Bella’s Case:
Parsi Identity and the Law in Colonial Rangoon, Bombay and London, 1887-1925

Mitra June Sharafi

A Dissertation
presented to the Faculty
of Princeton University
in Candidacy for the Degree
of Doctor of Philosophy

Recommended for Acceptance
by the Department of History

November 2006
ABSTRACT

This dissertation explores the ways in which the ethnic identity of South Asia’s Parsis was forged through litigation in the British colonial courts. The Parsis were Zoroastrians who fled to India after the seventh-century conquest of Persia by Arab Muslims. Under British rule, they became an elite of intermediary traders and professionals. Around 1900, a series of lawsuits erupted on the admission of ethnic outsiders into the Parsi community through intermarriage, conversion, and adoption. This dissertation is a study of the most extensive of these cases, the Privy Council appeal of *Saklat v Bella* (1914-25). The case erupted when an Indian orphan named Bella was adopted by Parsis in Rangoon, initiated into the Zoroastrian religion, and taken into the Rangoon fire temple, a space arguably desecrated by the presence of ethnic outsiders. Through an examination of case papers and judges’ notebooks from the Judicial Committee of the Privy Council (London) and the Bombay High Court (Mumbai), the dissertation explores competing visions of Parsi identity that were promoted by reformist and orthodox Parsis as litigants, witnesses, lawyers, judges, and journalists.

Bella’s case highlights two sorts of displacement. First, a patrilineal definition of Parsi identity was overtaken in this period by a more exclusive, eugenics-based racial model. As anxieties over communal extinction peaked with the advent of the census, orthodox Parsis clung to the notion of Persian racial purity, excluding Indian, Burmese, and European outsiders with renewed tenacity. Second, the colonial legal system’s reconfiguration of Parsi religious
institutions as trusts unravelled the authority of Zoroastrian priests as arbiters of religious doctrine.

On a larger scale, *Saklat v Bella* illustrates how a “centripetal jurisprudence” contributed to the creation of a unitary “legal India” and an empire of common law. It is also a story about legal pluralism and the rise of a non-European legal profession in the colonial context. Parsis rose to prominence as lawyers and judges in this period, and used their legal influence to carve out a space for Zoroastrian legal identity.
# TABLE OF CONTENTS

*Abstract*  

*Acknowledgments and Notes*  

**INTRODUCTION**  

**CHAPTER 1** The Case: *Saklat v Bella*  

**CHAPTER 2** The Controversy: Reform vs Orthodoxy  

**CHAPTER 3** The Precedents: Trusts and the Law of Outsiders  

**CHAPTER 4** The Bombay Commission I: Conversion  

**CHAPTER 5** The Bombay Commission II: Rituals of Purity  

**CHAPTER 6** The Libel Suits: Mixing in Burma  

**CHAPTER 7** The Bella Judgments: Creating Legal India  

**CONCLUSION**  

**EPILOGUE** After *Saklat v Bella*  

**Appendix A** Cases involving Parsi parties heard by D. D. Davar, Bombay High Court Judge (1906-16)  

**Appendix B** Translations of Jewish Conversion and Marriage Certificates in Ghandy v Wadia (1903)  

**Appendix C** Testimony of B. A. Wadia in Ghandy v Wadia (1903)  

**Appendix D** Witnesses in *Saklat v Bella* (1914-25)  

**Glossary**  

**Bibliography**
ACKNOWLEDGMENTS AND NOTES

First and foremost, I am grateful to my advisors, Gyan Prakash and Hendrik Hartog, who helped me bring South Asia and legal history together at Princeton. Gyan Prakash did me the greatest service by pushing me to spend more time in India, and to take more risks. I am grateful to him for making me think hard about conversion, and for giving me the freedom to follow the dissertation in the natural direction in which it developed. In the field of legal history, Dirk Hartog has been a guru-like figure for me. It has been a great privilege to have had this period of academic apprenticeship with him. My gratitude to him is greater than I can express. Colin (Joan) Dayan has also been a mentor, from a distance, since my first year of PhD study. Many thanks to her for making the academic personal. Colin Palmer and William Jordan kept me on my toes during my time at Princeton. Robert Tignor and Michael Laffan have graciously agreed to serve on my committee, sandwiching British India between their colonial African and Southeast Asian areas of expertise.

I owe huge debts to several institutions. The Graduate School and the Department of History at Princeton spoiled me with vast resources and incomparable training over six years. I am also grateful to the Social Science and Humanities Research Council of Canada for partially funding my first four years of PhD study. My first research trip to India in 2004, as well as a year in London, were made possible by Princeton, and also by the Social Science Research Council in New York. At Cambridge, Sidney Sussex College helped spark my initial interest in India during my legal studies there in 1996-8. A decade later, it
has provided me with the space and funding to make a second research trip to India in 2006, and to finish the dissertation. I am grateful to the Master and fellows of the college for welcoming me into their community.

In many ways, two scholars adopted me informally as their student. In Britain, I profited from John R. Hinnells’ astonishing knowledge of Parsi history, and from his scholarly generosity. It was because of him that I came into contact with many of my most important sources, both living and textual. My debt to him is enormous, not least of all because it was he who first nudged me in the direction of Bella’s case. In the U.S. (and cyberspace), Marc Galanter introduced me to many relevant scholars and helped me think seriously about legal pluralism. Many thanks to him for being the conscience peering over my shoulder as I wrote every footnote. I am also grateful to Mary Boyce, Almut Hintze, David Ibbetson, and Marika Vicziany for their scholarly interest and encouragement along the way.

Over the course of my research, I have discovered a great love of archival digging. Many thanks to F. G. Hart and Jackie Lindsay at the Privy Council Office (London), Robert Steward at the Highland Council Archive (Inverness), and especially to U. G. Mukadam on the Original Side of the Bombay High Court (Mumbai), along with his assistant Ramji, for making my time at the archives so rewarding. I am also indebted to Malcolm Deboo at Zoroastrian House (London), Nawaz Mody and the staff of the K. R. Cama Oriental Institute (Mumbai), the administration of the Bombay Parsi Panchayat (Mumbai), Bharti K. Gandhi at the Meherjirana Library (Navsari), and Rejendra Prasad Narla at the Tata Central
Archives (Pune) for their help and efficiency. A special thank you goes to Dhaval Vasani, a local boy who did a big favour for a perfect stranger at the Bhikaji Unwalla Zoroastrian Library in Udwada. Cemeteries were also an unexpectedly rich source of inspiration. Although unmentioned in the dissertation, trips to Paddington Cemetery (London), Brookwood Cemetery (Surrey), the Cimetière Père Lachaise (Paris), and Sewree Christian Cemetery (Mumbai) helped me think of history-writing as story-telling.

I met with over 65 Parsis individually for this project, and was taken by their generosity toward me, a non-Parsi writing on a topic of continuing controversy within the community. I was delighted to find a wealth of oral history on Saklat v Bella. I thank all those who so generously shared their family stories and photographs with me—in Mumbai, Pune, Udwada, Navsari, Ootacamund, Delhi, London, Toronto, Vancouver, Montréal and beyond. I feel especially privileged to have met Pesi Ginwala, Jehangir Mistry, Fali Nariman, Tanaz Panthakey, Mrs. G. N. Rattansha, Jerestin and Manek Sidhwa, and Arnavaz Vakil. They brought Parsi Rangoon alive. I am indebted to Shirin Bharucha, Sammy Bhiwandiwalla, Khorshed Gandhy, Pheroza Godrej, Arnavaz Mama, Nadir Modi, Sohrab E. Morris, Jehangir Patel, Jehangir Sabavala, Feroza Seervai, Jimmy Sidhva, Bella Tata, Darius Udwadia, and Sarosh Zaiwalla for their help and interest in the project. For sharing with me their religious and historical knowledge, I thank K. N. Dastoor, Ervad Ramiyar Karanjia, and Dastur Dr. Firoze M. Kotwal, Khojeste Mistree, and Firoza Punthakey Mistree. Homi D. Patel was a cheerful and
professional translator throughout. I am particularly grateful to him for his translation of the almanac, *Parsi Prakash*, from the Parsi Gujarati.

Most of all, my experiences in India were unique thanks to my Parsi hosts, Rustom P. Vachha (in 2004) and Erin Broacha (in 2006). I thank Rustom for accepting the role of living archive of the Parsi legal profession; his servants Asha and Ravi for their smiles, *masala chai*, and adorable grandchildren; and my “Mumbai mom,” Ratti Italia for her wit and help with everything from bargaining for mangos to locating Parsis from Rangoon. I am grateful to Erin (and Tushna T.) for welcoming me into their lively household where I spent two extremely happy months in 2006, and for treating me to the best *dhansak* in India.

At Princeton, my dissertation writing group consisted of Ishita Pande, Karin Velez, Molly Loberg, Katrina Olds, Tania Munz and Elizabeth Foster. Their company and close reading made writing up fun. The Family made my last year at Princeton one of the happiest ever. To Kutlu Akalin, Ishita Pande, Ryan Jordan, Clara Oberle, as well as Klaus Veigel and Volker Menze, there is nothing I can say but that you’re all pretty. From a distance, I thank Nicole Albas, Nigel DeSouza, Debra Shulman, Orit Bashkin, and Karsten Jedlitschka for everything over the years. In London, Biliana Draganova, Aditi Khanna, and Francisco Javier Álvarez Álvarez kept me smiling during a year largely spent in recovery after being hit by a London bus. During that period, my cousin Reza Jowkar brought me *zereshk polo* and changed my bandages when I could not walk. I am grateful to him for his company and compassion. Dinesh and Namrata Singh made Delhi feel like a home away from home. If anyone has made India a place I
love and miss, it is they. I thank them for their friendship and all the great adventures. In Mumbai, knowing Tushna Thapliyal filled my days with laughter, especially in 2006. Many thanks to Arudra Burra and Stelios Tofaris for the many fruitful discussions over the past five years. Transatlantically, the “Sixter” cousins (Shiva, Shireen, Anahita and Roxanna Guide, and Pari) kept me entertained at least once a year. In Oslo, I was lucky to have Pari Sharafi, the greatest little sister in the world, and Geir-Bjarne Listhaug, the greatest brother. Finally, in Canada, it would be hard to imagine two more supportive and indulgent parents than Sylvia Furman and Ali Ghaed. They believed in me more than I did myself, and always let me study instead of mowing the lawn.

A few preliminary notes are in order. “South Asia” includes Burma, at least during the colonial period. For the sake of historical accuracy, I have used colonial spellings of place names (e.g. Naosari, Poona) except where referring to the place in an explicitly modern context (e.g. Navsari, Pune). When speaking of post-colonial Bombay, I use the name “Mumbai” in references to the city after its official 1995 name change.

For most of the colonial period, many Parsi names, like the term Parsee itself, ended with the suffix –ee (e.g. Bomanjee). The modern practice is to use –i (e.g. Bomanji, Parsi). Both styles appear in the legal papers examined here, reflecting the shift in spelling conventions of the time. For the sake of consistency, I have adopted the modern –i form generally, unless quoting directly or referring to a name from a period when –ee was clearly the convention. In the
case of names with variable spellings (e.g. Jijibhai, Jeejeebhoy), I have favoured the spelling appearing in the official law reports (i.e. Jijibhai).

The use of a forename followed by a surname is not part of Burmese or Chinese naming conventions. As a result, I have retained Burmese and Chinese authors’ full names in citations, alphabetizing them by the first name that appears, rather than the last.

There are at least three dates by which a case may be identified: the date when the suit (or appeal) was filed, the date of judgment, and the date of the volume of law reports in which the ruling appeared (if reported at all). Following standard practice, I identify most cases by the date of the law report volume. Where I discuss a suit at length, as in the case of Petit v Jijibhai, I may distinguish between the date of filing (i.e. 1906), of judgment (1908), and of law report (1909). In such instances, I may also refer to the entire period from the date of filing the suit until the date of the final ruling [i.e. Saklat v Bella (1914-25)]. If a case was unreported, the date generally refers to the date when the suit was filed. All Bombay High Court case papers (as opposed to judgment notebooks) pertain to “Original Side” suits. These were suits falling under the court’s “Original Civil Jurisdiction” (OCJ) because they originated in the city of Bombay, rather than the mofussil or “provinces” (within Bombay Presidency). Although the judge D. D. Davar had a son named J. D. Davar who was also a Bombay High Court judge, references to Davar’s judgment notebooks refer to the father alone.

Finally, figures appear at the end of each chapter. Illegible words from archival sources appear in square brackets. Unless otherwise indicated,
translations from Gujarati are Homi D. Patel’s. Translations from French are my own.
INTRODUCTION

My Lord, What is Parsi law? Since I have been in Bombay, I have never been able to discover it; and I have never met with any man who had… I think I may insist, that the Parsis have no law… [The parties] must have this question determined according to English law…

-Mr. Campbell, counsel for Rev. Dr. John Wilson and Parsi convert to Christianity, Dhunjeebhoy Nowrojee, before the Supreme Court of Judicature in Bombay (1839)¹

This dissertation is the long history of a single case. At its most focused, it covers the eleven years between 1914 and 1925, recounting the story of an Indian orphan girl named Bella who was adopted by a Zoroastrian couple in colonial Burma, and who tried to gain the right to enter the Zoroastrian fire temple of Rangoon as a member of the Parsi community. In a broader sense, it takes a panoramic sweep, telling the story of a colonized community that forged its identity through litigation and ensured legal pluralism—namely, a specifically Zoroastrian body of law—by flooding the legal profession. I use the collective identity crisis sparked by the case of Saklat v Bella to illuminate an imperial circuitry of cultural and legal influences, and the history of a peripatetic people that, over thirteen centuries, fled from Persia to western India, trickled into Burma, then looped round to London via Bombay through litigation. Saklat v Bella caught the Parsis of South Asia trying to frame their rules of membership at a time when religious and ethnic affiliations were becoming unstuck from each

other. It highlighted the new demographic self-consciousness of census India, and the Rangoon Parsis’ multiple grounding spots that were always away—in Bombay, Gujarat, Persia and London.

The single case method makes sense when the case in question was either unremarkable but representative of some larger phenomenon, or unrepresentative but remarkable. In different ways, *Saklat v Bella* was both. It was representative of a phenomenon that made the Parsi community distinctive: the resolution of Parsi-Parsi disputes through litigation, rather than by some less public, more "internal" community-based route. Although Parsis were only about 6% of the population of Bombay in the early twentieth century, they were parties to almost a fifth of the officially reported cases in the Bombay High Court originating in the city of Bombay.\(^2\) In over half of these, Parsis initiated the litigation as plaintiffs or furthered it as appellants.\(^3\) In roughly a quarter, the suits were between Parsis on either side.\(^4\) A sizeable Parsi legal profession completed the picture. Between a third and a half of lawyers and roughly one tenth of High

\(^2\) In 1901, the Parsi population of Bombay was 46,231, or 6% of the city of 776,006. ([Gazetteer of Bombay City and Island](Bombay: compiled under Government Orders, printed at the Times Press, 1909), I, 273 (Appendix VII).) Of the cases reported in the *Indian Law Reports Bombay Series* between 1900 and 1930, 19% of the cases heard by the Bombay High Court on its Original Side (104 of 543) involved one or more Parsi parties. I have included Parsi businesses like the law firm Wadia Ghandy and Co. and the bank Tata Industrial Bank in these figures, as well as Parsis acting in their official capacity, like R. D. Sethna as Official Assignee. I have used Karaka’s extensive list of Parsi names and the names included in Darukhanawala’s biographical directory as aids. [Dosabhai Framji Karaka, *History of the Parsis including their Manners, Customs, Religion and Present Position* (London: Macmillan and Co., 1884), vol.1, 163; and H. D. Darukhanawala, *Parsi Lustre on Indian Soil* (Bombay: G. Claridge and Co., 1939).] I am also grateful to R. P. Vachha and Homi Patel for their help in the identification of Parsi names, particularly in cases where a name could be either Parsi or Hindu (e.g. Mehta, Patel), Muslim (names with the suffix –*wala* or –*walla*), or British (e.g. Boyce, Cooper, Marker, Dick).

\(^3\) In 64 of 104 cases involving Parsi parties (or 61.5%), Parsis were the plaintiffs or appellants.

\(^4\) 27 of 104 cases (or 26%) were disputes between Parsis.
Court judges in Bombay were Parsi in this period. Saklat v Bella featured exclusively Parsi litigants (or those who considered themselves Parsi) and many Parsi legal professionals, particularly in its Bombay phase. In this way, the case typified the move to settle disputes within the Parsi community in the colonial courts, and to understand Parsi identity through the language and structures of colonial law.

At the same time, the case was remarkable for the publicity and conflict it provoked, both of which went far beyond that of the average Parsi-Parsi lawsuit. In Bella's case, the essence of Parsi identity was at stake. With the status of being Parsi came the concomitant material, ritual and social benefits of membership in a tight-knit, affluent community with a rich cultural heritage and unique religious traditions. Saklat v Bella was the sequel to a case of attempted conversion and entitlement to community membership by the French wife of a Bombay Parsi in 1906-9. The French Mrs. Tata's case ended in the Bombay High Court. Bella's case went further—to the Judicial Committee of the Privy Council.

---

5 In 1908, 61 out of the 124 solicitors practicing in the High Court of Bombay (or 49%) were Parsi. In 1924, 116 out of 278 (41.7%) were Parsi. 35% of the names on a 1925 list of Bombay advocates were Parsi. [Ardeshir Jamshedji Chani Mistry, Forty Years Reminiscences of the High Court of Judicature at Bombay (Bombay: the author, 1925), 47, 60-3.] Nine of the 84 judges (or 10.7%) to sit on the High Court bench between 1876 and 1930 were Parsi, namely: H. C. Coyaje, Dinshaw D. Davar, Jehangir D. Davar, Jamshedji B. Kanga, Muncherji Pestanji Khareghat, Dinshaw Mulla, F. S. Taleyarkhan, Vicaji F. Taraporewala, and B. J. Wadia. See lists of puisne judges at the front of each volume of the Indian Law Reports Bombay Series, 1876-1930.

6 Throughout this study, I refer to the case of Petit v Jijibhai as “the French Mrs. Tata's case.” Although the French Mrs. Tata was not a party to the case, which was framed around other issues, both judges in the Bombay High Court acknowledged that the validity of her attempted conversion was the central issue in question. See The Parsi Panchayat Case in the High Court of Judicature at Bombay (Suit No. 689 of 1906). Sir Dinsha Manockji Petit and others, plaintiffs v Sir Jamsetje Jeejeebhoy and others, defendants. Judgment of the Honourable Mr. Justice Davar delivered Friday, 27th November 1908 (Bombay: n.p., n.d.), 32; and ...Judgment of the Honourable Mr. Justice Beaman delivered Friday, 27th November 1908 (Bombay: n.p., n.d.), vii; also appearing in Judgments: Petit v Jejeebhoy 1908, Saklat v Bella 1925. Reprint of original judgments with explanatory articles and supplementary judgments (Mumbai: Parsiana.
in London, the final court of appeal for the British empire. *Saklat v Bella* produced some 1,300 pages of legal records, four spin-off libel cases, protest meetings and petitions involving thousands of Parsis. It held the attention of the colonial press in Burma, India and Britain. Scholarly attention has focused almost exclusively on the French Mrs. Tata's case. In fact, *Saklat v Bella* was the more extensive judicial investigation of Parsi identity. In the late colonial era, it was the most in-depth attempt to answer the question, *who is a Parsi?* Was being Parsi primarily about being part of a religion or a "race"? 7

This dissertation joins a small but growing body of works that use the single lawsuit as an point of entry into the legal history of colonial South Asia. Partha Chatterjee's *The Princely Impostor* and Sudhir Chandra's *Enslaved Daughters* are the most recent examples of this genre.8 Studies of colonial appeals to the Privy Council tap a rich and neglected archive, both for India and other colonial territories.9 Generally, single case studies permit a mix of legal
doctrine and cultural context that is engaging and catholic in disciplinary appeal. *Saklat v Bella* provides the glue connecting Burmese Buddhist custom, Zoroastrian theology, South Indian Hindu temple entry cases, and Scottish divorce suits. It offers an opportunity to further the tradition of the narrative single case study, perhaps the genre of legal history that most successfully bridges the interests and methods of historians and academic lawyers alike.¹⁰

There is a second scholarly vein into which this study fits. A new resurgence in the history of the colonial legal professions has drawn attention to non-European lawyers not just as future leaders of anti-colonial independence movements, but also as intellectual middlemen in the production of legal ethnography.¹¹ So-called native lawyers and judges acted as translators, interpreters and crafters of cultural identities for their own and other communities in the idiom of colonial law.¹² The history of the Parsi legal profession is a major theme in this study, and one that dovetails nicely with a new non-hagiographical interest in the non-European colonial legal professions. I refer to the work of


¹² The term *native* is problematic because it ignores the complexities of pre-colonial history. Communities like the Parsis, Jews and Armenians of colonial South Asia considered themselves recent arrivals to British India, and maintained strong links and loyalties to societies beyond the colonial territory. See Joan Roland, *The Jewish Communities of India: Identity in a Colonial Era* (New Brunswick, N.J.: Transaction, 1998); and Mesrovb Jacob Seth, *Armenians in India from the Earliest Times to the Present Day* (Calcutta: the author, 1937).
Pamela Price and John J. Paul on colonial South Indian lawyers; of Mary Jane Mossman on the lawyer of Parsi descent, Cornelia Sorabji; and of Assaf Likhovski on Arab and Jewish lawyers in mandate Palestine.\(^{13}\) The seeds of similar studies are contained in legal studies of the colonial Gold Coast, central Africa, and newly American Hawaii, as well as of South Asian Muslim communities, the Nayars of the Malabar coast, and the Cherokee of the U.S. southeast.\(^{14}\) It is hoped that the larger general interest in the history of the colonial legal professions will lead more scholars to study non-European lawyers and jurists.\(^{15}\) The contribution of this study is to link the history of the legal


profession to the theme of legal pluralism, showing how substantive legal interpretation was colored by the ethno-cultural identity of its interpreters.

Thirdly, this dissertation bridges the area-studies divides between Middle Eastern, South Asian and Southeast Asian studies. The Parsis were by definition a diasporic community, thriving outside of the Persian homeland and migrating to the edges of Britain’s imperial reach and beyond--initially for trade, later for education and to take up professional and governmental positions. *Saklat v Bella* charts the identity formation of a community that, after 1,300 years outside of Persia and residence in South Asia, balanced a strong sense of Persianness with close ties to the imperial British metropole.

Through the most intimate ties of intermarriage and adoption, Bella’s case and its surrounding jurisprudence gauged Parsi self-understandings of race vis-à-vis the Europeans, Burmese, Indians, and Africans around them. In this way, this study adds to a fourth body of scholarship, the small but growing number of works that consider non-European perceptions of race in the colonial setting, and between colonial populations.\(^{16}\) It also makes a contribution to the global history of eugenics movements by examining the writings of J. J. Vimadalal.\(^ {17}\) The Bombay solicitor’s work adapted a largely European and American body of thought to the Parsi context, and had a real presence during the Bella proceedings.

There were two major contests embedded in Bella’s case. The first was the contest between Parsi lawyers and priests, and the inverse confidence levels

\(^{16}\) See notes 1001-2 (below).

\(^{17}\) See note 1195 (below).
underpinning the collective identity of each. As the colonial legal system claimed jurisdiction over internal religious disputes, courts repackaged Zoroastrian religious endowments as trusts. With this reformulation, much religious authority shifted from the Zoroastrian priesthood to the framers of trusts, trustees, and the lawyers and judges who interpreted trust terms in court. The rising professional identity of Parsis in the legal profession was a success story about legal pluralism and the creativity of a community officially denied its own body of religiously specific law. The story of the priesthood was just the opposite. Despite periodic attempts to tread water and learn to swim, this profession was losing power and authority for much of the second half of the colonial period, a phenomenon brought into sharp relief by *Saklat v Bella*.

The second contest was between two models of Parsi identity: the patrilineal model, by which eligibility for admission into the community required that an initiate have a Parsi father; and the racialized model, whereby it was the balance of blood on both sides that mattered. The triumph of the racial model meant a growing disapproval of intermarriage between Parsi men and non-Parsi women, reflected in the spin-off libel litigation to Bella’s suit. Two strands of argument underpinned the shift. First, the vast charitable sums made available to members of the Parsi community meant that there were significant material stakes attached to membership in the community. Orthodox opponents of the admission of outsiders predicted mass conversion by India’s impoverished lower caste masses, and the exhaustion of Parsi trust funds that would ensue. The second strand had to do with eugenics. J. J. Vimadalal, the Parsi solicitor who
would lead the case against Bella in Bombay, adapted European writings on racial hygiene to the Parsi context with specific reference to the intermarriage debate. His publications were cited during the Bombay commission to Bella’s case—and with conviction—such that race theory does not seem to have been a superstructural rationalization of the property claim, but an independent body of thought operating in tandem with it.

This study aspires to being an integrated legal history. All too often, the history of legal doctrine, the history of the legal profession, and cultural history written from legal sources exist as disconnected genres of legal historical writing. This long history of *Saklat v Bella* tries to merge all three. South Asian lawyers first outnumbered European ones in the period covered here, with the Parsis leading the way in Bombay particularly. This was also the period when the most explosive debates over Parsi identity came onto the public stage in the form of lawsuits. These cases are interesting both from an internalist lawyer’s focus upon doctrine, and from an externalist’s interest in larger cultural questions of race, reform and identity.

“Chapter 1. The Facts of the Case: *Saklat v Bella*” lays out the basic events of Bella’s case, complicated by the mysterious circumstances surrounding Bella’s conception and birth, and the deaths of her natural mother and alleged father. The chapter presents an alternative hypothesis relating to Bella’s true paternity. It also lays out the basic contours of a history of the Parsis of British Burma, a history unexplored by scholars. One part of that history was a dispute over ethnic exclusivity in the Parsi burial ground of Rangoon in 1889. This
episode foreshadowed many of the identity-related issues that would resurface in Bella’s case three decades later. It also explained why Bella’s adoptive uncle was sole trustee of the Rangoon fire temple in 1914, a fact critical to the events of Bella’s case.

In “Chapter 2. The Controversy: Reform vs Orthodoxy,” the dissertation moves to Bombay, situating Bella’s case in a chain of debates between reformists and orthodox Parsis. I consider reformist caricatures of orthodox views through the satirical cartoon figure of Mr. Best-Orthodox, and orthodox depictions of the reform movement in prose appearing in orthodox newspapers. The contours of the debate fell along unexpected axes, reformists adopting a backward-looking language of return to a purer form of Zoroastrianism, and the orthodox allying themselves with the self-consciously modern and fashionable theosophical movement.

“Chapter 3. The Precedents: Trusts and the Law of Outsiders” contextualizes Bella’s case within the two bodies of case law that most closely informed its outcome: cases on Zoroastrian religious endowments, which were understood by the colonial legal system as trusts; and cases on intermarriage between Parsi men and non-Parsi women. The trust cases are important because they reveal the distorting effects of the trust upon power relations and religious authority within the Parsi community. The intermarriage cases form the natural body of precedent for Bella’s case because they document earlier attempts to have ethnic outsiders admitted into the community. They reveal a
history of disapproval on the part of the many Parsis toward claims, typically by European women, to ritual and material access and entitlements.

Chapters 4 and 5 explore major themes of the Bombay commission, the body created in Bombay to collect evidence on Parsi Zoroastrian beliefs and practices for the Bella litigation in Rangoon. “Chapter 4. The Bombay Commission I: Conversion” investigates the competing positions presented on conversion during cross-examination in the Bombay Court of Small Causes. More than any other, this chapter treats the property-based strand of orthodox opposition to conversion. Orthodox Parsis argued that allowing conversion would spell the exhaustion of Zoroastrian charitable funds by lower caste converts. Reformists countered that aspiring converts would not be hordes of opportunistic impoverished Indians, but a small number of non-Parsi women and part-Parsi children who already shared bonds of blood and household with Parsi men.

“Chapter 5. The Bombay Commission II: Rituals of Purity” treats a discussion that formed a major part of the Bombay commission, but that was notable in its absence from the published judgments in Bella’s case: the ritual validity of Bella’s initiation ceremonies. If in fact conversion were permitted, the question was whether Bella’s particular initiation would be valid given that it had not included the purificatory rites of barashnum, a ceremony whose ritual necessity was itself in dispute. Barashnum required initiates to drink nirang, the consecrated urine of a white bull, and to appear naked before Zoroastrian priests. It became a target for reformists attempting to discredit orthodox ritualism
by appealing to colonial notions of propriety and disgust, and was a major source of conflict during the Bombay commission.

“Chapter 6. The Libel Suits: Mixing in Burma” explores four spin-off libel suits stemming from the Bombay press’ coverage of *Saklat v Bella*. Orthodox Bombay newspapers made a number of accusations relating to Burmese women and cultural influences. Bella’s adoptive father was said not to be married to her adoptive mother: the couple had married under Burmese, not Zoroastrian, rites. The woman in question, along with a little boy initiated into the religion by the priest who initiated Bella, was also accused of being a part-Burmese “half-caste.” Bella’s adoptive father and the boy’s father sued for their racial reputations as “pure Parsis.” These cases chart the shift from a patrilineal to a racial understanding of Parsi identity. The development of a eugenics-based model by J. J. Vimadalal provided the conceptual foundations for this new, more restrictive definition of membership in the community.

In “Chapter 7. The Bella Judgments: Creating Legal India,” I trace the discussion of legal doctrine through the three levels of court that heard Bella’s case. Three arguments were made against Bella’s entry into the Rangoon fire temple. First, it was claimed that she was a trespasser to the temple, the land, and even the persons of the other worshippers. Second, it was argued that Bella violated the other worshippers’ right of exclusive worship, that is, the right to worship in the exclusive company of their own kind. Third, the plaintiff-appellants’ lawyers claimed that on a proper construction of trust terms, Bella fell outside the class of people meant to benefit from the trust on the basis of her ethnicity. The
Privy Council rejected the first two arguments. But it affirmed the third. This last chapter takes as much an interest in the jurisprudential route taken by judges in Rangoon and London as in their substantive destination. The exercise of situating Bella within a common law landscape meant reproducing the centripetal jurisprudence of empire, tying the Parsis to Hindu temple access cases from Madras and Bombay, British public school and Oxbridge management schemes, and the treatment of religious disputes within Anglican, Catholic and dissenting Protestant churches in England and Québec. As much as *Saklat v Bella* represented a victory for ethnic exclusivity, it also illustrated the constant process of ethno-juridical integration that led to the creation of “Legal India” and an empire of common law.

The period covered begins with the important and problematic precedent on Zoroastrian death commemoration ceremonies, *Limji Nowroji Banaji v Bapuji Ruttonji Limbuwalla* (1887). The study moves through the Rangoon Parsi cemetery dispute (1889), a series of cases on Parsi trusts and intermarriage (1887-1916), the facts of Bella’s case (1899-1914), and the court proceedings and press coverage associated with the case, beginning in Rangoon (1914) and culminating in the Privy Council ruling in London (1925). A brief epilogue uses oral history to follows the figures and communities in Bella’s case after the Privy Council’s judgment. It documents the fate and flight of the Parsis from Burma during the Japanese invasion of 1941-2, and beyond.

Chapters 1 and 6, along with the epilogue, are about Parsi Rangoon. Chapters 2 to 5 look to Bombay, and chapter 7, to London. Chapters 3 and 7
analyze legal doctrine, while chapter 2 approaches pure cultural history more than any other part of this study. Chapters 4 to 6 take a law-in-context approach, using legal sources to illuminate larger cultural discussions of conversion, ritual and racial purity.

*Saklat v Bella* presented the legal forum as the primary site for Parsi identity formation in the late colonial period. More than through political, literary or popular channels, Parsis fought out their rules of membership in the courts—as litigants, witnesses, lawyers, and judges. Bella’s case documented those negotiations in meticulous detail, emphasizing that colonial law was an interpretive filter, backed by the power of the state, through which one colonized community represented itself to the world, and the world to itself.18

CHAPTER 1

The Case: Saklat v Bella

Sometime in 1899, a young couple named the Jones arrived in the Burmese port city of Rangoon, then part of British India. Mr. Jones was Indian, a Christian from the Indo-Portuguese colony of Goa. Mrs. Jones’ affiliations were less clear. She claimed that her parents had been Parsi—the descendants of Persian Zoroastrian refugees who fled to India after the seventh-century conquest of Persia by Arab Muslims. According to Mrs. Jones, her parents died in her infancy. After their death, she was taken in and raised by Christian missionaries in Surat, hence her name: Rebekah. When the couple arrived in Rangoon, Rebekah Jones was seventeen years old. She and her husband were destitute.¹⁹

The Jones came from Bombay. Witnesses in the subsequent trial claimed they had fled.²⁰ Mr. Jones looked for work and found it on the tramway.²¹ Mrs. Jones looked for a wealthy benefactor amongst the Parsi residents of Rangoon.²² The Parsi community was famous across colonial South Asia for its tradition of charity, evidenced by the popular Bombay saying, “Charity, thy name is Parsi.”²³

Mrs. Jones found a generous patron in Bomanji Cowasji Captain, a wealthy and

¹⁹ “Obituary: Bomanji Cowasji Captain” (1 February 1929) in Bahman Behram Patel and Rustom Barjor Paymaster, Parsi Prakash: Being a Record of Important Events in the Growth of the Parsi Community in Western India, Chronologically Arranged (Bombay: Bombay Parsi Panchayat, 1878-1942) VI, 403-4. (Translation from the Parsi Gujarati by Homi D. Patel used throughout.)
²⁰ “Parsis at Law. Alleged Defamatory Article. Charge against Mr G. K. Nariman. The Recent Navjote Ceremony,” Weekly Rangoon Times and Overland Summary (hereafter WRTOS) (2 May 1914), 42. See also “The Rangoon Romance (Bella and the Anjuman),” Hindi Punch (7 June 1914), 13.
²¹ “Parsis at Law,” WRTOS (2 May 1914), 42.
²² “Obituary: B. C. Captain” (1 February 1929), Parsi Prakash VI, 403-4.
influential Parsi barrister, aged 48 and married. Bomanji was one of three brothers in the prominent Captain family, popularly known as the “Cowasjis”—a pillar of Rangoon’s small but enterprising Parsi community. Mrs. Jones claimed to be Parsi, and Bomanji Cowasji believed her: she looked, dressed, and spoke Gujarati like a Parsi, and told him that her Parsi name was “Meherbai.” She came to him for help and he gave it, taking an interest in her welfare, visiting her and even providing her and Mr. Jones with free housing, a room in a flat Bomanji owned on Rangoon’s Lewis Street.

Sometime in mid- to late 1899, Mrs. Jones became pregnant. Also in 1899 or early 1900, Mr. Jones died “of galloping consumption.” In February or March 1900, Mrs. Jones gave birth to a baby girl, Bella. It was this child who would be at the center of a controversy that upset the Parsi world and piqued the interest of the colonial public between 1914 and 1925. Bella’s case ping-ponged between the courts of Rangoon and Bombay, trailing new lawsuits in its wake, and ultimately landing before the highest court of appeal for the British colonies, the Judicial Committee of the Privy Council in London.

Mrs. Jones’ benefactor left for England within three months of Bella’s birth, but he instructed his older brother, Shapurji Cowasji Captain, to tend to the mother and her baby with utmost care. A few months later, Rebekah Jones developed tuberculosis, and Shapurji took great pains to arrange care for her and

---

24 Following the legal records, I will refer to the family by the name Captain, rather than Cowasji.
25 “The Rangoon Romance (Bella and the Anjuman),” Hindi Punch (7 June 1914), 13.
26 Throughout this dissertation, I refer to the JCPC as “the Privy Council.” This is shorthand for the Judicial Committee specifically. The general Privy Council was a much larger body of individuals with responsibilities beyond the appellate judicial realm. See Norman Bentwich, The Practice of the Privy Council in Judicial Matters in appeals from Courts of Civil, Criminal and Admiralty Jurisdiction and in Appeals from Ecclesiastical and Prize Courts with the Statutes, Rules and Forms of Procedure (London: Sweet and Maxwell, 1912), 1-20.
the baby. But to no avail. Mrs. Jones was admitted to the Rangoon General Hospital, and died there on 7 October 1900. Her body was dumped in a pauper’s grave; no one had come to collect her corpse. Almost immediately, her benefactor’s brother assumed custody and care of Bella. Shapurji and his wife had lost their own two children. They raised Bella as their own, schooling her in the tenets of Zoroastrianism and giving her the Parsi name, *Goolabhai*.27

On one Zoroastrian New Year of 1914, Bella’s adoptive father had her initiated into the religion through the *navjote* ceremony.28 This *navjote* was questionable because, according to orthodox belief, one could only be Parsi if one was of Parsi *boon* (literally, seed) or paternity. Bella did not qualify: she was adopted, being apparently the natural daughter of a Goan Indian man. The local priest refused to perform the ceremony, fearing a public outcry. As a result, Shapurji hired the High Priest of the Deccan, Dastur Kaikobad of Poona, who came from western India to do the job.29 Dastur Kaikobad performed Bella’s *navjote* despite the wave of outrage and pressure that emanated from orthodox

---

27 “Parsi Defamation Case. The Anjuman Meeting,” *WRTOS* (1 August 1914), 42. Somehow the name *Goolabhai* did not stick. The legal records refer to Shapurji’s adoptive daughter as *Bella* throughout, as does this study.

28 Due to the *kabisa* or intercalation debate over the calculation of the Zoroastrian calendar, there are two Zoroastrian New Years: Jamshedji Naoroz, which is usually around March 21, and Pateti, which falls in September and is the more important of the two dates. Bella was initiated on Jamshedji Naoroz 1914. On the calendar controversy, see J. J. Modi, *The Religious Ceremonies and Customs of the Parsees* (Bombay: Society for the Promotion of Zoroastrian Religious Knowledge and Education, 1937), 430; Dosabhai Framji Karaka, *History of the Parsis, including their Manners, Customs, Religion, and Present Position* (Delhi: Indigo, 2001), I, 144-5; Rustom Burjorji Paymaster, *Early History of the Parsees in India from their landing in Sanjan to 1700* (Bombay: Zartoshti Dharam Sambandhi Kelavni Apnari Ane Dnyan Felavni Mandli, 1954), 77-8; and M. N. Dhalia, *Dastur Dhalla: The Saga of a Soul. An Autobiography of Shams-ul-Ulama Dastur Dr. Maneckji Nuesserwanji Dhalla, High Priest of the Parsis of Pakistan* Gool and Behram Sohrab H. J. Rustomji, trans. (Karachi: Dastur Dr. Dhalla Memorial Institute, 1973), 394. See also text accompanying note 975 (below).

29 For a biographical summary of Dastur Kaikobad’s life, see “Sardar Dastur Kaikobad Aderbad” in *Tawarikhe-Dastoor Jamasp Ashana [History of the Jamasp Ashana Family]* (Bombay: Mumbai Vertman Press, 1912), 146-53. (Translation by Homi D. Patel.)
Parsis in Bombay, Calcutta, and Rangoon. Following her navjote, the fourteen-year-old Bella entered the Rangoon fire temple with her adoptive father, an act that many claimed desecrated the temple and offended orthodox Parsis around the world.

This was how Bella’s case began. It ended in court—or more accurately, in various courts in Rangoon, Bombay, and London over the eleven years between 1914 and 1925. Like the twentieth century, Bella passed from her fourteenth to her twenty-fifth year over the course of the proceedings. The Parsi community’s struggle to define its borders traveled alongside Bella’s own passage through adolescence, superimposing collective upon personal identity trials.

This study of *Saklat v Bella* tries to counteract the trend among legal historians of colonial South Asia of privileging legislation over case law.\(^{31}\) Bella’s case was a single story, but it cracked open a web of late colonial engagements between Parsis and the Burmese, Indians and Europeans around them, as well as with the memory of the ancient Persians that defined the community’s sense of self. From the inner sanctum of the bedroom to that of the temple, Bella’s case forced together conflicting worlds—of ritual privacy and litigious publicity, diasporic cosmopolitanism and cultural exclusivity. The boundaries of community were at stake as an internal conversation between members of a tight community was blared over “speakerphone” to the late colonial world, the effect of taking Bella’s case into the legal arena. *Saklat v Bella* provides a rare glimpse of ethno-racial self-perceptions from a non-European colonial perspective.\(^ {32}\)

This chapter reconstructs the historical facts of Bella’s case in its opening segment in Rangoon, proposing an account of Bella’s parentage that differs from the official legal version. I then explore an important local antecedent to Bella’s case, the Rangoon Parsi fire temple and burial ground litigation of 1889—both because this episode put Bella’s adoptive uncle, Bomanji, in sole control of the Rangoon fire temple, and because it grappled with issues of ethnic exclusivity


\(^{32}\) This dissertation alternates between the terms *ethnic* and *racial*, the former being used generally except where the parties themselves spoke explicitly in terms of “race” in its early twentieth-century sense. See note 998 (below).
that would recur in *Saklat v Bella*. Finally, this chapter introduces the history of Parsi Rangoon, a story continued in chapter 6 and the epilogue.

**Into the Temple, into the Courts**

Members of the Rangoon Parsi community filed a suit against Bella and her adoptive father, requesting an injunction barring her from entry into the Rangoon fire temple. Entering the fire temple was no small act. Parsi fire temples were perhaps the ultimate instantiation of the sense of privacy that was so central to Zoroastrian religious life. The presence of a non-Parsi Zoroastrian inside the temple would defile it, requiring huge expense and labor for reconsecration, according to the grade of fire housed inside.\(^{33}\) The holy fire, kept burning continuously, was housed within a labyrinth of walls designed to prevent non-Parsi passers-by from catching a glimpse from the street.\(^{34}\) Bella’s entry into the temple had multiple resonances in the early twentieth century. In India, temple entry conjured up images of Gandhi’s and Ambedkar’s campaign to enable harijans or dalits (then pejoratively called Untouchables) to enter Hindu temples.\(^{35}\) In the specifically Parsi context, it stood for a violation of religious

---


\(^{34}\) See Sarosh Wadia, *A Study of Zoroastrian Fire Temples* (Ahmedabad: School of Architecture, Center for Environmental Planning and Technology, 1990), 60, 114.

privacy, the precious inner zone so carefully protected by a community that in so many other facets of trade and travel mixed freely with the outside world.

Entry into the temple was left to the discretion of the trustees of the controlling trust. Due to an unusual set of circumstances, the sole trustee of the Rangoon temple’s trust was none other than Bella’s adoptive uncle—Rebekah Jones’s original benefactor, Bomanji Cowasji Captain. Equally ironic was the fact that one of the men leading the lawsuit against Bella was her other adoptive uncle, the eldest brother of Bomanji and Shapurji, and perhaps the single most powerful Parsi in Burma. The Honorable Merwanji Muncherji Captain—popularly dubbed the “Grand Old Man of Burma”—was an unofficial member of the Provincial Council, a delegate to the Parsi Matrimonial Court, a first-class magistrate, a Municipal Commissioner, and the only Parsi from Burma selected to do homage to the King of England at the Durbar of 1911.36 The case of Saklat v Bella was heard by the Chief Court of Lower Burma in its original jurisdiction in 1915. Bella won, but her uncle Merwanji and his supporters appealed. In its appellate jurisdiction, the Chief Court of Lower Burma again upheld her right to enter the temple. Again, Merwanji appealed, this time to the Privy Council in London.

36 When the Morley-Minto reforms were introduced in India in 1909, the Burma Legislative Council was enlarged to include fifteen members. One of these was Merwanji Cowasji Captain—a coup for the Parsis of Burma as the entire majority Burmese population was represented by just two members. When Merwanji died in 1917, he was replaced on the Council by N. N. Parekh, the Parsi physician who cared for Mrs. Jones and Bella during their illness, and who testified in Bella’s case. [Nalini Ranjan Chakravarti, The Indian Minority in Burma: The Rise and Decline of an Immigrant Community (London: Oxford University Press for the Institute of Race Relations, London, 1971), 98.] On his role as matrimonial court delegate and municipal commissioner, see “Obituary: Merwanji Cowasji Captain,” Parsi Prakash, V (1917), 382; and “Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” WRTOS (25 July 1914), 41. On the 1911 Durbar, see “List appended to letter to Lord Hardinge from Lieut. Governor of Burma, Government House, Maymyo (Burma) (25 July 1911)” in Hardinge Papers, vol. 50 (Manuscripts and University Archives, Cambridge University Library).]
Meanwhile, four libel suits erupted out of the Bombay newspapers’ coverage of the case. Bella’s adoptive father sued the editors and publishers of two Bombay Anglo-Gujarati dailies, *Jam-e Jamshed* and *Sanj Vartaman*, for accusing his wife of being his half-Burmese mistress, their original marriage having been formalized only by Burmese (not Zoroastrian) rites. The father of another child whose *navjote* was performed at the same time as Bella’s also sued *Sanj Vartaman* and a Bombay monthly, *Cherag*. These newspapers had published the statement that Mr. Contractor’s son was not his child by his Parsi wife, but an illegitimate Burmese “half-caste,” the result of extramarital relations with a Burmese woman. Finally, the Zoroastrian Conference, a reformist organization in Bombay, sued *Jam-e Jamshed* for alleging that the body was responsible for Bella’s initiation. Shapurji’s two cases ended in apologies and settlements favourable to him. The other two collapsed for procedural reasons.

