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Official discretion, errors, and oversights: legal bureaucracy and the question of justice in twentieth-century India

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Abstract

Late colonial juridical practice in India was prone to bureaucratic errors and shared with the police a fundamental disinterest in the liberty of ordinary people. This article tells the politically marginal but highly revealing story of how a series of errors during the arrest and subsequent detention of an elderly man called Peter Budge—an innocent bystander in a situation of heightened communal tensions—led to a momentary scandal in the United Provinces administration in the year 1947–48. Peter’s case disappeared between the cracks of bad record-keeping, leading to his lengthy and unlawful detention. It raises important questions about the complementary relation between law and violence, and the fictitious nature of public-order laws. In contrast to the scholarship that has discussed the spectacular violence of the state, this article looks at the ‘other’ acts of violence of the state and argues that the everyday reality of public-order enforcement is key to understanding the nature and operations of the late colonial and post-colonial state.

Keywords: Paperwork; files; bureaucratic errors; official discretion; unlawful detention; the violence of law; public order

Studies of bureaucracies have emerged as one of the key frameworks through which to understand the everyday state.¹ Max Weber remains the key interlocutor of most such scholarship which either works with his assertion on the nature of ideal-types of bureaucracy and their coherence of purpose or argues against it.² Across disciplines, but most significantly anthropology, scholars have meticulously shown the significance of investigating everyday bureaucratic practice to comprehend state authority and its legitimation. Such an examination includes scholarship that has either highlighted the ordinary citizen’s narrative about the state³ or those produced by the

¹ Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Durham, 2012); Matthew Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley, 2012); Nayanika Mathur, *Paper Tiger: Law, Bureaucracy, and the Developmental State in Himalayan India* (Cambridge, 2016); Taylor C. Sherman et al., *From Subjects to Citizens: Society and the Everyday State in India and Pakistan, 1947–1970* (Cambridge, 2014).

² Max Weber, *Economy and Society* (Berkeley, 2002 [1922]); Max Weber, ‘Bureaucracy’, in *From Max Weber: Essays in Sociology*, (eds) H. H. Gerth and C. Wright Mills (Oxford, 1946), pp. 196–244.

³ Veena Das, ‘The signature of the state: the paradox of illegibility’, in *Anthropology in the Margins of the State*, (eds) V. Das and D. Poole (New Delhi, 2004), pp. 225–252; A. Gupta, ‘Blurred boundaries: the discourse of corruption, the culture of politics, and the imagined state’, *American Ethnologist* 22.2 (1995), pp. 375–402; Michael Taussig, *The Magic of the State* (New York, 1997).

state.⁴ Across the literature, two broader characterisations of bureaucracy emerge. On one end of the spectrum is Franz Kafka, who outlined its facade of rationality and emphasised its monstrosity,⁵ and on the other is Hannah Arendt, who stressed its capacity to depoliticise political processes.⁶

Contrary to some claims that bureaucracy has taken a backseat,⁷ we notice that discussions about bureaucracy in India have not withered away. Bureaucracy remains the most common point of interaction between the citizens and the state, and comprises multifarious components, including the judiciary and the police. It remains a crucial institution that makes the state visible in its dominant form. Scholarship has studied bureaucracy either by focusing on quotidian and extraordinary events or highlighting its materiality and affect. Scholars have stressed the urgency of examining the everyday maintenance of key practices of contemporary states such as everyday administration, regulation, and deregulation.⁸

In the context of India, the historical connection between various bureaucratic institutions and British colonialism cannot be overlooked. The colonial administration introduced a peculiar set of rules dealing with the registration and identification of its subjects. Bernard Cohn has focused on colonial state formations and revealed the significance of knowledge-making practices such as the generation of documents, rules, surveys, and censuses that enabled the colonial state to know its subjects in order to govern them.⁹ These documents now constitute the archive that mediates our sense of colonial bureaucracy. For Ann Laura Stoler, these documents, the material remnants of the colonial state in the form of archives, serve as technologies that have the capacity to reproduce states.¹⁰ Official archives are, in a way, potential 'paper truths', presenting or repressing information, manifesting themselves in differentiated ways through the bureaucracy, police, and lower judiciary.¹¹

Eric Stokes lucidly enumerated the arrival and entrenchment of utilitarian thought when it came to creating modern institutions for India.¹² Bureaucratic endeavours in nineteenth-century colonial India, for example, were supported by the active creation of a legal code based on a Benthamian philosophy, and approached law and its effects by deploying the *felicific calculus*.¹³ It enabled the colonial state to wield influence and

⁴ T. Mitchell, 'Society, economy, and the state effect', in *State/Culture: State Formation after the Cultural Turn*, (ed.) G. Steinmetz (Ithaca, 1999), pp. 76–97; James. C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, 1998).

⁵ Franz Kafka, *The Trial* (London, 2000); Franz Kafka, *The Great Wall of China: Stories and Reflections*, (trans) Willa Muir and Edwin Muir (New York, 1948); Franz Kafka, 'Before the law', in *Franz Kafka: Collected Stories* (New York, 1998), pp. 173–175; Franz Kafka, *The Castle*, (trans.) Mark Harman (New York, 1998).

