

A SUITABLE BOY: THE ABOLITION OF FEUDALISM IN INDIA

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Abstract

This article focuses on law and literature as a challenging tool in teaching courses in comparative law. Certain representative novels may provide important analytical instruments, especially in approaching legal systems that do not belong to the Western legal tradition but that involve a set of values profoundly rooted in a specific conception of society. In these instances, literature is used as a key in understanding the social impact of particular legal institutions, the nature of which seems difficult for European scholars to comprehend. This is particularly true in cases such as those in India, where the legal system is composed of different layers: the traditional, the religious and that of the colonial period.

The article examines a concrete literary example offered by Vikram Seth in his novel *A Suitable Boy*, in which the author deals with the debate about peasants' property in the form of land and about the abolition of the *zamindari system*, which had been introduced in India by the Mughals to collect land taxes from the peasants. It was continued by British rulers during the colonial period, but after independence in 1947 the system was abolished and the land was turned over to the peasants. To Westerners, the abolition of the *zamindari system* would seem to have been a sign of real independence and of the will to abolish feudalism. Nevertheless, the abrogation did not prevent the emergence of farm suicides in India, which have occurred since the middle of the 1990s.

Seth's novel allows us to witness firsthand the events that took place during the period when the law that put an end to the *zamindari system* was passed and to see with new eyes the genuine impact of such a reform.

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1 At first sight: a love story

A Suitable Boy is essentially a love story that centres on the efforts of the wife and mother, Rupa Mehra, to arrange the marriage of her younger daughter, Lata, to a 'suitable boy'. 'You too will marry a boy I choose' is the first line in the book, and the words are spoken firmly by Rupa Mehra to Lata on the day that the older daughter, Savita, marries Pran Kapoor. Though Lata, at 19 years old, appears to be a vulnerable college student, she is nevertheless determined to have her own way and not to be influenced by her strong-willed mother or her opinionated brother, Arun.

Ultimately, the story revolves around the choice Lata is forced to make between her suitors, Kabir, Haresh and Amit, but at the same time it examines the inner machinations of and the problems faced by four families: the Kapoors, the Mehras and the Chatterjis, who are all Hindus, and the Khans, who are Muslims.

The novel depicts in detail the lives of these families over a period of 18 months in the newly independent India; four family trees are also provided to help the reader keep track of the complicated and interwoven family networks. The Mehras live in a fictional town, *Brahmpur*, in a fictional state, *Purva Pradesh*, which along with other *real* Indian towns, like Calcutta, Delhi and Kanpur, forms a colourful backdrop for the emerging stories.

2 An important role for Law and Literature: many different stories

Though at its core the novel is about the search for a husband of suitable *Hindu* character for Lata, who is in love with a Muslim boy, Kabir, the plot is more complex.

Throughout the novel, the author examines important national issues of a political nature in the period leading up to the first post-Independence national election of 1952: namely, the psychological and economical effects of the partition between India and Pakistan on the refugees, as well as the status of lower caste peoples, such as the *jatav*. At the same time, this epic novel highlights various other issues including Hindu-Muslim strife, abolition of the *zamindari system*, land reforms and the empowerment of Muslim women. However, the book's most important tool by which to interpret Indian culture is the questioning of the generally acknowledged view held by Western lawyers concerning the role of the law in society.

A Suitable Boy is able to demonstrate many diverse aspects of Indian law as well as the persistence of old traditions, notwithstanding the introduction of legislative mandatory norms of varied significance.

Current Indian jurisprudence has written laws and a written Constitution, proclaiming the constitutional rights of Indian people, including Hindu, Islamic and others, although the *law in action* is still deeply rooted in ancient traditions.

As Patrick Glenn has pointed out: ‘It looks a lot like US law, yet there remain profound differences’.¹

Though Indian law is clearly different, it is difficult to convey to students of comparative law *how* different it is, and to show how life and social behaviour in modern India is still conditioned by ancestral rules even if the *law in the books* seems highly similar to that of the Western legal tradition. This is something that does not correspond to the task of the classical introductions to comparative law, like those by René David, *Les grands systèmes de droit contemporains*, by Zweigert and Kötz, *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts* or by Gambaro and Sacco, *Sistemi giuridici comparati*.²

In this field, the role of *law and literature* in the teaching of comparative law could be of considerable interest, and Vikram Seth’s novel offers a number of indications in this regard.

From a comparative point of view, and for a better understanding of the struggle that the novel explores, it is important to remember the relevance of the newly fashioned Indian Constitution, which introduced a broad principle of non-discrimination among castes.³

¹ H.P. Glenn, *Legal Traditions of the World* (Oxford: Oxford University Press 2000) at 275.

