landscape which is marked by legal pluralism. While such forms of investors' governance are opposed in the Global North on the grounds that they violate the principle of the law's general applicability, the political conditions for the proliferation of legal enclaves in Asia are much more favourable. Bönnemann concluded that SEZs are a somewhat necessary result of India's delicate balancing act between sovereignty and globalisation.

Bönnemann's presentation was followed by a presentation by Thomas Krutak[2], entitled "To Ensure a Proper Religious Conversion? Juridical Aspects, Historical Background and Social Impacts of the Conversion Legislation in India". Krutak discussed the *status quo* of conversion laws that have been introduced in the 21st century as well as their implementation and enforcement in various Indian states. Conversion laws regulate and bureaucratise the process of a lawful conversion from one religion to another (and thereby the religious personal laws that apply) and penalise those who attempt to convert others without following the prescribed procedure. Krutak examined the reasons behind the general assumption that conversion legislation serves to check religious minorities, in particular Christians, by discussing the *Freedom of Religion Act* within the wider legal framework and providing a brief glimpse of its historical background. Krutak thus sought to deepen the understanding of how conversion laws affect the people involved in conversion and how potential converts deal with them by navigating through the politics of belonging. The discussion that

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followed highlighted the paradox nature of the conversion laws which serve as a protection from forced conversion, but function as intimidation against voluntary conversion (to the "wrong" religion) at the same time.

Both presentations emphasised that it is not only the legislature which plays a crucial part in law-making. And the presentations that followed tied in with this, stressing the importance of other entities, in particular, the role of the judiciary.

Jean-Philippe Dequen[3] discussed the notion that classical colonial historiography tends to subordinate the multiple transfers of English law within the Indian subcontinent to either political events or economic shifts. In his project titled "A failed attempt of English legal transfer in India: Admiralty Courts in Bombay and Madras, 1684-1704" he sought to examine this historiography and put forward a purely legal chronology of legal transfers in India which, albeit influenced by the political and economic settings, follows its own internal logic. Based on this premise, he aimed at presenting a typology of such transfers, consisting of direct, indirect/contextualised and finally imperial legal transfers, by questioning whether English law has not lost itself in translation and perhaps even, in reference to Wolfgang Reinhard's words, dialectally disappeared in its expansion. He exemplified the ubiquitous nature of English legal transfers through a rather under-studied period of English legal expansion in India. He explained that following the transfer of Bombay to the English Crown in 1661, Admiralty Courts were progressively set up and acted as appellate jurisdiction to the Court of Judicatures in both Bombay and Madras at the turn of the 18th century. This 'experiment' was however short-lived and widely considered a failure, whilst pushing the East India Company and then the British Crown to set up more inclusive jurisdictions in the form of Mayor Courts, lasting throughout the 18th century. If the downfall of Admiralty Courts was largely due to the personality of the Judge-Advocates who were appointed to these jurisdictions; Dequen's research project seeks to concentrate on the legal aspects of this first failed attempt of legal transfers within the subcontinent. Thus, through an analysis of the remaining court records and the correspondence of the East India Company, his research aims to highlight the ambiguities of English legal transfers in India: the ubiquitous nature of the East India Company between private corporations and agents of the Crown, the former's attraction to Roman law and yet its unwillingness to face the latter's judicial consequences and finally the paradoxical legal architecture to administering common law in a civil jurisdiction.

Shifting to present day India, but demonstrating how colonial heritage still lives on, Tanja Herklotz discussed the idea of a Uniform Civil Code for India to replace or reform the system of personal laws currently in place in Indian family law. In her presentation entitled "Dead Letters? The Idea of a Uniform Civil Code in the Eyes of the Women's Movement and of the Indian Supreme Court" she demonstrated how different actors often have very different conceptions and solutions for the prominent challenges of legal pluralism. According to India's personal law system the different religious groups (Hindus, Muslims,

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Christians and Parsis) are each governed by their respective provisions. Article 44 of the Indian Constitution, a non-justiciable directive principle of state policy, urges the state to introduce a Uniform Civil Code (UCC) in order to unify the plurality of laws - a measure that has not been realised to date. Herklotz juxtaposed the discourse and rhetoric regarding Article 44 used by two different protagonists: the Indian women's movement (for whom the UCC has long promised gender equality) and the Indian Supreme Court (for whom the code has promised national integration, secularism and modernity). She argued that despite the different rhetoric of the women's movement and the Supreme Court, what the two protagonists do in practice, is actually not very distinct to and from each other. Both entities have accepted legal pluralism as a fact and search for uniformity through other means. Hence, Article 44 might be dead in the sense that an all-encompassing UCC will probably not be introduced in the near future. But it is still alive in the sense that its essence - uniformity and equality - is gradually being carried out through other means: through a gradual step by step approach by the legislature as well as the judiciary.

The last talk of the workshop was given by Sarah Holz on “Constructing an Islamic Republic through Law and Justice Mechanisms”. According to Article 227 of the Constitution of Pakistan, all laws in force have to conform to “the Injunctions of Islam as laid down in the Holy Quran and Sunnah”. Holz argued that the article itself and its implementation are one of the distinctive features that render Pakistan an Islamic Republic. In this regard the presentation explained how two state bodies, the Federal Shariat Court and the Council of Islamic Ideology, participate in monitoring and implementing Article 227. By reviewing laws to determine their accordance with the Injunctions of Islam or admitting petitions challenging the conformity of laws with these injunctions, the decisions of the Federal Shariat Court and the Council of Islamic Ideology are not confined to the legal realm but also function as a social commentary and norm-setting. She concluded that both bodies can be considered nodes between the legal, the social, the religious and the political. They can therefore function as starting points to examine how the Islamic Republic of Pakistan is governed in practice today.

Covering a wide range of different topics, the five speakers tackled similar overarching issues. All contributions pointed to instances that navigate diverse conceptions of law and ways in which these pluralisms are adjusted, while handling the conflicts and clashes between different claims and interests. In the process of adjustment, conceptions of modernity play an equally important role as identity politics or the expectations of the international community. Engaging with legal pluralism urges scholars to compare the theoretical ambit, i.e. the laws in place, ideas and justifications for their existence, with the practical ambit: their implementation, practice and enforcement on the ground. It invites a viewing of the bigger picture when engaging with the law and to work holistically, taking not only the legislature and the judiciary into account, but to engage with a variety of other actors involved in "making laws" and their enforcement.