⁶ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (London, 2006).

⁷ David Graeber, *The Utopia of Rules: On Technology, Stupidity and the Secret Joys of Bureaucracy* (New York, 2015).

⁸ Anya Bernstein and Elizabeth Mertz, 'Introduction. Bureaucracy: ethnography of the state in everyday life', *PoLAR: Political and Legal Anthropology Review* 34.1 (2011), pp. 6–10; Gupta, 'Blurred boundaries', pp. 375–402.

⁹ B. Cohn, *Colonialism and its Forms of Knowledge: The British in India* (Princeton, 1996).

¹⁰ Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, 2009), p. 28.

¹¹ Emma Tarlo, 'Paper truths: the Emergency and slum clearance through forgotten files', in *The Everyday State and Society in Modern India*, (eds) C. Fuller and V. Benei (Delhi, 2000), pp. 68–90. While investigating the emergency period in India (1975–1977), Tarlo has highlighted the motive of 'paper truths' vigorously generated by state bureaucracy to repress the uncomfortable memory of the period, which included gross violations of human rights.

¹² Eric Stokes, *The English Utilitarians and India* (Oxford, 1990) p. 372.

¹³ J. H. Burns and H. L. A. Hart (ed.), *An Introduction to the Principles of Morals and Legislation* (Whithorn, 1970). Utilitarian philosopher Jeremy Bentham formulated a framework for calculating the amount of pleasure or pain that a specific action is likely to cause. The calculation included several variables (intensity, duration, certainty, propinquity, fecundity, purity, and extent) which Bentham referred to as 'circumstances'. Early colonial liberal thought (for example, Macaulay) was guided by such a Benthamian philosophy and argued that the East India

control over its subjects and facilitated a disciplinary arrangement based on the interactions between various departments, such as the police, the executive, and the judiciary. Money was involved in such bureaucratic interactions, both in the form of a fee (official) and bribe (unofficial).¹⁴ Colonial bureaucracy sustained the interaction between the subject and the state through an elaborate system that prescribed the use of various kinds of application forms. Each form was meant for a specific purpose and had to be supported by different types of documents requiring different kinds of credentials.¹⁵ Paperwork constituted the core of colonial governance and continues to do so in the post-independent era. Scholars have pointed out that the foundations of the East India Company were based on a Hobbesian framework of 'body politik', with a clear chain of command and hierarchy.¹⁶ The movement of paper through various channels ensured that the colonial business of the Company was conducted. It was later reflected in the late colonial government too when the Crown took over the business of government in India in the second half of the nineteenth century. The trend continued after independence. Ben Kafka has argued that bureaucracy is as much myth as material reality. Both the materiality of bureaucracy and its conceptual-fantastical fashioning should be grasped together.¹⁷ Like most myths, bureaucratic ones, he further argues, are about managing structural contradictions in how we are governed and how we govern ourselves in the modern world.¹⁸ Bureaucratic rationality has always demanded that 'governing paperwork' creates a sense of certainty in order to infuse legal order with legitimacy. Such an order is based on a system of vouching. Matthew Hull argues that the 'government of paper' established a bureaucratic system where 'vouching was done by artefacts, not people'.¹⁹ All official documents had to be 'vouched' through signatures, stamps, and entries made by a different official at each level. However, as this article will point out, in the colonial arrangement of vouching through and across paperwork, official 'discretion' (formal and informal) often mediated the direction paperwork would take.

One of the significant aspects of British administrative policy and legal bureaucracy was that it granted great discretionary powers to the executives of the police and the judiciary. Nasser Hussain outlines the legal and political dilemmas faced by British authorities and argues that the colonial regime maintained the rule of law by incorporating elasticity into legal procedure, enabling moral claims of legality and political claims of government to coexist.²⁰ Within the legal code, discretion was embedded to facilitate governance. A superintendent of police or a district magistrate would be able to make instant decisions in cases of public order, especially. At times, the discretionary powers that empowered ordinary policemen, although in a limited manner, brought the quotidian violence of bureaucratic paperwork to the surface. In such legal contexts, discretion refers to the power of a public official to make a decision, based on their opinion, within the prescribed guidelines. It 'involves considerations of right and wrong and the weighing of mitigating and

Company needed to create new, better, and modern laws for the Indians. Such laws were supposed to be superior to the traditional practices of adjudication (despotism).

¹⁴ Jonathan Saha, 'Colonization, criminalization and complicity: policing gambling in Burma c. 1880–1920', *South East Asia Research* 21.4 (2013), pp. 655–672, Special issue: Colonial histories in South East Asia—Papers in Honour of Ian Brown; also see William Gould, 'Subjects to citizens? Rationing, refugees and the publicity of corruption over Independence in UP', *Modern Asian Studies* 45.1 (2011), pp. 33–56.