² If we consider the state-of-the-art comparative law research on the Indian legal system, it is in fact to underline that it is not particularly rich if we exclude the chapters that we find in more or less all volumes of introduction to comparative law in general terms. Attention to the Indian legal system is nevertheless increasing. See e.g. G. Sharma (ed.), *An Introduction to Legal Systems of the World* (New Delhi: Deep and Deep Publications 2008); G. Sharma, *Ancient Judicial System of India*, (New Delhi: Deep and Deep Publications 2008); W. Menski, *Hindu Law: Beyond Tradition and Modernity* (New York: Oxford University Press 2003). See also the interesting volume D.R. Saxena (ed.) *Law, Justice and Social Change* (New Delhi: Deep and Deep Publications 1996) where different authors deal with the question of how law can introduce social change in India. A comparison between different conceptions of ‘law’ is at the core of an important volume by R. May, *Law and Society, East and West: Dharma, Li and Nomos, Their Contribution to Thought and to Life* (Stuttgart: Franz-Steiner-Verlag-Wiesbaden 1985).

³ Art. 15 of the Indian Constitution introduced a Prohibition of discrimination on grounds of religion, race, caste or place of birth, stating: ‘Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to: (a) access to shops, public

The principles introduced by the Indian Constitution not only concern a general prohibition of discrimination but insist on a positive role of legislation in order to promote the most disadvantaged people. The more detailed Article 16 of the Indian Constitution foresees that the State may introduce provisions for the reservation of appointments or posts in favour of 'any backward class of citizens which, in the opinion of the State, is not adequately represented', and in particular for Scheduled Castes and Scheduled Tribes.⁴ Scheduled Castes consist mostly of former *untouchables* (now known as *Dalits*, which means '*the oppressed*'), while Scheduled Tribes are indigenous peoples, isolated from mainstream society. Under the Indian Constitution, Scheduled Castes and Tribes are automatically allotted a reservation proportional to their share of the population: about 22.5%

restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children'.

⁴ Art. 16 of the Indian Constitution (Equality of opportunity in matters of public employment) foresees: 'Equality of opportunity in matters of public employment.- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment. (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. (4A) Nothing in this article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.] (B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year. (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination'.

nationwide.⁵ The notion itself of *untouchability* is abolished by the Constitution, while the enforcement of any disability rising out of it is considered an offence punishable in accordance with the law.⁶

In reading Vikram Seth's book, the lawyer is obliged to consider the effect of written law, even of a superior kind, like constitutional law, on the power and the strength of traditions, and especially on traditionally based divisions within society.⁷

One might recall that after India gained independence from Britain in 1947, the new Indian government planned to codify the law.⁸ And far from being a univocal reaction to British colonial law, the Hindu Code was aimed at unifying in statutory form Anglo-Hindu law, and in particular the whole of family law and the law of succession. The new law was meant to establish a single statutory standard for all Hindus,⁹ without distinction of caste. The draft was strongly opposed by the conservatives, for whom any code 'was anathema and also by those who were unprepared to give up the special customary laws of their locality'.¹⁰

Contentious debate followed the presentation of the Hindu Code in the Indian Parliament. In the end, a series of four major pieces of legislation were passed in 1955-56 and these laws form the first point of reference for modern Hindu law: the Hindu Marriage Act (1955), the Hindu Succession Act (1956), the Hindu Minority and Guardianship Act (1956) and the Hindu Adoptions and Maintenance Act (1956).

The novel provides important insights into these developments, which took place under Minister President Nehru and the first Law Minister of the Indian Republic, Dr. Ambedkar, 'the great, already almost mythical, leader of the untouchables'.¹¹ In particular, the novel explains not only the

⁵ See S. Pager, 'Comparisons in Color Consciousness Affirmative Action Targeting in the US, India, and France,' in B. Pozzo (ed.) *Multiculturalisms: Different Meanings and Perspectives of Multiculturalism in a Global World* (Bern: Stampfli 2008).

⁶ Art. 17 (Abolition of Untouchability) foresees: "'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability rising out of 'Untouchability' shall be an offence punishable in accordance with law'.

⁷ It is worth noting that Rupa Mehra, Lata's mother, not only makes a strong distinction between Hindu and Muslim and – among Hindus – between different castes but also inside the 'right caste', in which she would like to choose between light-skinned and dark-skinned people a husband for her daughter.

⁸ T. Weir (tr.), K. Zweigert and H. Kötz, *An Introduction to Comparative Law* (New York: Oxford University Press 1998, 3rd ed.) at 318.

⁹ Glenn, above n. 1 at 275.

¹⁰ Zweigert and Kötz, above n. 8 at 318.

