

ARCHOLAW

INTEGRATION of ARCHITECTURE & LAW

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Abstract

LAW IS UNIVERSAL.

Bhagwat Gita, Guru Granth Sahib, Bible, Quran, Arthashastras and our Constitution all talk about Rules and Regulations.

From Guru Kul times of sending Princes to learn VED SHASTRAS to present day of following Border Laws, it's mandatory to follow the Laid Niyams.

Each and every discipline should have basics of law imbibed in it.

One of the most marvellous and wonderful Professions of Architecture creating beautiful Living shelters, recreational and commercial hubs also need to follow the Set bye laws, National building codes. For any discrepancy and Conflict one has to approach Lawyers and Arbitrators.

My research paper would deal about this inter disciplinary concern of how law inclusion as a part of course would create Better professionals in future and on *the best ways to maximize protection in an industry where protection can often be ignored, disregarded and at times reputations at stake.*

Keywords -Architecture, Law, Rules, Regulations, Integration

INTRODUCTION

The Set path pertaining to the Social, Political, Administration, Dharma, Birth, Death, Planning, Travelling, Import & Export, Development, Trade has been clearly laid in the Past, to be followed in the Present and to Brighten and Stabilize our Future.

Talk of any profession – be it doctors, engineers, lawyers, teachers, politicians, common person and Architects – there are certain Rules and Regulations to be followed.

Wonder – how many of us actually are aware of Basics of our Rights and Duties.

We the Law abiding People are not so well equipped with the complete Knowledge.

To talk about anything and to follow it, we should be Aware of it completely.

To follow a Path, one needs to know how to walk on that Path.

Need is to impart Basic Knowledge during Subject Course.

With enough Information and Knowledge on hand – a fully- fledged Professional armed with all the requisite and important weapons can lead to Better creation of Peaceful Nation.

I strongly believe and recommend law to be included is Architecture, subject like ARCHOLAW to begin during the course, so that there is total independency, integration and a better stronger Platform to work upon.

Can there be a law without architecture or a lawless architecture?

What is law?

Law understood as a human artefact, constitutes an ensemble of regulations that have been explicitly stated in order to sort behaviours into two categories: legal and illegal. Law is undeniably related to space as it requires a given territory with precise borders to be able to implement itself. (Architectural R theories) Nothing easier to understand this fact than to observe in which space one is allowed to smoke and in which one is not. (Legal Theory) It also includes within this territory smaller zones of exclusion, from the corner of the class room to the penitentiary, in which another form of the law -supposedly a more restrictive one- is applied for individuals who, through an active refusal of specific parts of it, are to be separated from the rest of society. Spaces like schools, offices, factories, hospitals, for example, apply a legal superimposition in order to complement the territorial law with set of rules specifically formulated to optimize their institutional function. (Legal Architecture) Law is an integral part of all fields and if we remove law, than we will have chaos with problems like uncontrollable traffic, pollution, encroachments, unsafe and uncomfortable living conditions.

What is architecture?

Architecture is the art, science, or profession of planning, designing and constructing buildings in their totality taking into account their environment, in accordance with the principles of utility, strength and beauty. (Republic act)The act of planning and architectural designing, structural conceptualization, specifying, supervising and giving general administration and responsible direction to the erection, enlargements and alterations to the building and building environment, aesthetics and orderly coordination of all the processes performed through the unbiased approach. (IPR, n.d.)Architecture is the ensemble of human physical modifications of the environment, whether they be agricultural, urban or infrastructural, It would probably be useless to wonder whether law invented architecture or whether it is precisely the opposite. What we can understand and affirm is that architecture through its physicality embodies the immaterial law. Architects, generally use the "drawings" to cover all written expressions of their art. (Architect drawings, n.d.)

Role of an architect is of Educator, auditor, advisor, supervisor, manager, designer and a planner.*The profession of architect is no longer limited to drawing up plans. Today, the architect has become a veritable orchestra conductor, increasingly subject to legal obligations and manifold responsibilities.* (Architect and the Law, n.d.)

Law in the Architectural profession

Architecture encompasses a wide range of services as preparing drawings, designs, plans and models of buildings to enable development approvals to be obtained for and construction to occur which undoubtedly can face legal risks that are often overlooked and architects must be both aware and mindful of the things that could possibly go wrong. *Architecture is the ensemble of human physical modification of its environment. It would probably be useless to wonder whether law invented architecture or if it is precisely the opposite.* (Archplus, 2019) *What we can possibly affirm, however, is that architecture, through its physicality, embodies the immaterial law.* Prisons are the extreme examples of how architecture embodies the law. We are nevertheless surrounded by more domestic cases of architectural enforcement of the law. During a curfew or quarantine, your own house, supposedly so neutral and innocent, can become your own prison. (Artikel, 2020)

What relates law to architecture?