¹⁵ Lloyd I. Rudolph and Susanne Hoeber Rudolph, 'Barristers and Brahmins in India: legal cultures and social change', *Comparative Studies in Society and History* 8.1 (1965), pp. 24–49.

¹⁶ Hull, *Government of Paper*.

¹⁷ Ben Kafka, *The Demon of Writing: Powers and Failures of Paperwork* (Cambridge, 2012), p. 16.

¹⁸ *Ibid.*, p. 11; pp. 81–82.

¹⁹ Matthew S. Hull, 'Documents and bureaucracy', *Annual Review of Anthropology* 41 (2012), pp. 251–336.

²⁰ Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor, 2003), pp. 35–68.

aggravating factors' in a legal context.²¹ Moments of official discretion, anthropologists have noted, operate as 'alien authority' that constitutes the law of the state.²² Such an authority comprises the unwritten and unspoken laws of the state that operate between the written law and its application. Recently, scholars have extensively discussed various dimensions of official 'discretion'. While Andrew Lowenstein has understood discretion as leverage that enables prosecutors (officials) to devise and execute their 'own enforcement strategies',²³ Amie Ely has noted it as part of an official responsibility motivated by a quest for justice.²⁴ In contrast, Laurie Levenson recognises discretion as a necessary outcome of legal imprecision.²⁵ Angela Davis²⁶ and James Vorenberg²⁷ have argued separately that discretion is dangerous and amounts to tyrannical power. It has come to be seen as a threat to justice, fairness, and the rule of law.

Others have pointed out that all claimants to discretionary power in colonial India refused to admit that it abrogated the rule of law.²⁸ Discretion enabled arbitrary acts which aimed to ensure the stability of the colonial regime and must be seen as a 'part of the legal sovereignty of the state itself'.²⁹ The British colonial regime aspired to foster political legitimacy, but the reality remained that it was a conquest regime. Various events in British colonial rule in India point to the fact that the regime repeatedly resorted to the discretionary authority of its executive and the force of its military. The colonial state created a structure of administration with a strong executive and judiciary and consistently insisted that certain acts would remain outside judicial enquiry.³⁰

A growing segment of historical literature has investigated colonial violence by examining grand events or incidents like the insurgency of 1857, the Ghadar Movement, Jallianwala Bagh massacre, etc., or incidents of direct physical violence on the body of the colonised.³¹ There is an urgent need to supplement this kind of scholarship with newer investigations that look at the other side of violence, which was not spectacular but subtle. As this article will show, such suffering and violence were conducted by legal-bureaucratic paperwork mediated by moments of official discretion. This article introduces other forms of colonial violence by looking at the story of an ordinary Indian, Peter Budge, who made the mistake of venturing out on the streets of Lucknow at a time of unrest and communal disturbances preceding the partition of

²¹ Austin Sarat and Conor Clarke, 'Beyond discretion: prosecution, the logic of sovereignty, and the limits of law', *Law and Social Inquiry* 33.2 (2008), p. 389.

²² Talal Asad, 'Where are the margins of the state?', in *Anthropology in the Margins of the State*, (eds) Das and Poole, p. 287.

²³ Andrew B. Lowenstein, 'Judicial review and the limits of prosecutorial discretion', *American Criminal Law Review* 38 (2001), p. 357.

²⁴ Amie N. Ely, 'Prosecutorial discretion as an ethical necessity: the Ashcroft memorandum's curtailment of the prosecutor's duty to "seek justice"', *Cornell Law Review* 90 (2004), p. 237.

²⁵ Laurie L. Levenson, 'Working outside the rules: the undefined responsibilities of federal prosecutors', *Fordham Urban Law Journal* 26 (1999), p. 557.

²⁶ Angela J. Davis, 'The American prosecutor: independence, power, and the threat of tyranny', *Iowa Law Review* 86 (2001), pp. 393-465.

²⁷ James Vorenberg, 'Decent restraint of prosecutorial power', *Harvard Law Review* 94 (1981), pp. 1521-1574.

²⁸ Hussain, *The Jurisprudence of Emergency*, pp. 4-5.

²⁹ *Ibid.*, p. 5.

³⁰ *Ibid.*, p. 6.

³¹ Taylor C. Sherman, *State Violence and Punishment in India* (Abingdon, 2010); Mark Condos, *The Insecurity State: Punjab and the Making of Colonial Power in British India* (Cambridge, 2017); Anupama Rao, 'Problems of violence, states of terror: torture in colonial India', *Interventions: International Journal of Postcolonial Studies* 3.2 (2001), pp. 186-205; Kim Wagner, *The Skull of Alam Bheg: The Life and Death of a Rebel of 1857* (London, 2017); Kim A. Wagner, *The Amritsar Massacre: An Empire of Fear and the Making of Massacre* (New Haven and London, 2019).

India.³² Peter was arrested for violation of multiple public order laws and thrown in jail, where he languished for a year and was declared untraceable by the legal bureaucracy.