Bella’s adoptive father—like her uncle Merwanji—died before the main case advanced to the Privy Council. Before Shapurji died, however, Bella married a Parsi. Her marriage prospects had been a key reason for Shapurji to fight for Bella’s status as a Zoroastrian. Without it, she would not have been able to marry a Parsi man. But she did, thanks to two Parsi priests who traveled from Poona to perform the rites, just as Dastur Kaikobad had for Bella’s initiation.

---

37 Interim hearings were held to readjust matters in the main litigation once Shapurji had dropped out as a defendant: *D. R. Saklat and two v Bella and one* ILR 2 Rang (1924) 91-3.
38 “Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” *Rangoon Weekly Times and Overland Summary* (25 July 1914), 41.
39 “Interlocutory Proceedings and Orders. No. 82: Affidavit of S. Cowasji, one of the respondents, with a copy of Marriage Certificate attached. Rangoon, 18 January 1921” in *Saklat v Bella*, 838 (PCO).
Manufacturing Company who came into money after his marriage, perhaps as a result of the marriage itself.\(^{40}\) On the occasion of her wedding, Bella once again entered the fire temple, reasserting her claim to temple access and re-defiling the temple.

Finally, in October 1925, Bella’s case was heard by the Judicial Committee of the Privy Council in London. For the first time, Bella lost her case. In theory, she won on a number of points. The Privy Council held that Bella was neither a trespasser to the temple, grounds, or persons of the other worshippers; nor that she had violated the other Zoroastrians’ right to worship in the exclusive company of their own kind. However, as the Rangoon fire temple trust was framed for the benefit of \textit{Parsi}s (an ethnic category) rather than \textit{Zoroastrians} (a religious one), Bella fell outside of the privileged class of persons intended to benefit from the trust. She may have been able to become Zoroastrian by religion, but she could not become Parsi by ethnicity, her alleged natural father being Indian. The result was that Bella was not entitled \textit{by right} to enter the fire temple, according to the Privy Council. Nonetheless, the trustees could allow her in at their discretion. On the earlier Rangoon fire temple trust scheme, this would have meant that Bella won—the trustee was her adoptive uncle Bomanji, who

\(^{40}\) Two figures in Bella’s case worked for the Singer Manufacturing Company: Bella’s husband and J. D. Contractor, the father of the other child initiated with Bella who sued two Bombay newspapers for libel. Another Parsi who worked for Singer in Rangoon pre-WWI was Jal Jamshedji Mistry [Excerpts from a letter from Jal Jamshedji Mistry (1891-1977) to his nephew Nari (January 1976) in unpublished Mistry family memoirs (Burjor M. Mistry), 30; with permission of Jehangir Mistry, Mumbai.] A number of law suits involving Singer’s traveling salesmen appear in the Lower Burma law reports. See, for instance, \textit{Singer Sewing Machine Co., applicants v Maung Tin, respondent} AIR 1923 Rangoon 47-8; also reported in \textit{Burma Law Journal} (hereafter \textit{Burma LJ}) 1 (1922) 158-60; and \textit{Singer Sewing Machine Co., petitioners v Yen Kun, respondent} AIR 1923 Lower Burma 68; also reported in \textit{Burma LJ} 1 (1922) 45. For a Singer advertisement of the period, see Burjorji Nowroji Apakhtyar, \textit{Cartoons from the “Hindi Punch” for 1910} (Bombay: the author, 1911), page facing 116 (alluding to the sewing machine “hire system” that produced so much litigation).
had been on her side from the beginning. But in 1919, the structure of the Rangoon trusteeship changed. New trustees were added, abolishing Bomanji’s unilateral and allegedly dictatorial exercise of power.41 Using their discretionary powers, these new trustees banned Bella from the temple. In practice more than in theory, Bella lost in London.

In between Rangoon and London came a flurry of activity in Bombay. Most of the evidence in Bella’s case was collected when a commission was established in Bombay to take witness testimony. The lawyers in charge were Parsi themselves, and deeply embroiled in the case personally as well as professionally. Representing Bella was the Parsi reformist D. M. Madon, a pleader involved with organizations like the Iranian Association and the Zoroastrian Conference, bodies dedicated to the modernization of Parsi customs and beliefs. Against her was the formidable J. J. Vimadalal—solicitor, orator, and doyen of Parsi orthodoxy, as well as a prominent theosophist and devotee of the Zoroastrian mystical *ilm-e-Khshnoom* movement.42 As early as 1910, he had published eugenics-based works alluding to the dangers of allowing outsiders into the fold, following the *juddin* (or alien) controversy provoked by a French woman’s attempted conversion that led to *Petit v Jijibhai* (1906-9).43 The first

41 “Rangoon Parsis’ Trusts,” *Times of India* (26 September 1918), 9; Miscellaneous Case No.186 of 1919 (Chief Court of Lower Burma, Original Side), cited in *D. R. Saklat and others v Hormusjee; A. B. Mehta v J. Hormusjee* ILR 7 Rang (1929) 562.
Parsi judge in the High Court, Sir Dinshaw D. Davar, had also been involved in Bella’s case. He attempted to broker a compromise on behalf of orthodox Parsees with the priest who performed Bella’s *navjote*, Dastur Kaikobad of Poona. He was also due to testify in the case, but fell ill and died before his evidence could be collected. Newspaper in Rangoon, Bombay and London followed the case closely.

**Bella’s Parentage**

Bella’s case has received surprisingly little attention. The only scholars to have analyzed it are Jesse Palsetia and John Hinnells. Both read Bella’s case as a coda to the Bombay case of *Petit v Jijibhai* (1906-9). In *Petit*, a French woman married into the illustrious Tata family and tried to convert to Zoroastrianism. Justice Davar, the first Parsi judge of the Bombay High Court, ruled that whether or not conversion was permitted by Zoroastrianism, no convert would be allowed to use Parsi trust funds, enter fire temples, or have his or her body left on the *dokhmas* or “Towers of Silence” for the traditional rites of exposure to vultures after death. These privileges were governed by religious trusts whose terms

---

44 “Plaintiffs’ Exhibit S: Telegram, Jehangir Davar, Matheran to Jehangir Vimadalal, filed before Commissioner” (undated) in *Saklat v Bella*, 57 (PCOR).  
45 In Bombay, these included the English-language daily *Times of India*, the Gujarati newspapers Jam-e Jamshed, Sanj Vartaman and Cherag and the Anglo-Gujarati satirical weekly, *Hindi Punch*. In Rangoon, the *Rangoon Times* and the Weekly *Rangoon Times and Overland Summary* followed the controversy, as did the *Times* in London when the Privy Council heard the case.  
were framed with reference to Parsis, not Zoroastrians. The former, being an ethnic term rather than a religious one, excluded ethnic outsiders by definition.\footnote{The official law report is \textit{Sir Dinsah Manekji Petit, Bart. and others v Sir Jamsetji Jijibhai, Bart. and others} ILR 33 Bom (1909) 509-609. This version is abridged. For the unabridged judgment, see \textit{The Parsi Punchayet Case. In the High Court of Judicature at Bombay. Suit No.689 of 1906. Sir Dinsah Manockji Petit and others, plaintiffs vs Sir Jamsetji Jeejeebhoy and others, defendants. Judgment of the Hon'ble Mr Justice Davar. Delivered Friday, 27th November 1908 and Judgment of the Hon'ble Mr Justice Beaman. Delivered Friday, 27th November 1908} (Bombay: n.p., n.d.). I am grateful to Jehangir Patel of \textit{Parsiana} for making this version available to me. The full judgment also appears in \textit{Judgments. Petit v Jeejeebhoy 1908, Saklat v Bella 1925. Reprint of original judgments with explanatory articles and supplementary judgments} (Mumbai: Parsiana Publications, 2005).}

It was on the basis of \textit{Petit} that the Privy Council reasoned that Bella was not entitled by right to enter Rangoon’s fire temple, not being ethnically Parsi. Palsetia and Hinnells offer a contextualization of the case, but their treatment is brief and limited to the published court ruling. I want to offer an in-depth view of the case based on the unpublished court records of the Privy Council, and of its surrounding case law from the records of the Bombay High Court. Before all else, I want to question the legal facts of the case, proposing an alternate explanation of Bella’s parentage.

The courts at the time, along with Palsetia and Hinnells, accepted that Bella’s natural mother was Parsi.\footnote{Palsetia, 266; Hinnells, \textit{The Zoroastrian Diaspora}, 121.} During the cross-examination of witnesses, though, there was much debate over Mrs. Jones’ communal identity. According to the Parsi almanac, \textit{Parsi Prakash}, Mrs. Jones had lied when she said she was Parsi.\footnote{“Obituary: B. C. Captain,” \textit{Parsi Prakash}, VI, 403-4.} And yet her claim was the alleged basis for the two Captain brothers’ unusual generosity toward her and her child. “Passing” trials in American and South African courts tried to determine race by appearance and behavior when
an individual’s lineage could not be identified in other ways. In the same way, the court tried to establish whether Mrs. Jones was “passing” as Parsi—or whether she was the real thing. Witnesses gave testimony on her complexion, dress, speech patterns, and mannerisms. Shapurji’s 1918 deposition in the Chief Court of Lower Burma stated that she looked and acted like a Parsi lady. She spoke to him in Gujarati, and put the kore (border) of her sari on her head, as a Parsi lady would. She wore a mathabana, the white Parsi scarf tied around the head, and he saw her sadra or sacred shirt projecting from underneath her sari.

Bomanji Cowasji sent his friend, Dr. N. N. Parakh, to the bedside of Rebekah Jones as she lay dying of consumption. Dr. Parakh testified that he could tell from the way she spoke Gujarati that she was Parsi: “Parsis speak Gujarati differently from Hindus and Mahomedans.” He could see above the bed coverings that she was dressed in a Parsi headdress and sari. She looked like a Parsi in features, speech, actions and dress. Similarly, Bomanji Cowasji told the court he had no doubts about her identity. She wore the white Parsi headscarf, even though it was “very much out of fashion.” In general,


52 Accusations of “passing” surfaced in other South Asian communities, too. Eurasian or Anglo-Indian writers, for instance, noted that lower caste Hindus sometimes tried to “pass” as Anglo-Indians, while Anglo-Indians occasionally posed as Britons. [Frank Anthony, Britain’s Betrayal in India: The Story of the Anglo-Indian Community (Bombay: Allied Publishers, 1969), iii.] On the dalit leader Ambedkar trying to pass as Parsi, see note 68 (below).

53 “Defendant’s Evidence. No.34: Deposition of Shapurji Cowasji, the second defendant. In the Chief Court of Lower Burma” (27 February 1918) in Saklat v Bella, 707 (PCOR).

54 “Defendant’s Evidence. No. 37: Deposition of N. N. Parekh, the third witness for the defendant. In the Chief Court of Lower Burma” (28 February 1918) in Saklat v Bella, 716 (PCOR).

55 “Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” WRTOS (25 July 1914), 41.
She spoke to me in our Gujarati language. She was dressed like an ordinary Parsi lady. Her complexion, features, manners, speech, her entire appearance—everything indicated that she was a Parsi...If I had the least suspicion about her nationality I would not have gone to that extent in helping her as I did. I might have given her a few rupees and done with her. But here I was all along hoping to restore her to her parents.\textsuperscript{56}

This last sentence suggested that Bomanji Cowasji did not believe Mrs. Jones’ story that her parents had died in her infancy, that she could not remember their names, and that she was raised by Christian missionaries in Surat.\textsuperscript{57} She could have been a 17-year old runaway who eloped with her Goan lover and fled Bombay to escape her parents’ opposition to the marriage, as the satirical magazine, \textit{Hindi Punch}, believed:

Capricious Cupid, that blows his darts into the heads of various couples, without particular thought of the consequences, did some fifteen years ago pierce the heart of a Parsi maiden whose feelings were reciprocated by a Christian citizen. O how mischievous on the part of Cupid! And yet the couple felt what love was, and had to seek its quiet enjoyment away from home in distant Burma. The curse of a forsaken family was too great for them both...\textsuperscript{58}

In less flattering terms, the couple was described in one Rangoon court as “an iniquitous union of a low caste, low rank Indian father and a mean renegade mother.”\textsuperscript{59} In this case, she would have been a Zoroastrian Parsi, as claimed,

\textsuperscript{56} “Defendant’s Evidence. No. 36: Deposition of Bomanji Cowasji, the second witness for the defendant. In the Chief Court of Lower Burma” (28 February 1918) in Saklat v Bella, 712-3 (PCOR). The \textit{Weekly Rangoon Times and Overland Summary} reports an animated atmosphere in the courtroom during Bomanji’s testimony: “he asked the audience to believe that it had left no manner of doubt upon his mind that the woman was a Parsi (cheers), and he would make that assertion up to the end of his days.” [“Parsis in Conclave. The Recent Navjot Ceremony. Series of Resolutions. Mr. B. Cowasji’s Speech,” \textit{WRTOS} (25 April 1914), 23.]

\textsuperscript{57} See “Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” \textit{WRTOS} (25 July 1914), 42; and “Parsis at Law. Alleged Defamatory Article. Charge against Mr G. K. Nariman. The Recent Navjote Ceremony,” \textit{WRTOS} (2 May 1914), 42.]

\textsuperscript{58} “The Rangoon Romance (Bella and the Anjuman),” \textit{Hindi Punch} (7 June 1914), 13.

\textsuperscript{59} “The Parsi Dispute. Another Defamation Charge. The Jam-e Jamshed Articles,” \textit{WRTOS} (16 May 1914), 32.
being of Parsi parentage and having had her navjote or initiation performed as a child of seven.\textsuperscript{60}

Another possibility was pulled out of a reluctant Dr. Parekh during cross-examination. The doctor admitted that in Bombay, Surat and elsewhere, Parsis employed Hindus and Muslims as servants. “Some of these servants speak Gujarati like Parsis.”\textsuperscript{61} Mrs. Jones could have been a Parsi runaway who changed her name in order not to be identified, or she could have been a former servant from a Parsi household who was able to pass for Parsi.\textsuperscript{62}

Both possibilities would have tapped into larger fears of the Parsi community. An on-going discussion about Parsi women “marrying out” reflected the grave concern with which many viewed the marriage of Parsi women to non-Parsi men. Customarily, the children of Parsi men and non-Parsi women had been allowed into the fold, although this too became contestable after 1905.\textsuperscript{63}

But there was no debate as to the children of Parsi women who married out: they were completely excluded. When Mohammad Ali Jinnah married Ratanbai Petit, the only daughter of the Parsi lawyer, Sir Dinshaw Petit, the orthodox public mobilized, organizing meetings and signing petitions against Mrs. Petit’s

\textsuperscript{60} Modi, \textit{Religious Ceremonies}, 170.
\textsuperscript{61} “Defendant’s Evidence. No.37: Deposition of N. N. Parakh” (28 February 1918) in \textit{Saklat v Bella}, 717 (PCOR).
\textsuperscript{62} The \textit{Times of India} stated that Mrs. Jones was not a Parsi, but did not elaborate. [*Rangoon Parsis’ Trusts,” \textit{Times of India} (26 September 1918), 9.]
\textsuperscript{63} On 16 April 1905, a meeting of the Parsi Anjuman passed a resolution that from that date on, children of Parsi fathers and alien mothers would no longer be accepted into the community either. [Delphine Ménant, “Social Evolution of Parsis,” \textit{Journal of the Iranian Association} (December 1921) X: 9, 283.] See also “Parsis and Proselytism. Mass Meeting at Bombay,” \textit{Times of India} (22 April 1905), 19; and \textit{Parsi Prakash}, IV, 14 and 118.
marriage and accompanying conversion to Islam. About the same time came the vexed death of a young Parsi woman who had married a Christian physician (probably a Briton) under the Indian Christian Marriage Act in 1917. Marriage under this Act implied that she was no longer Zoroastrian, although she had made no declaration to that effect. Nevertheless, the body of Mrs. Underwood, née Soonabai Edalji R. Mehta, was left on the chotras—peripheral unconsecrated structures where dubious Zoroastrian bodies were left for exposure to vultures—rather than the proper Towers of Silence, or dokhmas. Even then, there was community disapproval. Deep fears of Parsi extinction surfaced, and intermarriage (particularly by Parsi women) was viewed by many as a step toward communal extinction. If the young Mrs. Jones had in fact married a Christian and absconded from Bombay, her disappearance would have paralleled her status within the Parsi community. In marrying out, Parsi women underwent social death.

If Mrs. Jones was a Parsi impersonator, on the other hand, she would have confirmed the suspicion of orthodox Parsis that the Hindu hordes—

---


particularly the lower castes—were waiting for the opportunity to convert in order to avail themselves of the vast riches of Parsi religious trust funds. The *dalit* leader Ambedkar had himself pretended to be Parsi in order to get a room at a Parsi hostel in Baroda around 1917. The phenomenon preoccupied Dinshaw Davar in his judgment in *Petit v Jijibhai* (1906). However, the British judge in Bella’s case noted that the Parsis of Rangoon were much poorer than their Bombay coreligionists:

> The Parsis of Rangoon so far as the evidence before me enables me to judge are in a very different position to their coreligionists of Bombay. I have heard of nothing of large charitable funds for the benefit of the Parsis of Rangoon, such as are enjoyed by the Parsis of Bombay….it seems to me that in the present state of public feeling indiscriminate conversion is very unlikely to occur, and in Rangoon there seem to be none of those material temptations to false conversion, the power of which was so dreaded by the Parsis of Bombay with their wealthy charitable institutions.

But the suspicion persisted. In 1916, a trustee of the Parsi Panchayat testified from Bombay that Bella’s admission in Rangoon was worrying because it would give her access to the funds of the Bombay trust funds if she were “to come to Bombay any day.” Whether deemed a real Parsi or a “passer,” there were good reasons for Mrs. Jones to maintain a low profile and to remain vague with the Captain brothers.

---


69 *Parsi Panchayat Case (Davar)*, 67-8. Throughout this dissertation, references to the lower castes act as shorthand for lower and non-caste South Asians, including *dalits*.


In fact, it made no difference whether Mrs. Jones was Parsi or not. The Parsi paternity rule was patrilineal, not racial. Bella could be initiated into the Zoroastrian religion if she had Parsi boon (literally, seed) or paternity.72 To quote Dorabji R. Saklat, the plaintiff from whom Bella’s case took its name,

In my view purity of blood is of the very first consideration. I have no objection if the father is a Parsi. I do not mind what blood the child has from the mother’s side. I know good many Parsis in Rangoon and in other places of Burma who have married women of other races. These Parsis have never forfeited their position as Parsis and their children are recognised as Parsis if they are invested with Sudra and Kusti [sacred shirt and thread]. If these children die in infancy before investiture they are treated and buried as members of the Parsi community….The females have nothing to do with descent. As long as the father is Parsi it matters nothing whether the wife is or is not a Parsi.73

The real question was: who was Bella’s father? If Bella’s natural father had been Parsi, she would be Parsi, and perfectly eligible for initiation and entry into the temple. Only if he was believed not to be Parsi would Bella’s initiation be controversial. The courts, Palsetia and Hinnells accept the defence’s view without question: Bella’s natural father was the Goan Christian, Mr. Jones. But oral history and the chronology of events of 1899-1900 hint at something more illicit—something that may have been kept out of court because of its shamefulness for both sides of the Captain family.74

Bella’s natural father may not have been Mr. Jones at all, but Mrs. Jones’ original benefactor, Bomanji Cowasji, the sole trustee of the Rangoon fire temple

---

72 This rule was described as customary—albeit with some reluctance on the part of the Parsi community—by Dinshaw Davar in his judgment in Petit v Jijibhai. The defendants in that case also acknowledged the rule. See Parsi Panchayat Case (Davar), 36-49.
73 “Plaintiff’s Evidence. No.20: Evidence of Dorabji R. Saklat. In the Chief Court of Lower Burma” (19 February 1918) in Saklat v Bella, 390-1 (PCOR).
74 There were rumours that Bella was of Parsi paternity at the time of the case—the offspring of a Captain brother and a “sweeper woman.” [Pesi Ginwala (Mumbai, 5 January 2006), Jerestin Sidhwa (Mumbai, 3 January 2006), and Manek Sidhwa (Toronto, 9 March 2006).]
and the man who would be presented, for public purposes, as Bella’s adoptive uncle. A few cryptic references hint at this hypothesis. The reformist high priest from Karachi, Dastur Dhalla, was initially approached to perform Bella’s initiation. He refused, explaining that he did not regard “initiating children born out of wedlock into our faith” as a progressive step. Dhalla may have been doubting whether the Jones were actually married. But alternatively, he may not have believed Mr. Jones to have been Bella’s natural father. Following Mr. Justice Young’s decision in the Chief Court of Lower Burma, Bella’s case was appealed before two judges in the same court in its appellate jurisdiction. Bella’s lawyers denied a number of “other allegations” that they considered “embarrassing” and wanted struck off the record. They may have been referring to the claim that Bella was too dark to be even partly Parsi. There had also been insinuations during the trial that the three Captain brothers were not full siblings—that the middle brother Shapurji and the eldest brother Merwanji had different mothers. But it is also possible that Bomanji had been identified as Bella’s biological father.

The sequence of events were telling. The Jones arrived in Rangoon “some time in 1899,” when Mrs. Jones came to Bomanji Cowasji’s office to ask for his help. Bomanji Cowasji was married and 48 years old. Rebekah Jones

---

75 Dhalla, Autobiography, 385.
76 D. R. Saklat and others, appellants v Bella and another, respondent AIR 1920 Lower Burma 152.
77 See note 734 (below).
78 These suggestions were withdrawn during one of the spin-off libel suits. See “Parsi Defamation Suit. G. K. Nariman apologizes.” WRTOS (23 May 1914), 49.
79 “Defendant’s Evidence. No.36: Deposition of Bomanji Cowasji, the second witness for the defendant. In the Chief Court of Lower Burma” (28 February 1918) in Saklat v Bella, 712-3 (PCOR).
was 17. Mr. Jones, who was listed as a contractor in Mrs. Jones' burial records, “was attacked by some disease and died in hospital” some time after the Jones' arrival in Rangoon, but before the birth of Bella. The date of his death is unknown. What is known is that Mr. Jones died “long before” Bomanji Cowasji instructed Shapurji to take care of Mrs. Jones and her three-month old baby, and to pay Mrs. Jones 25-35 rupees per month for her living expenses. Bomanji made this request when he left for England, on 10 May 1900. Bella was probably born around 10 February 1900, and conceived in early May 1899. Mrs. Jones arrived with her husband in Rangoon and met Bomanji “some time in 1899,” making the alternative hypothesis possible. Bomanji told the court that he saw Mrs. Jones on numerous occasions after she first came to his office:

I gave her assistance frequently. I gave her a room in a house I had in Lewis Street. It was a tenement house. She lived there with her husband till the husband died and then alone and after that with Bella when the latter was born.

One week after delivery, Mrs. Jones fell ill. Bella also became ill at this time, and Bomanji asked his friend, the physician N. N. Parakh, to visit Mrs. Jones and her

---

80 Bomanji Cowasji Captain was 29 in 1881, when he joined the court in Rangoon. ["Defendant’s Evidence. No.36: Bomanji Cowasji" (28 February 1918) in Saklat v Bella, 714 (PCOR);] He referred to his wife once in his testimony. ["Defendant’s Evidence. No.36: Bomanji Cowasji" (28 February 1918) in Saklat v Bella, 713 (PCOR).]
81 Mrs. Jones’ hospital death records indicate that she was 18 when she died on 7 October 1900. ["Plaintiffs’ Exhibit RY1: An Entry in the Death Register (from the General Hospital, Rangoon), from 4 November 1900 to 10 November 1900," in Saklat v Bella, 103 (PCOR).]
82 "Plaintiffs’ Exhibit RX: Certified copy of entries in the Register of Burials, from 9 October 1900 to 9 November 1900" in Saklat v Bella, 101 (PCOR); “Parsis in Conclave,” WRTOS (25 April 1914), 23.
83 Mr. Jones probably died in Rangoon General Hospital, like his wife. ["Plaintiffs’ Exhibit RY1: An Entry in the Death Register” in Saklat v Bella, 103 (PCOR).] The hospital, now Yangon General Hospital, has not responded to requests for Mr. Jones’ date of death.
85 "Defendant’s Evidence. No. 36: Bomanji Cowasji" (28 February 1918) in Saklat v Bella, 713 (PCOR).
86 "Defendant’s Evidence. No.36: Bomanji Cowasji” (28 Feb 1918) in Saklat v Bella, 712 (PCOR).
baby at the house on Lewis Street in order to examine Bella. Parakh was a Surat-born Parsi who had practiced in Rangoon for over 33 years. He told the court that both mother and baby were very ill. Parakh was told Mrs. Jones was suffering from consumption (or tuberculosis). Although he did not examine her, he could see that she was pale and anemic.\(^7\) As the British superintendent of the Rangoon General Hospital testified, patients dying of consumption were generally “very emaciated and weak and very often are confined to bed before they die.”\(^8\) This was Mrs. Jones’ condition. Shapurji visited her eight or ten times during her illness.\(^9\) He asked her to go to the hospital, and she did. Afterwards, they met again, and she informed Shapurji that there was no chance of her recovering. She was not afraid of dying, but she worried about the fate of her child. Mrs. Jones asked him to bring the child up in their religion, as a Parsi. Shapurji agreed, whereupon Mrs. Jones told him that a burden had been lifted from her conscience.\(^9\) Mrs. Jones was then taken to the hospital again, where she died. Bella was handed over to a Burmese nurse, a soldier’s wife.\(^9\)

Surprisingly, no one came to claim Rebekah Jones’ body from the hospital after she died. The Captain brothers, who had been so attentive by sending a doctor to Mrs. Jones at home and visiting her frequently, suddenly stopped checking on her, and claimed not to know that she died when she did. Bomanji told the court that he had left for England at this point, leaving Mrs. Jones in Shapurji’s care.

\(^7\) “Defendant’s Evidence. No.37: Deposition of N. N. Parakh, the 3\textsuperscript{rd} witness for the defendant. In the Chief Court of Lower Burma” (28 February 1918) in \textit{Saklat v Bella}, 716 (PCOR).


\(^9\) “Parsi Defamation Case,” \textit{WRTOS} (19 June 1914), 32.

\(^9\) “Parsi Defamation Case,” \textit{WRTOS} (19 June 1914), 32.

Shapurji claimed that he did not hear of her death until some time after it had happened, at which point her body had already been buried in a pauper’s grave.\textsuperscript{92}

Mrs. Jones was buried on 7 November 1900, when Bella would have been eight months old.\textsuperscript{93} Her burial record originally labeled her “other caste,” but this was later crossed out and replaced with “Eurasian,” a label denoting South Asians of mixed race—generally the descendants of British soldiers and lower caste Indian women, and subsequently known as “Anglo-Indians.”\textsuperscript{94} V. N. Kemp, the Church of England minister at Saint Gabriel’s Mission on Mogul Street, testified that he had no record of Mrs. Jones as a Christian in his church register.\textsuperscript{95} In death, as in life, Mrs. Jones remained a mystery.

The disposal of Mrs. Jones’ body casts doubt upon the Captains’ story. Had they truly believed she was Parsi, they should not have allowed her to be buried in a pauper’s grave. Traditional Zoroastrian death rites consist of exposure to vultures in \textit{dokhmas} or Towers of Silence. Large Parsi centers like Bombay and Surat had their own \textit{dokhmas}, but smaller centers like Rangoon could not always justify the expense of building these structures with their elaborate

\begin{itemize}
  \item \textsuperscript{92} “Parsi Defamation Case,” WRTOS (19 June 1914), 32.
  \item \textsuperscript{93} “Plaintiffs’ Exhibit RX: Certified copy of entries in the Register of Burials, from 9 October 1900” in \textit{Saklat v Bella}, 101 (PCOR).
  \item \textsuperscript{95} “Plaintiffs’ Evidence. No.25: Evidence of V. N. Kemp. Deposition No.5 for the Plaintiff. In the Chief Court of Lower “ (28 February 1918) in \textit{Saklat v Bella}, 405 (PCOR).
\end{itemize}
drainage systems and sub-soil requirements. The substitute was a Parsi burial ground over which Bomanji Cowasji Captain had exclusive control since 1889, a story to which I will return below. The Zoroastrian prohibition on polluting the elements meant that burial was taboo, as it mixed the most ritually impure matter—dead bodies—with the soil. Nevertheless, Parsi burial grounds were the only practical alternative in many locales.

Many Parsi communities had also established special funds to cover the expenses associated with death rites for poor Parsis. An 1826 report in the Parsi almanac, Parsi Prakash, reported that if a “poor and friendless” Zoroastrian died in Bombay, Rs 30 was to be taken out of funds of the Parsi Panchayat for the expense of carrying him or her to the Towers of Silence and to fund the individual’s death commemoration ceremonies. If the person died in any locality whatsoever, “any person whatsoever out of the gentlemen residing at the undermentioned localities, on being informed, [would] cause expenses to be made in connection with his (or her) (death ceremonies) under his superintendance and [would] take the moneys in respect thereof from the [Panchayat].” A Bombay witness giving testimony in Bella’s case in 1916 noted that even Parsi prostitutes, if paupers, would have the expense of their bodies covered.

---

97 Modi, Religious Ceremonies, 151-2.
being left on the *chotras* defrayed by community funds.\(^9\) No one should have been more aware of these provisions than Bomanji (being in sole control of the Parsi burial ground), along with his brother, Shapurji. The fact that Shapurji did not learn of Mrs. Jones’ death when he had been keeping such a close watch on her condition, seems like an excuse for not disposing of her body according to proper Zoroastrian rites. Either Shapurji realized that Mrs. Jones was not in fact Parsi, or for some reason he wanted to be discreet about her existence. An illicit relationship and illegitimate child could explain Shapurji’s evasiveness at Mrs. Jones’ death.

Bella had been removed from her mother’s care before Mrs. Jones was admitted to hospital. Bomanji told the court that he had gotten a soldier’s wife to take care of her. But Bella was “troublesome and the soldier’s wife could not keep her.” Bella was then left with a Eurasian woman. Bomanji tried to get Bella into her mother’s care in hospital, but he was unsuccessful, so Mrs. Jones was brought out of hospital. At this point Bomanji left for England, instructing Shapurji to take care of the mother and child. Bomanji told the court that after Mrs. Jones’ death, “the child was thrown on his brother’s hands and he took charge of her from that day and had brought her up in his own family as a member of his family,” whereupon the courtroom exploded into cheers.\(^1\) Shapurji and his wife

---

\(^9\) “Defendant’s Evidence. No.29: Evidence of Nanbhoy Nowrojee Katrak, taken on commission. In the Court of Small Causes, Bombay” (16 May 1916) in *Saklat v Bella*, 575 (PCOR). *Chotras* were unconsecrated structures where the bodies of certain categories of dubious Parsis were left for exposure. See note 187 (below).

\(^1\) “Parsis in Conclave,” *WRTOS*, 23. Cheering was apparently not out of order in the colonial courtroom. See evidence from the time of Chief Justice of Bombay Norman Macleod (1919-25) of the noisy and chaotic atmosphere of Bombay’s courts: “Bombay High Court I—The Spirit of Change,” 8 (unidentified newspaper clipping) [HRA/D63/A8(g)] and Norman Macleod.
had had two children previously, but both had died. Bomanji returned from England in October 1901. He had received news of the death of Mrs. Jones by post while still in England. Upon arriving in India, he saw that Bella was being cared for by his brother, Shapurji.

Little is known about Bella’s childhood. Shapurji and his wife grew fond of Bella as she grew up. They instructed her in the Zoroastrian religion “exactly as if she had been a child of their own.” Witnesses testified that they had occasionally seen her as a child at the house of the eldest Captain brother, Merwanji. Merwanji and his family also occasionally visited Bomanji’s home, but as Bomanji reported, “Merwanji harboured some sort of dislike for the child, whenever he saw her at my house.” She was like a red rag to a bull. From the very start, Merwanji had given his younger brother Shapurji “quite fatherly advice” against adopting Bella.

When Bella was about ten years old, Shapurji and his wife adopted her through a Burmese “ear-boring” ceremony performed by Mrs. Captain. Adoption in Burmese law did not require a specific ceremony, but simply a “public and notorious” one. “Ear-boring,” a ritual piercing of the ears, was a general rite of passage for young Burmese women, and was probably chosen for Bella because

---

101 Reminiscences 1894” (HRA/D63/A5), 18; both in Macleod of Cadboll Papers, 1831-1983, Highland Council Archives (hereafter HCA).
102 “Parsis at Law,” WRTOS (2 May 1914), 42.
104 Defendant’s Evidence. No.39: Judgment by Young” (23 April 1918) in Saklat v Bella, 719 (PCOR).
106 Bomanji in “Parsi Defamation Suit. Mr B. Cowasji’s Evidence,” WRTOS (25 July 1914), 42.
107 “The Rangoon Romance (Bella and the Anjuman),” Hindi Punch (7 June 1914), 13.
108 Mg. Thwe v Mg. Tun Pe Law Reports 44 Indian Appeals (1917) 251-61. For summaries of other leading cases on adoption, see S. S. Halkar, S. Vasudevan and S. Loo-Nee, A Digest of Civil Rulings of Burma (Rangoon: Rangoon Times Press, 1918), 83.
of its local cultural significance. Also around 1910 or 1911, Shapurji made a public announcement that Bella was to be his heiress.

One wonders how much Merwanji knew and how much he suspected. Aside from the orthodoxy of his beliefs, there were a number of other reasons why he may have led the case against his adoptive niece with such determination. If Merwanji knew that his youngest brother had sired Bella, he may have disapproved and resented the damage Bomanji risked doing to the family reputation. In a related defamation suit, it was claimed that a married Parsi man and his family would be unable to mix with Parsis in Rangoon were it known that he had fathered an illegitimate child—in that case, by a Burmese woman. The theological condemnation of adultery was severe, and in earlier centuries, Zoroastrian tribunals had considered adultery a capital offence. Shapurji had also originally intended to take Bella to Bombay for her initiation. “Without it,” he told a Rangoon magistrate in 1914, “there was very little chance of her getting married.”

---


111 Modi, 45-8; Paymaster, 43.

112 “Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” WRTOS (25 July 1914), 41.
underlying objection to Bella generally, rather than to her subsequent initiation being invalid because it occurred in Rangoon.113

There was also Shapurji’s estate. As Shapurji told the court: “if I did not adopt Bella whatever little I had would go into Merwanji’s family to his children.”114 One of these children was the lawyer, N. M. Cowasji (Captain), the “leader of the Rangoon bar” who was incidentally representing his father against Bella in the main case of Saklat v Bella.115 Shapurji’s estate was sizeable.116

Given that Shapurji wrote a will, however, Merwanji would not have improved his children’s chances by proving that Bella was not Parsi.117 The case of Modee Kaikhoshru v Cooverbai established that there was no restriction upon the testamentary power of disposition by a Parsi. The Privy Councillors held that among Parsis, a will excluding one family member for the sake of another was valid.118 In a South Asian context, this type of individualism was unusual. Wills were unknown to classical Hindu and “Burmese Buddhist” law.119 In Islamic law,
the ambit of testamentary disposition was capped at a third of one’s property.\(^{120}\)

The individualism apparent in the Parsi case illustrates a point I develop in the next chapter: there was a coincidental overlap between elements of Zoroastrian intellectual traditions and the British strain of acquisitive individualism in vogue around 1900.

Merwanji might have argued that Bella’s adoption was void, making *Modee Kaikhoshru* inapplicable given that Bella would not be a proper family member. Traditionally, adoption did not exist amongst Parsis, a fact of which Shapurji claimed to be unaware.\(^{121}\) The common law took the same approach to adoption until well into the twentieth century.\(^{122}\) The Zoroastrian exception was the practice amongst men without male issue of adopting a *palak* or son, who would carry out the appropriate ceremonies for the good of the “paternal” soul after death.\(^{123}\) A *palak* was first and foremost a “son” for ritual purposes; he did not necessarily enjoy rights of inheritance.\(^{124}\) But because Bella was a girl, being a *palak* was not an option in the early twentieth century.\(^{125}\)

---

\(^{120}\) See note 385 (below).

\(^{121}\) “Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” *WRTOS* (25 July 1914), 411.

\(^{122}\) In English law, adoption only became legally recognizable with the Adoption of Children Act 1926. Informal adoption occurred before that date, but the parties were strangers in law. See Stephen Cretney, *Family Law in the Twentieth Century* (Oxford: Oxford University Press, 2003), 596-8. On the U.S., see Hendrik Hartog, “Someday All This Will Be Yours: Inheritance, Adoption, and Obligation in Capitalist America,” *Indiana Law Journal* 79 (2004) 354.


\(^{124}\) “Part I. In the Court of the First Class Subordinate Judge, Thana. No.55, Exhibit 116, Judgment of First Class Subordinate Judge at Thana, S. S. Wagle in Civil Suit No. 152 of 1909” (2 April 1910) in *Jehangir Dadabhoy and Byramji Jehangirji (defendants and appellants) v Kaikhushru Kavasha re: Estate of Pallonji Dadabhoy Cooverbai and Kavasha Edulji (original plaintiff and defendants 3 and 4, now all respondents)* 1914, Judgment No. 98, Volume 34, 147-51 (PCOR). See also Paymaster, 104-5. A 1929 Baroda case ruled that although the practice prevailed in the princely state of Baroda, it did not exist as a custom in British India [*Kershasji v Kaikhushru* 31 Bom L R at 1082-4 in Rana, 135].

By Burmese custom, there were two grades of adoption: apatitha, which was a rare and more casual brand of adoption, and keittima, which entailed full rights of inheritance. Familial behaviour and public acts of recognition distinguished the two. Eating with the child in public implied that the parents regarded the child as their own natural child, indicating keittima adoption. Bella qualified as a keittima, given her family’s demeanor and the performance of the Burmese ear-boring ceremony. Even so, the law of British India was personal rather than territorial, such that the courts would not generally look to Burmese custom when dealing with Parsis living in Burma. Ultimately, the issue of invalid adoption was not mentioned in Saklat v Bella, making it unlikely that Merwanji sought to have Bella disinherited. The inheritance point could have done nothing more than inspire a vague sense of resentment on Merwanji’s part.

The paternity hypothesis taps into a recurring theme in this period: that of extramarital intercommunal relations. In 1906, the case of Petit v Jijibhai exposed the extramarital relations of Parsi men in the mofussil or countryside that had become almost—and grudgingly—customary over several centuries. The Parsi judge Dinshaw Davar outlined how it was not unknown for Parsi men in rural Gujarat to bring non-Parsi women from the dubra caste into their homes ostensibly as servants, but in fact as mistresses. Illegitimate offspring could later be smuggled into the faith by a discreet navjote ceremony performed by an

---

126 Aung Ma Khaing v Mi Ah Bon 9 LBR (1917-18) 163.
128 Davar and Dhalla noted that many Parsis did not approve. See note 1144 (below).
129 On the lower caste dubras, see note 758 (below).
impoverished priest for a handsome fee.\textsuperscript{130} The satirical weekly, \textit{Hindi Punch}, commented that

[\text{t}he\ evidence, \ if \ it \ proved \ anything, \ proved \ this \ that \ the \ so-called \ aliens \ were \ only \ half \ so, \ illegitimate \ children \ of \ Parsi \ fathers \ by \ alien \ mothers, \ treated \ as \ Parsis \ according \ to \ a \ lax \ code \ of \ morals \ prevailing \ from \ remote \ times \ especially \ among \ mofussil \ people, \ and \ admitted \ into \ the \ Faith \ with \ the \ investiture \ of \ the \ sacred \ Sadra \ and \ Kusti. \ Not \ one \ of \ the \ numerous \ witness…could \ cite \ a \ single \ instance \ of \ genuine \ alien \ conversion, \ and \ their \ Ruplas \ and \ Ruplis, \ under \ stress \ of \ cross-examination, \ appeared \ tainted \ with \ the \ suspicion \ of \ being \ half \ children \ of \ the \ houses \ into \ which \ they \ were \ alleged \ to \ have \ been \ adopted \ out \ of \ compassion \ for \ their \ forlorn \ condition.\textsuperscript{131}]

The Mazagon converts controversy of 1882 highlighted the same scenario. In that episode, nine adults were initiated into Zoroastrianism, allegedly as total outsiders. In fact, they were the children of Parsi men and non-Parsi women.\textsuperscript{132}

The social status of extra-marital relations and illegitimacy in the Parsi community is a difficult issue to isolate in the sources. Shapurji’s outrage over the accusation that he and his wife were not actually married suggests that unmarried relations were absolutely taboo. In its coverage of that case, the orthodox Bombay newspaper \textit{Jam-e Jamshed} reported that Zoroastrianism imposed a duty to fight against wickedness, particularly “against all sexual wickedness.” Dastur Kaikobad had given sanction to “an act of adultery” by performing the Parsi wedding ceremony for Shapurji and his wife, who hitherto had been married by Burmese rites alone.\textsuperscript{133} At the same time, though, the blind judge Beaman argued that ethnic purity or “caste” as he called it, trumped sexual

\textsuperscript{130} \textit{Parsi Panchayat Case (Davar)}, 36-45, 52.
\textsuperscript{131} “The Parsi Panchayat Case,” \textit{Hindi Punch} (27 Dec 1908), 19.
\textsuperscript{132} \textit{Parsi Panchayat Case (Davar)}, 47-8.
\textsuperscript{133} “Jam-e Jamshed Defamation Case. Full Text of Judgment,” JIA IV: 4 (July 1915), 130.
morality. As he saw it, the Parsis had metamorphosized over the centuries in India from a religion into a caste:

[...]the defendants, expressing as we now know the orthodox Parsi view, are prepared to overlook immorality, bastardy—anything but alienage...They will admit all the illegitimate children of Parsi parents, begotten of prostitutes or kept-mistresses, but they will not admit the noblest, most exemplary foreigner. Why? Because a foreigner is outside the caste....We have here, what in its origin was not but has undoubtedly become a caste.134

Bella's case was probably another instance of the same phenomenon. If so, Bella's adoptive uncle Bomanji would have been her natural father, and her adoptive father Shapurji, her uncle.

Parsi Rangoon

From colonial India, Lower Burma looked like an obscure outpost of empire. The territory conjured up images of wild jungles, to which one would not move unless in the business of ruby-mining or teak-logging on elephant-back.135 By 1890, however, Rangoon was the third largest trading port in the Indian empire by volume of trade.136 On the heels of the British annexation came the development of Lower Burma at breath-taking speed—and with it, over a million Indians.137

---

134 Petit v Jijibhai ILR 33 Bom (1909) 594-5.
137 On the development of Burma, see Michael Adas, Prophets of Rebellion: millenarian protest movements against the European colonial order (Chapel Hill: University of North Carolina Press,
Many Indians migrated to Burma as unskilled or semi-skilled laborers, drawn by the elevated wages offered by a developing Burma.\textsuperscript{138} A more affluent merchant class came with capital and experience in trade, industry and banking.\textsuperscript{139} A third group consisted of professionals with expertise in public health, engineering, education, law, medicine and public administration.\textsuperscript{140} Parsis came as part of the latter two groups.\textsuperscript{141} By the early twentieth century, over 50\% of the population of Rangoon was Indian.\textsuperscript{142}

Very little has been written on the Parsis of Rangoon. Even histories of Indians in colonial Burma mention the Parsis only in passing.\textsuperscript{143} This is partly a problem of sources. With the Japanese occupation during the Second World War and the departure of Parsis from Burma both during the occupation and after, primary sources are as fragmentary and scattered for the Parsis of Burma as for the Indians of Burma generally.\textsuperscript{144} Late colonial Rangoon had a small Parsi

\footnotesize
\begin{itemize}
  \item 1979); and his State, Market and Peasant in Colonial South and Southeast Asia (Aldershot, UK: Ashgate, 1998).
  \item Desai, 25; Chakravarti, 42. See also E. J. L. Andrew, Indian Labour in Burma (Rangoon: Oxford University Press, 1933).
  \item The Marwaris, Chettiars and Multanis specialized in banking and money-lending. Gujaratis were predominantly rice and diamond merchants. [Usha Mahajani, The Role of Indian Minorities in Burma and Malaya (Bombay: Vora and Co., 1960), 16.]
  \item The best known literary example is probably Dr. Veeraswamy, the Indian physician and apologist for empire in Orwell’s novel set in colonial Burma. See George Orwell, Burmese Days (London: Victor Gollancz, 1935).
  \item Chakravarti, 30-1; and Christian, 67.
  \item In 1872, Indians constituted 16\% of the total population of Rangoon. By 1911, this figure had risen to 56\% [Desai, 31]. Indians paid 55\% of the municipal taxes in Rangoon, and owned more than half the real estate in Rangoon. [B. R. Pearn, The Indian in Burma (Ledbury: Le Play House Press, 1946), 17.] Tensions between Indians and Burmese resulted in the bloody anti-Indian riots of 1930 in which over 120 Indians were killed and thousands injured. See Chakravarti, 133; Desai, 38-9; Rao, 200-12; and Mahajani, 71-9. N. M. Cowasji, the son of Merwanji and counsel for his father’s side in Bella’s case, was a member of the Riot Enquiry Committee that was appointed to investigate that event. [Mahajani, 74, 140.]
  \item See, for instance, Mahajani, 2; and Chakravarti, 39, 79, 98. W. S. Desai’s India and Burma (Bombay: Orient Longmans, 1954) and B. R. Pearn’s The Indian in Burma do not contain a single reference to the Parsis of Burma.
  \item On Indian sources, see Chakravarti, xvi. On the flight from Burma, see epilogue (below).
\end{itemize}
community of only a few hundred, but this did not prevent the Rangoon Parsis from generating a number of identity-related controversies that drew the attention of Bombay, capital of the Parsi world. The Parsis of Rangoon were twice removed from centers of colonial power (London) and origin (Persia), and were far from Bombay, the mediating node for both spheres. Yet the claim that the rules were more flexible at the edges of empire would be misleading. If there was anything Bella’s case proved, it was that cultural Angst did not wane with distance. The fierce feuding that existed in Rangoon replicated itself in Bombay, drawing Parsis together across the subcontinent.