¹¹ V. Seth, *A Suitable Boy* (New York: Harper Collins Publishers 1994) 'Novel' at 1132. Dr. Bhimrao Ramji Ambedkar (1891–1956) rose from a community of 'untouchables,' to become a major figure in modern Indian history. On his role in

efforts to introduce a new Hindu Code but also the struggle of Ambedkar and Nehru to introduce new principles of law in defence of oppressed people:

In Delhi, in Parliament, opposition by Members of the Parliament from all sections of the House, including his own, forced him to abandon his attempt to pass the Hindu Code Bill. The legislation, very dear to the Prime Minister's heart – and to that of his Law Minister, Dr. Ambedkar – aimed to make the laws of marriage, divorce, inheritance and guardianship more rational and just, especially to women.¹²

The reader is then forced to look at these initiatives from a new perspective: the Hindu Code was not only a way to recast the old law after independence from British rule but was also a subject of controversy among Hindus themselves about the purposes of the new law in India.

With regard to untouchability, Seth unequivocally demonstrates the struggle between old traditions and new mandatory rules. Though untouchability had been abolished by the Constitution, the traditional approach to castes remained:

In the villages, the untouchables were virtually helpless; almost none of them owned that eventual guarantor of dignity and status, land. Few worked it as tenants, and of those tenants fewer still would be able to make use of the paper guarantees of the forthcoming land reforms. In the cities too they were dregs of society. Even Gandhi, for all his reforming concern, for all his hatred of the concept that any human being was intrinsically so loathsome and polluting as to be untouchable, he believed that people should continue in their hereditarily ordained professions: a cobbler should remain a cobbler, a sweeper a sweeper.¹³

Nevertheless, *A Suitable Boy* does not limit itself to describing the broad spectrum of life and social changes in newly independent India but goes into detail regarding a specific legal issue that concerns land reforms that were enacted in that period. The reforms were aimed at abolishing the *zamindari system*, which for centuries, and since the times of the Mughal, had dominated landlord-tenant relationships.

post-independent India see C. Jaffrelot, *Dr. Ambedkar and Untouchability, Fighting the Indian Caste System* (New York: Columbia University Press 2005), in particular Chapters 7 and 8.

¹² Novel, *Id.* at 1104.

¹³ *Id.* at 1131, where Seth quotes Gandhi on the very essence of Hinduism: 'One born a scavenger must earn his livelihood by being a scavenger, and then do whatever else he likes. For a scavenger is as worthy of his hire as a lawyer or your President. That, according to me, is Hinduism'.

3 The birth of the *Zamindari System* in India

The *zamindari system*¹⁴ originated in India during Mughal domination.¹⁵ Although the word *zamindar* is of Persian origin and means ‘the controller or holder of *zamīn*, or land’,¹⁶ the use of it as a *legal* concept originated in India; the word is practically unknown in Persia.¹⁷

A *zamindar* in Mughal times was a ‘vassal in chief’ and *zamindari* was defined as ‘the right which belonged to a rural class other than, and standing above, the peasantry’.¹⁸

As a property right,¹⁹ *zamindari* had, in the first place, specifically rural and agrarian associations. In the second place, legal definitions dating back to Mughal times stress the superior nature of *zamindari* right, in the sense that it was seen as being extended to the village rather than to any particular plot of land.²⁰

Fundamental historical sources from the 15th and 16th century witness that peasants recognised the *zamindars* as proprietors and acknowledged their right to evict them and to give their land to others for cultivation,²¹ although the chief objective of a *zamindar* in normal circumstances would have been to keep his peasants rather than to lose them.

It has been underlined that this right of eviction might originally have had little practical significance, as an abundance of land characterised the Mughal period, while later on this prerogative became a merciless instrument in the hands of the *zamindars* when the population increased rapidly under the British regime.²² On the other hand, it is not certain whether the *zamindars* could legally force the peasants to remain on their lands.²³

¹⁴ On the origin and evolution of the *zamindari* system, see I. Habib, *The Agrarian System of Mughal India, 1556-1707*, (Oxford: Oxford University Press 1999, 2nd ed.) at 169 ff., all of Chapter V is dedicated to the topic.

¹⁵ On the Mughal invasion and domination of India, see G. Dunbar, *A History of India from the Earliest Times to the Present Day* (London: Nicholson-Watson Publisher 1942, 3rd ed.). My reference is to the Italian Translation: *Storia dell’India*, by F. Valori, 1961, at 181 ff.; P. Spear, *India, A Modern History* (Ann Arbor: The University of Michigan Press 1961). My reference is to the Italian translation, *Storia dell’India*, (Milan: Rizzoli 1970) at 149 ff.

¹⁶ Habib, above n. 14 at 169.

¹⁷ *Id.*

¹⁸ *Id.* at 174.

¹⁹ On the concept of *property*, according to Hindu Law, see *id.* at 169

²⁰ Habib, above n.14 at 173.

²¹ *Id.* at 178.