In the following sections, Peter Budge's case will highlight that the implication of the provision of discretion is antithetical to the idea of the rule of law and, on the contrary, placed the executive or a policeman above the law. But what is even more important is that such moments of discretion also highlight the law's limitations. They aim to fill the gap that the imprecision of law creates. In the First Information Report (FIR), Peter's identity was recorded as Indian Christian; he had *sanwala rang* (brown skin colour), was potentially a lunatic, and a resident of Kandhari Bazar, Lucknow.³³ His misfortune resulted from two bureaucratic blunders: recording a wrong name at multiple institutions and the practice of maintaining careless records by the legal bureaucracy.

Bureaucratic processes governed by rules aim to achieve various goals of governance. Scholars have highlighted a bureaucratic tendency where rules become the goals in themselves, undermining the real intention for which they were instituted.³⁴ Sometimes, the more they are enforced, the less they are followed.³⁵ Scholars have also pointed out the potency of informal bureaucratic norms in achieving formal goals.³⁶ What is the purpose of a bureaucracy, then? Is it a self-perpetuating institution that replenishes its legitimacy through rules only, or does it have a substantive goal too? Peter's case will reveal that administrative pressure to maintain paperwork could lead to critical oversights. Merely maintaining paperwork is insufficient for upholding the rule of law. Attention to other aspects, such as coordination between departments and procedures, is equally important. Peter Budge's story will show that the actual functioning of bureaucracy and its stated aims are distinct. Beyond formal rules and regulations, both low and high-level bureaucrats innovate practices to maintain their legitimacy and authority. This article will show that officials in twentieth-century India, both in the police and the judiciary, conducted their business by instituting unofficial arrangements to manage their workflow. Such arrangements sometimes had unimaginable implications for citizens.

Peter's encounter with the law

The build-up to the partition of India was accompanied by astounding displays of communal violence. Volatile localities in the United Provinces susceptible to communal clashes were placed under various prohibitory orders such as the Communal Disturbances Act 1947, the Indian Arms Act, and section 144 of the Code of Criminal Procedure (CrPC).³⁷ The Communal Disturbances Prevention Ordinance 1947, for example, enabled ordinary policemen to use their discretion to decide who would fall under what category of crime. Under the new law, punishments for certain offences were enhanced, and the powers of the police and magistrates gained a different impetus.³⁸ For example, they would now be able to decide whether or not a person was participating in disorderly activities or was in possession of a weapon. Officials in the police and judiciary themselves were potentially vulnerable to the anxieties and dreams in such a context. The partition

³² See 'Inquiry about the detention of Mr. Peter Budge about a year without produced before court', File No. 814/48, Home Department (Criminal), Uttar Pradesh State Archives, Lucknow (hereafter UPSA).

³³ See Appendix 2, containing Roman transliteration of 'Naqalrapat number 22 roznamcha-am muwarakha, June 2, 1947, 11 ¼ bajey, Thana Allambagh, Lucknow', part of File no. 814/48, Home Department (Criminal), UPSA.

³⁴ Robert K. Merton, *Social Structure and Social Theory* (New York, 1968).

³⁵ Alvin Gouldner, *Patterns of Industrial Bureaucracy* (New York, 1954).

³⁶ Chester Barnard, *The Functions of the Executive* (Cambridge, MA, 1938); Peter Blau, *The Dynamics of Bureaucracy* (Chicago, 1955).

³⁷ 'Deterrent Punishment for rioters, Ordinance Promulgated in U.P.', *Hindustan Times*, 26 May 1947.

³⁸ See File No. 38/37/47, Public (A), National Archives of India (NAI).

of India was accompanied by independence/transfer of power. The simultaneity of both created a peculiar circumstance. Public disorder and communal violence accompanying partition created anxiety, and breaking from the shackles of colonial rule had set various political expectations. Behind the crisis, anxiety, unpredictability, and confusion around the context of partition, the bureaucracy continued to follow the rules, maintain files and paperwork, and sought to exhibit coherence and control and legitimise its authority to establish and maintain order. Against the backdrop of such a tense atmosphere, an ordinary man, Peter Budge, was stopped by two constables, Muhammad Saghir and Doodh Nath. They enquired as to his identity and his purpose in roaming the streets when prohibitory orders were in place. He informed the constables that he was merely taking a walk. It led to an argument, followed by Peter's detention and the confiscation of his walking stick under the Indian Arms Act.

Peter was taken to the police station, and a case was registered against him for violation of public order laws. According to the FIR, Peter was suspected of being a potential lunatic, and his walking stick was recorded as a weapon under the Indian Arms Act. Notably, actual circumstantial reality became irrelevant when left to the discretion of the policemen. The story of Peter Budge's misfortune did not end here. His freedom became increasingly distant with the repetitive wrongful recording of his name. The initial error resulted from the policeman's handwriting in *Nastaliq*, where Peter was recorded as 'Peer' and Budge as 'Bajar'.³⁹ His name was repeatedly erroneously written down, as the following sections will show. His father's name, too, was recorded with errors. He had multiple names noted for him in the records of multiple institutions.