Byelaws

Byelaws are the set rules and regulations made by governing bodies for ensuring safety standards, people health, comfort and hygiene.

They change as per the area to some extent. These govern ground coverage, height restrictions, FAR, setbacks.

In our olden times too we find building controls and planning .British era brought us standard setbacks and bye laws, providing us with controlled growth and preventing haphazard development.

Traffic and pollution control reducing congestion and ensuring planned development in order to ensure better life.

If Setbacks are not there, it will lead to lack of circulation and ventilation, Parking problems, essential emergency services reach issues, invisibility along road and streets, accidents, height regulations to not hinder the light and ventilation of property.

The practice of the profession has evolved considerably over the last many years. An evolution that sometimes feels like a revolution. The architects are evolving because of the conditions for practicing the profession, the monopoly and compulsory competition of architects, the incompatibility of practicing their professions with that of a contractor, (the Belgian Architects Association), the rules of conduct and the issues related to advertising. The second part addresses contract law in detail along the two lines that comprise it: the architectural contract under private law and the architectural contract in the public sector. This part clearly deals with the contractual obligations of the architect but also considers the special characteristics of the architectural contract concluded by electronic means. If there are many changes to a building that do not require the services of an architect, over the years, the architect's area of responsibility does nonetheless appear to be expanding. Furthermore, often it is better, even when there is no obligation, to resort to the services of a professional. "The presence of an architect ensures good follow-up of the works and prevents nasty surprises on completion of the construction. (Reflections, n.d.) A strong trend over the last few years that is not unlikely to decrease is an ever-increasing responsibility that rests on architects' shoulders. As with many trades, architecture has not escaped this judicialisation that has been developing over the years in our society. "This trend has a double effect," Lauren-Olivier Henrotte emphasizes. "On the one hand, we see an increase in finding architects responsible; on the other, architects will seek solutions to curb excessive responsibility by using contractual clauses to protect themselves". Also addressed in this third part are issues related to the criminal responsibility of architects when, for example, they carry out work for which a permit is required without first obtaining it or without respecting it, as well as issues related to neighborhood disturbances.

Urban and spatial planning

The fourth part focuses on rules on the law of urban and spatial planning with which the architect must comply, regulations that continue to evolve every year concurrent with this growing complexity in the practice of the profession. "Architects must thus be sure that it is possible to build on the land, become familiar with all the planning and regulatory constraints, direct their client's requests depending on the urban constraints, ensure compliance with all constraints imposed by administrative authorities, and so on. (Architects - What They Do, 2020)

The architects' responsibility may be triggered because of various failures in connection with the planning rules. Law and space all together.

India, of course being a great example for the themes of architecture and law of which you speak, whereby not only are there plural legal levels of law as a result of the genealogies of colonialism, but so too there are those very clear architectures of law that reveal legal dichotomies, the insides and the outsides, those included and excluded. (Iambert L. , 2013)

Nowhere else has there been such a use of law as a mechanism of legitimated dispossession than in colonial India, with the decentralized despotism of the Raj and their opulent palaces as reminders of their decentralized British power; the acceptance of customary law into a plural legal hierarchy of state law that put the common law as the pinnacle of all might.

When thinking of the role of land and law, and the wall as the boundary, the legal space in which all of the divisions and structures of hierarchy are analogized (or not even analogized, but actualized), there is a reason why one is so struck by architecture as the architect of law – or law as the architect of architecture. Western individual property rights, are based on a presumption that ‘ownership’ of land, the right to design land as one sees fit (or hire a draftsman to follow design instructions), is the right to have exclusive access and possession to that particular geography of land. Thus, and this is taking from the highly influential German jurist Carl Schmitt, law starts and ends with the earth. (Lambert, 2013) This intrinsic link between law and architecture is the design of property rights, it is the manipulation of space which acts as a way of keeping something in, keeping a population out. Therefore, architecture lends itself specifically as the embodiment of law, it is the dividing line, the juncture of liminality that is so easily described, and yet the most elusive thing in the world, that which is all order and chaos. It comes together in one coordinate, the coordinate of legal design; the sketching of the architect.

Indian Metros

In India was how obvious the past, and indeed the future, was expressed within the buildings, and more so within the constant construction going on within the mega cityscape where each new wood and cement fixture became another limb of the great living organism that was growing and gurgling. These were buildings that were not completed yet, that would most probably always remain incomplete as the years of bureaucratic procrastination and judicial protest halt the creation of the flyovers and office blocks.