In 1912, G. K. Nariman, an interpreter of the Chief Court of Lower Burma in Rangoon and a Parsi litigant in a libel case related to Bella’s case, wrote to the historian Delphine Ménant in Paris giving the basic demographics of Rangoon’s Parsi community. He reported that there were roughly 300 Parsis in Rangoon, and 100 in the rest of Burma. The Parsi population had a high turn-over, and Nariman was unable to list the Parsis by their occupations. Only about four or five of these Parsi men had Burmese wives and “indigenous families.” The rest were “purely Indian Parsis.” There were no dokhmas or Towers of Silence in

---

145 Maximum travel time for summonses and notices from courts in Bombay Presidency to reach Burma was two months. [Manual of Civil Circulars Issued by H. M. High Court of Judicature, Bombay, Appellate Side, for the Guidance of the Civil Courts and Officers Subordinate to it. Published under the authority of the Chief Justice and Judges (Bombay: Government Central Press, 1912), 22.] It took nine days for the nationalist leader Tilak to travel from Bombay to Rangoon by military transport boat in 1914, en route to the Mandalay jail in which he would be imprisoned under Dinshaw Davar’s six-year sentence. ["Mr. Tilak’s Own Account," The Mahratta (28 June 1914), 202-3; see also “On the Release of Tilak,” The Mahratta (21 June 1914), 193-4.]

Burma, only one agiary or fire temple—named after the family divided by Bella’s case, the Captains. Nariman’s figures may have been optimistic, or perhaps the Parsi population began to shrink. In 1929, there were only 117 adult male Parsis in Rangoon. Most of the Parsis in colonial Rangoon had come from Bombay Presidency.

Some of Burma’s earliest Parsi arrivals, the Burjorji family, migrated to Burma in the time of King Thibaw (1878-85). The Burjorjis, living in Calicut in India, quarreled after the head of the family took a second wife. Mr. Burjorji’s sons left Calicut in protest, and eventually found themselves in Rangoon. King Thibaw, who reigned in the few years immediately preceding full-blown colonial rule, gave the Burjorji brothers charge of the postal system. They succeeded, and other Parsis migrated to Burma in their wake. Many came as rice surveyors; Burma became the world’s leading rice exporter under British rule. Others came for banking, insurance and business, often beginning as cashiers or traveling salesmen. Parsis were also early investors in the teak and oil

147 Letter to Delphine Ménant from G. K. Nariman, Chief Court of Lower Burma, Rangoon (18 March 1912), in Delphine Ménant Papers, Musée Guimet (hereafter MG).
148 D. R. Saklat and others v J. Hormusjee; A. B. Mehta v J. Hormusjee ILR 7 Rang (1929) 566.
149 “Plaintiffs’ Evidence. No. 20: Evidence of Dorabji R. Saklat. In the Chief Court of Lower Burma” (19 February 1918) in Saklat v Bella, 389 (PCOR).
150 The British annexation of Lower Burma took place on 20 December 1852, although the Burmese king did not recognize the annexation from his capital in Mandalay. The heartland of his kingdom, Upper Burma, was annexed on 1 January 1886. [Thant Myint-U, The Making of Modern Burma (Cambridge: Cambridge University Press, 2001), 126-7, 196-8.]
151 I am grateful to Fali Nariman for recounting his memories of Parsi Burma (Delhi, 8 March 2004).
industries. Unlike Bombay, Burma was a place where impecunious Parsis could move from rags to riches overnight. Parsis who struggled to support themselves in Bombay and Gujarat considered seeking their fortune in Burma. The Udwada priest, Bhikaji Dinyarji Unwalla, was a case in point. While living in his ancestral home of Udwada in Gujarat, Unwalla was described as living in penury, his “exclusive subsistence depending on the doles being donated by worshippers.” He moved to Rangoon around 1900 and prospered in business. The Parsis of Burma were doubly diasporic, first having relocated from Persia to western India, then to the western coast of South-East Asia. Their position—at an intermediate position between colonizer (the British) and more recently colonized (the Burmese)—reflected itself in the ambivalence toward intimate Parsi-Burmese relations that surfaced in the libel suits I discuss in chapter 6.

The Controversies of 1889

The story of how Bomanji Cowasji Captain came to control the Rangoon fire temple trust explains why Bella was able to enter in 1914. The Captain brothers’ father was Cowasji Shapurji Captain, a merchant at Rangoon “for about seven decades”—a period probably spanning the period 1830 to 1900. Originally from the Katrak clan of Gandevi, a village in Gujarat, Cowasji Shapurji accompanied Hormusji Bomanji Captain to Rangoon for trade and settled

---

154 On teak, see Pointon, 5. On oil, see note 163 (below).
155 Judgment of the Case of Udwada Iranshah Aatash Behram. Includes a brief narration of its origins, judgments of the courts at Pardi and of the Honourable High Court at Bombay. Compromise at the Privy Council also included (Rangoon: Bombay Burma Press, 1933), 13 and 100. I am grateful to Homi D. Patel for translating this text from the Gujarati original, Udwada Iranshah Aatash Behram Case No Chukado (Rangoon: Bombay Burma Press, 1933). The translation used throughout is his.
there. In 1838, there were only nineteen Indians in Rangoon engaged in
shipbuilding and trade in timber and cottons, of whom twelve were Parsis. The
er elder Captain was probably one.

In 1889, the Parsi fire temple and burial ground in Rangoon were
practically defunct. The Zoroastrian prohibition on burial had been suspended for
practical reasons, and the Parsis had a burial ground, as they did in other
outposts like Singapore and Hong Kong. Both this and the fire temple were
dilapidated and closed due to the unauthorized actions of a Parsi named
Bottlewalla. In 1889, the three Captain brothers started legal action against him
in an effort to put the trust properties on a secure footing. In their first suit, they
alleged that since August 1886, E. J. Khory, the sole trustee of the Rangoon
temple trust, had refused to act. Some time in 1888, Nowroji Bottlewalla, “Guard
of the Street in the Town of Rangoon,” had taken possession of the fire temple
and had been using it as a storage space for old iron “and other sundries.”
Bottlewalla feebly claimed to have been put in charge by the last retiring
trustee. The court gave him short shrift. Merwanji and Shapurji proposed that
their brother, Bomanji, be made sole trustee. In the past, whenever more than

Captain, but given the related time frame (e.g. Merwanji’s birth in 1843 and his father’s seven
decades as a trader in Rangoon), the 1830-1900 period seems a reasonable estimate for the
er elder Captain’s Rangoon residence.
158 Mahajani, 2.
159 Hinnells, 462 and 271. Unusually, Aden had a Tower of Silence. See Darukhanawala, Parsi
Lustre, 347; and letter from Sooni Tata (née Suzanne Brière) to her mother (November 1902), J.
R. D. Tata Papers (Tata Central Archives, Pune; hereafter TCA).
160 “Plaintiffs’ Exhibit 86: Petition of the petitioners to the judge in Civil Regular No.36 of 1889 of
the Court of Recorder of Rangoon, Merwanji Cowasji and Saporjee Cowasji (both of Mogul St in
Rangoon) and Hormusji Furdonji of Soolay Pagoda Road, Parsee inhabitants of Rangoon, versus
C. Nowrojee Bottlewalla alias Nowrojee, Guard of the Street in the Town of Rangoon” (21
February 1889) in Saklat v Bella, 158 (PCOR).
161 “Defendant’s Exhibit 86: Merwanji Cowasji v Nowrojee Bottlewalla” (21 February 1889) in
Saklat v Bella, 152-4 (PCOR).
one trustee had been appointed, there had been conflict between them, and the properties had been neglected.

Bomanji was a barrister “of long standing, of much experience, and of great wealth.” 162 He could resurrect the Parsi properties single-handedly. 163 The Rangoon Parsi trust was in dire need of funds, and Parsi inhabitants of Rangoon did not have the money to raise an endowment by subscription. But Bomanji Cowasji could generate the Rs 40,000 required to demolish the old temple and build a new one. 164 He would also build a few shops on the property adjacent to the temple. The rent from these shops could be used to repay the loan. 165

This scheme was approved by the Recorder of Rangoon, a Briton named William Fischer Agnew. Normally Agnew would have appointed more than one trustee, but in this case, he was willing to consider Bomanji alone, given that a petition in his favour had been submitted. It was signed by 42 Parsis, 14 of which were permanent residents of Rangoon. The entire Rangoon community totaled only 20-25 permanent male members in 1889. Several meetings had also been held, and all but two members of the community had supported Bomanji’s

---

162 Bomanjee Cowasjee (defendant), appellant v The Chief Judge and Judges of the Chief Court of Lower Burma, respondents LB Rep 4 (1907-8) 35.
163 Bomanji qualified as a barrister in London, returning to Rangoon in 1891. ["Obituary: B. C. Captain," Parsi Prakash, VI, 403-4.] He would become an investor in the Burmese “oil rush” of 1900-10. See B. Cowasji and others, petitioners v Nath Singh Oil Company Ltd, opposite party AIR 1919 Lower Burma 29-36; and Marilyn V. Longmuir, Oil in Burma: The Extraction of “Earth-Oil” to 1914 (Bangkok: White Lotus Press, 2001), 222-3. “Earth-oil” was being extracted systematically in Burma as early as the mid-eighteenth century, and possibly even before. [Dautremer, 281-3; M. B. K., An Outline of Burma’s Oil History (Rangoon: Myawaddy Press, 1982), 15.]
164 “Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” WRTOS (25 July 1914), 42.
165 “Petition of the petitioners to the judge. In Defendant’s Exhibit 86: Civil Regular No.36 of 1889 of the Court of Recorder of Rangoon, Merwanji Cowasji and Saporjee Cowasji (both of Mogul St in Rangoon) and Hormusji Furdonji of Soolay Pagoda Road, Parsee inhabitants of Rangoon, versus C. Nowrojee Bottlewalla alias Nowrojee, Guard of the Street in the Town of Rangoon” (21 February 1889) in Saklat v Bella, 158 (PCOR).
candidacy. The two who opposed it were the defendant and a Mr. Sookia, and “on seemingly frivolous grounds.” The British judge made the Parsi barrister sole trustee.\textsuperscript{166}

Even before this judgment was issued, the Captain brothers had initiated a second round of litigation. This second suit was another clean-up job, this time pertaining specifically to Rangoon’s Parsi burial ground. It was claimed that on 18 February 1889, Bottlewalla “did…by force and threats, drive away the Durwan [doorkeeper] who was in charge of the said Burial Ground and of wall and gate thereof and has locked the same up.”\textsuperscript{167} In his defence, Bottlewalla claimed that the plaintiffs had desecrated the cemetery by turning their horses onto it to graze. He had been compelled to lock it up to keep the horses out.\textsuperscript{168} Again, Agnew did not believe him. The Recorder appointed Bomanji sole trustee of the Parsi burial ground, as he done with the fire temple. He was about to frame a scheme for its proper administration when a protest was filed by S. C. Sookhia, one of the two who had opposed B. Cowasji’s appointment as sole trustee for the fire temple.

Sookhia made the case into something much larger than a dispute about horses and gates. He objected to the offspring of Parsi men and non-Parsi women being buried in the Rangoon burial grounds. He did not trust the Captains

\textsuperscript{166} “Judgment. William Fischer Agnew, Esq., Recorder of Rangoon, 20 March 1889. In Plaintiffs’ Exhibit 86. Civil Regular No.36 of 1889 of the Court of Recorder of Rangoon, Merwanji Cowasji and Saporjee Cowasji (both of Mogul St in Rangoon) and Hormusji Furdonji of Soolay Pagoda Road, Parsee inhabitants of Rangoon, versus C. Nowrojee Bottlewalla alias Nowrojee, Guard of the Street in the Town of Rangoon. 21 February 1889” in \textit{Saklat v Bella}, 160-4 (PCOR).


to frame the proper terms of the scheme, and insisted that this was a task for the Head Priest and Parsi Panchayat of Bombay.169 The problem was racial: “[d]ifficulty arises out of Parsi Gentlemen marrying Burmese ladies.”170 Purely logically, one would expect the patrilineal bent of the Parsi paternity rule to minimize a certain type of race-based restrictions. If Parsi boon or seed from the father was all that was necessary to make a child Parsi, there ought to have been no objection even from the orthodox to Parsi men marrying out. Yet the disapproval of intermixing with Burmese women was unmistakeable as a new racial test emerged, a theme developed in chapter 6.

The Recorder adjourned the case twice to allow the Rangoon community to come to a unanimous decision. He wrote personally to the high priest of Bombay seeking an opinion. The high priest, Jamaspji Dastur Minocherji, replied that there was no important distinction between having two Parsi parents, on the one hand, and a Parsi father and alien mother, on the other. One was Parsi if one’s father was Parsi. What mattered was whether the child of a Parsi father had been invested with the holy shirt and thread by the age of fourteen years and three months. The trouble was that Rangoon and Burma could only be reached from India by sea. As a result, any priest who traveled that way would lose his barasnum, the highest state of ritual purity, and one that was vitiated by long-distance sea travel. He could only regain it through a ceremony administered in

---


Burma by two high priests who had retained their *barasnum*. But unless those two had reached Rangoon overland—an option that appeared impossible given the densely forested mountains between Burma and India—this would remain a perpetual impossibility.\footnote{During the Japanese invasion of Burma in 1941-2, residents of British Burma fled to India overland, crossing this difficult terrain on foot. See epilogue (below).} Lawyers in Bella’s case would investigate the *barashnum* conundrum in detail. It was problematic for places like Ceylon, Aden, Zanzibar and London as much as for Rangoon. In the interim, a Parsi father would have to take his child to a mainland center in order to ensure the validity of the initiation. This would cost time and money.\footnote{In 1939, the cost of bringing a child from London to India for initiation was about Rs 20,000, a sum equivalent to the combined costs of Bella’s trial in its Rangoon and Bombay phases. [Darukhanawala, *Parsi Lustre*, 389; “Defendant’s Evidence. No. 40: In the Chief Court of Lower Burma. *Saklat v Bella. Costs of Suit*” in *Saklat v Bella*, 735 (PCOR).]} But the high priest could not see “why a man who is careful of the well-being of his children in this world and the next, should not undergo some trouble and expense for the performance of this indispensable ceremony.” If the difficulties really were insuperable, though, and the child lived like a good Zoroastrian for his or her entire life, “some indulgence must be shown to them.”\footnote{Letter dated 14 Oct 1889 from High Priest of Bombay [Jamaspji Dastur Minocherji] to W. F. Agnew, Recorder of Rangoon filed in C.R. 36 of 1889. In “Defendant’s Exhibit 87: Record of Civil Regular No.37 of 1889 of the Court of the Recorder of Rangoon. Merwanjee Cowasjee, Sapoorjee Cowasjee and Hormusjee Furdonjee, plaintiffs vs C. Nowrojee Botleewalla alias Nowrojee, defendant” (1 March 1889) in *Saklat v Bella*, 186 (PCOR).} Bella’s case would continue this discussion over the difficulties of initiation in Rangoon.

The high priest probably looked to the Parsi prostitute controversy of 1870 for guidance. In 1870, two Parsi women applied for licenses as prostitutes under the Contagious Diseases Act of 1864.\footnote{“One of them, though she dresses as a Parsee, is the daughter of a Khoja female of a low character; and the other is an abandoned wretch who has since a long period estranged herself}
because it prided itself on having neither beggars nor prostitutes among its
numbers. The question was whether such women—and their children, being of
indeterminable paternity—were entitled to proper Zoroastrian death rites, namely
exposure to vultures in the Towers of Silence. Several thousand orthodox Parsis
opposed the idea. K. R. Cama, the lone reformist in the discussion, argued for
forgiveness if the women repented. He lost. The final solution was to relegate
the women’s bodies to the chotras, reserved for polluted remains. These
bodies included not only the corpses of Parsi prostitutes and their children, but
also suicides, the bodies of murderers and those subjected to capital punishment,
and bodies subjected to post-mortems by non-Parsis, corpses that had been brought
from great distances and as a result had probably been touched by non-
Zoroastrians, victims of poisoning, and even limbs separated from the body in
accidents where there was doubt as to whether they belonged to a Parsi.
There was discussion among witnesses in Bella’s case as to whether chotras
could also have been used for the bodies of women dying in childbirth, for Parsis
who were suspected of following another religion, and for the bodies of
illegitimate infants of Parsi fathers and alien mothers before initiation into the
religion.\textsuperscript{180} All these bodies had been made dubious through interaction with
non-Parsis.\textsuperscript{181}

In Rangoon, the high priest proposed another chotra-like “twilight zone” for
Parsis of questionable status. A special section of the burial ground could be set
aside for uninitiated Parsis, many of whom would have been half-Burmese. Half-
Burmese Parsis were never numerous enough to create their own self-sustaining
community, unlike other mixed groups like the Eurasians of British India or the
Indo-Burmese Zerbadis, making the question of their acceptance in Parsi society
critical.\textsuperscript{182} The priest tried to convince both conservatives and moderates that this
was an ideal compromise. He reminded conservatives that for the past 35 years,

---


---

both properly initiated Parsis and uninitiated children of mixed parentage (having Parsi fathers) had been laid to rest in the same burial ground. The Parsi cemetery had also been contiguous to a Muslim burial ground as well as to those of other Indian castes. Contact between Parsi bodies on the one hand, and non- and quasi-Parsis on the other, had been a commonplace for a long time. There was no good reason for this sudden hypersensitivity.183

To the moderates, the high priest stressed that being placed in chotra-style isolation would not stigmatize:

[t]he relatives of such persons must in their turn remember that it is no dishonor for such persons to be buried in a distinct portion of the burial ground, that even in Bombay dead bodies of Zoroastrians who have committed suicide are placed in a separate Tower of Silence [i.e. chotras], and that even the dead body of a priest who met with his death by accident and on whom a post-mortem examination was held was placed in that separate Tower.184

The same bundle of issues would be taken up by the spin-off libel cases to 

Saklat v Bella, the subject of chapter 6.

The Recorder of Rangoon applied the high priest’s scheme, allowing that if the child of a Parsi father had not been invested with the sacred shirt and thread by the age of 14 and a third for “unforeseen and unavoidable circumstances,” he or she could still be buried in the proper Parsi zone.185 The

---

final result of these proceedings was that Bomanji Cowasji Captain was named the sole trustee of the Rangoon fire temple and burial ground, an unorthodox situation in trust law. It was one that would be key to Bella’s case: her final rejection from Parsi society depended upon the change in the fire temple’s trusteeship in 1919. The 1889 controversy in Rangoon echoed many of the issues debated in the 1870 Parsi prostitute controversy in Bombay, and foreshadowed the key points of dispute in Bella’s case decades later.

Conclusion

In *Saklat v Bella*, the courts were asked to decide how to identify a Parsi. The traditional definition was by seed (*boon*), while the emerging new racial definition required Parsi parentage on both sides. Where genealogy was unknown, the test became physical and performative: did a person look, dress, and speak like a Parsi? And what would be her entitlements if she did? For Mrs. Jones, the spoils were patronage. For her daughter Bella, it was a matter of membership (in the community in which she had been raised), belief and practice (through entry of the fire temple), and finally, marriage (to a Parsi). At the punctuating points of life—initiation, marriage, and death—it mattered that Bella was clearly Parsi, or not. The accusation that mother and daughter had been “passing” as Parsi threatened to sever their social and material lifelines.

This chapter has presented an alternate hypothesis on Bella’s paternity, one too speculative to have met the exacting standard of proof required by the
legal record. If correct, Bella’s case made an important point about the re-
processing of historical facts in preparation for entry into the legal arena. As Joan
Dayan puts it, a certain “leveling and strangeness” developed as facts travelled
into and through the courtroom.\footnote{Many thanks to Joan Dayan for her insights on facticity (Princeton, 20 November 2004).} Bella’s case highlighted the process of double
filtration that occurred as everyday facts were made legally presentable—not just
according to the legal categories of the applicable precedents (the focus of
chapters 3 and 7), but also through the parties’ own process of sanitization.
Arguably, the facts of Bella’s case as presented in court were deliberately
construed so as to protect the Captain family reputation from public scandal while
furthering the interests of the little girl. Crucially, the only people to describe Mrs.
Jones and her deathbed wish in court were Bomanji and Shapurji, the same two
who would have had reason to hide the secret of Bella’s true paternity.

Bella’s real father was probably not the Goan Indian Mr. Jones at all, but
the influential Parsi benefactor of her impoverished young mother. Bomanji
Cowasji Captain was the man who would try to bring Bella into the Parsi
community in his official role as benevolent adoptive uncle and sole trustee of the
Rangoon fire temple. He fought alongside Bella’s adoptive father and against her
other adoptive uncle, outliving both.\footnote{Merwanji Cowasji Captain died aged 74 in 1917, before the Privy Council had heard Bella’s
case. [“Obituary: M. M. Captain,” Parsi Prakash, V, 382.] Shapurji also died mid-way through
proceedings (see note 22 above). Bomanji died in 1929 [“Obituary: B C Captain,” Parsi Prakash,
VI, 403-4]. He was buried in the Parsi Cemetary in Brookwood, Guildford, suggesting that he was
in England when he died. [“List of Parsi Burials in London,” Parsi Prakash, V, 196.]} This hypothesis turns the case on its
head, as the dispute only existed because of Bella’s alleged non-Parsi paternity.
If the hypothesis is mistaken, the raw facts of Bella’s case become even more intriguing. If Bella was not related by blood to the Captain brothers, why did Shapurji and Bomanji fight so long and hard to bring her into the fold? Being Parsi, for them, must have been about belief, practice, and shared experience, rather than ethnicity or race. Their tenacity suggested the conviction that the bonds of love and affection could defeat the dictates of blood and community. But if Bomanji and Shapurji ever believed this, opposition from Rangoon and Bombay quickly rose up against them. Bella’s case was about much more than one little girl in Lower Burma. The next chapter relocates to Bombay to show how her case became the latest in a decades-long sequence of feuds over reform and orthodoxy.
CHAPTER 2

The Controversy:
Reform vs Orthodoxy

Bella was the mouse that bit the sleeping lion’s tail. When orthodox Bombay awoke, it was not impressed. Even before Bella was initiated, orthodox Parsis from Bombay tried to stop the High Priest of the Deccan as he made his way from Poona to Rangoon via Bombay and Calcutta. Dinshaw Davar, the High Court judge who ruled against outsider admission in the 1906 case, sent a telegram warning that Bella’s initiation would be illegal.\(^\text{188}\) Several Calcutta Parsis also tried to intervene. “Considering the parentage, upbringing, surroundings and probability of the child’s giving up Parsism later on much indignation prevails at the proposed public ceremony that would be making a mockery of the Parsi rite,” fumed one Poona newspaper.\(^\text{189}\) But to no avail. Claiming to be bound by the dictates of his conscience, Dastur Kaikobad performed Bella’s initiation, along with that of Bella’s adoptive mother and a Parsi boy also living in Rangoon.

Orthodox Parsis were outraged. Parsi newspapers in Bombay like the *Jam-e Jamshed, Sanj Vartaman* and *Cherag* took up the anti-Bella cause, sponsoring a “requisition” or petition against Bella. It demanded a public meeting, and contained over 15,000 names.\(^\text{190}\) The Parsi Panchayat held a frenzy of

---

\(^{188}\) One reformist journal dubbed Davar the “Parsi Kaiser” for this telegram. [“The Rangoon Navjote,” *JIA* 3: 1 (April 1914), 32.]


internal meetings to consider its course of action. Reformers responded in kind: the Iranian Association raised a counter-requisition in Bella’s favour opposing the proposed meeting. Newspapers and magazines like The Parsi, Bombay Samachar, Rast Goftar, and Kaiser-I-Hind, as well as the satirical weekly Hindi Punch and the Journal of the Iranian Association took up the gauntlet in defence of Bella. Her case was the latest spark in the chain of controversies that had punctuated reformist-orthodox relations since the nineteenth century. These conflicts included debates over the seclusion of women during menstruation, on female and priestly education, and on the abolition of bigamy, which culminated in the creation of special legislation for Parsis in 1865 governing marriage and divorce, along with inheritance and succession.

This chapter examines the controversy over reform that Bella’s case provoked. Reform movements in colonial India had everything to do with colonialism and the European presence, even when Europeans were not directly involved. The European absence from Bella’s case and its precedents is indeed striking. British-run English-language newspapers covered these cases, and yet the colonial administration—excluding the judges hearing the cases—showed

---

191 The Panchayat held meetings about Bella’s case on March 20, April 2, and every day for the first six days of May 1914. [“Plaintiffs’ Evidence. No. 6: Muncherji Pemenji Khareghat” (2 February 1916) in Saklat v Bella, 60, 62 (PCOR).]
194 On the Zoroastrian treatment of menstruation, see Manekji Nusservanji Dhalla, Zoroastrian Theology. From the Earliest Times to the Present day (New York: n.p., 1914), 340, 349; Phiroze Shapurji Masani, Zoroastrianism Ancient and Modern. Comprising a Review of Dr. Dhalla’s Book of Zoroastrian Theology (Bombay: the author, 1917), 357-84. See also Rose. For a fictionalized account of the seclusion of menstruating women, see Bapsi Sidhwa, The Crow Easters (Delhi: Penguin, 1990), 70. On female and priestly education, see Palsetia, 138-52,157-74. On the debate over polygamy, see Palsetia, 197-225; and BengalEE.
little interest and did nothing to intervene. Why was this so? For one thing, there was no physical violence and little *tamasha* in the colonial sense of high drama in a public space.¹⁹⁵ This fact also made the controversy less titillating for the colonial “print capitalist” market in exotic horror stories. Keeping Bella out of the fire temple, or the French wife of R. D. Tata out of the Towers of Silence, may not have been comparable in the British imagination to amputation as a penal sanction, slavery, *sati* or the burning of Hindu widows on their husbands’ funeral pyres, the hook-swinging of Hindu devotees, human sacrifice, ceremonial cannibalism, head-hunting, or female infanticide.¹⁹⁶ Moreover, the British had no particular stakes in the Parsi outsider admission cases. These were hardly cases of “white men saving brown women from brown men,” a type of case loaded with strategic potential for reinforcing the British civilizing mission.¹⁹⁷ The Parsi cases

---


were just the reverse, in fact: the French woman who became Mrs. Tata and tried to “become” Parsi could be characterized as a “white woman joining brown men and brown women.” In order to maintain racial hierarchies, it may even have been in the best interests of the British not to encourage Parsi reformers, as reform meant facilitating intermarriage between colonized and colonizing peoples—a taboo particularly in the later colonial period.  

198 It was out of the fear that Indian men might acquire European wives that colonial authorities tried to limit the European travels of Indian princes, for instance.  

199 Mrs. Tata’s case may have been an instance of purposeful non-intervention by colonial authorities. The same authorities probably considered Bella’s case a “lateral” controversy between Asian communities—Parsi, Indian, and Burmese—rather than a “vertical” one between South Asians and Britons.

A divide-and-conquer reading of colonial history might have predicted that colonial administrators would plunge into such a mêlée with glee.  

200 But they did not. There were certainly British judges and lawyers in Bella’s case, but they often seemed to scurry into the safe, warm folds of jurisdiction and procedure. It


199 Ballhatchet, 165.

200 For such an interpretation of colonial rule in Burma, see Maung Htin Aung, _A History of Burma_ (New York: Columbia University Press, 1967), 280-1.
was Parsis who turned the Bombay commission in *Saklat v Bella* into an exhaustive investigation of the question, *who is a Parsi?* And it was the British judge back in Rangoon who sighed, many months and almost 9,000 rupees later, that most of this evidence was irrelevant and unnecessary from a legal standpoint. In the 1906 prequel to Bella’s case, it was a Parsi judge, Dinshaw Davar, who delivered the leading judgment with its detailed ethnographic investigations of Parsi life. His British colleague on the bench, F. C. O. Beaman, played the role of deferential side-kick. The striking Parsi presence in the legal profession helped create an informal and unobtrusive yet highly effective model of legal pluralism in Bombay. Through it, the Parsis managed to make the colonial legal system the primary forum in which their cultural identity was hammered out.

Kenneth Jones describes “acculturative” reform movements as movements that, although internal to individual communities, were products of the colonial interaction. These movements documented a crisis in identity when a community was divided over whether to hold on to “tradition,” or to accept the colonial critique and strengthen the community’s position by amending its practices accordingly. It was typically European-educated South Asians who led

---


202 To quote a popular song by the early twentieth-century Parsi satirist Dr. Jehangir Wadia, “Justice Davar sat to do justice and beside him sat Beaman to chant, ‘Yes Sir!’ [Justice Davar betha chukado karva ne sathe betha Beaman ha ji ha dhunva].” (I am grateful to K. N. Suntook for these lyrics.) On Dr. Wadia, see Dilnawaz Bana, “Dr. Jehangir R. Wadia: Dramatics for Charity” in Nawaz B. Mody, ed. *Enduring Legacy: Parsis of the Twentieth Century. Vol. III: Arts and Culture* (Mumbai: Nawaz B. Mody, 2005), 850-7. Beaman’s 1928 obituary in the *Times of India* commented that in *Petit v Jijibhai*, Beaman “at the end somewhat weakly gave in his more practical and masterful colleague.” [“Ex-Bombay Judge Sir Frank Beaman Dead. Well Known Figure in City,” *Times of India* (15 August 1928), 11.] See also *Parsi Panchayat Case (Beaman)*, i.
Bella’s case sparked such an acculturative reform debate. It was exclusively Parsi in the nature of its participants, and was triggered by the confrontation between “tradition” and colonial modernity, a concept seemingly inseparable in the colonial milieu from Europeanness.

But did being “modern” in turn-of-the-century Bombay necessarily mean being “European”? When it came to science and technology, probably. The world was becoming smaller, faster, and more visible thanks to western technological miracles like typewriters, telegraphs, telephones, steam-powered shipping, electric fans, lighting, and elevators. Reformist and orthodox Parsis alike drew upon the findings of western science selectively to support their claims. A concomitant belief in western rationality inspired Parsi and Hindu reformers, offering itself as a weapon against the endorsement of what they considered senseless or corrupted religious practices.

---

203 Kenneth W. Jones, *The New Cambridge History of India. III.1: Socio-religious Reform Movements in British India* (Cambridge: Cambridge University Press, 1989), 3. The leading example would be the Brahmo Samaj movement, led by Bengalis of the “Indian golden age” like Rabindranath Tagore, Rammohun Roy, and Vivekenanda. Amongst the Hindus of Gujarat and Maharashtra, there were the Paramahansa Mandali and the Prarthana Samaj, both supported by young, western-educated Brahmins who opposed caste restrictions, the ban on widow remarriage, and child marriage. [Jones, 30-9, 139-44.]

204 On the introduction of these modern amenities into the Parsi law firm, Wadia Ghandy and Co., see Ardeshir Jamsherji Chanji Mistry, *Reminiscences of the Office of Messrs Wadia Ghandy and Co.* (Bombay: printed at Commercial Reporter’s Press, [1911]), 37-9, 56-7. For a listing of Norman Macleod’s 17 roundtrips between India and Britain by steamship over 36 years, see his “Voyages to India and Back,” HRA/D63/A8(a), 1-2 in Macleod of Cadboll Papers, 1831-1983 (HCA). Macleod was Chief Justice of Bombay, 1919-26.

205 See Vimadalal’s exchange with “Hindu Thinker” on the “white” and “black” sides of western civilization: “VII. July 13, 1910. Western Civilization and the Parsees. To the Editor, from J. J. Vimadalal,” 12-14; and “X. July 27, 1910. The East and the West. Letter from ‘Hindu Thinker,’” 12-14; both in *Mr Vimadalal and the Juddin Question*.

But alternatives beyond the “modern-western-rationalist” trio of equivalence did exist. The theosophical movement was an alternative model, being in many ways both from and against the west.\textsuperscript{207} It preached a distinctly non-rational approach.\textsuperscript{208} Pioneered in New York in 1875, theosophy was a universalist spiritual movement that was fashionable worldwide in the early twentieth century. I want to argue, against scholars like Geoffrey West, that theosophy offered an alternate model of the “modern,” and one to which the orthodox side of the Bella feud subscribed.\textsuperscript{209} There were also distinctly modern, self-consciously anti-European movements afoot in colonial India: initially, the violent anti-colonial revolutionary movement of would-be barrister “Veer” Savarkar and Parsi Madame Cama, then later the Gandhian non-cooperation movement.\textsuperscript{210} Unlike these movements, both sides of the Parsi debate approved of the intellectual tools of the west when it was in their best interests to do so. Even the orthodox lawyer Vimadalal encouraged a selective adoption of western ways. In 1910, he advocated adopting the best of the west—its vigor and rational spirit—while retaining the spirituality of the east.\textsuperscript{211}

\textsuperscript{207} Pestanji M. Ghadiali, “Preface” in Nasarvanji F. Bilimoria, ed. \textit{Zoroastrianism in the Light of Theosophy} (Madras: Blavatsky Lodge, Theosophical Society, 1898), xxiii.


\textsuperscript{209} Geoffrey West, the first biographer of the theosophical leader Annie Besant, described Besant as turning her back on modernity by converting from atheism to theosophy. [Geoffrey West, \textit{The Life of Annie Besant} (London: G. Howe, 1933); cited in Gauri Viswanathan, \textit{Outside the Fold: Conversion, Modernity and Belief} (Princeton: Princeton University Press, 1998), 180.]

\textsuperscript{210} On the revolutionary movement see Rozina Visram, \textit{Ayahs, Lascars and Princes: Indians in Britain 1700-1947} (London: Pluto Press, 1986), 102-11. Several letters from Madame Cama to Delphine Ménant are included in the uncatalogued papers of Delphine Ménant, Musée Guimet (hereafter MG).

\textsuperscript{211} “XIII. 10 August 1910. Western Civilization and the Parsees. From Vimadalal” in \textit{Mr. Vimadalal and the Juddin Question}, 34.
This chapter begins with the depiction of the Bella controversy in Bombay from both reformist and orthodox perspectives. I describe the reformist depiction of the orthodox in the satirical weekly, *Hindi Punch*, particularly through its cartoon figure, “Mr. Best Orthodox.” The inverse perspective comes from coverage of the case in the orthodox Gujarati daily, *Jam-e Jamshed*. I then explore the complexities of the relationship of both reformers and orthodox with tradition and colonial modernity. Jesse Palsetia has argued that both sides drew upon the traditional and the modern or western at different times.212 I want to extend his point by illustrating the ways in which reformers were perhaps more “traditional” and the orthodox, more “modern,” than might be assumed. The effect of my argument is to draw both sides in from the outer edges of the spectrum of difference relative to other social movements in colonial South Asia. Despite the vituperation of their combat, neither Parsi reformers nor the orthodox were as extreme in their positions as they might have been. Parsi reformers were hardly proposing an experimental new worldview like strains of Brahmoism that rejected the caste system and adopted a form of civil marriage that declared participants non-Hindus.213 In the same way, Parsi orthodox were not offering a radical rejection of everything western and modern in the style of Gandhi’s anti-industrialism or the anti-colonialism of Wahabbi and Deoband Islamic revivalism.214

212 Palsetia, 251-62.
213 Jones, 34-7.
Finally, some definitions. The terms *modern* and *traditional* are tricky because current associations can creep in at the expense of very different connotations of 1914. I am employing these terms in an entirely self-referential sense. I want to investigate the ways in which reformists *understood themselves* to be traditional, and the orthodox, to be *self-consciously* modern. Among Europeanists, *modernity* has come to represent a bundle of features bearing a distinctly western stamp, including the rise of the individual’s political rights, the nuclear family, industrialization, urbanization, and secularization.\(^{215}\) The colonial Parsi story, particularly in its orthodox rendition, requires a more open-ended and culturally flexible definition of the modern, one that is less substantive and more formal. To echo C. A. Bayly, a large part of being modern was *thinking* that one was modern—that one was “up with the times.”\(^{216}\) Orthodox Parsis did not assume they had to be secular individualists to be modern. This chapter adopts the same starting point.

The second vexed pair of terms is *reformist* and *orthodox*. Particularly in this chapter, I assume a clean divide between the two groups. There were a few exceptions—priests who endorsed a reformist agenda generally but opposed the admission of non-Parsis, doyens of conservatism who did not feel they could be called orthodox for lapses in “lifestyle,” and one or two Parsis who zig-zagged across the border by issue or after a personal falling-out.\(^{217}\) In general, though,

\(^{216}\) Bayly, 10.
\(^{217}\) The Karachi high priest Dastur Dhalla was generally reformist, but objected to outsider admission. See Dhalla, *Autobiography*, 381, 384-9, 391, 701-15. Despite his unofficial role as a leader of orthodox Parsis, the High Court judge Dinshaw Davar confessed that he did not consider himself a very devout or orthodox Parsi because he smoked and went bare-headed in Zoroastrian temples. [“Editorial: The Jam-e Jamshed Defamation Case and Sir Dinshaw Davar,”
the lines were boldly drawn and respected. As this study focuses on the single issue of outsider admission, the terms reformist and orthodox refer specifically to Parsis’ position on this one issue. If I have exaggerated the divide, I take my cue from the primary sources recording Bella’s case, particularly the Bombay-based witness testimony and press coverage. Those sources portray reformist and orthodox Parsis as firmly entrenched at opposite poles with virtually no traffic between them.

_Ink and Flames_

Reformist depictions of orthodoxy were epitomized by the satirical figure of Mr. Best Orthodox in *Hindi Punch* (1878-1930), one of many Indian-run magazines modeled upon the London prototype, *Punch: The London Charivari*. The Bombay weekly was originally called *Parsee Punch*, but changed its name to *Hindi Punch* to broaden its readership. Under the management of Parsi editor Barjorji Naorosji, however, it maintained a Parsi focus. Earlier in the 1910s, the magazine developed a character named “Mr. Best Orthodox” who stood for Parsi orthodoxy. He was a blustering little man dressed in the traditional white Parsi cap and dagli (a muslin coat fastened with ribbons and worn over loose white pantaloons) and wearing leather *mojris* (slipper-like shoes with pointed toes).

---

_JIA VI: 5 (August 1915), 176._ For an idiosyncratic polemical agenda, see B. J. Billimoria, _A Warning Word to Parsees_ (Bombay: Messrs D. Ardeshir and Co., 1900). The Rangoon Parsi G. K. Nariman supported Bella’s initiation and the reformist camp until he quarreled with Bomanji Cowasji Captain, after which time he became an ally of Bomanji’s brother, Merwanji, and an ardent defender of orthodox interests. See text preceding note 1048 (below).

218 On the coining of the phrase, “Best Orthodox,” see Dhalla, _Autobiography_, 378-9. _Punch_-inspired magazines in colonial India included the *Delhi Sketch Book*, *Momus*, *The Indian Charivari*, and *Basantak*, as well as those that actually took the name *Punch*: *Oudh Punch*, *Delhi Punch*, *Indian Punch*, *Urdu Punch*, *Gujarati Punch*, and *Purneah Punch*. [Mitter, 138.]

219 Mitter, 155.
Beneath his felt hat or pheta, Mr. Best Orthodox had gaunt, bony features. He had a long, hooked nose; thin, arched eyebrows; a straggly white beard; and the occasional missing tooth, visible when he cackled hideously at the latest orthodox victory. He offered commentary on developments in Parsi community affairs, and on Bella’s case in particular. His nemesis was the mild and rosy-cheeked Mr. Parsi Punch, the voice of moderation and joviality. With his plump belly and benign smile, Mr. Parsi Punch purported to represent public opinion. Mr. Parsi Punch had a large protruding nose and chin, and a fin-like hump—unmistakable tributes to the signature features of the original Mr. Punch. Mr. Parsi Punch was notably absent from the Bella sequences, spending more of his time playing host in the more celebratory frames of Hindi Punch.

Between 1914 and 1920, Mr. Best Orthodox stormed and stewed about the reformers’ annual Zoroastrian Conference, the reformist proposal to build a crematorium, and the marriage of Parsi women to non-Parsi men, one groom in question being none other than Mohammad Ali Jinnah. He interpreted the

---

221 “Speech is silver, silence is gold,” Hindi Punch (1 November 1925), 12.
223 On the Zoroastrian Conference, see untitled cartoon, Hindi Punch (17 December 1916), 21; and untitled cartoon, Hindi Punch (24 December 1916), 12. “Haunted; --Or, the Best-Orthodox Parsi’s Bogey,” Hindi Punch (10 November 1918), 23. On the cremation debate, see text accompanying notes 835-8 and 841-53 (below). The Parsi woman who married Jinnah was Ratanbai Petit, the only daughter of the leading Parsi advocate, Sir Dinshaw Petit. Ratanbai was 18 years old when she converted to Islam and married Jinnah, who was 23 years her senior. ["Mahomedan-Parsi Wedding," Times of India (20 April 1918), 10; “Official and Personal,” Bombay Chronicle (20 April 1918), 8.] They had been engaged in secret and Sir Dinshaw disapproved, taking out an injunction forbidding Jinnah from seeing Ratanbai. After their marriage, the couple became estranged and Ratanbai died at the age of 28. [Hector Bolitho, Jinnah: Creator of Pakistan (London: John Murray, 1954), 74-96.] They had one child, a daughter named Dinah. Ironically, Jinnah disowned her for marrying a Parsi. [“Jinnah’s daughter was there,” The Asian Age (25 March 2004), 1-2.] On the controversy surrounding the Petit-Jinnah marriage within Parsi circles, see note 64 (above).
influenza epidemic of 1918 as divine punishment for the straying of so many Parsis from religion.\textsuperscript{224} He railed against the violation of Parsi sacred space by the flight of airplanes over the Towers of Silence.\textsuperscript{225}

Less than three weeks after Bella was initiated in Rangoon, Mr. Best Orthodox made his first comment on the controversy (fig. 1). With his brow furrowed in disapproval, he held a scroll labeled “Rangoon Navjote Ceremony” in one hand and a flaming plume—a reference to the frenzy of stories in the press—in the other. He was crouched down, about to set fire to a large stone edifice that stood for everything good and true about Zoroastrianism. The individual stones bore labels like “True Spirit of Religion,” “Parsi Peace,” and “Parsi Harmony.” The orthodox critic’s flaming plume smoked with the terms “Pharisaism” and “Hypocrisy.” Mr. Best Orthodox muttered to himself, “[l]et us see if this best of purifiers won’t cleanse my community!”\textsuperscript{226}

The following week, \textit{Hindi Punch} reported that the press continued to indulge in the “inky sport,” “to the disgust of the sensible portion of the community” (fig. 2). A grimacing Mr. Best Orthodox balanced on the rims of an enormous ink pot, waving his inked quill madly in the air. Ink was splattered everywhere on the wall with Mr. Best Orthodox’s frenzied graffiti—the words “abusive language” and “fanaticism”—barely readable from amongst the splotches.\textsuperscript{227}

\textsuperscript{224} “Effects of the Influenza Epidemic—No.8,” \textit{Hindi Punch} (20 October 1918), 12.
\textsuperscript{226} “Open Incendiarism,” \textit{Hindi Punch} (12 April 1914), 10.
\textsuperscript{227} “An Inky Sport!” \textit{Hindi Punch} (19 April 1914), 12.
Two weeks later in May 1914, Mr. Best Orthodox appeared in the pages of *Hindi Punch* dancing a jig to celebrate the collapse of an attempted compromise between Dinshaw Davar and the High Priest of the Deccan (fig. 3). The failure meant that the requisition to call an official meeting of all Parsis would be sent to the Parsi Panchayat itself.228

The following week, a scowling Mr. Best Orthodox tried to push his way into a room labeled “Parsi Community” (fig. 4). He held the requisition against the Rangoon navjote, but was blocked by two smiling Parsi ladies standing behind the door he was trying to force open. One woman was “Parsi Peace”; the other, “Parsi Harmony.” Mr. Best Orthodox demanded to be let in, telling the women that it was their duty as well as being in their best interests to support him. “Not if we can help it” was their reply. According to the caption, the trustees of the Parsi Panchayat had announced that there would be no public meeting: Dastur Kaikobad had apologized for his action over the past week.229

Mr. Best Orthodox chuckled his way through Bella’s ultimate defeat in the Privy Council in London, when a similar wave of Mr. Best Orthodox cartoons appeared in 1925 (fig. 5).230 *Hindi Punch* fashioned Mr. Best Orthodox as an angry, vindictive, hypocritical figure who delighted in disrupting the peace. Mr. Parsi Punch and the graceful figures representing peace and harmony, on the other hand, were predictably even-tempered and magnanimous. Mr. Best Orthodox typically whipped himself into a frenzy of rage and destruction. In the

---

228 “Mr. Best-Orthodox in High Jinks,” *Hindi Punch* (3 May 1914), 21.
229 “The Intruder,” *Hindi Punch* (10 May 1914), 12.
230 “Well-a done!” *Hindi Punch* (1 November 1925), 12; “Mr. Punch’s Fancy Portraits,” *Hindi Punch* (6 December 1925), 25.
Bella sequence, his repertoire included attempted arson, breaking and entering, and vandalism. When he smiled, it was out of Schadenfreude.