Peter's story is important because he was neither part of a political party nor arrested while rioting or protesting against the government. The story is of an ordinary person who, in addition to having been in the wrong place at the wrong time, became subject to bureaucratic violence through erroneous paperwork. In the following sections, Peter's ordeal will highlight the quotidian practices of the local police, jail authorities, and the judicial bureaucracy in handling marginal cases of ordinary figures who would appear to be politically insignificant. Peter's detention took place before 1947, and his ordeal ended after India had achieved independence. He missed the moment of India's independence while languishing in jail. He did not fit into any ready-made colonial problem category and received little attention. His case disappeared between the cracks of bad record-keeping and insufficient coordination between various departments.

Peter's story came to light when it was published by a prominent newspaper.⁴⁰ It became a momentary administrative embarrassment for the government of the United Provinces (UP). The publication of Peter's ordeal called into question ordinary citizens' rights in the newly independent India. The premier (chief minister) of the United Provinces intervened personally after the story was published. He rang the deputy secretary to enquire about the case and ordered him to deal with the ensuing scandal. Since India was an independent country now, the story of such an administrative lapse causing undue suffering to an ordinary man embarrassed the provincial government. The news story pointed to a potentially dark legacy that the post-colonial Indian bureaucracy was supposed to overcome. It is not known how Peter's case came to be published in the first place nor what happened to him afterwards. However, such reportage does achieve a wider political purpose. Scholars have argued that newspapers (the media) are crucial mediators of state acts because they enable the state to revisit, argue, course

³⁹ This is an observation made in the enquiry report submitted by Justice Desai. The author had access to the English translation of the documents related to the case. These documents were part of File No. 814/48, Home Department (Criminal), UPSCA.

⁴⁰ 'Release after nearly a years' jail as undertrial', *The Pioneer*, 11 May 1948.

correct, substantiate, and sometimes reiterate its commitment to a fair experience of citizenship.⁴¹ To deal with the fiasco, the UP government immediately appointed Justice M. C. Desai, district and sessions judge of Lucknow, to conduct a judicial enquiry into the case.

It is pertinent to discuss the difference between an investigation and an enquiry here. The former should not be confused with the latter.⁴² In legal bureaucracy, the police are responsible for investigating an incident, evaluating a context as either legitimate or illegitimate, and then charging the individual(s) for a particular violation. On the other hand, an enquiry aims to ascertain that an action that is defined as criminal actually took place and must establish the source of the act. Michel Misse refers to an enquiry report as a 'piece composed of technical reports, accounts recorded by a notary public and a legally-oriented report, signed by a police commissioner (in this case an inquiry ordered by the government, and conducted by a Judge) with a degree in Law'.⁴³ An enquiry is meant to identify facts and isolate heresy. It aims to restore what the investigation has failed to achieve, that is, re-examination based on complete facts. It is a double accusation, one on the original accused and the second on the investigating agencies. It was with the purpose of fact-finding that the enquiry was instituted into Peter Budge's detention. More than the circumstances of Peter's detention, the fact-finding report, as the following sections will reveal, exposed the practices of the legal order itself. Due to such practices, Peter's freedom became unseen, as, for him, law and legal facts came to constitute an altogether different way of experiencing citizenship.

The details of Peter's misfortune will enhance our understanding of the 'other' violence that legal bureaucracy unleashed on its subjects. In times of great uncertainty and communal violence, Peter decided to take a walk in the street of Lucknow on the morning of 2 June 1947. As mentioned above, he was arrested and a case was registered against him. It was mentioned in the FIR that 'he was found carrying a bamboo stick in contravention of the orders under section 144 CrPC and refused to give up his stick when asked to do so'.⁴⁴ His refusal to hand over his walking stick led to it being recorded as a 'weapon' because it 'contravened' the prohibition orders in place. In this context, the two constables and their act of arresting Budge neatly fit into what is referred to as 'street-level bureaucracy'.⁴⁵ According to this understanding, policemen are typical street-level bureaucrats because of their regular and direct interaction with citizens concerning issues of law and order. These bureaucrats are characterised by the power to exercise discretion over matters for which they are directly responsible. During moments of public disorder, a prescribed format of social life applies, which narrowly defines the legitimate, although vaguely. When public order laws are activated in volatile situations, there lurks a general atmosphere of distrust and suspicion. Scholars have noted that 'suspicion (like doubt) occupies the space between the law and its application'.⁴⁶ Hence the legal bureaucratic systems of the modern state 'presuppose organized suspicion, incorporate margins of uncertainty'.⁴⁷ The deciphering of suspicion is an act of translation.

⁴¹ Das and Poole (eds), *Anthropology in the Margins of the State*.

⁴² Michel Misse, 'O papel do inquéritopolicial no processo de incriminação no Brasil: algumas reflexões a partir de umapesquisa', *Revista Sociedade e Estado* 26.1 (2011), pp. 15–27. Also see Paula Chagas Lessa Vidal, *'Os donos do carimbo': investigação policial como procedimento escrito* (Rio de Janeiro, 2013).