Take the seething urban mass of Bangalore, a city that only 30 years ago was a quaint retirement destination for local Karnataka residents and its surrounding states, which since then has become the size of London, with no good public transport infrastructure – and is still growing. The population has matured its foundations, and the job of producing new living spaces and working spaces have not kept up. (-Maddock, 2009) There are two types of design, those of the massive land acquisitions and re-mappings that allow for colossal new speedways and airports; and then there are the designs of the slums – both of these architectures of law rely on unplanning, as opposed to planning, and are reactive and emergent in their convergences.

These are the upwardly mobile Bangalorians who work within IT and are making the most of the burgeoning city and it being known as the ‘Singapore of the South’. (Finchett, n.d.) Huge land acquisitions are undertaken in order to build in the name of the swelling bourgeoisie. Land acquisition is a common law inheritance and is known in India as ‘eminent domain’. It exists as a stop valve for the state to acquire land for ‘public purposes’, without the permission of those who already live on the land and have rights and attachments to the land. Those who are moved are by and large the architects of law from below, the slum dwellers and impoverished who own little or no legal rights to the land on which they reside. A complex web of common law legacy

gives way to a situation whereby land is acquired and new building schemes begin, whilst at the same time architects from below utilize the notoriously slow, but most certainly relevant litigation processes of the courts to try and halt the taking of their homes and the construction of new hegemonies.

These two unplanned movements of law and architecture, the state land acquisition and the litigious rigor of Bangalore's civil society, operates in an emergent coagulation and one that is realized in the half built pillars and cement covered children on the roadside. These are not complete spaces, but half spaces, spaces that are not aware of how they will end up as a result of the intersection of law in design.

“...marvelous walls of glass with their delicate screens of horizontals and verticals, in which the sky reflects itself; but inside those buildings all the scraps of Europe are accumulated in confusion ... The magnificent grid is artificially imposed upon a continent that has not produced it; it is a law one endures.”

What does this description of the underbelly of New York tell us of how law affects architecture, and the same vice versa? What can entropy tell us about the seemingly out-of-control cityscape of Bangalore, the planned unplanning and unplanned planning of the architects of law from below and those of the law from above? What is the role of property in this, and indeed aesthetics itself?

Mumbai, the two situations are relatively similar for that matter. Both eminent and immanent domains constitute a form of violence towards the law as they both “break” a traditional understanding of what property is about. In the first case, the municipality or the State expropriates a group of people, while in the second one, a group of people claims a piece of territory that does not belong to them to build their dwelling.

Many of the administrative buildings of Mumbai are still the same that were used by the British. Still wondering today if the continuity it creates is strictly symbolical or if it actively shapes the way this administration is operating. The same question goes for the Rashtrapati Bhavan in New Delhi, the Viceroy Palace that Gandhi wanted to transform into a hospital and that Nehru attributed as the Presidential Palace of the newly independent India. I suppose that there are a multitude of laws that were similarly elaborated during the colonial era and that remained afterward.

Turkey

In Turkey for instance, I read that the police cannot immediately destroy an unauthorized dwelling whose construction has been finished; this type of dispute has got to attend court to be settled. This scenario, because it involves the inertia (some more physics) of the administration that goes with it, is probably going to need enough time for the dwelling's inhabitants to use it for a short time. There are therefore strategies to create a range in one night to avoid a possible destruction the subsequent day because the construction would haven't been completed.

We need a framework through which we will understand the role of law within architecture

and architecture within law, in reference to property, aesthetics as an entire , and law so too. Do you think that there are often a law with no architecture or/and a lawless architecture? If architecture is basically the embodiment of the law, can we possibly consider an Archolaw?

Council of Architecture

Architectural profession is governed by COA and IIA

COA is a statutory regulating body to guard public from un- qualified persons working as architects .Only qualified and experienced persons under architects act 1972 can practice and work as architects.

Indian Institute of Architects

IIA is an organization uniting architects together to encourage the profession in INDIA.

Legal knowledge can help systematic and arranged society growth.

Property rights

Intellectual property rights ...IPR gives rights to people over the creation of their minds.

IPR is further divided into two categories

1) Industrial rights

2) Copyright law and privacy

Copyright and more broadly the difficulty of property are subjects that are regularly within the spotlight. The varied provisions associated with copyright and therefore the conflicts between the copyright holder and the owner of the building, especially the moral right of the architect versus the ownership of the principal, and therefore the right to the image of the products are to be analyzed intimately.