Two new characters appeared for the New Year’s or Pateti issue of Hindi Punch in September 1914. Miss Parsi Lady narrated the year’s events to Papa Punch, breaking the news of Bella’s case “with slightly shivering hands and extreme nervousness.” From a distant land with a tiny Parsi population came a shameful story “of personal malice and vituperative tyranny,” the likes of which Papa Punch would never before have witnessed. The story was shameful not for the facts of the case, but for the discord that it had sown in Bombay, aided by “social incendiaries” who fuelled the flames. Miss Parsi Lady described Dastur Kaikobad as “trusted, respected and famous, erudite and accomplished, scrupulously honest and straight-forward.” He had been the victim of Bombay’s social incendiaries, and it was just by luck that “his venerable beard” was not singed. Miss Parsi Lady’s “rosy splendor” drained from her face as she met her father’s astonished stare. The dastur, meanwhile, accompanied the yearly round-up in cartoon form (fig. 6). He stood amidst smoke and flames which were labeled “vituperation,” “malignant misrepresentation,” “unfounded and wild calumny,” and “base motives,” holding his hands up in a dramatic gesture of self-protection. Miss Lady Parsi and her father wrongly believed that there was a happy ending to the story, convinced that the exchange of apologies closed the affair: “And thus did the misguided, irreverent and positively irreligious fanaticism of irresponsible orthodoxy that frenzied the brains of those who fought with the

---

pen that is ever mightier than the sword, at last subside.” But it was the calm before the storm. In September 1914, Saklat v Bella had yet to be filed.

**Cream and Cholera**

The orthodox picture of reformers was equally virulent. For several months after Bella’s initiation, the conservative Parsi Gujarati-language daily, Jam-e Jamshed published a series of articles critical of Bella and her reformist supporters. These included a number of powerful images, some of which would soon be the subject of libel proceedings in Rangoon and Bombay. The articles referred to Bella’s reformist supporters as “Conferencias” due to their participation in the annual Zoroastrian Conferences. The conferences had taken place from 1910 to 1913 by the efforts of the Columbia-educated reformist priest from Karachi, M. N. Dhalla. The newspaper likened Conferencias to lepers who passed on the disease by coming into contact with the uninfected whilst they themselves were “in the throes of a ravaging disease.” Conferencias tried to lure Parsis into their cause just as vaghris, a lower caste of bird-catchers, snagged birds in their nets. The reformers were like cream, being the “best portion” of Parsi society that, like the dairy product, rose to the top. The public had been given the opportunity to examine this cream by “the awful Rangoonee Deccanee romance which is on the teeth of the world.” Wrote the Jam-e Jamshed, “[t]he cream has proved to be

---

234 Saklat v Bella was filed in the Chief Court of Lower Burma probably in the earlier part of 1915, as suggested by its suit number (91 of 1915).
such that its sight would give cholera without even the eating.” The reform movement was alternatively described as a poisonous viper. People like Dastur Dhalla, with his “fine writing and inducement,” were inviting other Parsis to feed the snake milk.

The Jam-e Jamshed associated reformers’ lax moral standards with their foreign contacts and travel. It characterized them as snobs who were “constantly moving about abroad and for travels to Europe.” The Conference camp stood “entirely on foreign legs.” This cosmopolitanism also kindled a desire for exotic sexual partners—“their one lustful idea”—which was the invisible engine powering the campaign for outsider admission. These outsiders, as I show in chapter 3, were typically wives. Only those who desired outsider women for themselves would defend the general principle for the whole community. So argued Jam-e Jamshed.

This fact put Parsi women at risk. If foreign women were admitted, they would make spinsters out of young Parsi women, snatching the most eligible Parsi bachelors for themselves. The shortage-of-men argument was a much repeated one in the Bella debates. Hindi Punch poked fun at it during the Petit v Jijibhai hearings with a cartoon of an older Parsi lady smiling over her newspaper (fig. 7). Soonamae, the mother of seven daughters, read the daily paper with delight, seeing that the French Mrs. Tata had lost her case: “Good, good, very good! Serves the Madamias [foreign women] right! No Juddin girl, White, Brown

---

236 Jam-e Jamshed (22 April 1914) in “Jam-e Jamshed Defamation Case,” JIA IV: 4 (July 1915), 129.
237 Jam-e Jamshed (about 20 April 1914) in “Jam-e Jamshed Defamation Case,” 129.
238 Jam-e Jamshed (about 22 April 1914) in “Jam-e Jamshed Defamation Case,” 129-30.
239 Jam-e Jamshed (about 16 April 1914) in “Jam-e Jamshed Defamation Case,” 128.
or Black, can now claim to be a Parsee, and no Parsee dare to marry her and convert her to Zoroastrianism! So now, unmarried girls have a chance! My seven little ones!” Hindi Punch sneered,

[...] the admission of one pucca juddin [i.e. proper outsider] girl... must necessarily deprive at least twenty-five members of pure blood and pure Kaianian origin of their right of marriage, and what shall we then do with the ever-increasing brood of our spinsters?241

Witnesses in Petit v Jijibhai, including the star expert witness, the scholar-priest J. J. Modi, had defended the argument.242 The blind judge Beaman dismissed it as ridiculous:

We were told, amongst other things, that one reason why the conversion of aliens to the Holy Zoroastrian faith was no longer permissible in Bombay, if it ever had been, was that unscrupulous European women would pretend to be Converts, in order to marry eligible Parsi young men, and so there would not be enough husbands to go round. The Parsi maidens we were told would be deserted; and one high priest even assured us that, owing to this lamentable tendency, he knew of a Parsi virgin of forty still looking out in vain for a husband. This is the merest absurdity.243

Two decades later in Bella’s case, the orthodox solicitor Vimadalal would press the argument upon several witnesses in Bombay.244 Similarly, Jam-e Jamshed advised the Parsi sisters and mothers of Bombay to be alarmed. Conferencias

---

240 “Materfamilias over the Juddin Case Judgment,” Hindi Punch (6 December 1908), 12.
241 “The Rangoon Romance (Bella and the Anjuman),” Hindi Punch (7 June 1914), 14, 19. The Kaianian dynasty ruled Persia circa 1300 B. C. It produced many of the epic heroes of Ferdowsi’s epic Shahnameh and by some accounts it was in this period that the prophet Zarathustra lived. [Karaka, I, 4-5.] There is much debate over Zarathustra’s dates. See note 259 (below).
243 Parsi Panchayat Case (Beaman), xxv.
244 “Defendant’s Evidence. No.27: Evidence of Jamshedji Dadabhoy Nadirshaw taken on Commission. In the Court of Small Causes, Bombay” (28 April 1916) in Saklat v Bella, 445 (PCOR); also noted at 413.
were “bent upon bringing about the destruction of you, —Oh, of us lady folk—and side by side with it of the whole Parsi Community.”\textsuperscript{245}

Miscegenation in many times and places has raised the \textit{but-what-about-our-daughters} alarm. Typically, though, the fear was that inside females would be overly, rather than underly, desired and carried off. The argument in the Parsi setting was a curious inversion of the stock case against exogamy. In the Parsi case, the community was at risk because its pure race and lineage were under threat of dilution. As long as “genuine faithfulness and care” were taken to “maintain and preserve our race and origin as only Parsi Zoroastrians,” the thought of admitting women of “hybrid lineage” would not be heard of “even in dreams.”\textsuperscript{246} The newspaper was referring not only to Bella, whose mother may have been Parsi, but also to her adoptive mother, Mrs. Shapurji Cowasji Captain. Mrs. Captain was initiated along with Bella in Rangoon, and was accused of being of partly Burmese descent, her mother having been Burmese. This was the subject of a libel case launched by Shapurji Cowasji Captain in Rangoon against the orthodox Bombay newspapers, and is examined in chapter 6. Quoting the Persian poet Ferdowsi, the author of the \textit{Jam-e Jamshed} article exited with the line, “[i]f evil arises out of people of hybrid lineage, there is [no reason] to be surprised.”\textsuperscript{247}

\textsuperscript{245} \textit{Jam-e Jamshed} (about 20 April 1914) in “Jam-e Jamshed Defamation Case,” 129.
\textsuperscript{246} \textit{Jam-e Jamshed} (about 16 April 1914) in “Jam-e Jamshed Defamation Case,” 130.
\textsuperscript{247} “Jam-e Jamshed Defamation Case,” 130.
Being “Traditional”:
Reformers and the Parsi Past

In a sense, these mutual depictions produced exactly the picture one would expect: orthodox Parsis looking back into the past and reformers looking forward into the future. One would expect the orthodox—simply by virtue of being orthodox—to reify their conception of tradition, embrace the literal understanding of texts and rituals, and reject European modes of thought and living. Against this, one might expect to find reformers—secular and westernized—eager to jettison religion and modernize. If there was any truth in this picture, it was only in the crudest sense. In the next two sections, I want to offer a more interesting and less predictable account of the reformist and orthodox positions in Bella’s case. I argue that in key respects, reformers were more “traditional,” and orthodox more “modern,” than one might expect.

Reformers were traditional in two key ways. First, they employed a distinct rhetoric of return—to an earlier era when Zoroastrianism existed in more pristine form. Second, they exhibited values in their interpretation of Bella’s case that, although easily mistaken for ideas assimilated under British influence, in fact had long genealogies in Zoroastrian theology. These included the Zoroastrian tradition of divine judgment and the doctrine of Asha or Truth. Both phenomena suggested that reformers were perhaps not as “modern” and “western” as might be assumed.

Like so many reform movements, Parsi reformist organizations like the Iranian Association couched their aims in the language not of advancing toward
progress, but of returning to a purer, earlier era in an effort to recreate a more “authentic” Zoroastrianism. The association aimed “to maintain the purity of the Zoroastrian religion” and remove “the excrescences that have gathered around it.” The group was explicitly anti-theosopist, many orthodox Parsis being followers of the theosophical movement. The Iranian Association also opposed any influence that added “foreign elements” to Zoroastrianism, or that brought about the degeneration of a “progressive and virile community like the Parsis,” reducing them to a “body of superstitious and unpractical visionaries”—again, a thinly veiled stab at the theosophical movement, itself a western import, with its belief in communication with the spirit world.248

What was meant by “foreign elements” was clarified in an exchange of letters in 1910 between J. J. Vimadalal, the orthodox solicitor leading the case against Bella in Bombay, and reformist readers of The Oriental Review. An anonymous contributor writing under the name of “Faith in Honest Doubt” argued that Parsi theology had been so permeated by Hindu and Islamic influences over the past 1,300 years that there was little of the true religion left. “If anything, it is Western education and Western Civilization that has restored to the Parsees their old pristine social and religious ways (e.g. emancipation of Parsee females socially and legally from barbarous Hindu customs).”249 The writer could also have been referring to what the orthodox called cynically the “Gathas Only Club,” a reformist school of thought that endorsed the conclusions of the mid-

249 “XIX. 31 August 1910: Western Civilization and the Parsis. From ‘Faith in Honest Doubt’” in Mr. Vimadalal and the Juddin Question, 47.
nineteenth-century German scholar, Martin Haug.²⁵⁰ Haug argued that of all surviving Zoroastrian scripture, only the prophet Zarathustra’s hymns, the Gathas, represented true Zoroastrianism. The later tradition had devolved into dualism due to the ignorance of priests who failed to understand Zarathustra’s essentially monotheistic project.²⁵¹ As Jesse Palsetia has shown, reformers held the view that the “true” Zarathustra was the first reformer, intent upon the propagation of the faith, which meant admitting outsiders.²⁵²

The second point is that the intellectual Anglicization even of reformist Parsis should not be overestimated. It was easy to mistake Asian intellectual traditions for western ideas where the two happened to endorse similar values. The point is masterfully illustrated by Ranajit Guha in *Dominance without Hegemony*, where he explains the coincidental overlap between the Hindu ideals of *Danda, Dharma*, and the Bhakti devotional tradition on the one hand, and British ideals of order, improvement, and obedience, on the other.²⁵³ The same phenomenon occurred between British political ideology and Parsi religious thought, and bears dissection in an extended account of Bella’s case appearing in *Hindi Punch* in June 1914. “The Rangoon Romance (Bella and the Anjuman)” described Bella’s story from 21 March until 7 June 1914. At these dates, the

²⁵² Palsetia, 252-3.
²⁵³ *Danda* is an ensemble of “power, authority and punishment,” the legitimation of force and fear as the foundation of royal authority, backed up by divine endorsement. *Dharma* is the moral duty to conform to one’s place in the caste hierarchy and in local power structures. The Bhakti devotional movements emphasized virtues like *dasya*, total servility to the deity. [Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India* (Cambridge, MA: Harvard University Press, 1997), 29, 35, 47-8.]
Saklat v Bella lawsuit had not yet been filed. At first glance, the reformist narrative exhibited all the signs of thorough Anglicization. It included biblical references, for instance. Shapurji’s promise to Bella’s dying mother that he would raise Bella as a Zoroastrian was an attempt to challenge “the commandment of the Scripture that the sins of the parents shall be visited on the children, even unto the fourth generation!” There were proverbial references in Latin. Satirizing the orthodox cry that most priests could be bribed to initiate outsiders, the author wailed in mock despair, “O tempora! O mores!” There were appeals to codes of colonial civility and good manners. Presumably appealing to the British gentlemanly rule of keeping one’s word, the magazine protested that breaking the promise to Rebekah Jones would constitute “an intolerable breach of good manners.” There were references to the common law doctrine of consideration, the canonical rule of English contract law by which contracts would not be enforced unless some “consideration” or value had passed between the parties, in addition to the initial promise. Shapurji was advised to ignore the promise he claimed to make to Mrs. Jones on her death bed. Hindi Punch snapped, “[a] promise without a consideration? Who can seek to enforce it?” Finally, Dinshaw Davar appeared in an accompanying cartoon, hovering in the heavens in a flowing white gown with feathered wings fluttering (fig. 8). He held the scales of justice in one hand and a small container of weights in the other. The text observed that he was “proclaiming his own law and administering it too.

254 “The Rangoon Romance,” Hindi Punch (7 June 1914), 13 (referring to Exodus 20:5).
255 “The Rangoon Romance,” Hindi Punch (7 June 1914), 14. For a similar example, see “1284-5,” Hindi Punch (12 September 1915), 23.
256 “Rangoon Romance,” Hindi Punch (7 June 1914), 13.
257 “Rangoon Romance,” Hindi Punch (7 June 1914), 13.
wisely assuming to himself the role of the patriarch chieftain in the community that now was threatened with certain rule. ²⁵⁸ Davar looked like a *pucca* Christian angel.

Or did he? The image is the perfect point of entry into a universe of Zoroastrian thought, elements of which may have coincided with European traditions, but only by chance. I want to focus on two such elements: the Zoroastrian tradition of divine judgment and the doctrine of *Asha* or Truth. The cartoon depiction of Davar as divine judge resonated not just—by coincidence—with the Christian tradition, but more accurately, with the Zoroastrian tradition that predated it by as much as a millenium. ²⁵⁹ The concept of divine judgment of the individual after death made an early appearance in the Zoroastrian tradition. ²⁶⁰ Specifically, a weighing procedure was central to the Zoroastrian process of divine judgment, making scales another feature common to Zoroastrian and Christian eschatology. ²⁶¹ The reference in *Hindi Punch* was confirmed by the caption: “The Great Dadgar Davar.” ²⁶² *Dadgar* meant judge. Ironically, so did Davar’s name itself, referring to high judicial officials in Achaemenian Persia—

²⁵⁸ “Rangoon Romance,” *Hindi Punch* (7 June 1914), 14.
²⁵⁹ There has been much debate over Zarathustra’s dates, with Greek sources placing him anywhere from 4000 BC to “258 years before Alexander” or the Seleucid era (i.e. roughly 570 BC). [James R. Russell, “The Place and Time of Zarathushtra” in Godrej and Punthakey Mistree, 29.] Mary Boyce estimates that Zarathustra lived around 1200 BC. [Mary Boyce, *Zoroastrianism: Its Antiquity and Constant Vigour* (Costa Mesa, California and New York: Mazda Publishers and Bibliotheca Persica, 1992), 45.] On potential Zoroastrian influences upon Judeo-Christian theology, see note 270 (below).
²⁶² According to *Hindi Punch*, Davar acted like “the Earthly Representative of Meher Davar [the divine judge].” [“Chow-Chow,” *Hindi Punch* (16 May 1915), 13, 19. See also untitled article, *Hindi Punch* (24 January 1915), 20.]
singularly appropriate for the first Parsi to sit on the High Court bench in Bombay. In Zoroastrian eschatology, the soul proceeded to the place of final judgment, Chinvat bridge or “The Bridge of the Separator,” at dawn on the fourth day after death. On the bridge, the soul was judged by “a team of heavenly assessors” who weighed good against evil in the scales of justice. The team consisted of Ahura Mazda, the Amesha Spentas, the prophet Zarathushtra, and three yazatas or divine beings. Mithra was the lord of contract; Rashn, the lord of justice; and Sraosh, the lord of prayer. If the soul was deemed righteous, the bridge widened, providing a wide walkway across which it could proceed to the Zoroastrian equivalent of heaven. If sinful, the bridge became narrow like a razor’s edge, such that the soul tumbled into the equivalent of hell.

Another east-west coincidence in the depiction of Davar was an angelic flowing white gown. The association of light and white with good, and darkness with evil, was integral to the Zoroastrian tradition. Parsi priests wore long white

---

265 Ahura Mazda is “the omniscient and omnipresent Creator of all that is Good in the world.” The Amesha Spentas are the seven holiest yazatas or divine beings created by Ahura Mazda {Godrej and Punthakey Mistree, 714.} Khojeste Mistree describes yazatas as neither individual gods nor angels. See Mistree, Zoroastrianism, 18-26.
268 According to the Zoroastrian creation story, the essence of Ahura Mazda, the deity of goodness, was light. That of Ahriman, the evil deity, was darkness. [Mistree, Zoroastrianism, 31.]
gown-like garments, and the traditional Parsi male coat or *dagli*—sported by Mr. Best Orthodox—was entirely white. 269 The moralization of light and dark, white and black, had a long Zoroastrian genealogy, and only by coincidence resembled the parallel Christian tradition of the Parsis’ colonial masters. 270

Finally, *Hindi Punch* stressed the importance of keeping one’s promises. Shapurji Cowasji Captain could not be expected to break his promise to the dying Rebekah Jones. As a kindly Parsi, he had tried “to relieve the distress of the dying mother in her grief and agony, and gave her promise on her death-bed not only to bring up her little one, but even to find the waif a place in the community from which she herself had sought self-banishment.” 271 It was also unforgiveable to ask him to go back on his arrangement with Dastur Kaikobad: “the Sirdar Shams-ul-Ulama is asked to eat his own promise to help the unworthy Rangoon Shettia and fulfil his pledge.” 272

Teaching Indians to keep their word was a central plank of the British civilizing mission in India. Uday Singh Mehta has shown how British liberals aimed to transform India from a society based on favours to one based on rules. Learning the value of telling the truth was part of this “pedagogic regime,” a package that treated Indians like children who needed to be educated in basic

269 For photos of priestly dress in the early twentieth century, see Firoze M. Kotwal and Khojeste Mistree, “The Court of the Lord of Rituals,” 375 in Godrej and Punthakey Mistree. See also Firoze M. Kotwal and Khojeste P. Mistree, “Protecting the Physical World,” 346-8 in Godrej and Punthakey Mistree.


political values before they were entitled to have a self-governing civil society.273

Contracts were formalized promises, and promises were themselves one type of truth-telling. In the legal context, British administrators complained endlessly about “Oriental mendacity,” a trait in India that seemed endemic, particularly in the courts. The blind British judge in Petit v Jijibhai commented at the end of his career that he had spent much of his forty years on the bench listening to witnesses who lied with impunity: “as it would obviously be impossible to prosecute every lying witness, however audacious his lying, not one in every million of India’s annual perjurers is brought to trial, and fewer still expect to be.”274 Norman Macleod, the Chief Justice of Bombay from 1919 until 1926, described the machinations of the Parsi registrar of the High Court, R. D. Sethna, with a cynical reference to “Oriental” standards of honesty.275

The problem was understood to be not just practical, but also doctrinal. According to the Shia doctrine (originally Ismaili) of Al-taqiyah, for example, a person was obliged to lie in order to protect the faith.276 To the British, honesty

275 Norman Macleod, “Reminiscences from 1894 to 1914” (HRA/D63/A5), 67 in Macleod Papers (HCA).
276 The doctrine was used in defence of the Aga Khan, head of the Ismaili Khoja community, in an 1866 case appearing before Arnould J in the Bombay High Court. [J. C. Masselos, “The Khojas of Bombay: the defining of formal membership criteria during the nineteenth century” in Imtiaz Ahmad, ed. Caste and Social Stratification among the Muslims (Delhi: Manohar Book Service, 1973), 15.] On its use amongst the Bohra community, who were Ismaili but not followers of the Aga Khan, see “Judgment in the Borah Case. Suit No. 941 of 1917,” The Advocate General, plaintiff vs Vusufalli Ebrahimji and others, defendants,” 2 (BHC); and S. T. Lokhandwalla, “Islamic Law and Ismaili Communities,” Indian Economic and Social History Review, IV: 2 (1967): 168-9.
For a genealogical guide to the Ismaili and Aga Khani communities of western India, see S. G. Haji, “Genealogical Tree, 29 August 1905, on silk, showing descent of the Aga Khan from the Prophet Mohammad, including the Shia Ismailis, the Shia Isnaasharis, the Khojas and the Bohras” (Karachi: Mercantile Steam Press, 1905), MSS Eur G135 (OIOC).
seemed a uniquely western virtue. The Viceroy of India made this point during his 1905 convocation address:

The highest ideal of truth is to a large extent a Western conception. I do not thereby mean to claim that Europeans are universally or even generally truthful, and still less do I mean that Asiatics deliberately or habitually deviate from the truth. But undoubtedly truth took a high place in the moral codes of the West before it had been similarly honoured in the East, where craftiness and diplomatic wile have always been held in much repute.277

The Parsi’s commentator was stunned. First, because there was as little honesty in a Richelieu, Napoleon or Bismarck as in a Shivaji or Aurangzeb. European statesmen’s diplomatic talk had “nothing of sincerity to recommend it” as superior to “the hypocritical professions of Indian Rajahs.”278 Second, and more importantly, the Viceroy seemed completely ignorant of the centrality of truth-telling to the Zoroastrian moral code:

what is more curious is that His Excellency should have characterized Truth as a Western ideal in the fact of the circumstance that long before the advent of Western civilization the prophet of Iran had proclaimed the sanctity of truth and constituted truth-speaking into a religious duty. It is just possible His Excellency may be amongst those who hold that the Parsis are a Western rather than an Eastern race: otherwise it is the East, and not the West, that can claim to have proclaimed to the world the usefulness and sanctity of truth and righteousness.279

277 “The Ideal of Truth in East and West,” The Parsi I: 3 (March 1905), 76.
278 “The Ideal of Truth,” The Parsi I: 3 (March 1905), 76.
The doctrine of Asha demanded that a Zoroastrian actively fight druj or lies.\(^{280}\)

The duty required a militant attitude, and Hindi Punch used martial images to depict the good Zoroastrian.\(^{281}\)

Mithra, one of the three divine judges on Chinvat Bridge, was the divine being or yazata presiding over faithfulness of promise. Zoroastrian scriptures warned of dire consequences for those who betrayed him:

> Thou bringest terror upon the bodies of those persons who break their promises. Thou who art angry (with those who break their promises) and who art powerful (to punish them), takest away from them, the strength of their two feet, the strength of their two hands, the power of sight of their two eyes, the power of hearing of their two ears.\(^{282}\)

If the head of a household, village or country broke his promise, Mithra would destroy him and his people.\(^{283}\) Greek sources equally commented upon the importance of truth-telling in the education of the ancient Persians. In a famous passage, Herodotus noted that between the ages of five and twenty, Persian boys were taught three things: to ride, to use the bow, and to speak the truth.\(^{284}\) Zoroastrian myth was equally full of moral lessons urging truthfulness.\(^{285}\)

The doctrine of Asha had ironic consequences for the British legal system—ironic given the priority both British and Zoroastrian value systems assigned to truth-telling. According to Zoroastrian ethics, swearing was taboo

---


\(^{283}\) *Meher Yasht*, 18 in Karanjia, 139.

\(^{284}\) Herodotus (Cary, trans.), Book I, 136 in Karanjia, 141.

precisely because Zoroastrians were meant to operate under Asha at all times: “Do not swear, whether for the sake of truth or untruth.”286 Oath-taking was forbidden “as demeaning, a loss of self-respect.”287 In chapter 4, I discuss the problems that oath-taking created for barashnumwala priests, priests in the highest state of ritual purity. By the early twentieth century, the extensive Parsi involvement in the legal system suggests that religious doctrine had been compromised: Parsi laymen and priests testified on a regular basis.288 Although a specifically Parsi oath had been devised for use in court, it was still an oath, and could not have been acceptable on a doctrinal basis. Both Parsi interpreters and witnesses were to be sworn on the Zenda Avesta, the Zoroastrian holy text, by an officer of the Court. Parsis were to place their right hand on the open book while wearing shoes, and to repeat: “I swear in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth.”289 This was followed by the Zoroastrian motto in Pahlavi (a form of Middle Persian), “Manasni, Gavasni, Kunasni.” The motto was translated as good thoughts, good words, good deeds, and the consistency of goodness between thought, speech and action carried with it an implied duty of honesty.290

286 Pand Nameh-I-Adarbad Marespand, 41 in Karanjia, 142.
288 For instance, the scholar-priest J. J. Modi was the leading expert witness on Zoroastrian doctrine circa 1900. He was the key witness in Limji Nawroji Banaji (1887) and Petit v Jijibhai (1909). See text accompanying notes 388 and 403 (on the first case) and note 242 (on the second). Modi was probably not a barashnumwala priest during this period.
289 On the sinfulness of going barefoot according to Zoroastrian doctrine, see Bamanji Nusserwanji Dhabhar, trans. The Persian Rivayats of Hormazyar Framarz and others. Their Version with Introduction and Notes (Bombay: K. R. Cama Oriental Institute, 1932), 100-1. In Parsi Prakash, see also “Obituary: Nowroji Fardoonji C.I.E.” (22 Sept. 1885), III, 160-1; and “Obituary: Edulji Rustonjii Reporter” (5 August 1907), IV, 102.
290 This oath was used on the Appellate Side of the Bombay High Court. Presumably something similar if not identical would have been used on the Original Side, which dealt with cases
revealing fusion of Zoroastrian doctrine and colonial legalese, one Parsi reformist insisted during an exchange with Vimadalal that “that the truth, the whole truth, and nothing but the truth” be told in the name of religion.²⁹¹ Truth-telling, in other words, occupied a privileged place in the Zoroastrian pantheon of virtues.

A further component of Asha was its emphasis upon independence of mind. Good Zoroastrians thought for themselves. Once they knew the truth, they had a duty to fight for it. Dastur Kaikobad’s argument for performing Bella’s initiation was that he was following the dictates of his own conscience. D. M. Madon, the reformer and Bella’s lawyer in Bombay, appealed to Kaikobad’s sense of ethical independence just before the initiation.²⁹² So did the Journal of the Iranian Association in its defence of the High Priest of the Deccan.²⁹³ In Hindi Punch, the cartoon of Kaikobad showed him with fists clenched stubbornly as he exclaimed, “I am an independent dastur” (fig. 9). The newspaper mimicked the orthodox caustically:

Mark the presumption of it! Was ever a high-priest independent of the community? And can he ever claim the right to act according to the dictates of his individual conscience? O horrors! He might as well become a free-thinker and free liver for all that!²⁹⁴

There were other Parsi-British conceptual overlaps. Like its Christian counterpart, Zoroastrian theology was millenarian and understood time to be linear, not

²⁹¹ “XXII. September 7, 1910. Mr. Vimadalal and the ‘Juddin’ Question. Letter to the Editor” in Mr. Vimadalal and the Juddin Question, 56.
²⁹⁴ “Rangoon Romance,” Hindi Punch (7 June 1914), 14.
cyclical.\textsuperscript{295} The responsibility of the individual for his or her fate in Zoroastrianism, combined with an ethics of individual industry and the “healthy materialism” that followed, aligned in many ways with the capitalist ethic of acquisitive independence and desert in the tradition of Samuel Smiles.\textsuperscript{296} In a curious crossing of religious labels, some scholars have gone so far to classify Zoroastrian values and Parsi entrepreneurial success under the heading of the “Protestant ethic.”\textsuperscript{297}

Parsi journalist R. P. Masani described the Zoroastrian ethic as the “gospel of work”: “In thus striving to fulfill his mission man is helped [immensely] by the gospel of hard labor and strenuous work preached by the Prophet...The basis of the religion is work as opposed to sloth and industry as an antidote for destitution.”\textsuperscript{298} Zoroastrianism’s rejection of asceticism reinforced its this-worldly message.\textsuperscript{299} So did its refusal to endorse the individual’s resignation to fate, in a radical departure from other Asian doctrines like the Islamic belief in \textit{kismet} and the Hindu conception of \textit{karma}.\textsuperscript{300}

\begin{footnotesize}
\begin{footnotes}
\end{footnotes}
\end{footnotesize}
The fit between many aspects of the British civilizing mission—both at home and in the colonies—and Zoroastrian ethics was striking.\textsuperscript{301} So was the backward-looking nature of the reformist rhetoric of purification and return. The net result was stronger ties to Zoroastrian tradition amongst reformers than the label “reform” may have implied. The conceptual parallelisms between Parsi and British traditions may also go a certain way toward explaining how the Parsis could have maintained such close relations with their colonial masters whilst retaining a striking degree of intellectual autonomy.

**Being “Modern”: Orthodox Parsis and Theosophy**

The reverse case is also arguable—that the orthodox saw themselves as “modern” in ways easily understated by reformers’ “iron age” caricatures.\textsuperscript{302} As science and religion became antagonists in the imperial metropole, Orthodox Parsis used the findings of scientific research to substantiate their religious claims. In a 1910 letter to the *Oriental Review*, J. J. Vimadalal observed that science may have eroded Christianity, but it had had no such effect upon Zoroastrianism, which lacked scientifically dubious doctrines like the virgin birth, the resurrection and ascension, vicarious atonement, the “small age of the earth,” salvation through mere belief, or an anthropomorphic god.\textsuperscript{303} Vimadalal

\textsuperscript{301} On the civilizing mission inside Britain, see Michael Ignatieff’s *A Just Measure of Pain: the penitentiary in the Industrial Revolution, 1750-1978* (New York: Pantheon Books, 1978).

\textsuperscript{302} The *Journal of the Iranian Association* described Sir Dinshaw Davar as a “self-constituted guardian in this Iron Age.” [“The Rangoon Navjote,” JIA III: 1 (April 1914), 32.]

\textsuperscript{303} “XIII. 10 August 1910. Western Civilization and the Parsis. By J. J. Vimadalal,” *Mr. Vimadalal and the Juddin Question*, 34.
marshaled the latest eugenicist research from Europe and America in his opposition to intermarriage and the admission of outsiders, a phenomenon I explore in chapter 6.\textsuperscript{304} Orthodox Parsis looked to state-of-the-art chemical analysis to argue for the cleansing properties of nirang or consecrated bull’s urine, a purifying agent in Zoroastrian ritual.\textsuperscript{305}

Yet another way in which the orthodox were self-consciously modern was through their widespread endorsement of theosophy.\textsuperscript{306} If any movement was considered fashionable in the early twentieth century—arguably to excess—it was theosophy.\textsuperscript{307} The movement originated in New York City in 1875 under the leadership of Ukrainian émigrée, Madame H. P. Blavatsky and American officer-turned-journalist, Colonel Olcott.\textsuperscript{308} The movement shifted its headquarters to Adyar, in Madras after 1878. Theosophists preached a brand of religious universalism, distilling universal truth from elements of the major world religions. They also pursued the possibility of communication with the spirit world, a point

\textsuperscript{304} See Vimadalal, \textit{Racial Intermarriages: Their Scientific Aspect} (Bombay: The Times Press, 1922).

\textsuperscript{305} Eugene Wilhelm, \textit{On the Use of Beef’s Urine according to the Precepts of the Avesta and on Similar Customs with Other nations} (Bombay: Maneckji Barjorji Minocherhomji at the Bombay Samachar Press, 1889), 54-8. Translation and publication of Wilhelm’s treatise was funded by a Parsi organization, the Sir Jamsetjee Jijibhoy Translation Fund.

\textsuperscript{306} Palsetia, 173-5; and Boyce, \textit{Zoroastrians: Their Religious Beliefs and Practices}, 204-5. When the Theosophical Society was founded in 1880, roughly half of its Bombay members were Parsi. [K. J. B. Wadia, \textit{Fifty Years of Theosophy in Bombay, 1880-1930} (Adyar, India: Theosophical Publishing House, 1931), 5 in Eckehard Kulke, \textit{The Parsees of India: A Minority as Agent of Social Change} (Munich: Weltgurum Verlag, 1974), 99 at note 34.]

\textsuperscript{307} See “The Spirit of the Zoroastrian Religion. Lecture delivered by Colonel H. S. Olcott, President-Founder of the Theosophical Society, at the Town Hall, Bombay, on Tuesday, the 14\textsuperscript{th} February 1882” in Bilimoria, 17; and, on the early period of the movement, Edward C. Moulton, “The Beginnings of the Theosophical Movement in India, 1879-1885” in Geoffrey A. Oddie, ed., \textit{Religious Conversion Movements in South Asia: Continuities and Change, 1800-1900} (Richmond, Surrey: Curzon, 1997), 109-72. For a useful summary of theosophical tenets and cosmology, see “Appendix: Theosophy: A Summary and A Criticism” in West, 265-81.

\textsuperscript{308} See Jones, 167-74.
reformers ridiculed relentlessly.\textsuperscript{309} The reformist priest, Dastur Dhalla, lamented the rise of theosophy among Parsis: “the growing fondness for occult mystery, the strong passion for the marvelous and the pursuit after the visionary and impracticable, the leaning towards the ascetic virtues, do not augur well for the community.”\textsuperscript{310} In Bombay, Parsis dominated the movement.\textsuperscript{311}

Parsi orthodoxy was so closely associated with theosophy that reformists treated the two as inseparable.\textsuperscript{312} The key figure was J. J. Vimadalal, the orthodox lawyer who led the case against Bella during the Bombay commission, and who was also a leader—and “demi-god”—of the Bombay theosophists.\textsuperscript{313} Fighting theosophy was one of the key aims of the reformist Iranian Association.\textsuperscript{314} The head of that association, P. A. Wadia, snidely told Vimadalal himself that the opposition of “Daji, Vimadalal and Company” to reformers and the Zoroastrian Conference began when the former realized the reformers were

---

\textsuperscript{309} One reformist referred to a trial in Junagadh or Bhownaggur (both princely states in western India) around 1895 in which it was proven that Theosophical spiritism was “a fraud.” [*XIX. August 31, 1910. Western Civilization and the Parsees. From ‘Faith in Honest Doubt,’” Mr. Vimadalal and the Juddin Question, 50.]

\textsuperscript{310} Dhalla, Zoroastrian Theology, 366.

\textsuperscript{311} See Wadia, Fifty Years of Theosophy in Bombay, 64-70, particularly at 65.

\textsuperscript{312} Dhalla, Zoroastrian Theology, 361.


opposed to “Theosophy and other fads.” Unusually, trendiness was a pejorative label attached to the orthodox.

Reformers went so far as to brand Parsi theosophists heretics. The theosophical interpretation of Zoroastrianism had distorted the religion into something unrecognizable, declared the *Journal of the Iranian Association*. Parsi theosophists were “no more Zoroastrian than we are Confucian.” They were “no more entitled to be called orthodox or even reformed Zoroastrians: for their heretical views and beliefs so fundamentally diverge from the leading doctrines of our religion as to take them beyond the pale of the Zoroastrian religion altogether.” Parsi theosophists endorsed vegetarianism and reincarnation, neither of which had a place in Zoroastrian belief of practice, argued reformers. The journal described Vimadalal as “the once famous associate of Mrs. Besant and head of the heretical sect of Parsi Theosophists,” who was committed to “the blindfold admission of beliefs opposed to the fundamental tenets of our religion.” If anything, reformers fumed, theosophy brought its adherents closer to agnosticism and materialism by rejecting the notion of a personal god. With a wistful, backward-looking glance, reformers argued that it

---

315 “Defendant’s Evidence. No. 32: Evidence of P. A. Wadia taken on commission. In the Court of Small Causes, Bombay” (21 June 1916) in *Saklat v Bella*, 674-5 (PCOR). According to Wadia, the core members of “Daji Vimadalal and Company”—the doyens of Parsi orthodoxy—were J. J. Vimadalal, F. K. Dadachanji, Dr. Daji, P. D. Mahaluxmiwala, Mr. Jamaji, Mr. Billimoria, Erwad Peroze S. Masani, Dr Lilanwala, K. E. Dadachanji, Jehangir Petit, and Dinshaw B. Master.


was their own blend of Zoroastrian beliefs that got Parsis closer to the original religion.

Embarassment was a key reformist strategy. First, there was the scandal involving child abuse and a leading member of the theosophical movement, the British schoolmaster and former Anglican curate, Charles Leadbeater. Leadbeater had identified a young Brahmin boy named Jiddu Krishnamurti as a vehicle of “Lord Maitreya,” and later of Christ. Through Besant, Leadbeater managed to gain charge of the boy and his brother Nityananda in order to accompany them from India to England and to arrange for their schooling in Britain. His role was investigated when the boys’ father sued Annie Besant for leaving them in Leadbeater’s hands. The boys’ father suspected the schoolmaster of pedophilia:

[h]e has a nasty sexual appetite and dirty ways of satisfying it. I have no respect or regard for the man. I won’t go into his room and the boys must not be allowed to go into his bedroom nor allowed to associate with him.322

Theosophy had a long and complicated history of involvement with the courts, and the Leadbeater case was the latest addition.323 The case went all the way to the Privy Council, which considered the testimony of Annie Besant’s own servant who claimed to have seen Leadbeater in a sexual encounter with the boy

---

321 For a theosophist’s description of the scandal, see Wadia, Fifty Years of Theosophy in Bombay, 90-1.
322 “Cross-examination of plaintiff (G. Narayaniah)” (31 March 1913) in Besant v Narayaniah, 44 (PCOR).
Krishnamurti.\textsuperscript{324} It was also claimed that the schoolmaster had hosted group masturbation sessions for boys under the guise of teaching them yoga.\textsuperscript{325} Initially, Leadbeater was thrown out of the Theosophical Society, but upon his readmission by Annie Besant, the English wing of the movement seceded in protest.\textsuperscript{326} As the apparently autocratic president of the Bombay theosophists, Vimadalal did nothing—a failure to act for which reformers criticized him harshly.\textsuperscript{327} The case was in fact part of a larger story of the rise and fall of theosophy in India. Krishnamurti went on to be proclaimed the “World-Teacher” and to gather a cult following among Indian theosophists. He also established his own movement, the “Order of the Star in the East.” Subsequently, though, Krishnamurti stopped believing that he was a messiah. He dissolved his order in 1929, and in 1930, resigned from the Theosophical Society. Within a few years, theosophy had lost about a third of its membership. From then on, the movement’s popular following dwindled.\textsuperscript{328}

Then there were ghosts. Being “modern” and intellectually \textit{au courant} in the early twentieth century meant maintaining a certain openness to the possibility that a spirit world existed, and that human beings could communicate

\textsuperscript{326} See Dixon, 107.
\textsuperscript{327} “Correspondence: Theosophy, Besant and Mr. Vimadalal,” \textit{JIA} I: 7 (October 1912), 128; “Mr. Justice Beaman and our Association,” \textit{JIA} I: 12 (March 1913), 248; “XII. 3 August 1910. Mr. Vimadalal and the ‘Juddin’ Question. From ‘D.’,” \textit{Mr. Vimadalal and the Juddin Question}, 31.
\textsuperscript{328} Jones, 176; Dixon, 227-8.
with it through the exercise of their psychic powers. William Butler Yeats was a believer, and spoke to the London Spiritualist Alliance in 1914 in favour of making encounters with spirits the subject of serious scientific enquiry. Sir Arthur Conan Doyle was similarly committed. “Psychism” was an important strand of theosophy, not least among Parsis. Writing on western education, Vimadalal warned:

it is only of very recent years that the phenomena of hypnotism, telepathy, spiritualism and the rest are bringing the borderland of the invisible worlds within the purview of its investigation, and that therefore it would be nothing but presumption on its part to venture to pronounce any opinion on these deep subjects which are quite outside its sphere.

A reformer put it snidely in the Journal of the Iranian Association: “[w]e have heard stories of silly Parsi women ‘shutting themselves up in darkened rooms and bandaging their eyes’ in order, I suppose, to develop the ‘third eye.’”

The cross-examination of a witness named Dr. Jehangir Cursetji Daji during Bella’s 1916 Bombay commission exemplified the blurring of theosophical and Zoroastrian tenets. Daji was a leading member of the anti-Bella camp. D. M. Madon, Bella’s lawyer and a fierce opponent of theosophy, put Daji on the stand.

---

329 For photographs of European and American spiritualists of the period accompanied by alleged spirits, see Clément Chéroux, Andreas Fischer, Pierre Apraxine, Denis Canguilhem, and Sophie Schmit, eds., The Perfect Medium: Photography and the Occult (New Haven, CT: Yale University Press, 2004).
330 “Mr. Yeats on Ghosts and Dreams. The Pros and Cons of Spiritism,” Deccan Herald and Daily Telegraph (5 September 1914), 6. See also Frank Kinahan, Yeats, Folklore, and Occultism: Contexts of the Early Work and Thought (Boston: Unwin Hyman, 1988).
333 “Correspondence: Theosophy, Besant and Mr. Vimadalal,” JIA I: 7 (October 1912), 129.
in order to discredit orthodoxy. Daji was glad to oblige, happily confirming for Madon that he had the ability to converse with spirits:

There is a spiritual world just as there is a material world. It is recognised in the Zoroastrian scripture as MINO, the material world being JATI. There are forces and intelligent beings at work in the spiritual world of whom those who have eyes to see can get experience in various ways, one of them being spiritual guidance. I know that I have such guidance, that many problems have been solved to me in a mysterious way, warnings have been given and difficulties relieved… I have experienced prompt reply to my prayer in a mysterious way that would seem incredible to the blind and I know that I do clearly see and understand things which the blind do not and cannot. I do understand some of the laws of nature that modern science cannot understand…

Daji derived his views on Zoroastrianism from the interaction between written texts and his spiritual communications. When erring in his theological interpretations, he had been warned and corrected by the spirit world. “[B]lind Avesta scholars” wrongly favoured conversion and outsider admission because they lacked the abilities to check their conclusions with the spirit world. Both Madon and Daji felt their desired points—which were diametrically opposed—had been made.

Reformers portrayed theosophists as part of a lunatic fringe. But in the early twentieth century, this was simply not the case. Being a theosophist was a way of being spiritually modern, and the movement drew a large following

334 See “Mr. Justice Beaman and our Association,” JIA I: 12 (March 1913), 246-7.
amongst educated Parsis and Hindus. As Joy Dixon puts it, theosophy and other brands of “esoteric religion” were the equivalent of alternative or New Age religion today. A fascinating alliance also existed between theosophy and the feminist movement, a point Dixon uses to argue that “modern” did not necessarily mean “secular,” contrary to so much post-Enlightenment discourse on modernity. If either side of the Bella controversy associated itself with this form of the modern, it was orthodoxy.

Conclusion

In 1885, the High Court judge and Hindu reformer, Narayan G. Chandavarkar, praised the manner in which the Parsi community had gone about reform. Because the Parsis had first educated their population and then introduced reform, argued Chandavarkar, the spirit of change had been gradual and, on the whole, conciliatory. The abolition of bigamy, the education of women, post-mortem dissections by Parsi medical students, intra-communal and simultaneous spousal dining, the public appearance and unescorted travel of women, the education of priests—all of these reforms had been achieved among Parsis in a remarkably agreeable manner. Chandavarkar held up the example of Parsi reform as a model for Hindu communities who experienced such conflict in wrestling with similar reform issues. How did the Parsis do it? Chandavarkar may have answered his own question in his next remark, a seemingly unrelated

338 Jones, 170.
observation: “I must confess that among the present generation of educated Parsis, there is a lurking tendency to be indifferent to religious questions.”

Twenty years later, everything was different. Parsi reform controversies over the admission of outsiders had become an explosive chapter in Parsi social life, and it could hardly be said that most Parsis were indifferent to religious issues, if ever they had been. An anonymous “Hindu Thinker” commented on Parsi reform in the Oriental Review in 1910. The Parsi identity debates were of great interest to Hindus, he wrote, because the question of intermarriage also plagued so many Hindu communities. In an inversion of Chandavarkar’s earlier comparison, though, this time it was the Hindu reformers who were “ahead”: “advanced” sections like the Brahmo Samaj and the Arya Samaj had accepted intermarriage, allowing aliens to be calmly and quietly received into the fold.

Vimadalal responded that it was all about numbers. Hindus could dabble in alien intermarriage: there were so many million Hindus that if these marriages failed, the community would not suffer for it. Parsi numbers, on the other hand, were so small that they could not afford to experiment.