⁴³ Misse, 'O papel do inquéritopolicial no processo de incriminação no Brasil: algumas reflexões a partir de umapesquisa', p. 19.

⁴⁴ See Judicial Inquiry Report, and the draft of the report by the district magistrate. Part of File no. 814/48, Home Department (Criminal), UPSA.

⁴⁵ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York, 1980).

⁴⁶ Asad, 'Where are the margins of the state?', p. 285.

⁴⁷ *Ibid.*

The manoeuvring of translation (of things and persons) bridges the gap between the legitimate and the illegitimate in such contexts. Such a translation stops midway, deciphering the context only and does not engage in its explanation. In Peter's case, suspicion enabled the two constables to interpret his presence on the road as a potential threat to public order and, as a result, discretion granted by law empowered them to confiscate his walking stick by declaring it a weapon.

After confiscating Peter's walking stick, the constables took him to the police station, where he was detained for a day. He was sent to the City Magistrate's Court the next day at 12.25 pm. According to the charge sheet filed in the court, he was booked under section 152 CrPC and section 188 IPC.⁴⁸ After obtaining the complaint from the district magistrate, Peter was sent to jail the very same day. The magistrate did not bother to ascertain if the accused was wrongly detained or not. Peter would stay incarcerated for almost a year from then.

The disorderly paperwork of legal bureaucracy

Justice Desai's enquiry into the circumstances of Peter's detention found that he had been detained under improper initial charges. Also, a series of 'clerical errors' had occurred when his details were recorded. Such 'errors' were the result of Urdu-English transliteration problems. Budge's name was sloppily written in *Nastaliq* and was later Romanised. The report in the general diary recorded his name as 'Peer Bajar s/o Tanik Bajar' whereas his actual name was 'Peter Budge s/o Tommy Budge'. The diary was maintained by the head *moharrir*, Munis Khan, who did not know English. The enquiry report opined that he should have taken care while noting a different (Christian) name. The sub-inspector's report, which was treated as the charge sheet, was copied from *moharrir*'s diary without cross-checking the details. Most importantly, despite the fact that Peter Budge was described as 'cracked head and insane', a medical and psychiatric examination was not conducted. Technically, he was wrong to arrest a person of 'unsound mind' and remand him in custody without a psychiatric examination.

Peter was taken to jail on 3 June 1947. The enquiry discovered that the papers related to his transfer to jail were lost and declared untraceable. As if this were not enough, Peter was thrown into jail under yet another name—'Peer Buj s/o Tomi Buj'. This added another layer of confusion to the paper trail concerning his detention. While his arrest was illegal in the first place, his detention was also illegal because the city magistrate who signed the warrant and remanded him to jail up to 17 June 1947 did not open any file in his name, nor did he make any entry about the matter in any register as required by procedure.⁴⁹ Another error on the part of the city magistrate was that he did not take cognisance of the offence (under section 188 IPC) and could not do so without a complaint by the district magistrate. He did not have the authority to remand the accused for even one day. However, as the enquiry report revealed, Peter was remanded for 14 days.

The litany of clerical errors continued. The sub-inspector had to attach a form with the charge sheet to seek the district magistrate's sanction for the case. Unfortunately, he had recorded Peter's details as 'Peer Bakhair s/o Tank Bakhair', leading to further confusion.⁵⁰

⁴⁸ Section 152 CrPC deals with 'Assaulting or obstructing a public servant when suppressing riot, etc.'; Section 188 IPC deals with 'Disobedience to order duly promulgated by public servant'. What is significant about these sections is that it is not necessary that the 'offender' should intend to produce harm or contemplate his/her disobedience as likely to produce harm. It is sufficient that they know of the order which they are disobeying, and that their disobedience produces, or is likely to produce, harm.

⁴⁹ See File No. 462/1948, Home Department (Police) B, 'Criminal Law Amendment Act, Question of issue of orders under section 144', p. 3, part of File No. 814/48, UPSA.

⁵⁰ *Ibid.*

Not only this, the clerk in the court (*ahalmad*) took 14 days to get the district magistrate's signature on the form. Delays and oversights at various levels created further challenges in the case.

Finally, when the case was registered in the court of the city magistrate on 16 June 1947, the court clerk opened the file in the case but recorded Peter's details in the register as 'Pir Baksh s/o Tank Bahadur'.⁵¹ These multiple careless entries made it impossible to later trace the man. Nor did errors spare his father's name. It had now been further changed from 'Tanik Bakhair' to 'Tank Bahadur'. The magistrate did not notice the error in the recording of the names nor did he observe that the police report had suggested that the man be medically examined to ascertain his mental health. No order was issued to the superintendent of the jail for a medical examination to take place either.