Architects in India can register their original works under the copyright act, 1957. An Agreement has got to be signed between Architect and client with clear mention of all the terms and conditions required to be followed and maintained at various stages of design progression. Architecture works are protected under the Uniform Copyright law under section 13.

Concept of ethical rights is from French origin stating that Creator of labor features a special relationship with the art they need created with their own skills and infused with their own beliefs. Moral rights encompasses Right to Integrity and Right to Paternity. Right to Integrity aims to guard the Reputation by outlawing any derogatory, distortion, defacement, alternation etc. which may harm the artists honor.

An architectural creation is, thus, capable of protection at three stages; (a) as a two dimensional technical writing, that is, as a plan, drawing or design; (b) as a two dimensional artistic representation of the projected structure- or as a 3 dimensional model of the said structure and (c) as a completed structure. Architects are concerned with infringements of

their rights in three different forms. These are, copying of plans within the sort of other plans, ^ the copying of plans within the form within the buildings and therefore the copying of a building by another building.

The 1994 Indian Amendment has actually further broadened the protection to the architects by replacing the term "architectural work of art" by "work of architecture" which may be a much wider expression. On the other hand unless an awareness of their copyright is made amongst the Indian architects, the protection afforded to them shall remain only on the written record and their plight by virtue of huge scale infringements shall continue. The copyright definition of the term "copy" bears this point: "A copy is that which comes so near to the original as to give to each person seeing it the idea created by original."

All the three stages are protected in most of the countries of the planet including UK and India.

Contract

A contract may be a voluntary agreement between two or more parties that's enforced by law as a binding legal instrument. It's executed and signed on a stamp paper of appropriate value.

Finance and payment issues", "Poor work quality" and "Extra items" are the most reasons which tends to dispute occurrence Unrealistic expectation, and delay in payments from owner side. (Sagar Soni*, 2017)

Design & Contract Related

Owner and Client –is the one who owns and finances the project

Architect is the one who executes the project and is paid stage wise periodically,

Various uncertain and double meaning terms are utilized in the contract documents. The most reason for using bespoke terms is because by the application of those terms participants can make profit, at the time of completion of the project, these bespoke terms presented with their second meaning for creating most of its profit. (Soni, 2017) By this process of creating profit leads to the occurrence of conflicts and dispute within the housing industry. Lack of obtainable information includes in design related factor which also end in creating conflicts in ongoing construction projects.

Recommended ways to guard Architects

An agreement between the architect and therefore the client must in the least times be entered into which clearly outlines each party's obligations. (Soni, Conflicts and Disputes in Construction Projects, 2017)

- The agreement should contain express terms that affect copyright and moral rights of the works to beat issues concerning implied licenses.
- The agreement should also state that no license is granted or implied under the agreement, any license granted by the architect could also be revoked in circumstances where the client has refused to pay or, within the event that there's a change within the client's ownership or legal interest within the site. (Bampton, n.d.)

- Changes to the original agreement that arise after the parties have entered into the agreement should always be properly documented as a variation to the agreement so as to minimize the risk of later disputes.
- If an infringement of an architect's copyright or moral right has occurred, the architect must act expeditiously to protect their rights. (Brampton, n.d.)

Arbitration

Is an informal, quicker, less expensive and confidential method of resolving the disputes outside the court? The neutral person or panel makes a decision after hearing the arguments and evidences of the concerned parties. People sign the binding and mandatory arbitration agreement.

For example-old village panchayat system.

Gives up the right to go to court.

Litigation –conventional court system is time consuming, expensive formal and is open to public in a court room. It can be civil and criminal. Judge is appointed for hearing.

Conclusion

Although Architects provide a spectrum of services ranging from planning, creating, designing and execution of projects. They at times are faced with many risks that may cause consequences for the employers and designers alike. (Boghossian, 2016)

It is therefore of fundamental importance (necessary) to have a comprehensive understanding of the laws relating to risk and responsibility when negotiating contracts. The designer will of course wish to limit as far as possible the scope of its liability, whilst the client will wish to ensure that it has effective rights and remedies in the event of defective design work. As always, it is likely to be in the interest of both parties to deal with these issues as far as possible and agree upon the assignment of risk by express terms in the contract to both make business run smoothly and at the same time maximize protection and minimize risk. With urbanization and uncontrolled growth of cities, there is need for better policies and governance in order to ensure better architectural character, good zoning .Zoning regulations control the land use, orientation and typology,

Building code provides with the design requirements, structural integrity, fire norms, services norms, seismic design, and right use of materials.

This leads to better sustainable and lawful living.

As quoted by American Architect Frank Lloyd Wright *“You have to go wholeheartedly into anything in order to achieve anything worth having.”*

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