The fear of communal extinction was the constant backdrop to the reform-orthodox struggles of this period. For reformers, if the rules of admission were not relaxed, Parsis would die out in numbers. For the orthodox, if the same rules

---


were relaxed, Parsiness would perish by dilution. But despite the differences in opinion over the continuing survival of the Parsis—a theme spotlighted by Bella’s case—this chapter has shown that neither side was as extreme as it might have been (vis-à-vis other colonial reform movements) in rejecting or accepting Parsi tradition or colonial modernity. This chapter has laid out the cultural context of Bella’s case in Bombay. The next chapter provides its legal equivalent.
FIGURE 1:
“OPEN INCENDIARISM”
“The Pharisee—Let us see if this best of purifiers won’t cleanse my community!”
(A controversy is once more raging in the Parsi papers of Bombay over the admission of a girl into the Zoroastrian fold by the performance of the Navjot or the ’sacred thread-investiture ceremony by the learned high-priest of the Parsis in the Deccan, Sardar Kiakobad Hosang, at Rangoon.)”
[Hindi Punch (12 April 1914), 10.]
[By permission of the British Library (SV 576).]
“Indulged in [by] some of the Bombay Parsi dailies morning and evening, to the disgust of the sensible portion of the community.”

[Hindi Punch (19 April 1914), 12.]

[By permission of the British Library (SV 576).]
“Mr. Best-Orthodox—Hurrah! And three times three for the failure of that compromise and the safety of my precious requisition! (The compromise made by Sir Dinshaw Davar and Dastoor Kaikobad to end the Rangoon Navjote controversy having failed, the requisition to call a meeting of the Parsees has been sent to the Trustees of the Parsee Panchayat Funds.)”

[Hindi Punch (3 May 1914), 21.]

[By permission of the British Library (SV 576).]
FIGURE 4:  
"THE INTRUDER"

“Mr. Best-Orthodox—Let me come in, ladies; it is your duty as well as your interest to support me.

The Ladies—Not if we can help it.

(The requisition against the Rangoon Navjote Ceremony, performed by Dastoor Kaikobad Adarbad of Poona, which created bad blood among the Parsi community, had been sent to the Trustees of the Parsi Panchayat Funds, who, having taken an explanation from the Dastoor now announce that there will be no meeting of the Parsees as the Dastoor has expressed regret for his action.)”

[Hindi Punch (10 May 1914), 12.]

[By permission of the British Library (SV 576).]
FIGURE 5:
“WELL-A DONE!”
“Mr. Best-Orthodox Parsi——
‘Joy, joy for ever! My task is done——
The gates are shut and the case is won.’
(Lalla Rookh, slightly altered for the occasion.)”
[ Hindi Punch (1 November 1925), 12.]
[By permission of the British Library (SV 576).]
FIGURE 6:
“A TORRENT OF FIRE”
[Hindi Punch (6 September 1914), 16.]
[By permission of the British Library (SV 576).]
FIGURE 7:  
“MATERFAMILIAS OVER THE JUDDIN CASE JUDGMENT”  
“Soonamae (Mother of seven daughters,  
perusing the Juddin Case Judgment):  
Good, good, very good! Serves the Madamias right! No Juddin girl, White, Brown  
or Black, can now claim to be a Parsee, and no Parsee dare to marry her and  
convert her to Zoroastrianism!  
So now, unmarried girls have a chance!  
My seven little ones!”  
[Hindi Punch (6 December 1908), 12.]  
[By permission of the British Library (SV 576).]
FIGURE 8: “THE GREAT DADGAR DAVAR” from “The Rangoon Romance (Bella and the Anjuman)” [Hindi Punch (7 June 1914), 14.] [By permission of the British Library (SV 576).]
FIGURE 9:
“I AM AN INDEPENDENT DASTUR.”
from “The Rangoon Romance (Bella and the Anjuman)”
[Hindi Punch (7 June 1914), 14.]
[By permission of the British Library (SV 576).]
CHAPTER 3

The Precedents:
Trusts and the Law of Outsiders

Bella’s case sat upon a thick undergrowth of legal precedent. This chapter investigates this case law, a rich set of sources that illuminates the dynamics—both internal and external—of late colonial social and religious Parsi life. These cases set up the legal framework through which Bella’s case would be filtered. With the single exception of the French Mrs. Tata’s case, *Petit v Jijibhai*, these cases have gone unexamined by scholars.\(^3\) I begin by exploring the translation of Indian religious institutions into the legal language of the common law trust, a reformulation that had the effect of radically transforming power relations within religious communities across colonial India. In the Parsi case, it shifted religious authority from the priests to the wealthy laity. Outside the community, it allowed the colonial courts to regulate religion in South Asia, despite the colonial state’s promise not to interfere with religion. Secondly, I look at the Parsi case law of outsiders, which until Bella’s case meant non-Parsi wives who attempted to join the Parsi community through marriage or conversion to Zoroastrianism. This group of cases was the natural body of precedent applicable to Bella’s case, and was very much in the minds of the participants in *Saklat v Bella*. Through these two clusters of precedents, Bella’s case became fastened to two larger issues:

---

the crisis of the disadvantaged Zoroastrian priesthood, and the fear that Parsi men were increasingly taking European wives.344

Entrusting the Faith

Bella’s case is just one instance of a much larger legal process that shifted power relations inside and outside the religious communities in India in a fundamental way. The repackaging of religious institutions as trusts allowed judges to unravel the colonial state’s promise of religious non-interference. This new English form also helped shift authority over religious institutions away from the Parsi priestly class or athonans and into the hands of the wealthiest of the laity or behdin. With the exception of two restitution-of-conjugal-rights cases, the key cases on Parsi identity in the early twentieth century fell within the law of trusts.345

Legislative and executive promises of non-intervention with religion were repeated on many occasions throughout the colonial history of South Asia. The East India Company and its successor, the British Crown, identified certain zones of native law to be left untouched by Company regulations and Parliamentary Acts: the law of the family, inheritance, and religious practice.346 Warren

345 The exceptions are Nusserwanjee Pestonjee Ardesir Wadia v Eleanora Nusserwanjee Pestonjee Ardesir Wadia 38 ILR Bom (1914) 125-49; and Dinbai v Erachshaw D. Todyvala, reported in “A Curious Parsi Matrimonial Case,” Indian Social Reformer (12 November 1916), 123.
346 In the preface to his translation of The Hedaya, Charles Hamilton explained the Company’s rationale: “nothing can so effectually contribute as preserving to the latter their ancient established practices, civil and religious, and protecting them in the exercise of their own institutes; for however defective and absurd these may in many instances appear, still they must be infinitely more acceptable than any which we could offer; since they are supported by the accumulated prejudice of ages, and, in the opinion of their followers, derive their origin from the
Hastings’ Plan of 1772 required British courts to apply native law “in all suits regarding Inheritance, Marriage, Caste, and other religious Usages and Institutions [between native litigants].” Native law meant “the laws of the Quran with respect to Muhammadans” and the law of the Brahmanic “Shasters” for Hindus. Following the Indian Mutiny of 1857 and the resulting transfer of power from the Company to the British Crown, Queen Victoria made a similar vow of non-interference with Indian law and religion. The promise was reiterated in legislation across various new territories acquired by the British. But these declarations were not necessarily endorsed by the judiciary. As religious communities came to have their temples and funds governed by the trust, the judiciary gained control over large swathes of religious life in India.

Divinity itself. This salutary maxim was wisely adopted by the servants of the EIC on the first acquisition of our Bengal territories; and to a steady adherence to it much of the present flourishing state of those provinces must be attributed.” [Charles Hamilton, trans. The Hedaya Commentary on the Islamic Laws (New Delhi: Kitab Bhavan, 1985; originally published in London: T. Bensley, 1791), iv.]

347 “A Plan for the Administration of Justice, extracted from the Proceedings of the Committee of Circuit, 15th August, 1772” in S. V. Desika Char, ed., Readings in the Constitutional History of India, 1757-1947 (Delhi: Oxford University Press, 1983), 106 (Article XXIII). The formula was reiterated in Section 15 of Regulation 4, 1793, which pertained to civil courts. [Singha, 121 at note 1.]

348 “[W]e disclaim…the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in any ways favoured, none molested or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure. [“Proclamation of 1858” in Char, 299.] The move seems to have been a strategic one. As Victoria told Lady Canning, “I think that the greatest care ought to be taken not to interfere with their religion, as once a cry of that kind is raised among a fanatical people—very strictly attached to their religion—there is no knowing what it may lead to and where it may end.” [Victoria in Christopher Hibbert, The Great Mutiny India 1857 (Allen Lane: London, 1978), 167.]

349 Section 3(b) of the Oudh Laws Act of 1876, for instance, confirmed that “in questions regarding succession, special property of females, betrothal, divorce, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—…. (2) the Muhammadan law in cases where the parties are Muhammadans.” The Act did, however, include the proviso “except in so far as such law has been…altered or abolished, or has been modified by any such custom as is above referred to.” [Act XVIII of 1876 (the Oudh Laws Act) in D. E. Cranenburgh, Unrepealed Acts of the Governor-General in Council (Calcutta: Law Publishing Press, 1892), II, 114-15.]
“Entrusting” the Zoroastrian faith was an instance of a legal device being developed under historically specific conditions, then exported into a completely alien context with unintended consequences. The trust is an instrument that allows one person, the trustee, to control property on behalf of another, the beneficiary, who enjoys the benefit of that property.350 The separation of ownership and management from the enjoyment of property was indispensable at many points in English legal history. Medieval monasticism relied heavily on the concept, monks and monasteries being “dedicated to poverty as long as the poverty was not real.”351 During the crusades, mechanisms like the trust (or “uses,” as they were then called) were equally convenient ways of having a surrogate manage property while the “real” owner was away in the Holy Land.352 During the “troubled fifteenth century” when many lived in fear of being convicted of high treason, the use was adopted as a way of saving the family estate from potential forfeiture to the crown.353 Later, the device became a useful way for wealthy families to reserve property for a married daughter, keeping it out of the clutches of her husband. Women lost their legal personality upon marriage under

---

350 Simon Gardner offers a more complete definition: “A trust is a situation in which property is vested in someone (a trustee), who is under legally recognized obligations, at least some of which are of a proprietary kind, to handle it in a certain way, and to the exclusion of any personal interest. These obligations may arise either by conscious creation by the previous owner of the property (the settlor), or because some other legally significant circumstances are present.” [Simon Gardner, An Introduction to the Law of Trusts (Oxford: Oxford University Press, 2003), 2.]


couverture or the doctrine of unity, and consequently could not own property until
the Married Women’s Property Acts of 1870 and 1882 in England.354

One category of trusts received “special treatment.”355 Charitable trusts
were exempt from many of the normal rules applied to trusts because they
benefited society generally—their removal of property from the open market
deserved to be treated with greater indulgence. Crucially, English law dictated
that trusts could not be created “in perpetuity” unless they were charitable. To be
“charitable,” a trust had to confer “public” benefit.356

Although similar devices to protect the property rights of the weak did exist
in South Asian legal traditions, British judges assumed equivalence with the
English trust, distorting the Indian devices in profound ways. A prime example is
the Islamic institution of waqf. Waqf means literally “to stop” or “to hold,” referring
to the “stopping” of property within the normal market dynamics of alienability. In
theory, waqf property could not change hands by inheritance, sale or seizure.
The individual setting it down divested him- or herself of the formal rights of
possession whilst retaining the power to appoint a custodian, who managed the
property. Founders could have profits distributed for any purpose that was
Islamically acceptable. Crucially, waqf, unlike the trust, could be for public

---

354 A saying attributed to Blackstone sums up the doctrine of unity nicely: “In law, husband and
wife are one person, and the husband is that person.” [Lee Holcombe, Wives and Property:
Reform of the Married Women’s Property Law in Nineteenth-century England (Toronto: University
of Toronto Press, 1983), 18.] Some scholars doubt the efficacy of the married woman’s trust,
particularly where the husband was named trustee, as was common practice. See Susan Moller
Okin, “Patriarchy and Married Women’s Property in England: Questions on Some Current Views,”
Eighteenth-Century Studies 17:2 (winter 1983-4), 121-38; and Susan Staves, Married Women’s
On the Acts, see Holcombe, 166-205.
355 Gardner (2003), 100.
356 Gardner (2003), 100. See also Simon Gardner, An Introduction to the Law of Trusts (Oxford:
charitable purposes or for private benefit (i.e. for the founder’s family). Yet from 1879 on, the courts of India invalidated any endowment created to benefit the settlor’s family. The Privy Council upheld these decisions and in 1894 issued a definitive ruling that Islamic endowments had to be “religious,” “charitable,” and public. The result was a backlash amongst Indian Muslims. The campaign led by Mohammad Ali Jinnah only undid the damage two decades later in 1913 with the passage of the Mussalman Wakf Validating Act. The Act restored a Muslim’s right to make a family settlement in the form of waqf.

The “public” nature of English charitable trusts also created serious problems for Parsi religious endowments. A device similar to the English trust existed in ancient Persian Zoroastrian law, but neither Britons nor Parsis proposed its resurrection during the colonial period. Even more perplexing is the question of why a body of Zoroastrian law was not extracted from the Zoroastrian scriptures written in the ancient and middle Persian languages of Avestan and Pahlavi, and more recently, from the rivayats, the correspondence between the Parsis of Gujarat and the Iranian Zoroastrians of Yazd and Kerman.

---

357 Kozlowski, 1.
358 Abul Fatah Mahomed Ishak and others, plaintiffs v Russomoy Dhur Chowdhry and others, defendants LR 22 IA (1894-5) 76-89.
359 Kozlowski, 5.
on doctrinal issues between the fifteenth and eighteenth centuries. European Orientalist scholars like William Jones undertook the massive project of translating and compiling Hindu and Islamic legal texts between the late eighteenth and early nineteenth centuries. Why did they not do the same for Parsi law? One possible explanation is that the Parsis’ small population—roughly 100,000—may have made the effort financially unjustifiable from the British perspective. Furthermore, the project would have involved more extraction than simple translation: sources of Zoroastrian law were collections of case judgments, rather than codes. Even so, the close ties between Parsis and the British made the omission perplexing. From the eighteenth century on, Parsis acted as middlemen between British and Indian traders, as well as shipbuilders for the British navy and key merchants in the euphemistically called “China trade,” a trade dealing primarily in opium.

361 The most thorough overview of the rivayats is Paymaster, 66-84. See also Writer, 120; Mistree, Zoroastrianism, 120; and Susan Stiles Maneck, The Death of Ahriman: Culture, Identity and Theological Change Among the Parsis of India (Bombay: K. R. Cama Institute, 1997), 34-8. For the rivayats themselves, see Manockji R. Unvala, ed. Darab Hormazyar’s Rivayat (Bombay: British India Press, 1922); Dhabhar, 347-57; and Mario Vitalone, The Persian Revayat “Ithoter”: Zoroastrian Rituals in the Eighteenth Century (Napoli: Istituto Universitario Orientale Dipartimento Di Studi Asiatici, Series Minor, XLIX, 1996). The Meherjirana library in Navsari holds one of the largest collections of original rivayat manuscripts in the world.


363 And yet, the study of ancient Persia and Zoroastrianism was so central to the scholarly obsession with “Aryan” or Indo-European heritage that one would have expected population figures to have been relatively unimportant. Further interest in Zoroastrianism was generated by the possibility that Christianity and Judaism had absorbed many Zoroastrian elements. See Michael Stausberg, “Contextualizing the Contexts: On the Study of Zoroastrian Rituals” in Stausberg, ed. Zoroastrian Rituals in Context (Leiden: Brill, 2004), 3 at note 9; and note 270 (above). For Parsi population figures, see note 709 (below).

364 For instance, see A. Perikhanian and N. Garsoian, The Book of a Thousand Judgments (A Sassanian Law Book) Persian Heritage Series No.39: Columbia Lectures on Iranian Studies, No.9 (Costa Mesa, California: Mazda and Bibliotheca Persica, 1997). As with the Madigan I Hazar Dadestan, it is not known whether Parsi communities in India knew of this text circa 1800.

with the case of *Naoroji v Rogers*: English law would apply to Parsis.366 Parsi discontent over an earlier ruling led to several pockets of Parsi law being carved out by special legislation on marriage, divorce, inheritance, and succession.367 In all other areas, though, the rule in *Naoroji v Rogers* held.368 As the Parsi Advocate-General, Jamshedji Kanga, told the Bombay High Court in a 1926 slander case between Parsis, his community had no law of its own except for what was reserved by these few Acts.369

But Kanga was unduly pessimistic. Over several decades, Parsi lawyers and judges were gradually undermining *Naoroji v Rogers* from within the colonial legal system. Parsis in the legal profession provided a unique model of quiet and informal legal pluralism from the ground up, flooding the colonial legal profession from the late nineteenth century on. A number of more explicit models of legal pluralism existed in colonial India. The most all-encompassing was Hastings’ 1772 declaration that reserved Hindu law for Hindus and Islamic law for Muslims. His interpretation of the subcontinent as religiously binary—presumably out of ignorance—forced judges to construe Sikhs and Jains as dissenting Hindu sects in order to grant them their own religiously specific law.370 The official endorsement of caste and community *panchayats* (councils of elders) was another way colonial administrators gave specific communities a measure of

366 *Naoroji v Rogers* 4 Bom HCR (1866-7) 1-118.
367 The case turned on a question of ecclesiastical jurisdiction over marital matters: *Ardaseer Cursetjee v Perozeboy* (1854-7) 6 MIA 348-92. On the Parsi legislation, see Bengalee; and Rana.
368 See, for example, *Navroji Manockji Wadia v Perozbai and others* ILR 23 Bom (1899) 87; *Payne and Co. v Projshah Nusserwanji Patel* 13 Bom LR (1911) 920-40; and *Hirabai Jehangir Mistry v Dinshaw Edulji Karkaria* ILR 51 Bom (1927) 167-8.
legal autonomy. Finally, there was the introduction of religion-specific legislation. Acts like the Mussalman Waqf Validating Act of 1913 or the Sikh Gurdwaras Act 1925 carved out special rules for particular communities. All three of these models depended upon British administrators for their activation. What Parsis in the legal profession did was unique because the effect, the creation of pockets of law governed by Parsi theology and custom, was of their own making.

Before Parsi lawyers and judges could gain a real presence, though, the colonial courts squeezed Zoroastrian religious bequeaths into the mold of the English trust on the authority of Naoroji v Rogers. The case of Limji Nowroji Banaji (1887) did the damage, and Jamshedji Cursetjee Tarachand (1907) attempted to undo it. In the first case, the Bombay Parsi Nowroji Cursetji Limbuwalla left a third share of a Bombay bungalow he owned to fund Zoroastrian religious ceremonies after his death. These included death commemoration ceremonies, the ceremony for the consecration of the white bull’s urine, and religious feasts. The third share of the bungalow was meant to create a trust to fund these ceremonies. Limbuwalla’s will stipulated that the bungalow “shall not be sold or mortgaged by any one; whoever advances money

---

373 Limji Nowroji Banaji v Bapuji Ruttonji Limbuwalla and others ILR 11 Bom (1887) 441-8; Jamshedji Kharshedji Tarachand v Soonabai, widow and others ILR 33 Bom (1909), 122-213.
374 For descriptions of nirangdin consecration, baj rogar and dosla death commemoration ceremonies, and religious ghambar feasts, see Modi, Religious Ceremonies, 241-5, 333-4, 419-28, and 442.
on this bungalow shall lose the same.” This type of arrangement was not uncommon among Parsis, and Limbuwalla’s son, who had also died at the time of the litigation, expressed his desire to continue the scheme through his own will. The case ended in court when the sons of Limbuwalla’s son, who stood to inherit the extra third share in the bungalow, challenged the trust’s validity on the grounds that it violated the rule against perpetuities. Here Zoroastrian religious practice collided with English law’s rule that property could not be perpetually “locked up” as a trust, which kept it out of the market and normal taxation processes—unless for charitable uses. The English advocate for the plaintiffs laid out the test for trusts in perpetuity that affected land: only if they were for “public charitable and beneficial objects” would they be valid. What he did not say was that the English law of trusts took its definition of charitable from a piece of Tudor legislation. Over the centuries, the list of what constituted a charitable purpose had evolved around the 1601 Elizabethan Statute of Charitable Uses’ roster of acceptable categories. Counsel and the judge added colonial cases to the clusters of illustrative case law. But the original template was English.

375 Banaji v Limbuwalla, 442.
376 Davar cited an instance of a muktad trust being established in 1826. [Tarachand v Soonabai, 155.]
378 Banaji v Limbuwalla, 444.
379 The Statute’s charitable purposes included “the relief of aged, impotent and poor people, maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities; repairs of bridges, ports, havens, causeways, churches, sea-banks and highways; education and preferment of orphans; the relief, stock, or maintenance of houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; relief or redemption of prisoners or captives; and aid or ease of any poor inhabitants, concerning payments of fifteenths, setting out of soldiers, and other
The rule against perpetuities aimed to discourage the removal of large blocks of property from the open market, a value judgment reflecting the priorities of British free-market ideology. The same pattern reproduced itself in other areas of property law. English law typically espoused a hard-edged capitalist ethic that aimed to maximize the alienability of property. South Asian doctrines, by contrast, generally fostered a slower and more protected marketplace for the sake of the underdog. The Hindu doctrine of *dámdupat* put a ceiling on the amount of interest that could be charged on a loan: the interest could not exceed the principal sum loaned. The Islamic doctrine of preemption forced a seller to offer the property for sale to those most affected by it—crucially, neighbors—before selling it on the open market. Wills were unknown to classical Hindu law because the joint family, not the individual, owned property. In Hanafite Islamic law, property-holders had the power to bequeath
only up to one third of their property by will without the consent of their heirs. The other two-thirds devolved to prescribed family members in set proportions. In Buddhist Burma, too, wills were traditionally unknown. The rule against perpetuities, then, was just one of many alien and ideologically loaded imports that chafed against pre-existing South Asian legal principles.

Because Limbuwalla forbade the sale or mortgaging of the third share of the bungalow, he seemed to be trying to create a trust in perpetuity. The judge, Jardine, reasoned that

> [t]he object of the rule against perpetuities is…to prevent the mischief of making property inalienable, unless for objects which are in some way useful or beneficial to the community. An exception is made, also on grounds of public policy, in favour of gifts for purposes useful and beneficial to the public, and which in a wide sense of the words are called “charitable uses.”

The critical question was the definition of public and private benefit. Jardine looked to the scholar-priest and expert witness, J. J. Modi, to identify the common aim of the ceremonies in question:

> The head priest has stated that, after the third day, the soul of the dead receives no spiritual benefit from these different ceremonies. But the Parsis consider their dead friends to be consoled by the remembrance of the living; the other advantages of these ceremonies seem to consist in the propitiation of these frohars, or guardian spirits, who…are each a kind of prototype of some person, to be compared with the “ideas” of Plato. They are believed to comfort and protect the living, if propitiated.

---


385 Neil B. E. Baillie, A Digest of Moohummudan Law on the subjects to which it is usually applied by British Courts of Justice in India (London: Smith, Elder and Co., 1887), 233.

386 Henderson, 33-5.

387 Banaji v Limbuwalla, 447. Incidentally, Jardine seems to have also been the Judicial Commissioner of Lower Burma before sitting as a Bombay High Court judge from 1885 on. He authored the definitive late nineteenth-century textbook on Burmese law, providing the legal backdrop to part of the Bella spin-off libel cases. See notes 1050-1 and 1054-5 (below). On Jardine’s career as a judge in Bombay, see Vachha, 77-8.

388 Banaji v Limbuwalla, 446.
Did this make the ceremonies of public benefit? Not for Jardine. The benefit consisted of “consolation to the spirit of certain dead persons and comfort to certain living persons.”\(^{389}\) The words of the will did not point to benefits available to the entire Parsi community.\(^{390}\) To Jardine, securing benefits through the protection of the frohars for a few private individuals looked more like a gift to a private company than a charitable donation. He cited two precedents from English company law, bringing the colonial into line with the metropole.\(^{391}\)

Jardine also looked to other colonial cases on the larger rule against perpetuities, tying together Zoroastrian, Chinese Buddhist, and Irish Catholic death commemoration practices. One instance was Yeap Cheah Neo v Ong Cheng Neo, a case that originated in Penang and came before the Privy Council in London. The deceased, a Chinese woman living in Penang in the Straits Settlements, stipulated in her will that a devise of two plantations in which the graves of the family were placed be reserved as a family burying-place.\(^{392}\) They were not to be mortgaged or sold. Her will also ordered that a house for performing religious ceremonies for the woman and her late husband should be erected and maintained, also for perpetuity.\(^{393}\) The Privy Councillors voided both clauses and likened the case to another “colonial” setting: “[i]n this respect a pious Chinese is in precisely the same condition as a Roman Catholic, who has

---

\(^{389}\) Banaji v Limbuwalla, 447. Emphasis added.

\(^{390}\) Banaji v Limbuwalla, 447.

\(^{391}\) Cocks v Manners LR 12 Eq. 574; Attorney General v Haberdashers’ Company 1 Mylne and Keen’s English Chancery Reports., 420.

\(^{392}\) The Straits Settlements were a British colony on the Strait of Malacca established in 1867. The colony consisted of Penang, Malacca, Singapore and (after 1907) Labuan.

\(^{393}\) Yeap Cheap Neo v Ong Cheng Neo (1875) LR 6 PC 381-90; cited in Tarachand v Soonabai, 201.
devised property for masses for the dead, and as the Christian of any church who may have devised property to maintain the tombs of deceased relatives.”394

The creation of a “centripetal jurisprudence” is a running theme in this dissertation. By “centripetal jurisprudence,” I refer to the homogenization across colonial South Asia and the British empire that occurred as judges smoothed over local differences by applying precedents from communities across the empire. The point seems banal at first glance: the phenomenon is natural in a precedent-based legal system. But the point may not apply to other types of legal empires, for instance, the French, Portuguese or Spanish empires (Roman law-based civil systems), or Islamic empires like the Ottoman, Safavid or Mughal (based upon Islamic law or sharia). The primacy of the doctrine of stare decisis or precedent in English law may have predisposed the British colonial legal system to do a good amount of work—from a colonial administrative view—in drawing together the edges of empire in a case-by-case, on-the-ground manner. From the point of view of litigants, fusion with the metropole or with distant and alien corners of the globe could have been frightening given its unpredictability. The question for future research would be whether “centrifugal jurisprudences”—or jurisprudential drift between colonies, and between colonies and the metropole—developed in colonial settings where the legal system relied less on empire-wide precedent.395

394 Yeap Cheah Neo v Ong Cheng Neo, 39.
The natural sequel to Limbuwalla’s case was the case of *Jamshedji Cursetjee Tarachand v Soonabai and others* (1907). Just one year before this case came to court, the first Parsi judge was appointed to the Bombay High Court bench. For the decade from 1906 until 1916, Dinshaw D. Davar decided most major cases involving one or more Parsi litigants and originating in the city of Bombay.396 When the Limbuwalla sequel came before him on 2 December 1907, Davar had the chance to reverse the trend that Jardine had begun twenty years before. In *Tarachand*, the widow Dinbai had left property to fund the *muktad* ceremonies for the dead members of the family in both Shenshaya and Kadmi sects.397 By the time of the litigation, this consisted of Rs 15,000 in Government promissory notes plus interest.398 The trustees in 1907 were descendants of Bai Dinbai’s children. Litigation arose when Jamshedji Cursetji Tarachand, one of these descendants, doubted the validity of the trust against the other descendant trustees, who defended it. J. C. Tarachand was an advocate, and took the case to court himself. As Davar was eager to point out, Tarachand was motivated not by self-interest, but by the simple desire to clarify the trust’s status.399

396 For a list of Davar’s Parsi cases, see “Appendix A: Cases involving Parsi parties heard by D. D. Davar, Bombay High Court Judge (1906-16).” For Davar’s biographical details, see Darakhnanwala, *Parsi Lustre*, 149; *Who’s Who in India 1911 Part VII (Eminent Men)* (Lucknow: n. p., 1911), 146; “Justice Davar’s Death: A Sketch of his Career,” *Times of India* (31 July 1916), 8; and “Death of Sir Dinshah Davar,” *Advocate of India* (29 July 1916), 7. Davar did not leave any memoirs, but he did publish a speech including some autobiographical material. See his *Hints to Young Lawyers. Being an Address delivered by the Hon. Mr. Justice D. D. Davar to the students of the Government Law School, Bombay, on 15th February 1911* (Bombay: N. M. Tripathi and Co., 1911).

397 On the *kabisa* or intercalation calendar controversy out of which these two sects arose, see Karaka, I, 105-6.

398 *Tarachand v Soonabai*, 126.

399 *Tarachand v Soonabai*, 211-2.
Davar rejected Jardine’s ruling in the Limbuwalla case and upheld the *muktad* trusts. In a tricky sidestep of the doctrine of precedent, Davar claimed not to be bound by an earlier ruling if that ruling was based on scanty evidence. Davar himself had far richer evidence of Parsi custom and belief—not just from the evidence presented to him in court, but also undoubtedly from being Parsi himself. He pointed to the escape clause in Blackstone’s definition of *stare decisis*: “this rule admits of exception, where the former determination [i.e. judgment] is most evidently contrary to reason; much more if it be contrary to the divine law.” For Davar, Jardine’s view that *muktad* trusts were for private benefit alone was contrary to Zoroastrian divine reason. It was even “manifestly absurd or unjust.” According to Davar, Limbuwalla’s case was a clear case of collusion between the parties. Davar believed that they had agreed beforehand that the trusts were void—in order to divide the spoils—and took the case to court to have their conclusion formalized. They had provided Jardine with the testimony of a single witness, the scholar-priest J. J. Modi, who had been cross-examined for fifteen minutes and not allowed to explain himself. Modi and the rest of the Parsi community were surprised and upset to see how his words were ultimately used. Limbuwalla’s case, in other words, was a stitch-up job—a

---

400 Blackstone’s *Commentaries* (21st ed.) in *Tarachand v Soonabai*, 147. Italics in Davar’s judgment.
401 *Tarachand v Soonabai*, 147. Italics in Davar’s judgment.
402 “Muktad Trust Case” (1907), *Parsi Prakash* IV, 109-111.
403 *Tarachand v Soonabai*, 149-150.
404 *Tarachand v Soonabai*, 150. Jardine’s conclusion in *Limbuwalla* “caused a great shock” to the Parsi community. [*Tarachand v Soonabai*, 162.]
mock dispute between parties who conferred with each other secretly beforehand and led the judge to their desired conclusion.  

With Jardine’s ruling, the snowball started rolling. It soon caused an avalanche: seven subsequent muktad trust cases followed Limbuwalla’s case. All of these trusts were invalidated on the authority of Jardine’s judgment. The consultation of Zoroastrian texts in these new cases was virtually non-existent, and where there was witness testimony, it was perfunctory. Davar traced the process through which a single misleading judgment created a wave of mindless judicial replication, crushing what Davar saw as centuries-old Zoroastrian practice. Like mischievous pupils telling a substitute teacher stories, the Parsi litigants in Limbuwalla’s case gave a distorted description of Zoroastrian practice for their own benefit, counting on the fact that the British judge would not know better.

An intriguing twist followed the seventh of these post-Limbuwalla cases, which was decided in 1895. In 1897, the Parsi Panchayat sent a petition signed by 10,000 Parsis to the Judicial Department of the Government of India. The

---

405 Tarachand v Soonabai, 148-53, particularly at 150.
406 These cases were: Dinbai v Hormusji Dinsha Hodiwalla (unreported) suit no. 267 of 1890; Dhunbajji v Nowroji Bomonji (unreported) suit no. 565 of 1889; Cowasji Byramji Gorewalla v Perrozbai (unreported) suit no. 281 of 1892; Maneckji Edulji Allbless v Sir Dinsha Maneckji Petit (unreported) suit no. 96 of 1892; R. R. Dadina v The Advocate General (unreported) suit no. 49 of 1895; and Cowasji N. Pochkhanawalla v R. D. Sethna ILR 20 Bom (1895) 511. [Tarachand v Soonabai, 153-62.]
407 Tarachand v Soonabai, 153-62. The same kind of self-replicating error wreaked havoc in other Bombay communities. On the Khojas, see Jan Mahomed Abdulla Datu and another v Datu Jaffer and others ILR 38 Bom (1914) 449-552.
408 Among the Bombay signatories were three knights, six Companions of the Indian Empire and of the Star of India, twelve High Court solicitors, nineteen fellows of the University of Bombay, and seventy-three Justices of the Peace. [“Appendix ‘H’: Parsi Panchayat’s letter dated 22.10.1897 to the Government of India, Judicial Department praying for a Special Act for Parsis legalizing Trusts for the performance of Baj Rojgar Ceremonies. No. 287 of 1897” in Desai, History of the Bombay Parsi Panchayat, 282-3.]
petition requested special legislation to legalize the type of trust that was being
struck down since Jardine’s ruling. Zoroastrians had always been permitted to
set up this type of commemoration funds—even under Islamic rule in Persia.\textsuperscript{409} The reason the colonial government did nothing was probably the counter-
requisition (or petition) that followed upon the panchayat’s petition, from “21
eminent Parsis.” This group, which included some trustees of the Parsi
Panchayat, argued for maximizing the alienability of property. Many Parsis sank
excessive sums into these trusts, keeping those funds “\textit{extra commercium}” and
inconveniencing the living for their sake. One of the names at the bottom of this
counter-petition was—perplexingly—Dinshaw D. Davar.\textsuperscript{410}

Between 1897 and 1907, Davar changed his mind. His judgment in
\textit{Tarachand} was an in-depth investigation of Parsi theology and history. His
primary project was to discredit the view that \textit{muktad} ceremonies were “private”
death commemoration ceremonies. This was at the heart of Jardine’s claim that
the provision of benefit \textit{to} and \textit{from} specific individuals (or their souls) made the
trust non-charitable and void.

Davar explained that the \textit{muktad} days were the holiest days of the year for
Zoroastrians, and that it was a religious duty to undertake the proper
ceremonies.\textsuperscript{411} These days fell on the last days of the Zoroastrian calendar, and
were not tied to any particular individual’s death date, unlike commemoration

\textsuperscript{409} “Appendix ‘H1’: Petition” in Desai, 284-8.
\textsuperscript{410} “Appendices ‘H2’ and ‘H3’: Counter requisition of 21 eminent Parsis” in Desai, 289-91.
\textsuperscript{411} \textit{Tarachand v Soonabai}, 174.
ceremonies held at particular intervals after a person's death. \footnote{There was debate among Zoroastrians of the exact number of days that constituted muktad days. "However that may be, there is no question that the Farvardigan days whether they be eighteen, fifteen or ten according to each individual’s honest beliefs, are days which are regarded by Zoroastrians as days of the greatest sanctity." [\textit{Tarachand v Soonabai}, 174.] Davar described individualized ceremonies thus: "we have first, ceremonies performed for the benefit of the souls of the dead for the first three days, and on the fourth or Charum day. Then follow the Dasma, or the tenth-day ceremony, next the Massisa, or the thirtieth-day ceremony—next the Chhumsi, or the six-monthly day ceremony, and then the Varsi or the anniversary of the day of death." [\textit{Tarachand v Soonabai}, 176.]} Secondly, Zoroastrian belief was that for three days after death, the soul hovered in the vicinity of the body. At dawn of the fourth day, the soul ascended to the mythical Chinvat Bridge, or the “Bridge of the Separator,” for the final judgment by a team of divine powers. After the final judgment, the soul would be sent to the Zoroastrian equivalent of Heaven or Hell: “the \textit{Judgment is irrevocable}. There is nothing in the scriptures for the redemption of the soul after the final judgment of the fourth day.” \footnote{\textit{Tarachand v Soonabai}, 176.} Prayers would be of no use to a particular soul more than four days after death, so muktad ceremonies could not be undertaken with this aim. \footnote{\textit{Tarachand v Soonabai}, 176.} \textit{Muktad} prayers were a duty, and were said to benefit everyone—not just one’s family or the Parsi community, but the entire world. \footnote{\textit{Tarachand v Soonabai}, 180.} This too undermined Jardine’s “private benefit” characterization.

Davar’s second line of argument scanned the colonial world for support. He pointed to a line of precedent that took religious trusts to be \textit{by definition} charitable. The Elizabethan statute to which the law of charitable trusts was pinned included one category of trusts “for the advancement of religion.” Since the Reformation, English law had excluded a class of religious trusts “for superstitious uses” from this category, a way of denying dissenting Protestant,
Catholic, and Jewish religious trusts the protection of the law. The plaintiff, Tarachand, had argued that *muktad* trusts ought to be void because they were of “superstitious uses.” But Davar argued that England was not an appropriate comparator. His reasoning was an instance of centripetal jurisprudence at its best. Davar argued that the Irish case law on Catholic Mass trusts, rather than English law, ought to be the model for Parsi *muktad* cases in India.

The links between India and Ireland were multifarious in the early twentieth century. Anti-colonial sentiment ran high in both colonies. Irish poets like W. B. Yeats urged Indians to revive their languages and culture, rejecting Britain’s cultural dominance:

> Cast off this foreign yoke; keep to your own languages; recover your contact with the ancient culture which associates itself with the ancient language. Here in Ireland we have a great deal too much English; it cuts us off from our cultural heritage; your case all…over India is the same.

The poet James Cousins posited an ancient Celtic-Aryan mythology that had been suppressed by Anglo-Saxon colonial rule, and that was fit for revival in Ireland and India. The Indian revolutionary movement had many links with Irish

---

416 *Tarachand v Soonabai*, 191. However, Viswanathan explores the gradual legislated inclusion of these communities in other areas of law and British social life during the nineteenth century. See Viswanathan, *Outside the Fold*, 3-43.

417 In the same interview, Yeats made the chilling comment that what India needed was “more insistence upon…antimony, more conflict,” and accordingly that Indian Hindus and Muslims ought to settle their differences “the primal way”: “And at last you will have tragedy—the Nietzschean strife and the Nietzschean victory. What you will do is put up a hundred thousand men on each side and fight it out. I don’t [say let] the victors entirely exterminate the vanquished, but I do say that there will be thus the opportunity at last for the creation of tragedy.” [Private memorandum recording the recollections of W. F. Trench of an interview with W. B. Yeats and an Indian philosophical critic, A. C. Bose of the University of Bombay (3 June 1937), 6-8, MSS 5875, Trinity College Dublin Manuscripts Department, Dublin.]

nationalists. It also thrived amongst Indian students in Britain. In the early twentieth century, large numbers of Indian law students were also studying for the Irish bar exam in Dublin. Worried perhaps by the potential alliances that could be forged between Irish and Indian nationalists, the British government introduced new regulations requiring “certificates of character” for Indian students in 1914. Davar’s choice of precedent pulled these linkages into the colonial Indian courtroom.

Unlike England, both Ireland and India had no established state church. Both enjoyed “unfettered religious toleration.” Consequently, the doctrine of superstitious uses did not apply. Where Irish Catholics died and left money for the purpose of funding masses, the courts in Ireland upheld them. Davar wanted the same for muktad trusts in India. He used as his model an Irish case decided just a year before, in 1906. In O’Hanlon v Logue, an Irish testatrix left her property for the creation of a trust “to sell and invest the proceeds and to pay the income thereof from time to time to the Roman Catholic Primate of all Ireland for the time being, to be applied for the celebration of Masses for the repose of the souls of my late husband, the children and myself.” This looked suspiciously similar to the muktad trusts as Jardine construed them to be—namely, of private benefit. But Davar argued for their public nature: “[t]hough commonly these prayers are supposed to be recited for the repose of the souls of the dead, a

---

420 Visram, 102-111.
422 Tarachand v Soonabai, 190. The disestablishment of the Church took place in Ireland in 1869.
perusal of them will show that, very much like the prayer said by the Parsi priests during the Muktad ceremonies, they are prayers involving a sacrifice to God, invoking blessing on mankind, and including worship of the Creator.”

Furthermore, there had been much discussion in *Tarachand* of the benefit accruing to Parsi priests, who relied upon *muktad* ceremonies for a good part of their meager incomes. Tarachand had argued that putting “money in the pockets of the priests” hardly constituted a public benefit. But the judges in the Irish case found that the trust for Masses was charitable in part “by the mode in which it is to be so applied…in the maintenance and support of the ministers by whom the acts of worship are to be performed.” This gave Davar the authority he was looking for. The public benefit test turned upon the belief of the donor and of his or her community:

> If this is the belief of the community—and it is proved undoubtedly to be the belief of the Zoroastrian community—a secular judge is bound to accept that belief—it is not for him to sit in judgment on that belief—he has no right to interfere with the conscience of a donor who makes a gift in favor of what he believes to be in advancement of his religion and for the welfare of his community or of mankind, and say to him, ‘You shall not do it.’

The coupled cases of *Limbuwalla* and *Tarachand* illustrate the depth of judicial interference in the internal theology of Zoroastrianism. The colonial executive and legislative wings of the state may have promised non-interference. By clothing religious institutions in the trust, however, the gates of India’s religions were thrown open to the judiciary, whose decisions had a very real effect upon

---

423 *Tarachand v Soonabai*, 206.
424 *O’Hanlon v Logue*, 270; cited in *Tarachand v Soonabai*, 207.
425 *Tarachand v Soonabai*, 209.
them, as the Zoroastrian case law shows. Misreadings of Zoroastrian doctrine only began to be rectified as Parsis began to populate the Bombay bar and bench.

Ironically, it was religious endowments themselves that paid for these legal incursions. In general, most fees in trust-related disputes came out of trust funds in question. Parsi examples abounded. In one 1907 case, the Parsi H. F. Warden left money for the purchase of an “eligible and commodious site” upon which a hall “for the purposes and uses of Parsis professing the Zoroastrian Faith” was to be built. When the trustees applied to the court to approve a scheme that diverged from the terms of the will, Dinshaw Davar ruled that all fees associated with the case were to come out of the trust funds themselves.426 Tarachand was the exception that proved the rule: Tarachand himself refused to be paid for his legal services because he did not want to deplete the trust fund.427 Legal fees represented a sizeable proportion of the total sum at stake. By 1898 in Madras Presidency, fees constituted approximately fifty percent of the sums paid in resolution of trust suits.428 It is no wonder the image of the lawsuit as a cow being fought over by the parties whilst being milked by happy lawyers was a recurring one across colonial India (fig. 10).429

In the Parsi case, the net result was that Parsi philanthropy subsidized Parsi litigation. The phenomenon was given particularly Zoroastrian resonances

427 Tarachand v Soonabai, 211-2.
428 Appadurai Breckenridge, 367-8.
429 See “A Milch-Cow, a Plaintiff, a Defendant, and Lawyers,” Hindi Punch (3 December 1916), 19. For a version of the same image from Madras Presidency, see cartoon entitled “Litigation,” from the Maharaja of Bobbili’s Advice to the Indian Aristocracy in Price, 174.
in a 1908 *Hindi Punch* cartoon that depicted two vultures—the agents of Zoroastrian death rites by exposure—as advocates (fig. 11). Grinning and bespectacled, they sat dressed as barristers in black gowns and white collar bands. Each had a bundle of papers tucked under its wing, one labeled “plaintiffs’ costs”; the other, “defendants’ costs.” The two were perched on a huge sack of coins representing the funds of the Parsi Panchayat, and were happily helping themselves. “Ha, ha, ha, ha! Jolly this, to feed on somebody else’s sinews!,” exclaimed one bird to the other. The caption declared that the judges in *Petit v Jijibhai* had allowed both sides of the dispute to take their legal costs from the funds of the Parsi Panchayat. “This looks like fining a third party for the sins of the combatants,” protested the paper. The fact that so many of the lawyers were Parsi themselves meant that much of the money was fed back into the community. But rather than going to the neediest members of the community, it went to the more affluent. Instead of funding cooperation between Parsis, it sponsored conflict.

**Laying Away Priestly Powers**

“Entrusting” the faith had an equally profound effect upon internal power relations within religious communities across India. When internal feuding divided a community a faction could take the dispute to the colonial legal system by

---

challenging the trustees of their religious trust.  

A case in point is a 1913 dispute in Ahmedabad, Gujarat, amongst the devotees of the mausoleum of an Islamic Pir, Bakar Ali Sayed Badamia. Infighting amongst the Sayeds (descendants of Mohammad) who controlled the sect led to many duties being given to a third party, a celibate order called the Kakas (literally, slaves). The Sayeds then sued the Kakas for mismanagement as trustees. A huge internal power struggle entered the legal arena as 287 plaintiffs filed suit against 635 defendants. The same pattern reproduced itself amongst castes in turmoil.

The process of “entrustment” began after the East India Company’s Board of Directors made a policy decision to withdraw its supervision of “native religious establishments” in 1833. The decision was an ironic admission given that since the start of its involvement in India, the Company had professed a policy of non-interference with Indian religion. The shift was not so much a withdrawal

---


433 Not all the Pir’s followers were Muslim; there were also Hindus. [“Law Reports. Sayeds and Kakas in Court. Charges against Trustees,” Advocate of India (9 January 1913), 4.]