The investigation revealed that Peter was not sent to the court as per the rules when his remand expired on 17 June 1947. A fabricated date for 8 August 1947 was fixed for his next appearance which implied that the warrant had not been extended, and Peter was detained without authority. The enquiry report held the assistant jailer, Radha Raman Tiwari, responsible for this unlawful detention.⁵² The case was handled by three different judges owing to the judges being transferred one after the other. All of them repeatedly issued summonses for the accused to be presented before the court without knowing that he was languishing in jail. The summons kept coming back with no response. And of course, there was no need for a summons to be issued in this case in the first place as the accused was already in detention. It shows the carelessness of the judiciary. In addition to the clerical staff (*moharrirs* and *ahalmads*), magistrates too were not careful and attentive to paperwork. Neither the clerks in court nor the magistrate seem to have read the charge sheet and copy of the report of the general diary. During the enquiry, various officers said that they were overworked and often put in overtime. In the spring/summer of 1947, there was a lot of movement of judicial and administrative officers because of partition which could possibly have added to delays and disruptions in Budge's case.

The issues of legibility, transliteration, and the vernacular all made official records confusing. Also, many bureaucratic habits that were in contravention of the rules and regulations had (unofficially) become acceptable practices. Careless handling of paperwork across different authorities, be it the police, jail staff, or the judiciary, underlined the copying and incorrect recording of details without due investigation. For example, it was revealed that the reader of the court, Oudh Behari, had admitted that there was Urdu writing on the complaint. It read '*mulzimaan muqayyad hai*' (the accused is under detention).⁵³ But Oudh Behari claimed that he read it as '*muqayyad azad hai*' (the detainee is free). Justice Desai's enquiry report disagreed with the possibility that '*muqayyad*' could be read as '*azad*'. Furthermore, the judges who kept issuing summonses declared an accused as absent when it was the jail authorities who repeatedly did not produce him before the magistrates. All the summonses were, at least in this case, carelessly endorsed. When the summons reached Peter's locality, nobody knew a person by the name of 'Pir Baksh' or 'Pir Bakhair'. The enquiry discovered that the entries in the lockup register and in the diaries of the court clerks and jail authorities were fabricated and did not match the actual details of Peter's detention. Records comprised manufactured entries and emanated from neither law nor authority and they did not reflect the facts of the

⁵¹ *Ibid.*, p. 4.

⁵² See File No. 462/1948, Home Department (Police) B, 'Criminal Law Amendment Act. Question of issue of orders under section 144', p. 4, part of File No. 814/48, UPSA.

⁵³ *Ibid.*

case. These were acts of official discretion, which were neither questioned nor condemned but seen as integral to the functioning of the legal bureaucracy.

In November 1947, the case was transferred to a special magistrate Dr S. N. Bose. He, too, repeated the mistake and fixed the next date of hearing for 5 January 1948. By this time, Peter had already spent eight months in jail without being presented before a magistrate. When Peter was found absent by the special magistrate, he again issued a summons for 16 January 1948 but took the precaution of issuing it through the channelling authority, which meant carefully recording the facts so any follow-up on the case was made easier. When the summons order was not received from the police, another summons was issued through the channelling authority, and the next hearing was fixed for 26 January 1948. When the accused was found to be repeatedly absent, the special magistrate's court dismissed the complaint on the grounds that the accused was untraceable. The case against Peter came to an 'end' on 26 January 1948 without anyone noticing that he was still rotting away in jail. The enquiry report later concluded that the initial blame lay with the court *moharrirs* who were in the habit of doing fictitious work and did not realise their responsibility in such matters. But it was the court too that was inattentive even though the jail superintendent kept sending warrants time and again. According to the enquiry report, 'it was a question of liberty of an individual who had already undergone unlawful detention'.⁵⁴ But one can argue that it was more a question of the banality of legal procedure.

During the enquiry, it was also discovered that the jail superintendent did send Peter Budge to court on three occasions after January 1948, but on each occasion, the court returned him. When, repeatedly, no notice was taken of the matter, the superintendent wrote a letter on 28 April 1948 to the district magistrate bringing this unlawful detention to his notice. The magistrate received the letter on 6 May 1948 and immediately ordered the jail authorities to present Peter Budge before the Court. Peter Budge was presented before the magistrate the next day and was immediately released under section 249 CrPC.⁵⁵ By this time, Peter had spent almost a year in detention. The case that began with the discretion of the policemen ended with the discretion of the magistrate because Section 249 CrPC pertains to a situation where:

When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.⁵⁶

Using his granted discretion, the magistrate released Peter on the grounds that there were no papers connected with his detention, and he was never produced before the court. Therefore, his detention was held to be illegal. The irony is that the court did not trouble itself to enquire if there was any mistake on its part or whether the system was itself inefficient or careless. During the enquiry, the magistrates and jail authorities did accept that there were gaps in the way the legal bureaucracy functioned. However, they blamed these on staff shortages and overwork. They accepted their constraints and expressed the difficulty they had in managing an ever-increasing volume of legal and administrative correspondence with limited resources. The institutions that appeared so ordered and

⁵⁴ See File No. 462/1948, Home Department (Police) B, 'Criminal Law Amendment Act, Question of issue of orders under section 144', p. 9, part of File No. 814/48, UPSA.