²² Dunbar, above n. 15, in the Italian version, at 538.

²³ Habib, above n. 14 at 178.

The purpose of *zamindari* was of course to provide possessors with an income.²⁴ This could derive from the land's products, as well as from holding back a share of the annual harvest, but also from other sources, such as the sale of milk.²⁵

In this situation, agricultural production was not at all left intact in the hands of the peasants: it was creamed off by the land tax, with the government, central or provincial, taking the major share. The rest went to local landholders, with a small residue allotted to the villages collectively and from which corporate village life and its services were maintained. The actual cultivator was left with just enough to subsist on and with no reserve against famine.²⁶

As in all feudal societies, the *zamindars* also had a significant social function: namely, that of defending their families and the peasants against the gangs of plunderers that frequently sacked Indian villages.²⁷

At the same time and consequently, *zamindars* considered that they were entitled to levy a number of miscellaneous cesses, like *jalkar* and *balkar*, or levies on water and forest produce, and poll taxes on men, as well as taxes on marriages and births²⁸:

In the end, almost throughout the Mughal empire there existed fiscal claims of the zamindars upon land lying within his zamindari, the claims being met either through cesses or levies on the peasants and others or through the holding of a portion of the land free revenue-free or through a cash allowance out of the revenue collected from the entire land by authorities.²⁹

These taxes represented a large part of the *zamindar's* income, which was obtained on the basis of his proprietary right. But there was another important source of income, which arose out of his position as a servant of the State, 'a cog in the machinery of revenue collection'.³⁰ For his services, the *zamindar* received a 'subsistence' allowance, called *nankar*, ranging from 5 to 10 percent of the revenue, paid in money or in the form of revenue-exempt land.³¹

To people in rural areas, the government appeared mainly as a revenue-collecting agency. The cultivated land was recorded, the value of the crops was assessed and the share of the government was determined. The

²⁴ *Id.* at 179.

²⁵ *Id.* at 180.

²⁶ P. Spear, *A History of India, Vol. 2, From the Sixteenth Century to the Twentieth Century* (London: Penguin Reprint 1990) at 49.

²⁷ Dunbar, above n.15, in the Italian version, at 538.

²⁸ Habib, above n. 14 at 181.

²⁹ *Id.* at 186.

³⁰ *Id.*

³¹ *Id.*

distinguishing feature of the Mughal period was that assessment was on the whole fairer and more accurate than it had been for some time previously, thanks to the work of Akbar's Hindu revenue Minister, Todar Mal.³²

When the English arrived in the 18th century, they found only the remains of this system and 'they admired it in ruins'.³³ The initial result was that while feudalism in Europe was slowly declining during the 18th and 19th centuries as a way of structuring social and in particular agricultural relationships, the English rulers consolidated the *zamindari system* as an instrument of land administration that persisted into the 20th century.

4 The British ruler

Classical Hindu law³⁴ was not based upon formal laws but rested on the works of private scholars, whose inspiration stemmed from the Vedas,³⁵ foundational scriptures that for the Hindus are the source of all manner of knowledge.³⁶

The *dharmasastras*, or the *doctrine of proper behaviour*, was believed by Hindus to have at its very root a divine revelation,³⁷ and under British colonial domination this doctrine was used to form part of the legal system. This was formally established in 1772 by Governor-General Warren Hastings, who declared in his *Plan for the Administration of Justice* that 'in all suits regarding inheritance, marriage, caste and other religious usages or institutions, the laws of the Koran with respect to the Mohamedans and those of the Shaster with respect to the Gentoos shall invariably be adhered to.'

It has often been pointed out that British rulers in India adopted a respectful attitude towards ancient local traditions, without any political agenda of imposing the common law in the new colonies.³⁸ From this perspective we can understand the effort by British rulers to introduce *pandits*: namely, natives learned in the *dharmasastras*, who were attached to

³² Spear, above n. 26 at 49.

³³ Spear, above n. 14 from the Italian version, at 306.

³⁴ It is worth noting that Sanskrit contains no word that precisely corresponds to *law* or *religion* and, therefore, the label 'Hindu Law' is a modern convenience used to describe this tradition. On the differences between the concept of *dharma* and the *concept of law*, compare May, above n. 2

³⁵ Zweigert and Kötz, above n. 8 at 317.

³⁶ Compare R. Lingat, *Les sources du droit dans le système traditionnel de l'Inde - École Pratique des Hautes Études* (La Haye/Paris: Mouton & Co. 1967); Italian Translation by D. Francavilla : *La Tradizione giuridica dell'India*, (Milan : Giuffrè 2003) at 18 ss.

³⁷ On this concept, see L. Acquarone, *Tra Dharma, Common Law e WTO, Un'Introduzione al sistema giuridico dell'India* (Milan: CUEM 2006).