436 See Appadurai Breckenridge, 217-8.

as a transfer of power: from the revenue branch of the colonial state, which had
taxed temples, to the judicial one, which would now be in charge of keeping the
peace when the newly reinforced panchayats (local councils of elders) failed.438
As Carol Appadurai Breckenridge observes for Madras Presidency, litigation
increased following this transfer, as the courts stimulated fresh conflicts by
refining the number of points that could be disputed.439 The single most important
piece of legislation on religious endowments of the nineteenth century, the
Religious Endowments Act 1863, aimed to reinforce the judicial grip on these
disputes. It also widened the power to file a suit, giving “any interested party” the
right to initiate proceedings. Prior to the Act, this ability had resided with the
Collector alone.440 Even so, trustees were elected for life and were under no
obligation to publish accounts of their spending.441 By 1914, the year of Bella’s
case, the colonial state was again devising ways to extend its reach, as it
planned legislation to reduce the misuse of religious funds by trustees of religious
endowments.442

Judges in Madras and Bombay presidencies alike exhibited an eagerness
to create trusts retroactively—to dig through the written scraps left by societies
for which the concept of the English trust would have been completely alien, and
construe these texts as having created trusts. In Appadurai Breckenridge’s cases
from the Sri Minaksi Sundaresvarer Temple in Madurai, these texts were found

438 Appadurai, 157; and Appadurai Breckenridge, 141, 348, 358-60, 471.
439 Appadurai Breckenridge, 362-3, 473.
440 Appadurai Breckenridge, 358-9.
441 “Religious Endowments,” Times of India (19 November 1904), 3.
442 “Indian Religious Endowments Trusts. Conference at Delhi. Home Member’s Speech,”
WRTOS (21 March 1914), 16. See also “The Guardian Serpents of the Bag,” Hindi Punch (15
March 1914), 10.
on inscribed copper plates (tamara), stone slabs (kal vetti) and palm leaves (ola). In early twentieth-century Parsi cases, the earliest explicit trust deed dates from 1871. In Mrs. Tata’s case, Davar looked to informal documents and inscribed tablets on Bombay’s fire temples, Towers of Silence and their accompanying structures for the intention of the founders of the trusts, even though the language of trusts was completely absent from these texts, dating from as far back as 1670. As the revenue branch handed religious institutions to the judiciary, so the trust came to be the new outerwear of religion.

It was an entirely judge-made re-clothing. L. J. M. Cooray charts the way British judges in Ceylon imported the English law of trusts through the back door. In Ceylon, it was technically only Romano-Dutch law, not the common law, that applied even after the British acquisition of the island from the Dutch in 1796. But once a few Anglo-type cases had established the trust in Ceylonese law, judges could simply rely on them as precedents. It took just three decades to root the trust in Ceylonese law. The first ruling to adopt the trust was in 1874. By 1905, judges were declaring that it was “monstrous” to suggest that trusts were not part of the law of Ceylon. Carol Appadurai Breckenridge argues that the English law of trusts was superimposed upon Hindu religious endowments in Madras Presidency, despite key differences between the two institutions.

443 Appadurai Breckenridge, 262.
444 Tarachand, 144.
445 Parsi Panchayat Case (Davar), 64-6.
447 Bentwich, 183.
448 Ibrahim Saibo v Oriental Banking Corporation (1874) 3 New Law Reports 148, 151.
449 Carimjee v The Municipal Council (1905) 1 Balasingham's Reports 75.
Notably, the “beneficiaries” of the so-called trusts in the Indian context were not human beings, but stone deities. My findings on the Parsi cases extend the conclusions of Cooray and Appadurai Breckenridge into Bombay Presidency. The Indian Trust Act of 1882 was extended to Bombay Presidency in 1891, but the introduction of trusts by Bombay judges predated this legislation by several decades at least.

Prior to British rule, Parsi religious institutions were managed by the priestly class or athornans. Particular priestly families came to exercise exclusive control over Parsi fire temples, demonstrated by their later claims of “ancestral rights” over temple management in colonial court disputes. As these religious structures came to be reformulated as trusts under British rule, however, power shifted from the priests to the wealthy individuals—including laymen or behdin—who endowed the trusts and framed their terms. Not only did this hand religious authority from the priestly class to the wealthy laity. It also decentralized Parsi religious doctrine. Colonial courts ultimately decided most Parsi temple cases not by asking, “what is the view of Zoroastrian religious doctrine as interpreted by priests on the question of X?”, but by asking, “what did the framer of the trust intend when he or she framed the terms of the trust deed?”

The best example is the celebrated case of Petit v Jijibhai (1906). A French woman named Suzanne Brière married into the Bombay mercantile Tata

---

450 Appadurai Breckenridge, 361-2.
451 See the 1863 trust case of Sir Jamsetjee Jijibhai and others v Sonabai, widow of J. S. Patak, and others 2 Bom HCR 133-41.
452 See Stiles Maneck, 33-4.
453 Judgment of the Case of Udwada Iranshah Aatash Behram, 11.
454 The only other scholar to have hinted at this is Kenneth W. Jones in his Socio-Religious Reform Movements in British India, 146.
dynasty and attempted to convert to Zoroastrianism. Mrs. Tata sought the full benefit of membership in the Parsi community, particularly access to Parsi religious buildings like fire temples and Towers of Silence. The leading judgment was delivered by Dinshaw Davar. He admitted that the question of whether Zoroastrianism permitted conversion was *obiter dicta*: given that the case did not actually turn on the issue, what Davar said about it could be of no real legal authority for the purposes of future cases. Davar considered the religious doctrine, but in the end he deemed another issue to be more important. Even if Suzanne Brière could become Zoroastrian by religion (itself a controversial claim, and one that Davar was not conceding), she could not enter the fire temples or the Towers of Silence because these bodies were governed not by religious doctrine but by the terms of the trust, which gave access to Parsis rather than Zoroastrians. What mattered was not the priestly understanding of religious doctrine, but the intention of the framers. The seventeenth- to nineteenth-century framers of “trusts” probably never considered the possibility that there might be converts to Zoroastrianism. Davar fashioned their “constructive intention” to be exclusionary, and only in trying to reconstruct their intentions did he look to the priestly authority, J. J. Modi, on Parsi beliefs and practices of their period. “Entrusting the faith” took power out of the hands of the priests and handed it both to trustees and—in their capacity as interpreters of trust deeds—to colonial judges. If the intention of the framer was sacrosanct, then the framer was also at liberty to encode his or her own idiosyncratic religious preferences in law, contributing to a splintering of religious views and practices.455

455 For example, the terms of the trust establishing Maneckji Sett’s dokhma or Tower of Silence in
The fire temple in the Gujarati village of Udwada housed the holiest fire in India. The fire was believed to have been brought from Persia by the first Parsi arrivals, and to have been kept burning ever since. This fire temple, the Iran Shah *Atash Behram*, came to be the focus of a heated legal battle at the turn of the twentieth century. *Navroji Manekji Wadia and others v Dastur Kharshedji Mancherji and others* (1900) epitomizes my argument about the trust-induced diminution of priestly powers. The case captured the struggle for religious authority between the wealthy lay trustees of the Iran Shah *Atash Behram*, the Wadias, and the nine original families of priests or *Nav Kutums* in Udwada, all of whom were members of the Sanjana clan. The case traveled through three levels of courts, stopping short of the Privy Council only because a settlement was reached. It was highly publicized, oppressively expensive, and deeply upsetting to most of the Parsi community. The spark was seemingly trivial. A Bombay were unusual. Bodies of dubious ritual status were allowed to be left in Sett’s tower, unlike in the other towers. These included the bodies of Parsis having undergone post-mortems by non-Parsis or *juddins*, and the bodies of Parsis who had died in hospital and been touched by *juddins*. [*Plaintiffs’ Evidence. No.16: Evidence of Shavakshaw Burjorji Sakai taken on Commission. In the Court of Small Causes, Bombay* (12 July 1916) in *Saklat v Bella*, 376 (PCOR).]

Judgment of the Case of Udwada Iranshah Aatash Behram. Includes a brief narration of its origins, judgments of the courts at Pardi and of the Honourable High Court at Bombay. Compromise at the Privy Council also included, translated by Homi Patel from the Gujarati original, *Udwada Iranshah Aatash Behram Case No Chukado* (Rangoon: Bombay Burma Press, 1933); and *Navroji Manekji Wadia and others (original defendants), appellants v Dastur Kharsedji Mancherji and others (original plaintiffs)*, respondents ILR 28 Bom (1904) 20-58.

The trustees’ application to appeal to the Privy Council was successful because the case involved property valued at over Rs 10,000, and also because it involved “a substantial question of law.” [*In His Majesty's High Court of Judicature, Appellate Side, Bombay. Civil Application No.606 of 1903, being a petition for leave to appeal to His Majesty's Privy Council from the decree of the High Court in Appeal No. 106 of 1900 from Original Decree: Navroji Manekji Wadia and others (original defendants), applicants versus Dastur Kharsedji Mancherji and others on behalf of themselves and all other Parsi Inhabitants of Udwada (original plaintiffs), opponents. Certificate under Section 600 of Act XIV of 1882.”* I am grateful to Mr. Sam Joshi and Mr. Bativala of N. M. Wadia Charities (Mumbai) for making these documents available to me.]

Bombay newspapers like the *Sanj Vartaman* and *Jam-e Jamshed* covered the case extensively. See excerpts in *Judgment of the Case of Udwada Iranshah Aatash Behram*, 3, 109,
door connected the Wadia fire temple with the smaller adjacent Petit fire temple. The door had been used by priests moving between the two. The trustees had first shut the door after 8pm. When the priests had it fixed so that it could only be closed, not locked, the trustees responded by covering the opening with tin sheets and building a wall across it on their side. They had also shut three doors in other rooms inside the temple, allegedly to protect the temple, its silverware and ceremonial utensils from theft. The closures constituted a serious inconvenience to priests and worshippers. Priests had to use the cupboards near one door for the storage of ritual objects. Elderly priests and visitors needed to move around the complex, and worshippers, to wash with the water in a well just outside one door before standing in front of the holy fire. Stories of previous thefts were hoaxes concocted by the trustees themselves, argued the priests. Furthermore, it was the responsibility of the community’s representative council of elders (Anjuman), led by the priests, to investigate and punish for thefts, and also to hire more guards if security was an issue. A history of conflict between trustees and priests predated this suit. Those who had the right to manage the temple presumably also had the right to block and close the doors. The court’s task was to delimit both trustees’ and priestly powers. Although the mamlatdar or

110-13. The case “caused damage of a gigantic expenditure of rupees one and a half lacs to both the parties.” A lac (or lakh) was 100,000. [Judgment of the Case of Udwada Iranshah Aatash Behram, 12.] Giving testimony in the case, Khan Bahadur Bamanji Behramji commented that “[m]ost of our Parsi community is displeased at the quarrel brought about for this trifling matter by the closing of this door.” Chief Justice Lawrence Jenkins also regretted “the bitter and costly litigation which the record discloses.” [Wadia v Mancherji, 36.]

459 Judgment of the Case of Udwada Iranshah Aatash Behram, 10.
461 Judgment of the Case of Udwada Iranshah Aatash Behram, 91-2.
462 See Wadia v Mancherji, 45-6; and Judgment of the Case of Udwada Iranshah Aatash Behram, 9-10, 17-20, 38-40, 83.
government revenue official of Pardi had to refer the case to the district court in Surat because of the serious nature and scale of the case, he seemed to side with the trustees.\textsuperscript{463} From then on, though, the priestly families won. Both subordinate judge Lallubhai Parekh in the Surat court and Chief Justice Jenkins in the Bombay High Court awarded the case to the priests. Jenkins held that

\begin{quote}
[I]he free and uninterrupted use of this door seems to us to be necessary for the enjoyment of the temple and its premises in the manner in which the temple has been always enjoyed, and we cannot see that the trustees had any right to disturb that enjoyment.\textsuperscript{464}
\end{quote}

The priestly families were entitled to an injunction against the closure of the three interior doors, and to a declaration against the wall that was blocking the doorway.\textsuperscript{465} The final settlement also favoured the priests by upholding the Bombay High Court ruling and by acknowledging the priestly families’ rights to the temple “from the earliest time known” and into the future.\textsuperscript{466} In the Surat court, Parekh required the trustees to pay their own costs as well as the priests.’ This order was upheld by the Bombay High Court.\textsuperscript{467}

The trustees derived their powers from the charitable act of a wealthy Parsi woman named Bai Motlibai. She had rebuilt the fire temple at her own expense in 1894 in response to a plea from the priests.\textsuperscript{468} Bai Motlibai purported

\begin{thebibliography}{9}
\bibitem{463} Judgment of the Case of Udwada Iranshah Aatash Behram, 30-1.
\bibitem{464} Wadia v Mancherji, 49.
\bibitem{465} Wadia v Mancherji, 58.
\bibitem{466} “The Memorable Compromise During the Iranshah Case. A written agreement made between the Trustees of Wadiaji’s and the Anjuman” in Judgment of the Case of Udwada Iranshah Aatash Behram, 111-12. The priestly families consulted the eminent Parsi advocate Dinshaw Mulla before accepting the final compromise. He considered it to be favourable to them. [“A letter from Advocate Dinshaw Mulla (Bombay, 16 April 1906)” in Judgment of the Case of Udwada Iranshah Aatash Behram, 114.]\bibitem{467} Judgment of the Case of Udwada Iranshah Aatash Behram, 108; Wadia v Mancherji, 58.
\bibitem{468} Bai Motlibai spent Rs 90,000 upon the erection of the new buildings, and set up a separate fund of Rs 61,000 for the maintenance of the buildings. [“Declaration of Trust,” Wadia v
\end{thebibliography}
to give her trustees the power to make and change the rules of management of the temple.\textsuperscript{469} On the case’s final appeal in the Bombay High Court, Chief Justice Lawrence Jenkins held that such a provision exceeded her powers. Bai Motlibai’s act was a charitable one—a gift—which as a consequence did not give her or her trustees any rights of ownership over the temple:

\begin{quote}

[i]t is true that she has spent a very considerable sum of money in connection with the temple, but it appears to us that the reasonable inference to draw under the circumstances is that she incurred that expenditure, not in the belief that she was thereby going to gain any proprietary rights or temporal advantage, but that she looked for her reward in the religious merit of the act performed by her, and that appears to us to be a sufficient explanation of her action.\textsuperscript{470}
\end{quote}

The trustees were only “bare trustees.” As the judge at Surat had held earlier, the trustees’ powers were limited to the supplying of ceremonial woods, having the building repaired and checking the appropriate use of the building.\textsuperscript{471} Chief Justice Lawrence Jenkins read the language on the tablet erected by Bai Motlibai to indicate that she had relinquished any interest in the temple. Aligning Parsi and Hindu temple trust law, he found that the inscription was more in harmony “with the renunciation essential to the completion of an act of similar piety on the part of a Hindu benefactor.”\textsuperscript{472}

The priests looked to customary usage. Using consciously legal language, they alleged the nine priestly families had “as of right and from time immemorial” been the special delegates of the Parsi inhabitants of Udwada for the purpose of

\textsuperscript{469} “The Trust deed of Udwada Atashbehram as made by Bai Motlanbai (Jam-e Jamshed, Thursday, 23 April 1903),” in Judgment of the Case of Udwada Iranshah Aatash Behram, 3.
\textsuperscript{470} Wadia v Mancherji, 47.
\textsuperscript{471} Judgment of the Case of Udwada Iranshah Aatash Behram, 75.
\textsuperscript{472} Wadia v Mancherji, 45.
supervising and managing the fire temple. The nine families brought the holy fire with them to Udwada, and both Parekh’s and Jenkins’ judgments traced the route of the families and fire from their arrival in India to the move to Udwada in 1742. Before him, Lallubhai Parekh had found that the oral evidence proved that:

1. the Nine mobed families who brought the holy fire to Udwada are the owners of that holy fire;
2. they are authorized to receive the income of that fire;
3. they are exclusively vested with the rights and authority to sound the “Buoy” and perform other ceremonies in the Atashbehram.

The priestly families had allied with the laity of Udwada for the protection of the fire: when the priestly families had arrived in Udwada, there were frequent political upheavals in Gujarat. The laity allowed the priestly families to join them as the Anjuman of Udwada. In return, the priests were allowed to manage the temple on behalf of the laity. But this did not give the laity any claim to control either fire or temple:

The Behdins have no right either to touch or to keep sandalwood or dry wood on this holy Fire. Hence they cannot claim to be the owners of the Holy Fire. The ancestors of the Nav Kutunbis who originated the fire, served it and preserved it by laying sandalwood and dry wood in the time of peace and war, shifted it from place to place considering the factors of

---

473 Wadia v Mancherji, 50. In English law, “time immemorial” meant “from time whereof the memory of man is not to the contrary,” but began on a specific day: the beginning of the reign of Richard I on 6 July 1189. Wharton’s Law Lexicon gives no hints as to what the phrase meant in British India. [Oppé, 648, 994.]
474 Wadia v Mancherji, 21-2; and Judgment of the Case of Udwada Iranshah Aatash Behram, 47-50.
475 On appeal, the Bombay High Court qualified this view. It was opposed to Parsi belief that the sacred fire was subject to ownership, “but even if there be difficulty or doubt as to its ownership, it is obvious that there must be someone entitled to protect from improper invasion the temple property, and those who can predicate themselves that they have exercised the management, authority and supervision as alleged in the plaint, are so entitled.” [Wadia v Mancherji, 20-1.]
476 “To sound the ‘Buoy’ is a daily routine pertaining to the religion, during which the holy fire is offered sandalwood and incense.” [Judgment of the Case of Udwada Iranshah Aatash Behram, 64.]
477 Judgment of the Case of Udwada Iranshah Aatash Behram, 62.
safety are the rightful owners. None of their testimonies in this case has shown that any of the Behdins or any of their ancestors could have migrated with the Holy Fire from place to place. The present day Nine Mobed Families have received this holy fire as a legacy, they make use of the precious items that are offered to it and they are the owners of it.478

Udwada’s laity sided with the priests, “helping them procure their rights,” but in no way diluted the priestly character of the fight against the trustees.479

Judgments frequently noted the impoverished and weak relative position of the priests. The story was one of “how a poor Anjuman had waged a struggle continually for years against the millionaire Shethiyas [merchant princes]—to retrieve their ancestral rights.”480 The great irony was that the only reason the priests were able to fight the trustees in court was because they had the financial support of another wealthy lay Parsi trustee. Sir Dinshaw Petit, trustee of the adjacent Petit temple compound, led a group of Petit trustees in supporting the priestly cause.481 “It was due to the previous help of these Shethiyas that the rights of those poverty stricken mobeds [priests] have been saved from being plundered by millionaire Shethiyas.”482 Up to the application for appeal to the Privy Council, the priestly families and their allies had incurred legal costs of Rs 20,000. All of this was “quietly borne by the exalted Petit family,” by one priestly account.483 The Wadia trustees accused the priests of being puppets of Sir Dinshaw, who was allegedly pursuing the suit for his own purposes.484 They even

478 Judgment of the Case of Udwada Iranshah Aatash Behram, 64.
479 Judgment of the Case of Udwada Iranshah Aatash Behram, 26.
480 Judgment of the Case of Udwada Iranshah Aatash Behram, 11.
481 The dehermeher was the ritual area of a fire temple where high liturgies were performed.
482 Judgment of the Case of Udwada Iranshah Aatash Behram, 12.
483 “A Happy Ending to the Lawsuit pertaining to Udwada’s Ancient ‘Iranshah Atashbehram.’ A Brief History of that Case...Written by: Ek Athornan,” Sanj Vartaman (28 April 1906), in Judgment of the Case of Udwada Iranshah Aatash Behram, 22.
484 Wadia v Mancherji, 27.
claimed they had built the wall to stop him from stealing the holy fire.\textsuperscript{485} Parekh, however, found Sir Dinshaw’s support to be purely an act of charity. He helped the priests, who were “penniless persons,” from his own pocket: “it is considered an act of blessings to help the mobeds in their hour of need.”\textsuperscript{486} The Parsi law firm Mulla and Mulla represented the priests in the case free of charge as solicitors, and the famous lawyer (and later politician) Pherozeshah Mehta acted as their advocate, also for free.\textsuperscript{487}

The underprivileged position of the Parsi priestly class was an important theme in the Udwada case. From the mid-nineteenth century onwards, wealthy Parsi benefactors had created funds and institutions to educate, feed, and house needy members of the priestly class.\textsuperscript{488} In the cases of \textit{Petit v Jijibhai} and \textit{Saklat v Bella}, orthodox Parsis accused priests of being willing to do almost anything—including initiate ethnic outsiders—if paid enough.\textsuperscript{489} The accusation hinted at the generally impoverished situation of many Zoroastrian priests.\textsuperscript{490}

The Udwada fire temple case was the exception that proved the rule of priestly disadvantage. The priestly plaintiffs were able to enter into the legal arena to challenge the trustees only \textit{because} they had their own wealthy patron backing them. They won their case precisely by appealing to their position of

\textsuperscript{485} Judgment of the Case of Udwada Iranshah Aatash Behram, 95.
\textsuperscript{486} Judgment of the Case of Udwada Iranshah Aatash Behram, 94.
\textsuperscript{487} Judgment of the Case of Udwada Iranshah Aatash Behram, 11.
\textsuperscript{490} See Judgment of the Case of Udwada Iranshah Aatash Behram, 13, 100.
weakness and vulnerability in the face of the “millionaire Shethiyas.”

Furthermore, as preservers of the Iran Shah fire and fire temple in Udwada, they represented the single most sacred Zoroastrian site in India. If any priests could take on their temple’s trustees and win, it would be the nine priestly families of Udwada. This was particularly so given that the trustees had hired the very best counsel—the legendary Scottish advocate, J. D. Inverarity.491

The Udwada priests won the battle but lost the war. The Iran Shah case was a lone priestly victory, sitting as it did against a backdrop of the trust-induced erosion of priestly religious authority. As with contracts, wills, and constitutions, the common law courts treated “the intentions of the framers” of trust deeds as sacrosanct. Where there was no clear intention, judges would impute “constructive intention,” a legal fiction that filled the gap. The authority of religious doctrine as interpreted by Parsi priests only became relevant in that context, namely, if it could help establish the probable intention of the framers of a religious trust. The fact that priests came to be hired (and fired) by trustees under the terms of trust deeds was final testament to their subordination.492


492 Bomanji Cowasji Captain informed the local Rangoon priest, B. D. Unwalla, that he could call himself a mobed or priest if he liked. In the end, though, it was Bomanji, the trustee of the Parsi trust, who hired him. [*Exhibit RU: Letter from B. Cowasji to Mobed. Rangoon, 19 November 1917* in Saklat v Bella, 99 (PCO).]
The Law of Outsiders

The “law of outsiders” consisted of cases in which the foreign wives of Parsi men attempted to join the Parsi community. Cases of adopted children trying to gain admission into the community were unknown prior to Bella’s case, with the result that the courts likened Bella’s case by analogy to those precedents involving foreign wives. In the three most celebrated cases, the wives were European. Suzanne Brière was French, the daughter of the well known Parisian photographer by the same surname. She married into the Tata family—the mercantile royalty of Bombay—but failed in her attempt to become Zoroastrian and Parsi through conversion. While conversion may theoretically have been allowed by Zoroastrian doctrine, it had not been the custom of the Parsis since their arrival in India. The issue of religious conversion was moot in any case, because even if Mrs. Tata had been able to convert to Zoroastrianism, she could never become a Parsi. The trusts in question were framed in ethnic, not religious terms—to benefit Parsis rather than Zoroastrians.

Mrs. Tata’s case was predated slightly by the case of Ghandy v Wadia (1903), in which a Parsi man, Bomanji Ardeshir Wadia, converted to Judaism in London. He was circumcised, then married Fanny Epstein, a Jewish woman from Warsaw. As a result of his conversion and marriage, his family tried to exclude him—and through him, her—from the benefit of the family trust funds. The Wadia family lost because the wording of the trust deed did not make benefit contingent upon religion.
Finally, in *Wadia v Wadia* (1913), an English stage actress named Poppy Hammond married the Parsi, Nusserwanji Pestonji Ardeshir Wadia, in London. They returned to Bombay, whereupon a “coldness” developed between them due to his family’s disapproval. When they returned to London, he abandoned her on the platform of Victoria railway station. She sued him for the restitution of conjugal rights. He responded with allegations of cruelty, unchastity and incontinence. He ultimately won on a jurisdictional point.

Amongst Parsis in Bombay and Britons in London, there was agreement on the inadvisability of intermarriage between European women and Parsi or Indian men. In Bombay, the cry of protest against “Madames” or European women was that they were snatching the best Parsi men, and turning Parsi women into old maids, as discussed in chapter 2. The Parsi population was barely maintaining itself—more and more Parsis were staying unmarried for life, and the birth-rate was falling.\(^{493}\) The Parsi paternity rule dictated that only the children of Parsi fathers could be initiated into the faith, so that the children of Parsi women and *juddin* or non-Parsi men were outside of the fold.\(^{494}\) From at least 1905 on, an orthodox segment of the population also advocated a further tightening of the rule: the children of Parsi men and *juddin* women should also be excluded from admission to the community.\(^{495}\) The fear of corporate extinction ran deep in the Parsi psyche.\(^{496}\) For many Parsis, intermarriage and the


\(^{494}\) *Parsi Panchayat Case (Davar)*, 38.

\(^{495}\) “Parsis and Proselytism. Mass Meeting at Bombay,” *Times of India* (22 April 1905), 19; *Parsi Prakash* IV, 14, 118; Ménant, “Social Evolution of Parsis,” *JIA* X: 9 (December 1921), 283. See also *Parsi Panchayat Case (Davar)*, 49.

\(^{496}\) See Pangborn.
absorption of outsiders constituted forms of communal death by dilution. There was also the argument from eugenics: even though Britons and Parsis were both “superior races,” superior races that were too different from each other ought not to interbreed. 497

British observers interpreted the abandonment of the former English actress, Mrs. Wadia, as a warning to naïve young British women tempted to marry Indian men in Britain. In the late colonial era, the period of permissible coupling between Europeans and South Asians had long passed. 498 Even when it had existed, the practice had consisted of British men taking South Asian women as their wives and mistresses, and far from British shores. 499 The Wadia case and its type arose when western women fell for Indian men residing in Europe, then moved to South Asia for those men. 500 The London actress’ case confirmed that the law would not protect such women when they found themselves deserted. Like Mr. Wadia, these husbands could be fickle or have disapproving families. Some Indian husbands expected their European wives to live under deplorable conditions back in India. 501 Others overstated the degree to which they had rejected their conservative religious backgrounds in the name of progressive reform movements like the Brahmo Samaj, only to lapse once the

497 Vimadalal, Racial Intermarriages, 60. See text accompanying notes 1176-7 (below).
498 British-Burmese couples in newly annexed Burma in the 1880s-90s may have been an exception, although British administrators expressed considerable disapproval of this pattern. See Ballhatchet, 145-55.
499 See note 1139 and 1141 (below).
500 See Helen Lendrum v Sukumar Chakravarti (1929) Scots LT 67; and Agnes Isobel MacDougall, pursuer (reclaimer) v Anand Shanker Rao Chitnavis, defender (1937) Sess C 392. During the First World War, extreme measures were taken to prevent Indian soldiers from meeting local women while staying in military hospitals in Britain. See Visram, 132-3.
501 See Lendrum v Chakravarti, 98; and MacDougall v Chitnavis, 392.
couple had married. A few turned out to be impoverished polygamists—rather than the unmarried men of wealth they had pretended to be while in Britain. The truth usually came out upon the couple’s return to the husband’s homeland. In Rabindranath Tagore’s 1894 short story, “Atonement” (“Prāyaścitta”), this scenario played itself out exactly, although the victim was meant to be the protagonist’s Indian wife and her parents. Even so, the arrival of an English lady at the main character’s Indian father-in-law’s home left the family baffled. Mrs. Anath Bandhu Sarkar presented her visiting card and made her entrance, “fresh off the boat from England, rosy-cheeked, auburn-haired, blue-eyed, as fair as froth on milk, and as nimble as a doe.” Unaware that her husband was already married to someone else, she ran forward to embrace him as soon as she had spotted him amongst the crowd, implanting “on his betel-red lips a kiss of conjugal reunion.”

The satirical Indian Charivari commented cynically on the scenario, too. Even a genuine Indian prince who might seem like a romantic catch would soon show his uncouth and sexist nature once he had tricked a naïve English girl into marrying him. The “veneer of cosmopolitanism” that initially coated these unions with exotic allure soon wore thin.

On more than one occasion serious warnings have been issued to English girls who marry Indians coming to England for study or other reasons. They have been cautioned against accepting at their face value Indians of whom they know practically nothing direct; and against facing, without

---

502 Lendrum v Chakravarti, 97-8
504 The Indian Charivari in Mitter, 149.
505 The Times (12 May 1913) cited in “Mixed Marriages in India. Perils of Unions with Persons of Other Races. ‘Times’ Warning,” Advocate of India (30 May 1913), 5.
careful inquiry, the immense social disadvantages under which they must labor in India, or the dangers which arise from the entry of English girls into a social system which permits polygamy. While most residents in India can cite cases where mixed marriages have proved successful, it may be said as a general rule that they bring nothing but misery and distress, especially to the Englishwoman.506

Parsi readers were aghast at the reference to polygamy. K. J. Sanjana accused the *Times* of “wilful misrepresentation of facts and gross slander of a whole community.” Anyone with the “least power of observation” would know that polygamy was illegal amongst the Parsis, who lived an “open-air, free and sociable life.”507 Polygamy had been prohibited by the Parsi Marriage and Divorce Act 1865, an Act drafted and proposed by members of the Parsi community itself.508 It had been a source of considerable pride for Parsis to claim the honour of being “the first of Oriental peoples” to raise woman “to a definitely higher social position” on the basis of her status as a “reasonable and responsible being.”509

But the correction was never communicated back to London, where Mrs. Wadia’s case provoked unmitigated outrage. Mrs. Wadia lost because the Bombay High Court felt it did not have jurisdiction either over a Parsi husband married to a Christian wife or a husband living outside of India. This left European women stranded. A non-Christian Indian could marry a British woman

---

506 “Mixed Marriages in India. The Legal Position,” *Times of London* (12 May 1913), 5. Sir Norman Macleod, Chief Justice of Bombay (1919-26), noted one or more mixed marriages on a 1921 inspection tour of the provincial courts in Naosari and Surat: “Received by the Judge’s wife a Hindu and [a] European lady whom I found to be the wife of the Judge of Broach, a Sindhi.” [Letter to Torquil Macleod from Sir Norman Macleod, Bombay (1.1.21), “Letters from India” (HRA/D63/A1), 1A in Macleod of Cadboll Papers (HCA).]


508 Bengalee, iii.

509 Bengalee, vii.
in Britain, take her to India, and abandon her. London’s *Times* demanded legislation: “[a]s the position stands today, the legal status of an Englishwoman married to a non-Christian Indian is such that no civilized society should tolerate it for a day longer than can be helped.” Similar cases were also marshaled against intermarriage. There was the case of the English woman who had married a Hindu man from Madras in Britain. They lived together for a period, then he returned to India, allegedly with the intention of abandoning her. She began proceedings against him in England for judicial separation on the ground of desertion. He argued that the marriage was invalid: it was a polygamous union, and as a Hindu, he could not validly marry outside of his caste anyway. Lord Gorell, then President of the Probate and Divorce division, rejected the Madrasi’s case, as the *Times* would have wanted the Bombay High Court to reject Mr. Wadia’s.511

Finally, the 1916 suit of *Dinbai v Erachshaw Todyvala* presented a case of a quasi-“outsider” wife who was not European, but part-African.512 Dinbai was a young Parsi woman who had been brought up a Parsi in Gujarat and initiated into the Zoroastrian religion. Her mother was half-Malagasy, and Dinbai had been conceived when her Parsi father was travelling in Madagascar in 1880. Dinbai married a Parsi man, Erachshaw D. Todyvala, but he abandoned her six months

512 The case was unreported in the law reports, but covered in the press: “A Curious Parsi Matrimonial Case,” *Indian Social Reformer* (12 November 1916), 123.
later on the grounds that she was of partly juddin or alien stock, a fact of which he claimed to have been unaware at the time of their marriage. The case went to the Parsi Chief Matrimonial Court, an all-Parsi tribunal that was established under the Parsi Marriage and Divorce Act 1865. The delegates were asked, in essence, to re-assess the Parsi paternity rule. But they confirmed it: Dinbai won because her father was Parsi, her mother’s ethnic origin being unimportant to her own ethnic status. The delegates’ finding indicated that Parsi identity at this point was patrilineal. Parsi status was determined by the father alone, rather than being racial, in which case any non-Parsi “blood” would vitiate the individual’s claim to Parsi status.

The Property Argument

A critical thread running through the case law of foreign wives was an argument about property. If membership in the Parsi community was not limited by blood, it was argued, the vast wealth of Parsi trust funds would be dissipated amongst opportunistic outsiders who would join for material gain. In Mrs. Tata’s case, this argument was explicit. Dinshaw Davar predicted that the lower castes would convert en masse in order to get access to Parsi trust funds if conversion were permitted:

[w]e were told by the learned counsel for the defendants that the Parsis were proud of the fact that there were no street beggars and professional prostitutes amongst the Parsi community and the community took care of its own paupers and cripples. If the plaintiffs’ contentions prevailed, the community would very soon have no reason to boast of these characteristics of their race, and the Parsis would soon cease to exist as a

---

513 See Darukhanawala, Parsi Lustre, 146-7; and Mistry, High Court, 22.
514 Although see chapter 6 on the shift toward a racialized “blood” rule.
community by reason of the rapid invasion of all pauper Sweepers and Dubras of Gujarat, who would, no doubt, be attracted to the Holy Mazdiasni religion by reason of the fifty-three lacs of rupees in the possession of the defendants, and the other advantages belonging to the Anjuman of the Holy Zoroastrians of Bombay.515

It was easy to be fooled by the “mere accident” that Mrs. Tata was “an educated and cultured lady, belonging to one of the most civilized nations of Europe.” If conversion were permitted in her case, it would have to be permitted in every case, and the gates of the community would be thrown open to “general and promiscuous admissions of converts.”516

In the Jewish conversion case of Ghandy v Wadia (1903), the “floodgates” argument was never made explicitly, but it underpinned the whole case. Bomanji Ardeshir Wadia—born and raised a Bombay Parsi—was circumcised and converted to Judaism in London.517 He married Fanny Epstein, a Polish Jewish woman, by Jewish rites at the St. Johns Wood Synagogue in London in 1892. Back in Bombay, his family tried to stop him and his wife from benefiting from the Rs 75,000 trust fund set up for his benefit—presumably on the basis of religion and ethnicity. The trust deed entitled Bomanji to receive maintenance and support from the trust fund during his lifetime. After his death, the funds were to go to any of the following: his wife, his children, his three sisters, or his brothers. In 1902, Bomanji executed a deed stating that of these, it was his wife who would receive the trust funds. Prior to this, the couple’s relationship had deteriorated. They had agreed to live separately, with Bomanji paying Fanny ten pounds per

515 Parsi Panchayat Case (Davar), 67. Emphasis original.
516 Parsi Panchayat Case (Davar), 68.
517 For press coverage of the case, see “Administration of a Trust Fund. A Parsee becomes a Jew,” Times of India (1 August 1903), 8.
month as maintenance. Bomanji also filed divorce proceedings against Fanny. She stayed in London and he returned to Bombay, “wearing the sacred sadra and thread and otherwise comporting himself as a member of the Parsee community and not as a Jew.”

Soon, they resolved their differences. He executed the deed of 1902, and a year later, they responded to the suit filed against them by trustee Jiwaji Dinshaw Ghandy, senior partner of the Parsi law firm Wadia Ghandy and Co., by claiming Rs 22,000 from the trust. Ghandy was accompanied as plaintiff by Bomanji’s three sisters, all of whom contested the Wadia couple’s claims to the trust money. The plaintiffs’ entire case rested on the claim that Bomanji’s conversion to Judaism was invalid. If this was the case, then his marriage to Fanny would also be invalid according to the common law’s criteria for recognition of Jewish marriages: both parties had to be Jewish. This would exclude Fanny’s claim to the trust money after Bomanji’s death—the trust deed, which enabled his later deed, allowing the money to go to Bomanji’s “wife” and not companion. From here, the trust funds could revert to Bomanji’s Parsi family, namely his children, brothers, and three sisters, keeping the money within the fold. A commission was established in London to collect evidence from Bomanji Wadia, Jewish scholars, rabbis, and even the circumcising physician.

---

519 Jiwaji Dinshaw Ghandy and others, plaintiffs v Bomanji Ardeshir Wadia and others, defendants 5 Bom LR (1903) 657.
520 Ghandy v Wadia, 659.
521 See the testimony of Abraham Cohen (the Jewish physician who circumcised Bomanji Wadia on 26 July 1892), Harris Lewis Price (the Jewish “minister” and secretary of the St. Johns Wood Synagogue, who performed the couple’s wedding ceremony), and Herman Cohen (a Jewish
commission return satisfied the Bombay High Court that both the conversion and marriage were valid.\textsuperscript{522} The plaintiffs, represented by the premier advocate of Bombay’s colonial period, J. D. Inverarity, then argued that when the trust deed referred to Bomanji’s “wife,” it meant “wife” under the Parsi Marriage Act of 1865, which required both parties to be Parsi.\textsuperscript{523} Fanny Epstein’s outsider status precluded her from enjoying the benefit of the Wadia family trust, according to the plaintiffs.\textsuperscript{524}

Inverarity’s strategies failed. The judge, a Briton named Russell, held that a Parsi was free to convert to another religion, that Bomanji’s conversion and Jewish marriage were valid, and thus that the trust owed Bomanji and Fanny Wadia Rs 22,000, in addition to their legal fees.\textsuperscript{525} The Wadia family had tried its best to keep Bomanji out—not just because of his own conversion, but also because of the outsider status of his wife and her consequent claim to Wadia trust funds. The concern to reserve Parsi funds for Parsis ran throughout the cases on outsider wives, as it would in Bella’s case.

The Ethnic Argument
A second development critical to Bella’s case was the growing distinction between the terms \textit{Parsi} and \textit{Zoroastrian}. Before the French Mrs. Tata’s case, the terms were generally used synonymously. After that case, the term \textit{Parsi}}
became ethnicized. Davar held that Zoroastrian described religious status, while Parsi denoted ethnic or racial status. Before Mrs. Tata’s case, there were few known cases of people who were ethnically Parsi but not religiously Zoroastrian, and even fewer (if any) who were Zoroastrian by creed but not Parsi by ethnicity. Bomanji Wadia’s cross-examination in London by the trustees’ counsel, Ellis Jones Griffith, epitomized a common pre-Petit understanding of the terms. This exchange took place some time before 24 July 1903:

Q. Referring to your knowledge of Parsee people and of the Parsee religion I suggest that a Parsee does not cease to be a Parsee on changing his religion?
A. It seems to me to be a contradiction in terms. I cannot agree with you. A Parsee on changing his religion ceases to be a Parsee.
Q. Of course you mean a Parsee by race?
A. That is a point which is very ticklish. It is impossible for him to remain a Parsee. I cannot conceive of a Parsee not being a Zoroastrian or a Zoroastrian not being a Parsee.
Q. So the moment a Parsee changes his religion he ceases to be a Parsee?

526 The most famous cases of Parsi converts to Christianity were the two Parsi school boys, Dhanjibhai Naorozji and Hormasji Pestanj who converted to Christianity in 1839 under the influence of the Reverend Dr. John Wilson [Karaka, II, 291-5]. Another convert was Sorabji Kharsedji, whose daughter Cornelia Sorabji went on to become the first woman to obtain a Bachelor of Civil Law (BCL) degree at Oxford. She returned to have a leading legal career at the Court of Wards in Calcutta. An account of his conversion is included in his unpublished autobiography [*Autobiography and notes on the life of the Rev. Sorabji Kharsedji, with an account of his death and copy of his will*] (1894-1910), file 205 in “Files relating to Cornelia Sorabji’s father, Rev. Sorabji Kharsedji,” in Cornelia Sorabji Papers (1866-1945), MSS Eur F165/205, OIOC. The father of George Edulji, Rev. Shapurji Edalji, was another such convert to Christianity. Edulji’s father was a minister in a small English village. His son gained media attention when he was falsely accused of cattle-maiming by xenophobic villagers, and sentenced to seven years’ penal servitude on flimsy evidence. [Visram, 70, 244 at note 85; “The Case of George Edalji,” *The Parsi* I: 2 (February 1905), 59; “The Remarkable Case of George Edalji, Solicitor. The Victim of a Judicial Blunder,” *The Parsi* I: 3 (March 1905), 114-16; “George Edalji,” *The Parsi* I: 4 (April 1905), 121; “The Remarkable Case of George Edalji, Solicitor,” *The Parsi* I: 4 (April 1905), 159-60.] Sir Arthur Conan Doyle took up Edulji’s cause in a series of articles, reprinted in part by Parsiana. [Arthur Conan Doyle, “The Strange Case of George Edalji,” *Parsiana* 5: 2 (August 1982), 36-33.] Iranis were generally considered to be of the same ethnicity as Parsis. The point was discussed in the post-colonial cases of Sarwar Merwan Yezdian v Merwan Rashid Yezdian 52 Bom LR (1950) 876-84; and Jamshed A. Irani v Banu J. Irani 68 Bom LR (1966) 794-809 and 1967 Mah LJ 33-51.
Parsee altogether. Is that what you suggest?
A. That is what I suggest.  

Davar’s ruling in *Petit* separated the terms, with the far-reaching effect that trust deeds that may have referred to *Parsi* in the older religious sense came to be interpreted in the new ethnic sense. The distinction seeped into the everyday speech of Parsis, testament to the profound social influence that this case exerted over the Parsi community.  

Davar put the distinction simply. An English woman could marry a Frenchman and convert to Catholicism, but she would remain English. In the same way, a Parsi could cease to be Zoroastrian by converting to another religion, but could not change his or her Parsi status.  

It was Davar’s 1908 judgment that formalized this contraction in meaning of the term *Parsi*. Bella would ultimately be denied entry to the Rangoon fire temple on the basis that she was not an ethnic Parsi, her alleged natural father being Goan.  

Two “restitution of conjugal rights” cases further delineated the notion of *Parsi* as a wholly ethnic category. This type of case, falling under section 36 of the Parsi Marriage and Divorce Act 1865, borrowed from English ecclesiastical law the curious notion that the court could order spouses to live together where one had deserted the other without lawful cause, upon pain of imprisonment or a  

---

526 See Writer, 148; and “Second Accused’s Statement,” *WRTOS* (22 August 1914), 49. For instances of the general use of the term *Parsi Zoroastrian* post-1908, see coverage of three Parsi defamation cases by the *Weekly Rangoon Times and Overland Summary*: “The Parsi Dispute. Another Defamation Suit” (2 May 1914), 40; “The Parsi Dispute. Application in Revision” (23 May 1914), 44; and “Parsi Defamation Case. The Community in Rangoon” (19 June 1914), 2; and “Parsi Defamation Case. The Anjuman Meeting” (1 August 1914), 42.
529 *Parsi Panchayat Case (Davar)*, 59-60.
The cause of action was available to other South Asian communities as well, and the issue of enforcement was at the heart of the highly publicized case of *Dadaji v Rukhmabai* (1885-6), in which the young Hindu woman Rukhmabai refused to live with her husband on the grounds that she had been married to him against her will at the age of eleven. Rukhmabai lost her case and only avoided imprisonment because her estranged husband agreed to accept payment instead. Her case led Parsi activist Behramji M. Malabari to launch a public campaign to abolish imprisonment as a penalty in such cases. The effort failed. By English standards, Rukhmabai’s case was unusual. In England, suits for the restitution of conjugal rights were a step on the way to a financial remedy.

In *Wadia v Wadia* an English woman was abandoned on the basis of her ethnicity or race. In *Dinbai v Todyvala*, a Parsi woman who was one quarter Malagasy was abandoned for the same reason. What emerged between the two was the Parsi paternity rule in action. As long as one’s father was Parsi, other

---

530 Reported Parsi cases of this type include the 1843 case of *Ardaseer Cursetjee v Perozeboye* 6 MIA 348-92, also reported in 4 Indian Decisions: Old Series 50-69 (predating the 1865 Act); *Avabai, wife of Jamasji Jamshedji v Jamasji Jamshedji and another* Bom HCR 3 (1865-7) 113-116; *Ardesar Jahangir Famji v Avabai* 9 Bom HCR (1872) 290-304; *Kawasji Edalji Busni v Sirinbai* ILR 23 Bom (1899) 279-82; and *Dhanjibhoy Bomanji v Hirabai* 3 Bom LR 371-83. See also s. 36 of the Parsi Marriage and Divorce Act 1865; and, for commentary, Rana, 83-90 and S. Krishnamurthi Aiyar, *The Law and Practice Relating to Marriages in India and Burma* (Lahore: University Book Agency Law Publishers, 1937), 215.


532 Chandra, 160-200.

533 “And I must further observe that so far are suits for restitution of conjugal rights from being in truth and in fact what theoretically they purport to be, proceedings for the purpose of insisting on the fulfillment of the obligation of married persons to live together, I have never known an instance in which it has appeared that the suit was instituted for any purpose than to enforce a money demand.” [Sir James Hannen in *Marshall v Marshall* (1879) 5 P.D. 19 at 23 per Sir James Hannen; cited in *Wadia v Wadia*, 136.]
racial influences coming from the mother’s side did not matter. Falling short of this, even Europeans, with whom Parsis had worked so hard at cultivating trade and professional relationships and from whom such benefits could be acquired, were unacceptable to the community.