⁵⁵ *Ibid.*

⁵⁶ See 'Section 249', the Code of Criminal Procedure (CrPC) for India.

considered their work ethic as rule-based, in reality, operated under constraints. The facade of order in the legal bureaucracy was exposed when the upholders of such a systematic order proved to be the most chaotic and lawless of all. Peter's case demonstrates that at the heart of this 'Government of Paper' is an element of error, neglect, and confusion. The police, jail authorities, and the magistrates were all involved in the violation of due process.

Peter Budge's story reveals the violence of legal bureaucracy in India where individuals could be trapped in a mechanical world of bureaucratic procedures that served little purpose other than its perpetuation. As a result, the centrality of justice was often rendered irrelevant in the web of bureaucratic hierarchies and rules. It is evident in Budge's case that, despite the availability of meticulously laid out rules, the law could not sustain the balance between law and justice because it was precisely in the context of colonialism that a decoupling of the procedural and substantive elements of law took place. However, the two elements coexisted and maintained the overall framework of the justice system in India. Each procedural error in Budge's story brings to light nothing but law's own nature/making and highlights that official discretion was constitutive of the idea of justice. Right from the moment of Budge's detention to the orders for his release and the subsequent enquiry by Justice Desai, a complex and strained bias towards 'procedure' is dominant and notable. The enquiry report, thus, is an exercise in salvaging the law by blaming procedural distortions. Such an enquiry facilitated covering up the gap between the procedural and the substantive in colonial law. Budge's story is prodigiously instructive of this dilemma and exposes a fundamental problem in the nature of colonial legality. The question of justice exhausts itself as the story of Budge's illegal detention unravels. The law ends up in failure, both at the procedural and substantive levels. The enquiry report did not highlight the indeterminacy of law and the salutary production of injustice in the entire process. As a result, the injustice suffered by Budge was assimilated into the narrative of law by the rehabilitation of (correct) procedures in the enquiry report.

Conclusion

Observations at three levels can be made from the Peter Budge story: a first level, about the nature of the bureaucracy of paperwork as such; a second, about the repercussions of official discretion on ordinary lives; and a third, regarding the question of justice and procedure in late colonial India.

British colonial government in India saw its bureaucracy and the paperwork it generated as one of its strengths. Legal procedure functioned as rationality where the state could, in principle, master or control all things by calculation. The entire purpose of such an administrative system was based on the establishment of depoliticised bureaucracy, impartial judiciary, rule-bound norms, and dutiful police. The 'order of files' breathed life into such a bureaucratic order and was argued to be laden with facts and, therefore, truth. Legal formality and the bureaucratic management of life, as the case of Peter Budge reveals, aimed to reinforce elements of precise control at each level. Although legal procedure specified the rules of conduct, the conduct itself was not always legal. Throughout this article, Budge's story and the enquiry report have challenged such a convenient understanding of colonial bureaucracy, exposing the fictitious nature of the paperwork involved.

The colonial experience had already extended the reach of bureaucracies to their widest extent. Such extensions, especially in the first half of the twentieth century, brought new strengths and weaknesses of the state to the fore. They not only opened up opportunities for corruption but distortion of the procedure too.⁵⁷ Corruption here does not

⁵⁷ Gould, 'From subjects to citizens?', pp. 33–56.

merely mean monetary or personal gain, but practices that were either quasi-official, crypto-official, or fictitious. Such practices were constitutive of the emergent post-colonial state. Informal rules and false records were commonplace in clerical practice.

Peter Budge's ordeal shows that in situations of 'public disorder', police officials could declare someone's presence a violation of public tranquillity or declare an object a weapon. What is pertinent is the basis on which such action could be taken. Charging a person with a particular extraordinary crime and then proving it were two different sides of the administrative machinery. Ideally, a respite from injustice could be expected by challenging the official prejudice involved. But in this case, official incompetence both in language and law further complicated the process. The career of public order laws that granted discretionary powers to various officials emerges as a corrupt and potent remnant of colonial legality. Such laws highlighted the significance of the performative aspect of state power and enabled a disciplinary and punitive image of the state.

Illegal detentions and bureaucratic violence due to the promulgation of public order laws demonstrated the state's capacity to discipline its citizens with disregard for the consequences of such laws and the supplementary discretionary powers granted to officials. The state and its practices are always written into ordinary lives, but Budge's story enables us to make those practices visible. Peter's ordeal highlights that the spectacular in law trumped the substantive, and disciplining the city undermined the liberty of ordinary citizens. Budge's story demonstrates that the state and its legal machinery were often internally incoherent, and its officials enjoyed unchecked powers and followed practices contrary to the stated claims. Individual officials like the local policemen, the clerks, and even the judges acted in ways that circumvented the stated objectives of the state.

Conflicts of interest. None.

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