³⁸ On the impact of foreigners on the law in India, see Glenn, above n. 1 at 273.

the courts and to whom the British judges could ask particular questions. The substance of Hindu law was in fact implemented through early translations from Sanskrit texts, and reference to the pandits permitted English judges to understand the actual meaning of the provisions included. The British, however, misunderstood the *dharmasastras* as *codes of law* and failed to recognise that these Sanskrit texts were not intended as statements of positive law.

In any case, the institution of *pandit* was abandoned in 1864 and since then judges have made their own decisions, with the help of case-law and a number of law books. ‘The judges used prior decisions not only as a starting point for argument but as binding authorities in accordance with the principle of “stare decisis”’.³⁹ However, the application of the *stare decisis* and the necessity to express Hindu concepts using English legal terminology resulted in a ‘hybrid monstrosity’.⁴⁰

The English maintained the same attitude in their administration of the new territories as well. Historians have stressed that the English as foreigners tried to rule Indians along Indian lines and largely through Indian agency, and their governing took the form of supervision rather than of detailed administration.⁴¹ They strove to become the guardians of an ancient society, and as such their intention was to protect and to foster it.⁴²

This does not mean there were no attempts to introduce into India typical characteristics of English common law and society. In particular, Charles Cornwallis, who was appointed Governor General in India in 1789, tried to introduce two features into India society, neither of which generated much notice, because neither was fully understood. One was the *rule of law*, which was outside Indian experience at that time and related to new tangled courts and therefore was not taken seriously. The class that would benefit from it had not yet arisen. The other was the introduction of English landlordism.⁴³ This had, in fact, a large impact on the cultivator, but its

³⁹ Zweigert and Kötz, above n. 8 at 317.

⁴⁰ D. Derret, *Sir Henry Maine and the Law in India*, in *The Juridical Review*, 1959, at 47, republished in *Essays in Classical and Modern Hindu Law, Vol. II* (Leiden: E.J. Brill 1977) at 53. A similar opinion is expressed by B. Stein, *A History of India* (London: Blackwell 1998) at 213.

⁴¹ Spear, above n. 26 at 93.

⁴² *Id.* at 99.

⁴³ ‘Most of the little kings who survived the eighteenth century ... were ‘permanently’ settled as zamindars, the Persian term for landlord, on proprietary estates. Political relations were rechanneled into the new domain of proprietary law’. See N.B. Dirks, ‘From Little King to Landlord: Colonial Discourse and Colonial Rule,’ in N.B. Dirks (ed.), *Colonialism and Culture* (Ann Arbor: The University of Michigan Press 1992) at 177-182.

implications were not immediately realised. And it was, after all, an adjustment of relationships rather than a revolution within them.⁴⁴

Under the *zamindari* or *permanent settlement* system, introduced around 1793, feudal lords were declared proprietors of the land on condition of fixed revenue payments to the British regime. Peasants were transformed into tenant farmers, and rents were collected by a range of intermediaries below the level of the *zamindars*.⁴⁵

As far as taxation was concerned, the British took advantage of the semi-feudal agrarian system, with ownership of land concentrated upon a few individual landlords, these being the *zamindars*, which India had inherited from Mughal times.⁴⁶ In this system, the land revenue, which most closely affected the lives of the people, was collected along traditional lines, though with new personnel at the top and enhanced powers for the *zamindars*.

This situation is powerfully described by Vikram Seth:

The British had been happy to let the zamindars collect the revenue from land-rent (and were content in practice to allow them whatever they obtained in excess of the agreed British share), but for the administration of the state they had trusted no one but civil servants of their own race, selected in, partially trained in, and imported from England – or later on, brown equivalents so close in education and ethos as made no appreciable difference.⁴⁷

The *zamindari system* evolved out of the British need for clearly identifiable owners of land, who in turn would owe them revenue. In this manner the British ruler was able to maintain – on the surface – the prior system of land administration and at the same time to transmit the legal categories that they knew from their own judicial system and that the common law had

⁴⁴ On the introduction by Cornwallis of the land reform with the *Permanent Settlement*, compare M. Edwardes, *A History of India. From the Earliest Times to the Present Day* (London: Thames and Hudson 1961); Italian Translation by G. Veneziani: *Storia dell'India, Dalle origini ai giorni nostri* (Laterza: Bari 1966) at 318 ss.

⁴⁵ R. Mearns, Access to Land in Rural India, Policy Issues and Options, *Policy Research Working Paper Series, No. 2123* (Washington D.C.: World Bank 1998) at 7.