Just as Mrs. Tata was rejected from the fold in *Petit v Jijbhoy*, so was Mrs. Wadia in *Wadia v Wadia*. The reason her husband abandoned her—her non-Parsi ethnicity—appears only in brief flashes, and in the unpublished case papers rather than in the published judgment or press coverage of the case.\textsuperscript{534} Eleanora or “Poppy” Hammond met Nusserwanji Pestonji Ardesir Wadia while she was a 24-year old actress at the Gaiety Theatre in London. By her account, he posed as a Bombay Parsi “of independent means,” and even claimed his parents were eager for him to marry an Englishwoman.\textsuperscript{535} He, on the other hand, insisted that he had been reluctant to marry her. He had repeatedly warned her that his parents would not approve of his marrying a non-Parsi, and claimed never to have posed as wealthy.\textsuperscript{536} They married in Kensington on 4 August 1911, then sailed for Bombay via Ceylon and Madras. Upon arrival, Eleanora stated that her husband began to behave coldly to her under the negative

---

\textsuperscript{534} In a letter to the *Times of London*, for instance, Mr. Wadia’s lawyers claimed that his differences with his wife were “not specially connected with any racial question.” [“Mixed marriages.” To the Editor of the Times,” *Times of London* (15 May 1913), 5.] His statements in the case papers proved otherwise. He claimed to have told Mrs. Wadia that his parents “would not consent to his marrying an English woman: that she would never be received by them as his wife or treated as a member of his family, and that if they were married her position as his wife would be a very humiliating one.”[“Written Statement on behalf of the Respondent,” 1 verso in *Nusserwanjee Pestonjee Ardesir Wadia v Eleanora Nusserwanjee Pestonjee Ardesir Wadia* (suit no 690 of 1912) (BHC)]. He wrote to her mother that “[o]n my arrival in India the news of my marrying an English girl naturally upset my parents and my father at first refused to have anything to do with me.” [“Annexure No.3: Letter from Mr. Wadia to Mrs. Hammond, mother of Mrs. Wadia (undated),” *Wadia v Wadia*, 11 recto (BHC)].

\textsuperscript{535} “Petition for restitution of conjugal rights, filed 28 June 1912,” *Wadia v Wadia*, 3 verso (BHC).

\textsuperscript{536} “Written Statement on behalf of the Respondent, filed 18 October 1912,” *Wadia v Wadia*, 1 verso (BHC).
influence of his family. He asserted that she turned them against her with her uncontrollable temper, foul language, and insulting behaviour.\footnote{537}{"Written Statement on behalf of the Respondent," \textit{Wadia v Wadia}, 2 verso (BHC).} He further argued that he abandoned her because of her violent behaviour, which included throwing crockery and hairbrushes at him.\footnote{538}{"Written Statement on behalf of the Respondent," \textit{Wadia v Wadia}, 6 recto (BHC).} She had verbally abused her husband with slurs like “low born nigger,” and had frequently insulted his family.\footnote{539}{She allegedly also called him “a damn low scum,” “dirty impudent vermin,” and “scum of the earth.” \footnote{539}{"Written Statement on behalf of the Respondent," \textit{Wadia v Wadia}, 6 recto (BHC).} On the use of the term \textit{nigger} to describe Indians in British satirical cartoons from 1853 on, see Mitter, 145. See also Atkinson.} Nusserwanji claimed that his wife had conducted illicit relationships with other men both before and after their marriage.\footnote{540}{Mrs. Wadia allegedly received and cashed cheques from other men under the name “Eleanora Stanley” after her marriage, refusing to give her husband an explanation. \footnote{540}{"Written Statement on behalf of the Respondent," \textit{Wadia v Wadia}, 3 verso-4 recto (BHC).} She led Mr. Wadia to believe that before her marriage she was a “chaste woman,” when in fact she had lived with a man named Gosschalk, became pregnant by him, and obtained an illegal abortion. Gosschalk ultimately left her “on account of her vile temper and frequent assaults upon him.” She also told Gosschalk that she had had relationships prior to theirs. \footnote{540}{"Written Statement on behalf of the Respondent," \textit{Wadia v Wadia}, 5 verso (BHC).}} He told the court she had a disturbing psychiatric history.\footnote{541}{Mrs. Wadia spent a period in a private lunatic asylum. \footnote{541}{"Written Statement on behalf of the Respondent," \textit{Wadia v Wadia}, 5 verso (BHC).} \footnote{542}{\textit{Wadia v Wadia}, 130.}} She was also incontinent, a fact of which he had been unaware before their marriage.\footnote{542}{\textit{Wadia v Wadia}, 130.} The couple returned to London in 1912 and Nusserwanji deserted Eleanora on the platform of Victoria railway station. She came to Bombay to file the suit against him, asking the court—in theory—to make him return to her. Her husband accused her of coming to Bombay with the hope of “taking these proceedings in a place where she thought she would be able to bring pressure upon the Respondent’s family to buy her off.”\footnote{543}{"Written Statement on behalf of the Respondent," \textit{Wadia v Wadia}, 4 verso (BHC).} She denied the charge, and refused all offers of settlement from her husband’s
It was true that London would have seemed the obvious place to pursue her husband through the courts: Eleanora and her husband were both living there, and they had married there, too. But Eleanora’s lawyers in London probably advised her to go to Bombay.

The restitution of conjugal rights was a hazy memory in the law of England by 1912. Legislation had abolished the remedy in 1884. A 1912 edition of Blackstone commented that as a result, the English wife could leave her husband’s house whenever she pleased. It was Eleanora Wadia’s bad luck that the same was true for a husband—in London. Things were different in British India, or so Mrs. Wadia hoped. The Rukhmabai case had nearly resulted in the imprisonment of a once-child bride under this action. That was in 1885—significantly, just a year after the action was abolished in English law. In the decades that followed, a number of restitution of conjugal rights cases passed through the colonial courts. The courts wavered on entertaining and enforcing the form of action.

---

544 Wrote Eleanora Wadia, “I utterly decline to consider any proposals of money settlement (no matter how substantial the offer) made from my husband’s solicitors. I have never put forward this point.” [“Annexure No.1: Letter from Petition to Messrs Chester, Broome and Griffiths. From Wilton Hotel, Victoria, 8 March 1912," Wadia v Wadia, 8 recto (BHC).]


547 For cases in which the courts seemed generally receptive, see *Binda v Kaunsilia* ILR 13 All (1890) 126-64; *Bai Sari v Sankla Hirachand* ILR 16 Bom (1892) 714-16; *Fakirguda v Gangi* ILR 23 Bom (1898) 307-11; *Surdyamoni Dasi v Kali Kanta Das* ILR 28 Cal (1900) 37-53; the ruling of the Ahmedabad court of first instance in *Bai Parwati, wife of Mansukh Jetha v Ghanchi Mansukh Jetha* ILR 44 Bom (1920) 972-7; and *Nina Dalal v Mervanji Pherozeshah Dalal* ILR 54 Bom (1930) 877-902. Contrast with cases where the courts were less enthusiastic: Bombay High Court ruling in *Bai Parvati; Lakshmi Ammal and another, v Venugopal Naidu* AIR 1934 Madras 407-8; *Dhanjibhoy Bomanji v Hirabai* ILR 25 Bom (1901) 644-58; *Dular Koer v Dwarkanath* ILR 34 Cal (1907) 971-85; *Saravanai v Poovayi* ILR 28 Mad (1905) 436; *Babu Ram v Musammat Kokla* ILR 46 All (1923) 210-1; and *Bai Jivi v Narsingh Labhrai* ILR 51 Bom (1927) 329-40.
was available to all communities in India. A textbook on Burmese law noted that it could also be used in Burma, and had been in cases between 1886 and 1929. The unsettled nature of this area of colonial law was probably enough to make Mrs. Wadia feel that suing in Bombay was worth a try.

In the court of first instance, the Scottish judge Norman Macleod awarded the case to Mrs. Wadia. On appeal, she lost on the point of domicile. Mr. Wadia had been living in England the whole time, and Mrs. Wadia did not actually reside in Bombay, having come only for the purposes of filing the suit. The residence of the petitioner had to be "bona fide and not casual or as a traveler." In Mrs. Wadia’s case, Bombay was held not to be. She lost.

Three months after her defeat in court, a photo of Mrs. Wadia, draped in white chiffon and posing dramatically, appeared in a Bombay daily (fig. 12). Its caption announced that Mrs. Eleanora Wadia was returning to the stage, and would appear at the Cinema de Luxe that evening. “She is the English lady whose difference with her Parsi husband has become quite a ‘cause celebre,’ not

---

548 “Limitation Applicable to Suits for Restitution of Conjugal Rights,” Bom LR (journal section), 8 (January 1907), 19-23.
549 Nga Nwe v Mi Su Ma (1886) Selected Judgments and Rulings Lower Burma 391; Nga Chin Dat v Mi Kin Pu (1909) II UB Rep (1907-9), Buddhist Law, Marriage: Restitution of Conjugal Rights, 1; and Ma Thein Nwe v Maung Kha (1929) ILR 7 Rang 451. All noted in O. H. Mootham, Burmese Buddhist Law (London: Humphrey Milford, Oxford University Press, 1939), 26.
551 Mr. Wadia was employed in England and claimed he could not leave “on account of his service,” which is why he requested that a commission be held to collect evidence in London. His request was refused. [“Appellate Side. Anglo-Parsi Marriage,” Times of India (29 March 1913), 12.]
552 Wadia v Wadia, 149.
553 It is interesting to note that in 1930, the Bombay High Court explicitly overturned the Wadia decision, allowing a Russian Christian woman who had married a Parsi man in France to sue him for the restitution of conjugal rights in Bombay. See Dalal v Dalal ILR 54 Bom (1930) 896-7.
only in Bombay, but in the Home Press."554 Three years later in 1916, the couple was divorced.555 Regardless of the outcome of *Wadia v Wadia*, it was her in-laws’ opposition to Eleanora Wadia on the basis of her ethnicity that made the case relevant to Bella.

The case of *Dinbai v Erachshaw D. Todyvala* illustrated the inverse: the inclusive side of the Parsi paternity rule. When Erachshaw D. Todyvala married Dinbai, a Parsi girl from the village of Vesu near Surat, he believed she was of a dark complexion because of the high salt content in her local water supply. The marriage broker, Hirabai, allegedly gave him this explanation, assuring him that Dinbai’s complexion would lighten once she moved to Bombay.556 In fact, Dinbai was part-African: her mother was half-Malagasy.557 Dinbai was the result of a relationship between her Parsi father and a woman living in Madagascar who was probably named Mana.558 Mana lived with her own father, a Parsi named Pestonji Thalbi. Mana’s mother was Malagasy.559 Mana probably did not undergo her initiation ceremony, or *navjote*, meaning that she was Parsi by ethnicity (according to the Parsi paternity rule), but not Zoroastrian. In fact, Mana’s religious status was irrelevant, as the Parsi paternity rule looked to the father’s

555 Mr. Wadia initiated divorce proceedings.[“*Wadia v Wadia,*” *Parsi Prakash* (1916), IV, 339.]
558 The case notes are written in an unclear hand, and there is a chance the woman’s name was Maria rather than Mana. With a Parsi father, though, this seems unlikely. [“Testimony of Jamshedji Dadabhai [Khajotia],” *Dinbai v Todyvala*, 27 (BHC).]
559 “A Curious Parsi Matrimonial Case,” 123.
status alone. Dinbai’s 75-year old father testified that he had gone to Madagascar in 1880, had relations with Mana, then brought the baby Dinbai back to India, leaving her with his cousin to be raised while he returned to Madagascar, presumably for trade. Dinbai never knew her mother. At the time of the trial, her father had a Parsi wife named Sonabai. Dinbai’s father arranged for his daughter to have her navjote performed when she was seven or eight. The family had attempted another marriage union for Dinbai before approaching Erachshaw Todyvala. The first attempt had been unsuccessful because it was generally known that Dinbai’s mother had been non-Parsi.

Before leaving India for the trenches of World War I, Erachshaw Todyvala agreed to marry Dinbai. He “liked the girl” and did not then “gather from her appearance that there was a [strain] of African blood.” Dinbai’s father and Todyvala had had some understanding concerning a piece of land owned by Dinbai’s father at Vesu. To Dinbai’s mind, her husband deserted her because this land was not handed over to him after their marriage.

560 This relative testified in Dinbai’s case. See “Testimony of Dinbai Jivanji [Khajotia].” Dinbai v Todyvala, 29 (BHC).
562 Dinbai testified: “I remember the ceremony. I was made to drink cow’s urine, then made to rub my body with it, then I had a bath.” [“Testimony of Bai Dinbai, plaintiff,” Dinbai v Todyvala, 24 (BHC)].
564 “I was in Flanders: near the fighting line. I left 14.10.14 and returned 20.4.16. All that time.” The couple married on 5 February 1913. [“Testimony of E. Dossabhoy Todywala, defendant,” Dinbai v Todyvala, 40 (BHC).] Over one million South Asian soldiers fought in the First World War, sustaining 100,000 casualties of which over 36,000 were fatalities. On their experiences, see Visram, 117-39; and David Omissi, ed. Indian Voices of the Great War: Soldiers’ Letters, 1914-18 (Basingstoke: Macmillan Press, 1999). For a fictional account, see Mulk Raj Anand, Across the Black Waters (Delhi: Vision Books, 1940). On Parsi volunteers in the First World War, see Hinnells, “War and Medicine,” 288-9. For a cartoon depiction of a Parsi returning from the war, see “Home from the Front,” Hindi Punch (12 September 1915), 27.
566 “Testimony of Bai Dinbai, plaintiff,” Dinbai v Todyvala, 26 (BHC).
that the land was irrelevant. They had lived happily for six months when a distant relative informed him that his wife’s mother was a juddin. As Todyvala testified,

I returned to Bombay and told my mother not to allow the girl in our house. This was because of the information I’d received. If I had known I would not have married the girl because I am orthodox. My parents also are orthodox. There was no quarrel about land. I shouldn’t have deserted my wife for other reasons.  

He spoke again with Hirabai, the marriage broker, allegedly reproaching her. Her response was trenchant in a literal sense. Was Dinbai “a cucumber or watermelon to cut and see the inside of”? Dinbai’s family sent Dinbai back to her husband several times, but he refused to allow her into his house. She returned to stay with her aunt, where she had been living for the three years previous to the date of the hearing. She filed for the restitution of conjugal rights.

The Parsi Chief Matrimonial Court was a quasi-autonomous Parsi tribunal set up within the colonial legal system under the provisions of the Parsi Marriage and Divorce Act 1865. The tribunal consisted of a panel of delegates, all of whom were Parsi, presided over by a High Court judge. Once Dinshaw Davar was appointed to the bench, he oversaw the matrimonial court, being both Parsi and a High Court judge. The other contender for the role of Parsi marriage court in 1865 had been the Parsi Panchayat, the community council of elders set up under British rule in 1787. But the Panchayat had suffered a progressive loss of authority over the course of the nineteenth century, most pronounced during a

---

569 “Testimony of Bai Dinbai, plaintiff,” Dinbai v Todyvala, 24 (BHC).
570 See Rana, 34-40; and Aiyar, 207-11.
mid-century controversy on polygamy. The Panchayat was accused of having disciplined poor bigamists while looking the other way if wealthier men took second wives. Colonial legislators instead created a new body to settle marital disputes. The delegates decided the outcome of a case, with the High Court judge guiding them on points of law and procedure.

In Dinbai’s case, the delegates held that there was no lawful excuse for her husband’s behaviour. Dinbai was indeed entitled to the restitution of conjugal rights, or at least to the payments that would flow from this entitlement, a finding that would lead her to enforce her claim in two further suits. The delegates were asked to question the Parsi paternity rule. Todyvala asked them to reconstitute Parsi identity along a principle of racial purity, suggesting that the presence of any non-Parsi racial elements vitiated Parsi status. The delegates rejected his request. Because Dinbai’s father was Parsi, she was, too. The case confirmed the patrilineal rather than racial definition of Parsi ethnicity.

Conclusion

Chapter 1 proposed that the basic events of Bella’s case may have undergone a particular type of transformation in preparation for entry into the legal arena. The secret of Bella’s real parentage may have been edited out of Bomanji and Cowasji’s version of the life, death, and identity of her mother, Mrs. Jones. This

571 Stiles Maneck, 171-5; Desai, 11.
572 See Palsetia, 97-101.
573 Bengalee, 229.
574 Dinbai sued Todyvala for her legal costs of Rs 800 and maintenance of Rs 25 per month. She won, and when he did not make the payments, she sued him again for enforcement of the award. The Chief Justice upheld her entitlement. Todyvala appealed on a jurisdictional point, but lost. [Erachshaw Dosabhai Toddiwala v Dinbai, wife of Erachshaw Dosabhai Toddiwala ILR 45 Bom (1921) 318-23.]
chapter makes a similar point about the legal processing of facts. This time, the foregrounding and backgrounding of particular facts in Bella’s case would not be done to protect the family name, but with a knowledge of the precedential substrate in which Bella’s case would have to ground itself. First, her case had to be slotted into the language and mechanics of the religious trust. The repackaging of the Zoroastrian religion within the legal device of the trust is just one example of a phenomenon occurring across the Indian subcontinent under British rule. As temples and religious funds came to be remodeled in the shape of trusts, internal power relations were transformed. In the Parsi case, power shifted from the priestly class to the affluent elite of Parsi society (many of whom were lay people). This latter class could afford to endow trusts and set the terms of the trust deeds, and also tended to be trustees. The colonial courts also exercised huge control over religious trusts by regulating the trustees’ powers in cases of disputes, and by approving changes in management schemes even in the absence of disputes.575 The colonial state had promised not to interfere with religion in India, and yet the judiciary did just the opposite—thanks to the trust.

The second important body of case law for Bella’s case, the law of alien wives, was notable for its surprise value. A small number of European women married into a colonized elite during the colonial period but were generally rejected for property-related and ethnic reasons—precisely the domains in which

one might expect them to provide maximum benefit for the Parsi community. The high priest Dhalla summed up the view with his picture of the “prodigal son” scenario. An orthodox father would typically send his “one and only pampered son” to England to be educated, only to have the son squander his father’s “hard-earned twenty-five thousand” and return with “the additional encumbrance of a fair-skinned offspring of some good-for-nothing mother.”

Statements like Dhalla’s destabilize the view, epitomized by Luhrmann’s work, that the Parsis aspired to perfect Europeanization. The cases of the French Mrs. Petit, the English Mrs. Wadia, and the Polish Jewish Mrs. Wadia documented the rejection of European women from the Parsi community at a time when Parsis enjoyed all the benefits of excellent relations with the European ruling class. Dinbai’s case, on the other hand, indicated that Malagasy roots were irrelevant as long as an individual’s father was Parsi. The Parsi delegates in Dinbai’s case were not operating upon British racial hierarchies in some derivative fashion. Parsi was made an ethnic, as opposed to a religious, category by Dinshaw Davar in Petit v Jijibhai. The definition of ethnic then became a contest between two models: the older, customary Parsi paternity rule, and the newer model of race wherein outside influences on either side vitiated Parsi status. Dinbai’s case confirmed the older, patrilineal rule. Around the same time, but with much greater publicity, Bella’s case and its related libel suits suggested that the newer, stricter definition of ethnic purity was gaining currency, a story left

---

577 Luhrmann, 21.
for chapter 6.
FIGURE 10:
“A MILCH-COW, A PLAINTIFF, A DEFENDANT, AND LAWYERS”
[Hindi Punch (3 December 1916), 19.]
[By permission of the British Library (SV 576).]
FIGURE 11:
"THE VULTURES"

"Vultures—Ha, ha, ha, ha! Jolly this, to feed on somebody else’s sinews! (The Judges who tried the Parsi Juddin Case have allowed the costs of both parties to come out of the Parsee Punchayat Funds, instead of ordering the parties to bear their own costs. This looks like fining a third party for the sins of the combatants.)"

[Hindi Punch (6 December 1908), 21.]
[By permission of the British Library (SV 576).]
FIGURE 12:
“GAIETY GIRL IN BOMBAY”
“Mrs. Eleanora Wadia, formerly a Gaiety Girl, who is to appear at the Cinema De Luxe Tonight.”
[Advocate of India (25 June 1913), 10.]
[By permission of the British Library (NPL C.1124).]
CHAPTER 4

The Bombay Commission I:
Conversion

Bella’s case has gone down in history as a case on conversion, despite the fact that Bella was not a convert (or an aspiring one) in the usual sense of the term. At no point did she make a conscious decision to shift her religious affiliations. Her lawyers came to court asking for retroactive recognition of her membership since infancy in this community—interpretive, ritual, social and familial—to which she knew no alternative. Bella had grown up amongst Parsis and as one. Her adoptive father told the Rangoon court that he had raised her as a Zoroastrian. Her childhood had been populated by Parsi cousin playmates. When Shapurji brought Bella into the fire temple in 1914, none of the Parsis present objected to her presence. Her lawyers were asking the court for ex post facto approval of a social reality.

The reason the “conversion” label stuck was because of the ways Bella’s case resurrected a debate from the preceding decade. “Conversion” was a familiar piece of mental furniture for the Parsis of Bombay, having been assembled and tested in the 1906 case of Petit v Jijibhai. In that case, a 23-year-old French woman named Suzanne Brière married into the Tata family and tried

579 “Defendant’s Evidence. No.34: Deposition of Shapurji Cowasji, the second defendant. In the Chief Court of Lower Burma” (27 February 1918) in Saklat v Bella, 707 (PCOR).
580 “Parsis at Law. Alleged Defamatory Article. Charge against Mr G. K. Nariman. The Recent Navjote Ceremony,” WRTOS (2 May 1914), 42.
582 In the words of Macgregor J, who heard Bella’s case on appeal in Rangoon: “In this country a person without a community is difficult to conceive. The first defendant does not as a matter of fact belong and never has belonged, to any other community than the one she has been brought up in and if she were cast out from it she has no other to fall back upon.” “[Appendix IB. No.70: Judgment of the Appellate Court” (28 July 1920) in Saklat v Bella, 815 (PCOR).]
to join the Parsi community by converting to Zoroastrianism. Dinshaw Davar delivered the leading judgment, ruling against Mrs. Tata. There was a textual basis for conversion, but on its heels came thirteen centuries of customary practice to the contrary. Davar could have declared that the Parsis prohibited conversion by “custom” in its legally enforceable form. Curiously, he did not, instead relying on the terms of the trusts that governed Parsi funds and temples. These trusts were framed for the benefit of Parsis, not Zoroastrians—two terms only distinguished definitively by his ruling. Even if an outsider could become Zoroastrian by religion, he or she would be excluded from fire temples and trust funds, not being Parsi by ethnicity (or, in the language of the time, by race). Davar left the question of conversion hanging. Almost a decade later in 1916, the issue was volleyed back across the subcontinent from Rangoon by the young teenager, Bella. This time, the Parsi community demanded an answer. Could ethnic outsiders be admitted into the Zoroastrian Parsi community? “Conversion” was the umbrella term under which Bella’s case was shuffled, however awkwardly, as the second round of the conversion debates began.

583 Parsi Panchayat Case (Davar), 50-2.
585 Parsi Panchayat Case (Davar), 57-8. On the role of trust law in Bella’s case, see the first half of chapter three (above).
586 Parsi Panchayat Case (Davar), 59-60.
This chapter lays out the contours of the conversion debate as it developed during the 1916 judicial commission in Bombay, a body created to collect evidence for the Chief Court of Lower Burma in Rangoon. Parsi witnesses and lawyers—polarized as reformist or orthodox—disagreed in three significant ways. First, there was the overarching clash between the orthodox “birth only” model of membership, and the reformist willingness to accept converts. Second, the two sides disagreed over what conversion to Zoroastrianism was (or would be) fundamentally about. To the orthodox, it was about property. Aspiring converts would join the community for material gain and exhaust community funds, depriving ethnic Parsis of their birthright. To reformists, it was about formalizing the social unit created by shared kinship and household—for the non-Parsi mates, children, and formerly, servants or slaves of Parsi men. Finally, the two sides argued past each other because they were temporally misaligned. Reformists looked to the past, pointing to alleged cases of conversion. Orthodox Parsis pointed to the future, predicting community disintegration in the wake of conversion.

This chapter also does a certain amount of foundational work for the larger dissertation. Investigating the mechanisms through which a colonial lawsuit passed means noting the idiosyncracies of the British system of legal pluralism. I argue that the large scale of British legal pluralism—specifically, its anti-local bent—raised the stakes in any given lawsuit and increased in-fighting within colonized communities.
Finally, this chapter examines two groups of people involved in Bella’s case. The first is the lawyers in Bombay. The history of the non-European legal profession is central to *Saklat v Bella* because almost all the lawyers during the Bombay segment of the case were Parsi. The intriguing phenomenon of Parsi lawyering, by which Parsi legal personnel gained control of cases involving their co-religionists, was unusual but not unheard of in colonial India. Tamil Brahmin lawyers in Madras Presidency exhibited a similar pattern. Not surprisingly, the lawyers in the Bombay commission were deeply invested in Bella’s case in a very personal way. Pledger Madon and solicitor Vimadalal were two Parsis who had thought hard about conversion—first personally, then professionally. In Bombay, they were stage-managing opposite renditions of their community’s account of itself. They were purveyors of alternate identities, interpretive middlemen selectively repackaging the past and present for future needs.

The second group considered by this chapter is women. They were notable for their absence or, if present, for their silence. Both Parsi conversion cases were all about females. Mrs. Tata, an unnamed Rajput woman, and Bella were the aspiring converts in question. Yet of the three, only Bella was a party to her own case, and even then, she was not a witness. The gender element of these cases is striking, and aligns tidily with patterns identified by scholars of colonial South Asia. Women were often at the center of reform controversies in colonial communities, but as symbols, not participants.

---

The “classical” or “legal centralist” conception of legal pluralism describes a situation in which the laws of various religious and cultural communities are applied by and within a state-run legal system. The study of legal pluralism began here with colonial studies like M. B. Hooker’s in 1975. Since then, scholars like John Griffiths, Sally Falk Moore, Marc Galanter, and Sally Merry Engle have broadened the definition of legal pluralism to encompass non-state legal systems. They have emphasized that legalities and sovereignties emanate from multiple sources—commercial, professional, voluntary and religious bodies among them. But although the scholarly discussion has moved away from the colonial setting, I want to return to it for the purposes of understanding what it meant for colonial legal pluralism to operate in its distinctly British form.

The British brand of legal pluralism allowed the winner to take all—and on a sub-continental scale. The fundamental unit of British legal pluralism was the ethno-religious community across legal India, as opposed to a smaller unit that would allow for variation in norms between regions or social strata. This is not to say that there were not provisions to allow for regional or even clan-based diversity. Judges could reach for the category of special or family custom, as opposed to general custom. But the onus was on the party alleging a special custom to prove with “clear and positive proof” that it was ancient and invariable,

and not repugnant to the general law. In other words, local diversity was the exception, not the rule. In the Parsi context, an appropriate smaller unit might have been the *panthak*, or Gujarati diocese established around 1290. The *panthaks* occasionally followed divergent ritual practices, a diversity that did not compute within the colonial courts’ all-India perspective. If Bella’s initiation, or the lack of purity on the part of the priest and bull’s urine, was acceptable under a particular *panthak*’s practices, no one tried to construe it as a special custom during proceedings.

The legal system’s massive scale of operation raised the stakes for everyone involved in a dispute, and for those not involved, too. Whatever was decided for the tiny Parsi community of Rangoon could later be applied to Parsis from Singapore to Zanzibar, making *Saklat v Bella* everyone’s business. The system of precedent was the mechanism by which this leveling process occurred. It was a mode of legal reasoning that did much on-the-ground work in the project of homogenizing the British empire. The selection of rulings for publication in the law reports was a mysterious process that reveals itself only rarely in the colonial archive. Once a case was reported, though, the winning

---

591 *Nugender Narain v Rughoonath Narain Dey* SWR (1864) 20; and *Raghavendra v Balkrishna Raghavendra* 4 Bombay Appeals Cases 113.

592 See Hormazdyar Dastur Kayoji Mirza, *Outlines of Parsi History* (Bombay: H. D. K. Mirza, 1987), 234-5; and, for divergent practices regarding the highest state of ritual purity (*barashnum*), “Plaintiffs’ Evidence. No. 11: Darab Pesotan Sanjana, taken on commission in the Court of Small Causes, Bombay” (14 March 1916) in *Saklat v Bella*, 261-2 (PCOR). See also text accompanying note 1405 (below).

593 See chapter 7 (below).

594 A rare instance was an episode in 1914 in which the government of Bombay pressured the Indian editors of the *Bombay Law Reporter* to report a precedent-setting case in a way that would be favorable to the state. The state succeeded. See letter from P. E. Percival, Office of the Remembrancer of Legal Affairs, to the editors of the *Bombay Law Reporter* (14 February 1914), 373-5; and letter from Messrs Ratanlal and Dhirajlal, *Bombay Law Reporter* to Legal
version of a community’s ethnography became available for percolation across empire.595 As Marc Galanter has pointed out, the question “what is the unit?” is one of the most interesting and important ones in the study of colonial legal pluralism.596 It goes a long way toward explaining how British legal pluralism produced so much infighting within ethno-religious communities.597

Other imperial states accepted greater variation at the local and intra-community level. The Ottoman Empire’s millet system allowed local courts operated by ethno-religious communities themselves to handle cases specific to those communities.598 Many nineteenth-century American courts took a distinctly hands-off approach to intra-denominational disputes, refusing to go behind a decision taken by church leadership, or to homogenize across wings of the same church.599 The British model exacerbated intra-community conflict by accepting jurisdiction over intra-denominational disputes, and by making local disputes into subcontinental ones.600 The players in Saklat v Bella fought so long and hard—

Remembrancer, Mahableshwar (20 April 1914), 379; both in Merwanji Muncherji Cama and another v Secretary of State for India in Council, B-1/1 of 1907-10: serial no.253 of compilation 1910, suit no.63 of 1910 in the High Court of Bombay, Legal Dept. Records (MSA).
596 For an example affecting the Jewish communities of the British empire, see the application of a ruling in the Alexandrian Jewish case (Sasson v Sasson) to a case between Jews in Bombay (Benjamin v Benjamin): Marie Tilche Sasson v Maurice Sasson LR 1924 AC 1007-1010; Rachel Benjamin v Benjamin Solomon Benjamin ILR 50 Bom (1926) 369-94 and 28 Bom LR (1926) 328.
600 On the former point, see Dame Henriette Brown, appellant v Les Curés et Marguilliers de L’oeuvre et Fabrique de Notre Dame de Montréal, respondents LR 6 PC (1874-5) 157-220.
pursuing five separate lawsuits over eleven years—because they knew they were playing on a field of high-stakes legal pluralism.

The Commission and its Lawyers

A radical shift in personnel occurred as the case moved from Rangoon to Bombay. In Rangoon, all but one of the lawyers and judges were British. The exception was the Parsi lawyer, N. M. Cowasji. He was Bella’s adoptive cousin, the son of Merwanji Cowasji Captain. Not surprisingly, he appeared for his father’s side—against Bella.601 In Bombay, the lawyers, commissioner, and witnesses were exclusively Parsi.602 Their dominance captures the point I make in the introduction: that the Parsis entered the legal profession in numbers far disproportionate to their size in the early twentieth century.603 Gradually, they climbed to the upper levels of the profession, and as pleaders, advocates, solicitors and judges, came to control the outcome of cases involving their own community.604 Both this chapter and the next revolve around the cross-examination of Parsi witnesses by two Parsi lawyers, one fighting for Bella and the other, against.

601 N. Cowasji Captain appeared for the plaintiffs as the junior of a British lawyer named Mr. Connell. For the defendants were Mr. Giles and his junior, Mr. Lentaigne. The judge in the Chief Court of Lower Burma in its original jurisdiction was C. P. R. Young. On appeal, the judges (in the same court) were the Acting Chief Justice Robinson J and MacGregor J.

602 Only three of the 32 witnesses were not Parsi. See witnesses for the plaintiffs xix-xxi in “Appendix D: Witnesses in Saklat v Bella (1914-25).”

603 See note 5(above).

604 See “Appendix A: Cases involving Parsi parties heard by D. D. Davar, Bombay High Court Judge (1906-16).”
Colonial non-European lawyers have been studied for their leading role in anti-colonial independence movements. The irony is that they were usually educated at the imperial center—typically, at the Inns of Court in London—with the hope that they would become Europeanized supporters of colonial rule. This focus has dominated research on lawyers from colonized populations. But there is an aspect of colonial lawyering that deserves equal attention: lawyers’ role as intermediaries and translators between the legal and cultural worlds of colonizer and colonized. Just as Parsi merchants acted as mercantile middlemen from as early as the seventeenth century, so Parsi lawyers were “middlemen traders” in colonial forms of knowledge. By joining the legal profession, they gained a role in representing their own community to the colonizer, and in crafting the official story that colonial law would tell about the Parsis. For D. M. Madon and J. J. Vimadalal, *Saklat v Bella* was more than just a case. It was an opportunity to inject one model of Parsi identity with all the privileges and protection the law had to offer, and to silence its competitor.

Judicial commissions were missions established in other cities or countries to collect evidence—both written and oral. They were time-consuming.

---


606 See Duman, 132. Gandhi and Jinnah are classic instances in which this policy backfired. On the same phenomenon in mandate Palestine, see Likhovski, 1 of chapter 5.


and expensive. Judges like Dinshaw Davar suspected that many requests for commissions were stalling tactics intended to buy time and bankrupt opponents. He and other judges rejected many of these requests, particularly when they involved travel overseas. In Saklat v Bella, the British judge in Burma, C. P. R. Young (himself formerly a barrister in Bombay) allowed a commission to be created in Bombay to document the beliefs and practices of the Parsis. The commissioner, a Parsi named R. S. Dadachanji, oversaw the collection of testimony from many quarters of Parsi society—from Zoroastrian high priests to hereditary corpse bearers, businessmen to trustees, scholars to mystics. The judge who ordered the commission also appointed the

---

609 The cost of the commission for Bella’s side alone was Rs 8,768. [*Interlocutory Proceedings and Orders. No. 55: Particulars of defendants’ costs incurred in the commission proceedings in Bombay* in *Saklat v Bella*, 768 (PCOR).] This constituted 86% of Bella’s total costs for the original hearing and first appeal in the Chief Court of Lower Burma (Rs 10,211). [*Defendant’s Evidence. No.40: In the Chief Court of Lower Burma. Saklat v Bella. Decree: Costs of Suit* in *Saklat v Bella*, 735 (PCOR).] Davar refused a request to examine over a hundred witnesses in Zanzibar at a comparatively late stage in one trial: *Haji Beebee Widow, plaintiff v H H Sir Sultan Mahomed Shah Aga Khan and others, defendants*, suit no. 72 of 1905, 7 September 1907, 4-5. In Davar, “Judgments (8 July 1907-19 December 1907)” (BHC). On the colonial Indian tradition of punitive litigating, see Davar, *Hints to Young Lawyers*, 17-18; and Bernard Cohn, ‘Some Notes on Law and Change in North India,’ in Cohn, *An Anthropologist among the Historians and other essays* (Delhi: Oxford University Press, 1987), 568-9.

610 In Wadia v Wadia (see chapter 3), Macleod J refused to send a commission to collect N. P. A. Wadia’s testimony in London. [*Certified Copy of Notes taken by the Honourable Mr Justice Macleod on the 30th November 1912,* in *Wadia v Wadia* (BHC), 1 verso.] See, however, cases in which Davar allowed commissions in Mozafferpore and Cawnpore [joined cases of *Perin Ardeshir Patel v the GIP Railway Co.* (suit no. 426 of 1907) and *Ardeshir Dhunjibhoy Patel vs the GIP Railway Co.* (suit no. 427 of 1907) in Davar, “Judgments (7 January 1908-7 December 1908),” 81 (BHC)]; and in Bangalore, Madras and Ootacamund [*Payne and Co. v Pirosha Nusserwanji Patell* (suit no. 75 of 1911) in Davar, “Judgments (19 January 1911 to 17 July 1911),” 2 (BHC)].

611 On Young’s career at the Bombay bar, see text accompanying note 1285 (below). For another example of a Burma-Bombay overlap in legal personnel, namely Sir John Jardine, see text accompanying notes 385-94 (above) and his *Notes on Buddhist Law*.

612 R. S. Dadachanji was an eccentric bachelor who spent much of the 1940s in rented accommodation at the National Liberal Club in London, where the Zoroastrian Association occasionally held its meetings. He exerted an avuncular influence in London, acting as benefactor to at least one young Parsi law student at the Inns of Court during that period. Many thanks to R. P. Vachha for this information (22 February 2004, Mumbai). On the Zoroastrian Association, see John R. Hinnells, *Zoroastrians in Britain: The Ratanbai Katrak Lectures, University of Oxford 1985* (Oxford: Clarendon Press, 1996), 117.
Presumably Young took the advice of the Parsi parties and found in Dadachanji an individual that both sides could endorse. More than any other part of *Saklat v Bella*, it was the Bombay commission that provided a window onto Parsi identity in 1916.

It is the legal historian’s chronic methodological worry that lawyers cannot be trusted to say what they mean in the courtroom. As hired guns, lawyers try any and every argument that might succeed. Outside of the courtroom, there is no guarantee that they will endorse the same views. Lawyers typically construct their cases through “onion cases,” a series of mutually exclusive layered arguments. Each layer can be peeled away and discarded—if rejected by the judge or jury—so that the next can be considered on its own merits. Like an onion, this type of case has no core, consisting as it does of a series of conceptual barriers covering an increasingly small space. The fact that these barriers often contradict each other reinforces the image of lawyers as “intellectual prostitutes”—professionals who get paid to try anything without meaning any of it. The same point is made by the fact that in many legal cultures, it is common for a small group of elite lawyers to monopolize the most coveted appellate work.

---


615 I am grateful to Dirk Hartog for his emphasis upon this troubling feature of legal history.

616 The top advocates on the Original Side of the Bombay High Court fell into this category. In the latter half of the nineteenth century, the trio of J. D. Inverarity, Basil Lang, and James Jardine...
different cases, before the same court over the same period, the absence of any personal investment in the cases is taken for granted. What this means is that the legal historian must approach a lawyer’s courtroom argument with caution when trying to identify that lawyer’s personal beliefs.

Saklat v Bella is that rare and beautiful thing: a case in which the lawyers did take the content of the case seriously and personally, where they could be trusted to mean what they said in the courtroom. Not only were both Madon and Vimadalal Parsi themselves; their natural political allegiances also lined up precisely with their professional roles in the Bombay commission. Madon was both Bella’s lawyer and a reformist activist. Vimadalal was a doyen of Bombay orthodoxy, a leader of both theosophical and khshnoomist mystical movements, a published eugenicist, and the lawyer working against Bella. To borrow the phrase of Austin Sarat and Stuart Scheingold, they were “cause lawyering.”

Madon was known for his directness, a manner that verged on abrasiveness even by admirers’ accounts:

He had his faults: he was often brusque; he was sometimes too blunt in the expression of his views; he was above all impulsive, and was often betrayed into situations which with a little more tact and judgment he might easily have avoided. But he was always sincere; he was a complete

---

“appeared on either side in all important cases.” [Mistry, High Court, 43.] The same phenomenon probably existed among the top London-based lawyers acting in Privy Council appeals in the early twentieth century. Among them were George R. Lowndes, E. B. Raikes, and M. A. Jinnah, all of whom had formerly been advocates in Bombay. See Vachha, 144-6, 159-51; and note 1346 (below).

617 A perfect example is the American lawyer, Matthew Hale Carpenter, who argued for opposite interpretations of the Fourteenth Amendment in two cases before the same court (the U.S. Supreme Court) over the same period (1872-3). Compare his arguments in Myra Bradwell v State 83 U.S. 130 and the Slaughterhouse cases 83 U.S. 36.

stranger to intrigue; he never knew what it was to stab a man in the back.619

P. A. Wadia, the editor of the Journal of the Iranian Association, reported that Madon’s manner was frank and open, so different from the “suave and sneaking manner” that was generally associated with lawyers. Madon may have been rude with stubborn witnesses, but he never practiced the “trickeries of the trade.” The lawyer against Bella, J. J. Vimadalal, taunted him for losing his temper in the courtroom. But Wadia lauded Madon for his earnestness, a quality more “loveable” than the strategic coolness and composure that may have been “essential to a lawyer for a flourishing trade”—a not-so-veiled reference to the suave and successful Vimadalal.620

Madon was an active member of and legal adviser to the reformist Iranian Association.621 He also wrote articles for its journal, arguing among other things that the prophet Zarathushtra was speaking from his own mind rather than conveying some divine scheme.622 He was equally involved with the Zoroastrian Conference, intended to be an annual meeting of reformists. The conferences had been conceived of by the Columbia-educated reformist high priest from Karachi, Dastur Dhalla.623 But it was Madon who made Dhalla’s idea into a living institution. The Iranian Association’s tribute to Madon described him as suffering

---

620 “Mr. D. M. Madan,” JIA V: 6 (September 1916), 236-7.
621 “Mr. D. M. Madon,” JIA V: 6 (September 1916), 236. On the Iranian Association, see text preceding note 248 (above).
622 D. M. Madon, “Is the Religion of Zarathustra a Revealed Religion?,” JIA II: 9 (December 1913), 255-60.
623 For Dhalla’s own account of the Zoroastrian Conference, see his autobiography: Dhalla, Autobiography, 372-84.
through years of abuse and vilification (during the debates over reform), humbly refusing to take credit although he had borne all of the burdens.624

Madon was involved in Saklat v Bella beyond his role as counsel in the commission. When Dastur Kaikobad, the high priest who performed Bella’s initiation, was being pressured by orthodox parties not to undertake the ceremony, Madon telegrammed him to tell him to act according to his conscience.625 In response to coverage of Bella’s case by disapproving Bombay newspapers, the Zoroastrian Conference—with Bella’s adoptive father—launched a defamation suit against them. The case was led by Madon, who single-handedly undertook the “almost Herculean task of sifting a voluminous record of newspaper articles, of hunting out the proper material, of translating an enormous material into English, of arranging it, or drawing up a case and of instructing counsel.”626 Madon took every opportunity to support Bella’s side both inside the courtroom and outside.627

His nemesis Vimadalal was also present behind the scenes at many unexpected points. Vimadalal was solicitor to the Advocate-General in the commemorative death ceremony or muktad trusts case of 1907.628 His team was responsible for presenting Davar with the case that won over the judge: the “setting straight” of the law of Parsi death commemoration trusts that I examined

624 “Mr. D. M. Madon,” JIA V: 6 (September 1916), 236.
626 “Mr. D. M. Madon,” JIA V: 6 (September 1916), 236.
627 Madon left Bombay to move to “faraway Sakchi,” the new planned industrial city in Bihar developed by the Tatas for steel production. Sagchi would be renamed Jamshedpur in 1919 after its Parsi patron, the uncle-in-law of the French Mrs. Tata: Jamsetji Nusserwanji Tata. On the early history of Jamshedpur, see Maya Dutta, Jamshedpur: the growth of the city and its regions (Calcutta: Asiatic Society, 1977), 3-17. The Journal of the Iranian Association lamented the loss of Madon to the reformist cause. [“Mr. D. M. Madon,” JIA V: 6 (September 1916), 235.]
628 On Tarachand v Soonabai, see text accompanying notes 396-425 (above).
in chapter 3. He may have intervened informally mid-way through the *Petit v Jijibhai* hearings, convincing both Davar and the priestly witness Modi to take a harder stand against the two aspiring female converts. Vimadalal and Davar had a relationship of mutual reinforcement for decades before Bella’s case. Both were legal luminaries, and both were orthodox in outlook. In Bella’s case, Davar got involved by unsuccessfully trying to broker a compromise, which meant trying to convince Dastur Kaikobad not to perform Bella’s initiation ceremony. Finally, Davar was supposed to testify before the Bombay commission in support of Vimadalal’s case and against Bella, but he fell ill and died.

Jehangir Jamshedji Vimadalal was the descendant of a priestly line of marine cargo insurers. “The leader of the orthodox section of the community”

---

629 *Tarachand v Soonabai* (1907), 139-42, and 178.
630 Maneckji Kavasji Patel, “A Character Sketch of the Late Mr. Jehangir Vimadalal, the Doyen of Parsi Orthodoxy, and the Glory and Pride of the Community” in *Vimadalal Memorial Volume* (Bombay: Jashan Committee of Bombay, 1937), 140. Vimadalal’s opposition to intermarriage was well known: *Mr. Vimadalal and the Juddin Question*. On Davar’s change of position, compare his willingness to broker a compromise allowing conversion under certain conditions in “The Bombay Parsi Case. Suggested Compromise,” *Times of India* (7 March 1908), 10; and in Strangman, 33; to his wholesale opposition to conversion in his final judgment: *The Parsi Panchayat Case (Davar)*, 1-76. On Modi’s shift, see Beaman, *Parsi Panchayat Case Notes*, 46 (BHC). I am discounting the possibility that Beaman’s influence hardened Davar’s views on conversion: Beaman’s deference to Davar was well known. See note 202 (above).
631 See Darukhanawala, *Parsi Lustre*, 78-9 (on Vimadalal) and 149-50 (on Davar).
634 “Obituary: Jehangir Jamshedji Vimadalal,” *Parsi Prakash* (21 July 1931), VII, 19. The appearance of the priestly class in the marine insurance business seems surprising, given the
and “the last of the great Parsi orators” was known for the “clear, placid, mellow splendor” of his public speaking, and for his leadership in orthodox as well as theosophical and mystical khshnoomist circles. By one contemporary account, Vimadalal’s influence acted as a “mighty brake on the headlong course of go-ahead reformers, who, if left to themselves unchecked and unhindered, would have proceeded from one excess to another, and precipitated the community headlong into the vortex of destruction.” He also took a lead in the creation and administration of a number of Parsi housing societies, the Athornan Mandal (a society for the education and wellbeing of the priesthood), the Zoroastrian Physical Culture and Health League, and the Jashan Committee, which worked to provide religious education for Parsi children. Vimadalal was a founder of the Iran League, a body that strengthened ties between Bombay Parsis and

polluting effect of long-distance sea travel on priests with barashnum, the highest state of ritual purity (see chapter 5). But given that Parsis were heavily invested in the shipping trade, having co-religionists in the auxiliary marine services would have made good business sense. Vimadalal’s family probably did not perform the category of religious ceremonies requiring priestly barashnum. Marine insurance began developing as a business in England around the same time as the British acquired Bombay—the late seventeenth century. In the same period, a fair number of appeals to the Privy Council from colonial India concerned disputes over marine insurance (Jain, 320). On the law of marine insurance in the British Empire, see Edward Louis de Hart and Ralph Iliff Simey, Arnould on the Law of Marine Insurance and Average (London: Stevens, 1924), 11th ed.