⁴⁶ The same was done in the Fiji Islands. Compare S. Harzenski, 'Post-Colonial Studies: Terrorism, A History, Stage Two' (2003) *17 Temple International and Comparative Law Journal* 351, with special reference to footnote 174: 'This same mind-set characterized British endeavours in India where British governance brought about a transformation from little kings or palaiyakkarar, whose landholdings existed in fluid interrelationships to the other inhabitants of the community, to permanently settled landholders, zamindars, entitled, as in England, to possession of the land against all other claimants'.

⁴⁷ Novel, above n. 11 at 305.

developed on the basis of the Norman feudal system. When coupled with the gross inequities of the caste order in the village, this rapidly became a huge exploitative mechanism whereby a handful of landed gentry owned vast tracts of land and thereby held thousands of impoverished, landless people in a state of servitude.

Under British domination, there had already been a few initiatives to free the exploited peasants from the unbearable burden of this system. In Bengal, this effort resulted in the promulgation of the Bengal Rent Act in 1859, which conferred to peasants an occupation right to land if they were able to show that they had been working it for more than twelve consecutive years.

The *Panjab* and the *Oudh Tenancy Act* followed in 1868, but it was only with Independence in 1947 that major agricultural reform could take place.

5 The Zamindari system: through the looking glass of Law and Literature

Vikram Seth's novel sheds light on the social significance of the *zamindari system* and on the profound impact of the reform that, by sweeping away this archaic system, prepared the path to the contemporary agrarian structure in India. The author achieves this through his depiction of the friendship that links two of the book's main characters: the Minister proposing the reform, Mahesh Kapoor, and the Nawab Sahib of Baitar, the head of the family Khan and an important *zamindar*.

The respect between the two friends, who try to understand the reasons behind each other's stance, is in stark contrast to the rancorous parliamentary discussion of the bill aimed at the abolition of the *zamindari system*.

Thus, in the novel, Mahesh Kapoor distinguishes the *person* from the *role* of the *zamindar*, admitting: 'There are zamindars and zamindars. Not all of them tie their friendship to their land. The Nawab Sahib knows that I'm acting out of principle'.⁴⁸

The Nawab Sahib appears instead to acknowledge that his friend Kapoor is justified in his views regarding the revolution that he is initiating, notwithstanding the risks for him and his family. Seth describes the Nawab Sahib's state of mind during his attendance at one parliamentary hearing where the bill was being discussed:

...another reason why he was present in the House today was that he realised – as did many others, for the press and public galleries were all crowded – that it was a

⁴⁸ *Id.* at 20.

historic occasion. For him, and for those like him, the impending vote was one that would – unless halted by the courts – spell a swift and precipitous decline. Well, he thought fatalistically, it has to happen sooner or later. He was under no illusions that his class was a particularly meritorious one. Those who constituted it included not only a small number of decent men but also a large number of brutes and an even larger number of idiots. He remembered a petition that the Zamindar's Association had submitted to the Governor twelve years ago: a good third of the signatories had used their thumb-prints.⁴⁹

The Bill on the abolition of the *zamindari system* is strongly opposed by a Member of Parliament, Begum Abida Khan, the sister-in-law of the Nawab Sahib; she is rendered sufficiently sympathetic to the reader by the fact of being a Muslim woman fighting in a world of men and passionately dedicated to defending the social role of the *zamindars*:

...the fact is that it is we zamindars who made this province what it is – who made it strong, who gave it its special flavour. In every field of life we have made our contribution, a contribution that will long outlive us, and that you cannot wipe away. The universities, the colleges, the traditions of classical music, the schools, the very culture of this place were established by us. When foreigners and those from other states in our country come to this province what do they see – what do they admire? The Barsaat Mahal, the Shahi Darvaza, the Imambras, the gardens and the mansions that have come down to you from us. These things that are fragrant to the world you say are filled with the scent of exploitation, of rotting corpses. Are you not ashamed when you speak in this vein? When you curse and rob those who created this splendour and this beauty?⁵⁰

Vikram Seth opposes Begum Abida Khan's speech on the social role of the *zamindars* by means of the Nawab Sahib's silent reflections:

...(he) was compelled to admit...Most zamindars – himself, alas, perhaps included – could hardly administer even their own estates and were fleeced by their munshis and money-lenders. For most of the landlords the primary question of management was not indeed how to increase their income but how to spend it. Very few invested it in industry or urban property. Some certainly, had spent it on music and books and the fine arts. ...But for the most part the princes and landlords had squandered their money on high living of one kind or another: on hunting or wine or women and opium. A couple of images flashed irresistibly and unwelcome across his mind. One ruler had such a passion for dogs that his entire life revolved around them: he dreamed, slept, woke, imagined, fantasized about dogs; everything he could do was done to their greater glory. Another was an opium addict who was only content when a few women were thrown into his lap; even then, he was not always roused to action; sometimes he just snored on.⁵¹

⁴⁹ *Id.* at 304-305.

⁵⁰ *Id.* at 307-308.

⁵¹ *Id.* at 305-306.

More than any doctrinal explanation, the confrontation between these two approaches and states of mind, one expressed vividly by Begum Abida Khan, the other sealed in the silence of the Nawab Sahib's thoughts, enable the reader to understand the struggle between century-long traditions that have supported art, music and education on the one hand, and the new upcoming era dominated by principles of equality and meritocracy on the other. In the words attributed to Prime Minister Nehru, the novel aims to emphasise this struggle between Old and New:

India is an ancient land of great traditions, but the need of the hour is to wed these traditions to science... We must have science and more science, production and more production. Every hand has to be on the plough and every shoulder to the wheel. We must harness the forces of our mighty rivers with the help of great dams. These monuments science and modern thinking will give us water for irrigation and also for electricity. We must have drinking water in the villages and food and shelter and medicine and literacy all around. We must make progress or else we will be left behind....⁵²

In the novel, once approved by the Indian Parliament, the *Zamindari Abolition Act* is challenged in front of the High Court and then appealed to the Supreme Court⁵³. Even here the lawyer is able to find a series of details that render the depiction of the legal frame fascinating as a reflection of the past world of British common law embodied in the judges who form the Court:

And now judges followed in their black gowns... They wore no wigs, and a couple of them appeared to shuffle slightly. They entered in order of seniority: the Chief Justice first, followed by the puisne judges whom he had assigned to this case. The Chief, a small, dry man with almost no hair on his head, stood before the central chair; to his right stood the next seniormost judge, a large, stooping man who fidgeted continually with his right hand; to the Chief's left stood the next seniormost judge of this bench, an Englishman who had served with the judicial service of the

⁵² *Id.* at 1354. On the real anti-*zamindari* attitude of Nehru, compare R.C. Sterne, 'Law & Literature: Civil Disobedience, Violence, and Colonial "Justice" in two Indian Novels' (1999) 24 *Legal Studies Forum* 527, especially at 548 ff.

⁵³ In fact, we know that during the 1950s several statutes aimed at abolishing the *zamindari system* and other intermediaries were enacted in the different States of India: e.g. in Bihar, Madhya Pradesh and Uttar Pradesh (1950), in Assam (1951) and in Rajasthan (1959). In some of these States, though not in others, the Acts were challenged in front of the Courts. Compare T. Besley and R. Burgess, 'Land Reform, Poverty Reduction and Growth: Evidence from India' (1998) *The Development Economics Discussion Paper Series No. 13 October 1998*. The same happened in Bengal and Bangladesh. See K.L. Rosenbaum, 'Rule of the Land: Life and Law in Bangladesh' (1999) 59 *Oregon State Bar Bulletin* 9.

Indian Civil Service and had stayed on after Independence; he was the only Englishman among the nine judges in the High Court at Brahmipur. Finally, at the wings, stood the two juniormost judges.⁵⁴

In the discussion of the case, it is worth noting that the existence of a written Constitution emerges as the new differentiating feature of the Indian legal arena in comparison with the British common law system; it is a feature that places the Indian legal system in a situation closer to that of the United States as far as the presence of a written constitutional text is concerned. This appears clear in the dialogue that takes place among those lawyers in Court who try to challenge the validity of the Act under the Constitution, when the senior barrister, turning to his junior partner, says: 'Find me whatever American case-law you can on the point, and bring it here to me at eight tomorrow morning'.⁵⁵

Vikram Seth explores with precision not only the minds of the *zamindars* sitting in Court, waiting for the decision that will decide the destiny of their fortunes but at the same time the attitude of the judges who have to take that paramount decision⁵⁶. The reader might be led to think that the author of such descriptions must have received a legal education, not only because of the precise quotation of the Constitution articles but much more because of the intriguing debate between Bench and Bar during the discussion of the case; it clearly indicates how much was at stake and the profound reasons that support the different legal arguments.

When the critical moment arrives, the author's writing style is such that it transports the reader to the Courtroom where the Chief Justice has just entered:

The Chief Justice looked to left and right, and the chairs were moved forward. The Court Reader called out the numbers of the several conjoined writ petitions listed "for pronouncement of judgement". The Chief Justice looked down at the thick wad of typed pages in front of him, and riffled through them absently. Every eye in court rested on him. He removed the lace doily from the glass in front of him, and took a sip of water. He turned to the last page of the seventy-five-page judgement, leaned his head to one side, and began reading the operative part of the judgement. He read for less than half a minute, clearly and quickly: "The Purva Pradesh Zamindari Abolition and Land Reform Act does not contravene any provision of the Constitution and it is not invalid. The main application, together with the connected

⁵⁴ Novel, above n. 11 at 743.

⁵⁵ *Id.* at 754.

⁵⁶ This is put splendidly in the mouth of the Senior Barrister, with this wording: 'It is probable that no case of similar significance from the people of this state has been fought in this court before, either under the emblem of the Ashoka lion or under the lion and unicorn'. Novel, at 744.

applications, are dismissed. It is our view that parties should bear their own costs, and we order accordingly".⁵⁷

When the Chief Justice finishes reciting the judgement, the reader is there in the Courtroom: like the rest of the onlookers, he rises when the judges leave and he sees the Raja of Mahr, one of the most arrogant and uneducated *zamindars* depicted in the novel, wondering:

But aren't they going to read the judgement? ...Have they postponed it? He could not grasp that so much significance could be contained in so few words. But the joy on the government side and the despair and consternation on his own brought home to him the full import of the baleful mantra. His legs gave way; he pitched forward onto a row of chairs in front of him and collapsed on the ground; and darkness came over his eyes.⁵⁸

In the novel, the Supreme Court judges agree on the constitutional validity of the *Zamindari Acts*,⁵⁹ but the moral of the story leaves bittersweet taste.

6 The persistence of old traditions: a look into reality

Vikram Seth does not leave the reader with a happy, hopeful ending. It is true that after Independence a new Constitution is introduced that renders all Indian citizens equal; a statute is passed that abolishes the feudal structure of the land and is aimed at enabling peasants to cultivate their own land; and the same statute is confirmed in its validity by the Supreme Court. However, the novel also tells of the illegal manoeuvres that the expropriated *zamindars* conceived in order to frustrate the aims of the Act, according to which five years of continuous tenancy would have been considered enough to establish the labourer's right to land: 'The idea is to move the tenants around...Keep them running – this year this field, next year, that'.⁶⁰ Hence, nobody would ever have been able to demonstrate five years of continuous tenancy.

As the novel clearly illustrates, the problem was strictly connected to that of land registration. Most of the *zamindars'* records were kept by local clerks. Some of the records were poor and many of the clerks were corrupt. A dishonest clerk could quickly produce a new record of tenancy, and fraudulent and conflicting claims appeared everywhere.⁶¹

⁵⁷ *Id.* at 819-820.

⁵⁸ *Id.* at 820.

⁵⁹ Novel, above n. 11 at 1464: 'The judges of the Supreme Court had agreed that the Zamindari Acts were constitutional; they were in the process of writing their judgement, which would be announced to the world at large in a few days.'

⁶⁰ *Id.* at 585.

⁶¹ See Rosenbaum, above n. 53 at 2.

In fact, the entering into force of the Act has led in only a few cases to substantial justice: land reforms in India have divested princes and large landowners, who owned huge estates of 10,000 to 20,000 acres, of their hereditary property. The ones who have gained are the medium-size prosperous farmers in the immediately lower ranks, not the people who till the soil. Former feudal lords still own hundreds of acres of land acquired or held either by exploiting legal loopholes or through illegal schemes.⁶²

As recent research by the World Bank has pointed out, the cost of the abolition of intermediaries was high: the heavy compensation paid to former *zamindars* enabled many of them to become rich agro-industrialists, and many acquired ownership rights over land they did not previously own. These early reforms left substantially unchanged the inequalities in land holdings and the precarious position of sharecroppers and agricultural labourers.⁶³

The implementation of *tenancy reforms* has generally been weak, non-existent or counterproductive, resulting in the eviction of tenants and their rotation among landlords' plots to prevent them acquiring occupancy rights, as well as a general worsening of their tenure security.⁶⁴

Even today we should again question the real role of legislation in India: statutes that attempted to ban tenancy outright, as in Uttar Pradesh, Orissa and Madhya Pradesh, had a particularly adverse effect and inevitably led to concealed tenancy arrangements being even more informal, shorter and less secure than they had been prior to reform.⁶⁵

This does not mean that legal reforms designed to increase tenure security for tenants are bound to fail. They can succeed provided that sufficient attention were paid to the institutional conditions required for their successful implementation and if the balance of power shifts sufficiently in favour of tenants.

In West Bengal, the most notable aspect of the reform process was not legislative change – many of the central provisions had been on the statute books since the 1950s – but political change at the State level, reinforced by effective institutions at the local level. With popular support and local political representative bodies, well-publicised land settlement camps moved from village to village, updating land records and offering tenants the right to register their tenancies at the same time. This concerted effort between government and citizens' representative bodies helped to

⁶² Land Research Action Network, *Land Reform in India, Issues and Challenges* <www.landaction.org/display.php?article=57> (accessed January 21 2003).

⁶³ Mearns, above n. 45 at 11.

⁶⁴ *Id.* at 12.

⁶⁵ *Id.*

bring about a significant shift in the bargaining power of tenants in relation to landlords, and was ultimately the key to success.⁶⁶

⁶⁶ *Id.*