636 Shet Jehangir Vimadalal Yadgari Granth in Kulke, 103 at note 47.

637 “Obituary: Vimadalal,” 19. For an advertisement from the Zoroastrian Physical Culture and Health League, see Darukhanawala, Parsi Lustre, 626. On concern over the perceived degeneration of the “Parsi physique,” see text accompanying notes 1187-90 (below).
Zoroastrians in Iran, particularly through charitable projects. His publications included a collection of letters appearing in the *The Oriental Review* in 1910 opposing the conversion of outsiders to Zoroastrianism, an attack on intermarriage from a eugenicist perspective, and at least one mystical *khshnoomist* tract.

Significantly, Vimadalal was also active in the Parsi Lavad Mandal, a society created to shift cases between Parsis from the colonial court system to an alternative forum: a Parsi arbitration board. There Vimadalal served as an arbitrator, settling a number of disputes between Parsis in Naosari and Udwada. Davar also endorsed the scheme. Had the movement for this forum succeeded on a more widespread basis, cases like *Saklat v Bella* never would have appeared on the colonial record.

A power imbalance permeated the relationship between the two Parsi lawyers. Vimadalal was a solicitor; Madon, a mere pleader. In England, the legal profession was split between barristers, who had the right to plead before superior courts, and solicitors, who did not. Solicitors attended to the preparation of clients’ papers for litigation, and to legal work that did not involve

---


639 See (respectively) Mr. Vimadalal and the Juddin Question; Vimadalal’s Racial Intermarriages; and his “The Late Behramshah Shroff: Precious Inheritance bestowed by him upon the Parsi Community,” 240-6 in *Behramshah Shroff Memorial Volume. Frashogard Book* 17-18 (Bombay: n.p., 1930). I am grateful to K. N. Dastoor for making this last source available to me, and for his translation from the Gujarati.


643 There were heated debates over who had such rights in the lower courts. [Raymond Cocks, *Foundations of the Modern Bar* (London: Sweet and Maxwell, 1983), 1.]
going to court. Barristers in England enjoyed greater prestige, independence and income than solicitors. With a few exceptions, the English distinction did not extend to the colonies. Bombay was unusual: it retained a dual profession, but also inverted the status of the players.

In Bombay, solicitors (technically, “attorneys”) reigned supreme vis-à-vis “advocates.” Most advocates were also barristers, having been called to the Bar in London at one of the four Inns of Court. In order to qualify for the Bombay bar, Indian students could also be called to the Bar in Ireland or curiously (given its continental-style civilian legal system) Scotland. After 1912, the Bombay High Court also required Indian barristers to have completed a Bachelor of Arts degree before qualifying for the Bar in Britain, and then to do a one-year apprenticeship in the office of a European lawyer of more than ten years' standing.

644 Cocks, 3.
645 Ceylon and Malta retained the English model. [Likhovski, 2 of ch. 5.] On the Cape colony (after 1910, South Africa), see Martin Chanock, The Making of South African Legal Culture, 224-5.
647 On the Bombay usage of the terms “attorney” and “solicitor,” see Mistry, High Court, 46.
649 Mistry, High Court, 42.
650 Mistry, High Court, 42. Requirements for Indians to gain admission to the Inns and Bar in Britain also became stricter as the twentieth century wore on. The changes were probably political, given reports that Indian students in Britain were failing to assimilate and were being recruited by the anti-colonial revolutionary movement. See note 421 (above).
There was also a humbler route to advocacy. Those who could not afford a stay in Britain had to complete a Bachelor of Laws at the University of Bombay, attend High Court hearings on the “Original Side” for one year and the “Appellate Side” for another, then pass the Advocates’ exam. Judges could also appoint advocates, allowing a very few pleaders and solicitors to gain rights of full audience by an unconventional route.

Only advocates enjoyed full rights of audience in the Bombay courts. Nevertheless, it was the solicitors who had at their disposal small armies of “peons,” copyists and articled clerks (solicitors in training), as well as extensive law libraries. They presided over law firms typically not more than five minutes’ walk from the Bombay High Court—a trip made until the late nineteenth century by palanquin. To become a solicitor, one had to pass a notoriously difficult exam. Most failed it the first time. Vimadalal passed on his first try. “Managing clerks” ran the everyday business of the firm. The managing clerk A. J. C. Mistry left two sets of memoirs about life in his Parsi law firm, Wadia Ghandy and Co.

---

651 Some time after 1920, candidates were no longer required to attend court for two years. [Mistry, *High Court*, 41-2.] Cases coming from within the city of Bombay were handled by the Original Side (OS) of the Bombay High Court. The Appellate Side (AS) was for those originating outside of Bombay city but within Bombay Presidency. On the historical development of this system and its variations across colonial India, see Jain, 675-8. The Original Side enjoyed greater prestige than the Appellate Side, and OS lawyers and judges tended to look down on AS practitioners. See letter from F. C. O. Beaman to B. G. Kher (Gulmarg, Kashmir; 29 June [1920]), 41 in B. G. Kher Papers (NMML); and Strangman, 53.

652 Parsis like the solicitor Dinshaw Furdoonji Mulla and pleader Hormazdiar Cooverji Coyajee were appointed advocates. [Mistry, *High Court*, 42.]

653 However, solicitors could also become advocates and practice as both. See A. J. C. Mistry, *High Court*, 43.

654 On the admission of Indians as solicitors in Bombay, see Gagrat, 28, 31.


656 Gagrat, 31-2; Mistry, *High Court*, 52-3. B. G. Kher, the man who would become the first “Prime Minister” of the composite state of Bombay in 1937, failed the solicitor’s exam on his first and second attempts. He did not re-attempt it. [Kamath, 37-8.]

657 On the early role of managing clerks as cultural intermediaries between European solicitor and Indian client, see Gagrat, 26.
Co., in 1911 and 1925, along with an account of the daily workings of the Bombay High Court in 1925. Senior partners at leading firms like Wadia Ghandy probably had a higher income than most judges. In all likelihood, Vimadalal did too, being a founding partner of a leading Parsi law firm called Jehangir, Gulabbhai and Billimoria. If there was any authority governing solicitors, it was the professional regulating body. The Bombay Law Society was established in 1894, intent upon protecting the character, status and interest of this upper segment of the legal profession.

One level down were the advocates. They were self-employed and often struggled to generate a living income in the first few years as "briefless barristers," a position well known to M. K. Gandhi. In colonial South Asia, barristers lacked the organizational resources of solicitors, and needed the help of dubious law touts to drum up business. Dinshaw Davar advised young law graduates to simply hang around the court, taking notes with the hope of being needed in an emergency by a senior advocate whose junior had failed him.

---

658 See Mistry, *Wadia Ghandy and Co.* (1911) and (1925); and his *High Court.*
659 While a barrister, Dinshaw Davar generated more than double his future income as a High Court judge. Solicitors generally earned more than barristers. [Serial No. 18, No. 62, 11 March 1909. From Government of India, Finance Department, Pensions and Gratuities. To His Majesty’s Secretary of State for India. Forwarding a copy of correspondence regarding Davar’s pension plans, 979. In Orders of the Secretary of State for India on the Representation from the Hon. Mr. Justice D. D. Davar, Judge, High Court, Bombay, regarding his pensionary prospects. Bombay Judicial Proceedings: May-August 1909. IOR/P/A18/62 (OIOC)]. On solicitors’ fees, see Shantilal Harjivan Shah, “The Dual System,” 183 in *Bombay Incorporated Law Society Centenary 1894-1994.*
660 Gagrat, 33.
662 The editor of the *Burma Law Times* fumed that “[t]outs in Burma have become dangerous vermin and those who do anything to suppress their growth deserve as much gratitude of the public as rat exterminators.” [“Editorial Notes,” *Burma Law Times* II: 5 (September 1908), lxxiii]. See also Kher, 38-9; and Gandhi, *Autobiography,* 94.
663 Davar, *Hints to Young Lawyers,* 12-14.
They did not have their own law libraries, and relied upon the courts’ supply of law reports and textbooks.

Neither lawyer in the Bombay commission was an advocate. Back in Rangoon, though, there were two in Bella’s family. Both Bella’s adoptive uncle, Bomanji Cowasji Captain, and her adoptive cousin, the son of her disapproving uncle Merwanji, were advocates in Rangoon. The legal profession in Lower Burma was effectively unified. Although solicitors did exist technically, there were just three solicitors practicing in Rangoon in 1924. Advocates acted as a one-stop-shop for potential litigants with the result, according to one touring British judge, that they overextended themselves and were underprepared in court.664

Pleaders like Madon sat one rung below the advocates. Pleaders or vakils were Mughal “leftovers,” vestiges of a pre-colonial profession marginalized by the crush of the newer British forms of solicitor and advocate.665 Their lack of status was visible through the resolutions of the Bombay Vakils’ Association during the early twentieth century, which protested restrictions on the promotion of vakils to the judiciary.666 Pleaders’ exams in India took six years’ preparation and were harder to pass than that of the barristers in England, which took just three years.667 And yet, pleaders did not enjoy the same rights of audience and court privileges of the “ballusters” back in Bombay, an inequity that created a sense of

---

667 Mistry, *Wadia Ghandy and Co.* (1911), 78; Duman, 131.
resentment among pleaders. even their dress showed it. one letter to the times of india begged pleaders to replace their “sometimes ultra-short” coats that were “far from dignified” with gowns like those of barristers and judges. the wish was granted in 1909. in 1916, then, a black gown was about the only ceremonial prop madon had to rely upon as he faced his opponent vimadalal, his superior in key professional ways.

conversion:
the property argument

having introduced the controllers of courtroom exchange, let me now turn to the dialogues they instigated. the orthodox narrative created by vimadalal and the orthodox witnesses was a story of future depletion and dilution of both economic and ethnic capital. if conversion were permitted in one case, it would have to be permitted in general, and india’s lower- and non-caste hindus would rush in for material advantage. chapter 6 explores the ethnic or “racial” strand of the “floodgates” argument. this chapter examines the property version.

the conviction that conversion was first and foremost an economic decision appears frequently in the parsí case law—not only among orthodox

---

668 “creation of an indian bar,” bom lj 1: 4 (september 1923), 253; and bom lj 1: 6 (november 1923), 313.
669 “indian affairs. indians in england,” times of london (19 november 1906), 5; “letter. indians students in england. from edward candy,” times of london (11 september 1908), 9; “barring the doort” hindi punch (26 november 1916), 23. for a description of advocates’ and judges’ dress by community, see mistry, high court, 45-6.
670 “correspondence. vakils’ dress. from ‘uniformity and dignity,’” times of india (4 april 1908), 13.
671 “on and after 1st june 1909, vakeels of the high court when appearing in court, were required to wear a gown made after the pattern of king’s counsel’s gown, of black stuff but with sleeves cut off at the elbow, and ending in a triangular flap, at the back of the arm, six inches long from base to apex. the wearing of the head dress was made optional from that date.” [mistry, high court, 46.]
Parsis, but also among British judges like Beaman. In *Petit v Jijibhai*, Beaman expressed horror at the thought of lower caste converts to Zoroastrianism, anticipating “a constant stream of the lowest and most despised persons” pouring into the community.672 According to Davar, “[c]enturies of association with their Hindu brethren have made the Parsis entertain the same feelings towards a Hindu of the lower castes as the Hindus themselves entertain.”673 His concern was not just status-based, but also economic. Parsi funds would be rapidly exhausted and the community, dissolved.674

Vimadalal advanced the floodgates argument with particular vigor in his exchange with the reformist Parsi, J. D. Nadirshaw. The witness was a retired building superintendent with a knowledge of ancient Iranian languages and texts. He had also been ordained as a priest in his youth, and performed some religious ceremonies. Vimadalal pressed Nadirshaw to admit that the admission of lower caste converts would be undesirable.675 In response, Nadirshaw accused Vimadalal of phrasing the question such as to “rouse the feeling of the unthinking [Parsi] mass against me purposely,” a disdainful stab at Vimadalal’s orthodox supporters.676 But he finally took a decisive stance: “I say that if a juddin of low caste be as much a human being and the creation of Ahuramazd as any

---

672 *Parsi Panchayat Case (Beaman)*, xxvii.
673 *Parsi Panchayat Case (Davar)*, 53.
674 Conversion to Christianity by the lower castes invited the same response at times from British missionaries, who wanted to target upper caste Hindus in order to sidestep precisely the suspicion of material motives. See Antony Copley, *Religions in Conflict: Ideology, Cultural Contact and Conversion in Late Colonial India* (Delhi: Oxford University Press, 1997), 177. For a similar reaction by Ahmadi Muslims (expressing horror at the 1901 Punjab Census Report’s suggestion that the movement had “a special mission to the sweepers”), see Yohanan Friedmann, *Prophecy Continuous: aspects of Ahmadi religious thought and its medieval background* (Berkeley: University of California Press, 1989), 15-16 at note 73.
676 “Defendant’s Evidence. No. 27: Nadirshaw” (27 April 1916) in *Saklat v Bella*, 432 (PCOR).
Zoroastrian in my opinion he is admissible into the religion because a good religion always is expected to ennoble a man and improve his moral and material state.\textsuperscript{677} The reformist witness Hormusji Jehangir Bhabha gave testimony that must have further upset the orthodox camp. When Bhabha was about seven years old, he claimed there had been an initiation of a lower caste \textit{dubra} servant into Zoroastrianism, in Rander, a village near Surat.\textsuperscript{678}

Both sides resorted to social status—both caste and class—in their attacks upon each other.\textsuperscript{679} The orthodox fixation with infiltration by the lower castes was one example. Upper caste Hindus or Indians of other communities did not receive the same attention in these discussions, despite the fact that non-Parsis of all castes and communities were equally polluting according to the Zoroastrian purity laws.\textsuperscript{680} Temple entry would become firmly linked to caste in early twentieth-century India. Two decades after Bella’s case, Ambedkar and Gandhi engaged in a campaign to secure access to Hindu temples for the lower castes. As in Bella’s case, the image of a lower caste Indian sullying a temple with his or her presence inspired horror in many elite circles. The effort failed.\textsuperscript{681}


\textsuperscript{678} “Defendant’s Evidence. No. 33: Evidence of Hormusji Jehangir Bhabha taken on commission. In the Court of Small Causes, Bombay” (1 July 1916) in \textit{Saklat v Bella}, 693 (PCOR). On the \textit{dubra} caste, see note 758 (below).

\textsuperscript{679} Caste did not exist among Parsis, although arguably the hereditary corpse bearers or \textit{nassassalars} occupied a position in Parsi society comparable to untouchability in Hindu society. See \textit{Parsi Panchayat Case (Davar)}, 53; and Dhall, \textit{Autobiography}, 49. On the \textit{nassasalars}, see notes 814 and 833 (below). On the conceptual struggle between class and caste according to Ambedkar vis-à-vis Indian communists, see Gail Omvedt, \textit{Dalit Visions: the Anti-Caste Movement and the Construction of an Indian Identity} (Hyderabad: Orient Longmans, 1995), 41, 51.

\textsuperscript{680} Compare Davar’s extended discussion of the lower castes with his brief paragraph on the polluting quality of all non-Zoroastrians: \textit{Parsi Panchayat Case (Davar)}, 37-9, 52-3.

\textsuperscript{681} Gandhi and Ambedkar tried unsuccessfully to ensure access to upper caste Hindu temples for \textit{dalits}. Ranga Iyer’s temple entry bill was introduced on 24 March 1933 and failed due to lack of government support. [V. S. Kadam, “The Movement of the Untouchables from the Poona Pact to the Yeola Conference,” \textit{Quarterly Review of Historical Studies} 29:1 (1989), 32-41.]
Reformists made class-based attacks on the orthodox as well. Despite Nadirshaw’s self-professed egalitarianism—at least when it came to caste—his reference to the “unthinking masses” of orthodox Parsis tapped into lower class depictions of orthodox Parsis by reformists.682 Similarly, counsel for the plaintiffs in the French Mrs. Tata’s case had blurted out that the public meeting that opposed Mrs. Tata’s admission was composed of the “riff-raff” of the Parsi community.683 The reformist weekly, Hindi Punch, referred to the orthodox as “bigoted leaders of the poor” who found textual justifications for “the stupidest of practices prevalent amongst the uneducated masses.”684 It made Mr. Best-Orthodox look bigoted, backward, and poor.685 His terrible teeth, out-of-date traditional dress, and the possible Irani associations of his pheta hat may have been veiled class-based stabs.686 Furthermore, Mr. Best-Orthodox was virtually

682 The orthodox claimed to garner support amongst the “great middle class of Parsis,” rather than the Parsi “aristocracy.” [Patel, “A Character Sketch of the Late Mr. Jehangir Vimadalal,” 135.]
683 Parsi Panchayat Case (Davar), 52.
684 “Will the Parsis take a lesson?” Hindi Punch (10 October 1915), 19-20.
685 See, for instance, “Open Incendiaryism,” Hindi Punch (12 April 1914); “An Inky Sport,” Hindi Punch (19 April 1914), 12; and untitled (on the cremation controversy), Hindi Punch (24 November 1918), 23.
686 See generally “Mr. Best-Orthodox in High Jinks,” Hindi Punch (3 May 1914), 21; “The Intruder,” Hindi Punch (10 May 1914); and Mistree and Godrej, “Style and Elegance,” 612 (ill. 9b). For dentally dubious depictions, see “Mr. Punch’s Fancy Portraits. Mr. Best-Orthodox in Excelsis,” Hindi Punch (28 July 1918), 21; and “Mr. Punch’s Fancy Portraits. The Best Orthodox Parsee-Zoroastrian in Elation,” Hindi Punch (6 December 1925), 25. Iranis were caricatured as the unsophisticated poor cousins of the Parsis. See “XIX. August 31, 1910. Western Civilization and the Parsees. From ‘Faith in Honest Doubt’” in Mr. Vimadalal and the Juddin Question, 49; and Dhalli, Autobiography, 724 and 726. For the reformist view that traditional dress was unfashionable, see socialite Shirin’s “Ladies’ Page: Social Doings,” The Parsi I: 1 (January 1905), 32; and anonymous, “IV. July 6, 1910. The Social Problems of the Parsees” in Mr. Vimadalal and the Juddin Question, 5. Both paintings and photographs of affluent Parsis showed them wearing mojris (slipper-like shoes with pointed toes) and the Parsi dagli (muslin coat fastened with ribbons and worn over loose white pantaloons) until the late nineteenth century. From about 1890 on, though, wealthy Parsi men generally wore European-style suits and shoes in formal portraits. See Rusheed R. Wadia, “Colonial Trade and Parsi Entrepreneurs,” 448 (ill. 17); Firoza Punthakey Mistree and Pheroza J. Godrej, “Style and Elegance: Parsi Costumes in the 18th and 19th Century,” 610 (ill. 6-7); Pheroza J. Godrej, “Faces from the Mists of Time: Parsi Portraits of Western India (1750-1900),” 623 (ill. 2), 625 (ill. 3), 630-1 (ill. 7a, 7c), 633 (ill. 8b), 640-5 (ill. 11-
indistinguishable in dress and even facial features from the figure of the impoverished Parsi depicted elsewhere in the same magazine (fig. 13). The orthodox were not the sole wielders of an arsenal powered by social inequality.

The fear of other communities depleting Parsi funds collided head-on with a point of pride amongst the Parsis of Bombay: the large volume of Parsi charitable donations that flowed across ethno-religious borders. The Gujarati-language almanac, Parsi Prakash, documented Parsi charitable donations providing medical care and disaster relief for people of all communities. Parsi charitable funds benefited everyone from Indians in Africa to destitute Europeans. In one of the spin-off libel cases resulting from Bella's case, Bella's adoptive father donated his winnings—500 rupees—to non-Parsi charities.

Hindi Punch gently mocked the cosmopolitan theme. In one 1914 frame, a swarm of bees with human heads hovered around a sack of gold coins, representing the Parsi N. M. Wadia Charity Trust Fund (fig. 14). The caption commented that Parsi, Christian, Hindu and Muslim communities alike—the bees—were anxious to take advantage of the N. M. Wadia Charity Trust Fund. The managers of the fund were to be congratulated for distributing over 300,000

---

688 John R. Hinnells, "Flowering of Zoroastrian Benevolence," 235-6; and his "War and Medicine," 280-4. On Parsi aid to destitute Europeans as early as 1749, see Paymaster, 57.
689 Sapurji gave half to the Leper Asylum and half to the Bishop Bigandet Memorial Fund, both presumably in Rangoon. ["Parsi Defamation Suit. The Jam-e Jamshed Article. Mr. Nariman’s Apology," Rangoon Times (6 June 1914), 13.]
rupees to “the deserving objects of all communities, in accordance with the cosmopolitan objects of all communities.”

Six years earlier in 1908, Dinshaw Davar had been featured in the “Mr. Punch’s Fancy Portraits” series (fig. 15). He asked the Parsis to “turn Hindu” in the matter of charity. Alluding to the open-hearted generosity of the Parsi community, he opined: “Yes, my [brethren], no more of Cosmopolitan Charity, which has brought world-wide renown and fame for the Parsee name! Only sectarian charity, in your own narrow circle, like your brother, the shrewd Hindu!”

Hindi Punch was referring to Davar’s stress upon the duty of wealthy Parsis to help their own poor. Davar felt the Parsi poor were being neglected by wealthy Parsis’ cosmopolitan donations.

But if so many funds were already open to non-Parsis, why such concern over the financial consequences of outsider admission? The answer was that an equal or larger amount of funds was probably reserved for Parsis alone. An extensive colonial network of charities for Parsi beneficiaries spanned medical, housing, and educational sectors, and provided generous poor relief for elderly, destitute, ill, orphaned and widowed Parsis. Efforts to help the Parsis’ underprivileged co-religionists in Persia took the form of financial and diplomatic

---

690 “Hovering over the Honeycomb,” Hindi Punch (10 May 1914), 23.
691 “Mr. Punch’s Fancy Portraits. Mr. Justice Dinshaw D. Davar,” Hindi Punch (7 June 1908), 12.
693 John R. Hinnells, “Flowering of Zoroastrian Benevolence,” 209-32, 236-40; and his “War and Medicine,” 277-88. As Davar noted in 1908: “[t]he funds of 50 odd lacs of rupees, richly endowed Institutions for poor Parsis, comfortable homes for the blind and infirm, Dispensaries, Sanitariums, Convalescent homes, would attract many thousands of the most objectionable people.” Fifty lacs meant five million rupees. [Parsi Panchayat Case (Davar), 52.]
aid.694 The tradition was an old one. As early as the seventeenth century, European travellers noted that there were no beggars amongst the Parsis because of their community cohesion and mutual support.695 But the fear of outside influence may also have found its roots in something deeper and more visceral than trust fund figures.

Orthodox Angst over “mercenary” conversion came at a very particular time.696 The early twentieth century was a period of heavy traffic between religious affiliations in South Asia.697 Religio-communal choice and mobility was exercised in great numbers by lower caste Hindus, dalits (pejoratively called untouchables) and tribal peoples.698 Scholars like Yoginder Sikand have pinned the beginnings of mass communal strife to this period, attributing its rise to the sudden competition among religious movements and the sharpening of lines

695 Paymaster, 49-50.
696 The phrase is Sanjana’s. [“Plaintiff’s Evidence. No. 11: D. P. Sanjana” (8 March 1916) in Saklat v Bella, 235 (PCOR).]
697 Even Europeans took part. The period records European conversion to Hinduism, Jainism and Islam, and large European followings of syncretic movements like Theosophy that adopted tenets from Hindu and Buddhist traditions and were overtly hostile to organized Christianity. On European converts to Hindu traditions, see Swami Agehananda Bharati, The Ochre Robe (Santa Barbara, California: Ross-Erikson Publishers, 1980); John Campbell Oman, The Mystics, Ascetics, and Saints of India (London: T. Fisher Unwin, 1905), 222-3; Sister Nivedita, Myths and Legends: Hindus and Buddhists (London: Senate, 1994); and Sukanya Rahman, Dancing in the Family: An Unconventional Memoir of Three Women (New Delhi: Harper Collins, 2001). On European conversion to Jainism, see Herbert Warren, Jainism in Western Garb, as a Solution to Life’s Great Problems (Bombay: Shree Vallabhsuri Smarak Nidhi Publications, 1968; originally published 1912), xi-xvi. In Britain, a Muslim group based at Woking Mosque and publishing the Islamic Review attracted European converts to the Ahmadi brand of Islam, a movement considered dubious or even heretical by most Sunni Muslims. Converts included Marmaduke Pickthall, Al-Haj Lord Headley al-Farooq, and William H. Quilliam. See Friedmann, 183; and The Islamic Review for this period. (Many thanks to Will Hanley for his guidance on this topic.) On theosophy, see Edward C. Moulton, “The Beginnings of the Theosophical Movement in India, 1879-1885: Conversion and Non-Conversion Experiences,” 109-72 in Oddie, Religious Conversion Movements; and Viswanathan, Outside the Fold, 177-208.
between religious tags. Lower and non-caste Indians suddenly found they had a choice—whether to stay or to go. Many opted for Protestantism, although the anticipated benefits of new respect from European and socio-economic amelioration did not always follow. Others converted to Sikhism and to Islam. Years later, millions opted for Buddhism. Reformed religious bodies generally tried hard to win disenchanted members back, reformist Hindu and Muslim groups peddling a sanitized version of their respective religions to draw lapsed members back to their religion of birth. Parsis stood aloof from this

---

699 The spark was the Arya Samaj’s proselytizing shuddhi or purification movement. Islamic and Hindu missionary bodies sprang into action in response. [Yoginder Sikand, “Arya Shuddhi and Muslim Tabligh: Muslim Reactions to Arya Samaj Proselytization (1923-30)” in Rowena Robinson and Sathianathan Clarke, ed. Religious Conversion in India: Modes, Motivations and Meanings (Delhi: Oxford University Press, 2003), 98-9.]


703 The inspiration was the dalit leader, B. R. Ambedkar, who became a Buddhist at the end of his life in 1956 as a rejection of the Hindu caste system. See Omvedt, Ambedkar, 56-72; Gary Tartakov, “B. R. Ambedkar and the Navayana Diksha,” 193 in Robinson and Clarke; Jaffrelot, Dr. Ambedkar, 136-41. For a description of Ambedkar’s conversion and of the twenty-two oaths he took (of which numbers 1-6, 8 and 19 explicitly rejected Hinduism), see Jaffrelot, Dr. Ambedkar, 133-6. Ambedkar sent his followers to investigate Sikhism, and was courted in turn by Muslims, Christians, Sikhs, and Buddhists as well as reformist Hindu bodies. [Omvedt, Ambedkar, 65-7; Tartakov, 194; Jaffrelot, Dr. Ambedkar, 123-9.] For Ambedkar’s own comparison of the relative social and material merits of Islam, Christianity and Sikhism, see Ambedkar in Jaffrelot, Dr. Ambedkar, 121-2. He was followed in his conversion by a majority of the Mahar community of dalits in Maharashtra. [Junghare, 93, 96.]

704 Khan, 45; Copley, 185, 212-3; and Sikand, 98-118.
fashionable proselytizing. Even allowing lapsed Parsis to return to the fold came on strict terms: material greed could play no part.\textsuperscript{705}

The subcontinent’s religions swirled outward, renovating their rules of practice, conventions of interpretation, and membership, and racing each other in the numbers game. At the same time, the colonial state’s obsession with quantification imbued demographic figures with seemingly magical power. With the census, begun in 1871 and repeated every ten years, came a heightened awareness of relative size—and strength—between communities.\textsuperscript{706} And with the Morley-Minto reforms of 1909, numbers translated into power through communally based electorates.\textsuperscript{707}

As the effort to increase numbers gripped other communities, just the opposite occurred in Parsi circles.\textsuperscript{708} Parsis were keenly aware of their numerical insignificance—they were little more than 100,000 in a subcontinent of nearly 300 million.\textsuperscript{709} Low rates of marriage and reproduction; travel, emigration and intermarriage; and conversion to other religions only made the situation more dire.\textsuperscript{710} Orthodox Zoroastrians like Vimadalal tried to clamp down, tightening

\textsuperscript{705} On a Parsi priest and his wife who converted to Islam but then wanted to return to the Zoroastrian fold, see “Plaintiff’s Exhibit A25: Translation of Letter, K. D. Jamaspji to E. S. P. Kookana, filed before Commissioner” (28 October 1910) in \textit{Saklat v Bella}, 15 (PCOR).


\textsuperscript{707} The Morley-Minto Reforms Act of 1909 increased Indian representation in government and introduced separate electorates for Hindus and Muslims. Indian nationalists criticized this new constitutional principle, claiming that it sowed division among Indians. See Das, 228-49.

\textsuperscript{708} Dhalla, \textit{Autobiography}, 704.

\textsuperscript{709} The Indian census reports gave the following figures for the Parsi population of India at ten-year intervals: 89,887 (1891), 93,952 (1901), 100,096 (1911), 101,778 (1921), and 111,853 (1931). \textit{[Mirza, Outlines, 274.]} In 1901, the population of the Indian subcontinent was 294,361,056, of which 231,899,507 were in British India and the remainder, in the native states. \textit{[Risley and Gait, Census of India 1901, I, part 1, 13.]}

\textsuperscript{710} See generally Mirza, \textit{Outlines}, 274-80; and Dhalla, \textit{Autobiography}, 701-15. Figures for colonial rates of intermarriage are unknown, but see Writer, 106-15. At some point before 1939, the Parsi
access even as growth rates slowed.\textsuperscript{711} Reference to the scholar Friedrich Max Müller’s prediction of Parsi extinction appeared in heated exchanges between Vimadalal and anonymous reformists.\textsuperscript{712} As the patrilineal model of identity shifted into a racial one, orthodox Parsis felt it was racial “quality”—or ethnic purity—not quantity that mattered.\textsuperscript{713}

There were other communities that had similarly evolved from religious into ethnic bodies, gradually restricting access to membership by birth. But even amongst Jains, Sikhs and Jews, the door was left slightly ajar. Spouses and outsiders with a genuine commitment to these faiths could squeeze in through this crack.\textsuperscript{714} In 1903-4, the Parsi Panchayat’s sub-committee of experts considering conversion to Zoroastrianism had been open to this approach. They placed the bar high, recommending a series of requirements that would filter out

\begin{footnotesize}
\textsuperscript{711} J. J. Vimadalal, “Draft Speech of Memorial presented to Montagu (undated [post-1911]),” 5-11 in Papers of Sir Homi P. Mody (NMML). On falling rates of population growth, see Desai, 63 and 71.

\textsuperscript{712} “VIII. July 13, 1910. Is Zoroastrianism Evangelical? Reply to Mr. Vimadalal from ‘Shade of Zoroaster’” in Mr. Vimadalal and the Juddin Question, 17.

\textsuperscript{713} Vimadalal, \textit{Racial Intermarriages}, 5-6.

\end{footnotesize}
all but the most dedicated of aspiring converts. Davar dismissed Mrs. Tata’s claim to convert on the basis that she had not undergone all the ceremonies required by the report. But he also avoided endorsing the report generally, again stopping short of taking a definite stance on conversion.716

Parsis had considered leaving the door open just a sliver at another moment, too. Rumor had it that two American men had been invested with the holy shirt and thread in the United States. The priestly witnesses Modi and Sanjana had both been initially willing to consider their admission, given the force of the men’s conviction. Sanjana had even approached Professor A. V. Williams Jackson, another American and scholar of Zoroastrianism, proposing conversion. Jackson declined, wanting to remain Christian. Midway through *Petit v Jijibhai* (for Modi) and *Saklat v Bella* (for Sanjana), the priests were swayed by dominant orthodox opinion that considered it dangerous to use “conviction” as a test. Even if the two Americans had converted, they could never be part of the Zoroastrian community, Modi told the court. In the words of one Parsi witness before the Chief Court of Lower Burma, the convert would be “a fish out of water.” The sentiment of the community would be “dead against him,” such that his position would be intolerable: “the spiritual food for which he entered the fold would be denied to him.”717 By the late spring of 1916, orthodox Parsis had slammed the door to outsiders, and bolted it shut.

716 Parsi Panchayat Case (Davar), 55-7.
717 “Plaintiff’s Evidence. No. 23: Evidence of Dhunjishaw B. Desai. In the Chief Court of Lower Burma. 20 February 1918” (20 February 1918) in *Saklat v Bella*, 402 (PCOR).
The numbers game had other consequences for Parsis. Along with the sinking feeling that came from recognizing just how small their community was, there came a rising anxiety in certain Parsi circles over the possibility of Indian independence. This is not to suggest that the Parsi community was generally opposed. Key revolutionaries and supporters of the nationalist movement were Parsi. Madame Bхikaji Cama, Shapurji Saklatvala, and Khurshed Framji Nariman (“Veer Nariman”) were leading Parsi extremists, part of the wider network of largely exiled Indians plotting the violent overthrow of British rule in India.718

Dadabhai Naoroji, Pherozeshah Mehta and D. E. Wacha helped lead the more constitutional push for independence, particularly in the early period of nationalist organization from 1885 to 1915.719 “Economic nationalists” like the Tata, Godrej and Wadia families led the industrial development of India in pursuance of the swadeshi belief in “self-respect though self-reliance.”720 Parsis who supported

---


720 Doctor, 504-7. On the Parsi-Gandhian divide over industrialization and prohibition, see Palsetia, 309. On the Parsi “pioneer of the swadeshi hosiery industry” (Kaikobad N. Katrak), see Darukhanawala, Parsi Lustre, 483.
independence linked themselves more closely to Indians than to the British. As a leader of the early nationalist movement, Dadabhai Naoroji declared himself Indian first and Parsi second.\textsuperscript{721}

But another strain saw things the opposite way around, fearing for the Parsis—a mere drop in the sea of India’s “teeming millions”—if the British left.\textsuperscript{722} This unease prompted some to propose the creation of a Parsi colony in east Africa, where an offer of land for the creation of a Jewish “homeland” had been declined, or in Sind, which had the advantage of getting as close to Persia as possible. Others urged mandatory military training for Parsi youths.\textsuperscript{723} Their approach to the problem of small size saw fortification or migration as a better solution than numerical inflation—and financial depletion—through the admission of outsiders.

**Conversion:**

**The Social Argument**

What of the aspiring converts themselves? How did they understand their attempted conversions? Unfortunately, nobody knows. People wanting to convert to Zoroastrianism left no conversion accounts, unlike those leaving the religion, particularly for Christianity.\textsuperscript{724} The absence of this type of source is not as

\textsuperscript{721} See Hinnells, *Zoroastrians in Britain*, 158.
\textsuperscript{722} Patel, “A Character Sketch of the late Mr. Jehangir Vimadalal” in *Vimadalal Memorial Volume*, 139. On Parsi loyalty to British rule, see J. J. Vimadalal, “Draft Speech of Memorial presented to Montagu” (undated [post-1911]), 5-7 in Papers of Sir Homi P. Mody (NMML).
\textsuperscript{723} See text accompanying note 1225-30 (below).
\textsuperscript{724} Colonial conversion accounts by Parsis converting to Christianity include the following: Dhanjibhai Naoroji, *From Zoroaster to Christ: An Autobiographical Sketch of the Rev. Dhanjibhai Naoroji the First Modern Convert to Christianity from the Zoroastrian Religion* (Edinburgh: Oliphant, Anderson and Ferrier, 1909); the unpublished autobiographies of the Christian convert
surprising as it might seem. The conversion account was a distinctly Christian literary genre, particularly given the spiritual “exhibitionism” of so many evangelical conversion narratives and the “lightening-bolt” Pauline model of conversion. \textsuperscript{725} Official conversion accounts were tailored by a narrow band of missionary managers for a specific audience, whether a population that was already converted or one that was being targeted for conversion. \textsuperscript{726} The contrast with aspiring Zoroastrian converts, for whom there was a marked absence of expressed interiority, is striking.

Court records provide no relief either. The three best known aspiring “converts”—the French Mrs. Tata and the Rajput woman in \textit{Petit v Jijibhai}, along with Bella—all had their cases fought openly in court. One would imagine that given the need to testify, it would be impossible for conversion accounts not to have been created by the three women. But in \textit{Petit v Jijibhai}, neither Mrs. Tata nor the Rajput woman was called as a witness. In fact, to the amazement of the judges, they were not even parties to the suit. \textsuperscript{727} This absence fueled an ongoing

---

\textsuperscript{725} On the discomfort felt by Indian Christian converts toward evangelical “exhibitionism” (as opposed to Catholic sacramentalism), see Copley, 256. On the “Pauline paradigm” of conversion, see Torkel Brekke, “Conversion to Buddhism?” in Robinson and Clarke, 182. On the effect of conversion (to Christianity) upon marital status, see Nandini Chatterjee, \textit{Christian Personal Law in India: the modern origins of yet another tradition} Cambridge Centre of South Asian Studies, Occasional Paper No. 4, 2004; and (to various religions), G. M. Tripathi, “Conflict of Laws between Converts and Non-Converts in India,” \textit{Bombay LR} (journal section) 5 (January 1903), 8-17, and 5 (February 1903), 25-46; and Vesey Fitzgerald, 62-4.

\textsuperscript{726} Powell, 44-5.

\textsuperscript{727} \textit{Parsi Panchayat Case (Davar)}, 4, 31-5; and \textit{Parsi Panchayat Case (Beaman)}, ii-v.
debate on whether *Petit* had any legal authority on conversion, or if the judges’ comments were simply *obiter dicta*, having no significance for future cases.728

The gender element to these cases is complex. Had a non-Parsi man married a Parsi woman and tried to convert, his chances of succeeding in court would have been so small given Parsi customary practice that it is unlikely that litigation would have been attempted in the first place. Parsi women who married non-Parsi men were deemed to have left the community themselves, and mixed children of Parsi maternity could not be initiated into the religion, even “through the back door” by paying unscrupulous priests.729 Had a male convert appeared in a non-marital context, though, one imagines he would have been a party and witness in his own case. Bomanji Ardeshir Wadia, the Parsi who converted to Judaism, was both. His testimony offered a detailed description of his reasons for conversion.730

At least Bella was a party to her own case. She was not, however, one of the 32 witnesses to appear on the stand.731 The rough and hostile tone of the litigation may have made Bella’s family want to shield her, as a minor, from the trauma of testifying.732 It was bad enough that when the two sides bumped into

---

728 See text preceding note 455 (above).
730 See “Appendix C: Testimony of B. A. Wadia in Ghandy v Wadia (1903).”
731 21 witnesses appeared for the plaintiffs, of which 14 were examined in Bombay and seven in Rangoon. Eleven witnesses appeared for the defence—seven in Bombay and four in Rangoon. See “Appendix D: Witnesses in Saklat v Bella (1914-25).”
732 Bella’s adoptive father Shapurji was her guardian ad litem in *Saklat v Bella*. In English and Indian law, ad *literum* guardians were appointed to represent infants, lunatics or idiots when these parties were respondents or defendants. When minors or the mentally unsound initiated litigation, their representative would be called a “next friend.” In the absence of an ad *literum* guardian, plaintiffs could have a solicitor appointed. Married women could be neither ad *literum* guardians nor
each other in Rangoon, the interaction ended in shouting. Cross-examination in Bombay and Rangoon was aggressive, as was the media coverage. In four instances, press comments landed Bombay editors in court for libel in Rangoon, a story left for chapter 6. One Bombay paper also commented unkindly upon Bella’s physical appearance, a fact Bella’s lawyer described as “irrelevant, untrue and offensive and made with the intention of throwing ridicule upon her, and lowering her in the estimation of others, and for the purpose of injuring [her] feelings.” The Rangoon newspaper that reported the story was careful not to repeat the alleged libel, but the charge was implied: Bella was too dark to be ethnically Parsi.

The fact that Bella, Mrs. Tata, and the Rajput woman did not testify in their own cases was almost certainly due to their gender. Not a single one of the 32 witnesses in Bella’s case was female. Only one of the 29 witnesses in Petit v Jijibhai was female—a woman named Soonabai, alleged to be the adopted daughter of a Parsi hospital worker named Mr. Vakil. It may have been that women were not seen to be fully credible or reliable as witnesses. But testifying also could have been discouraged by colonial notions of feminine propriety. Was it improper for a woman to appear in court? For centuries, the practice of elite Hindu and Muslim women of living in seclusion or purdah had put courts in a next friends. [W. J. Byrne, A Dictionary of English Law (London: Sweet and Maxwell, 1923), 432, 607.]

733 “Defendant’s Evidence. No. 36: Deposition of Bomanji Cowasji. In the Chief Court of Lower Burma” (28 February 1918) in Saklat v Bella, 715 (PCOR).
734 “Parsis at Law. Alleged Defamatory Article. Charge against Mr. G. K. Nariman. The Recent Navjote Ceremony,” WRTOS (2 May 1914), 41.
735 “Parsis at Law,” 41.
736 The plaintiffs called 19 witnesses, while the defendants called ten. [Beaman's Notes (BHC).]
quandary when evidence was required from them. But Parsi women were symbols of progress and enlightenment, enjoying greater education and freedom, and earlier on, than most other Indian women. In 1916, the first female lawyers had not yet succeeded in breaking into the Bombay legal profession. The Parsi advocate P. B. Vachha likened the first female lawyer in Bombay, who arrived on the scene in 1923, to “a solitary sun-beam straying into a sick chamber” of legal maleness. Most women lawyers, though, “like summer roses, faded away after a season.” If they did not always capture “a fat brief,” they did at least catch the occasional “lean but learned lawyer.” Female lawyers were a rarity, and were

737 An exchange between lawyers in a Privy Council appeal of 1903 reflected this problem. The appellant’s female relatives had been subpoenaed to give testimony in court. Their solicitor, a Parsi named P. W. Plesder, replied testily to the respondents’ solicitors, “[y]our clients and her associates are fully aware that ladies of our client’s family which belong to the Cutchee Memon community are Purda ladies and do not attend the Court. These ladies moreover know nothing about the matters and it is more to annoy them rather than to take their evidence that the subpoenas are issued against them.” The respondents answered that in fact the ladies in question did not live in purdah, and that this was a growing practice among many respectable Cutchi Memon families. The appellants took issue with both points, but also refused the option of having a judicial commission sent to the ladies’ homes to take their testimony in private, for reason of costs. The correspondence ended with the respondents returning to the original plan of having the women subpoenaed. [Letters of 22-28 February 1900 between Messrs Bicknell Merwanji and Motilal (solicitors for respondents) and P. W. Pleader for Messrs Thakurdas Dharamsi Cama and Hormasjee (solicitors for appellants), Defendants’ Exhibits, No. 47, Exhibit No. 1, 107-11 in Haji Saboo Sidick and other v Ayeshabai and another 1903: vol. 5, judgment no. 24 (PCOR). See generally Cornelia Sorabji, The Purdahnashin (Calcutta: Thacker, Spink and Co., 1917); and s. 132 (1) of the Code of Civil Procedure in Agarwala, 292.

738 See note 992 (below).

739 See Vachha, 120-3; and Mistry, High Court, 43-5. On Cornelia Sorabji, the first woman to complete the Bachelor of Civil Law degree at Oxford and the daughter of a Parsi convert to Christianity, see Mary Jane Mossman, “Cornelia Sorabji: A ‘Woman in Law’ in India in the 1890s,” Canadian Journal of Women and the Law (2004) 16:1, 54-85. Sorabji was denied the right to practice on the basis of her sex, but was eventually permitted to practice as a vakil in the Allahabad High Court in 1921. On Parsi barrister Mithan Tata, the first woman admitted to the Bombay High Court as an advocate in 1924, see Vachha, 120-3; Mithan Tata, “Women and the Law” in Evelyn Clara Gedge, ed. Women in Modern India (Westport, Conn.: Hyperion, 1976), 124-32; and Bom LJ 1: 2 (April 1924), photo facing first page. Miss Tata appeared as junior counsel for Parsi respondents in R. G. Lakhmidas and Co. v Sir D. J. Tata and others ILR 51 Bom (1927) 247-58. On another of the earliest female advocates in Bombay, Bhicoo S. Bhatilivala (also Parsi), see Darukhanawala, Parsi Lustre, 241. On the earliest female lawyers across the empire, see Mossman, “Cornelia Sorabji,” 55 at note 4 (on Ethel Benjimin in New Zealand) and 69 at note 65 (on Eliza Orme in England and Clara Brett Martin in Canada); and Chanock, Making of South African Legal Culture, 225-6 (on Sonja Schlesin in South Africa).
given “a chilly reception.” The two Parsi identity cases suggest that female witnesses and parties were, too.

Lata Mani has suggested that women were mere sites, rather than participants or even objects of real concern, for debates over reform between competing male factions. The point has resounded across multiple contexts, and can be made here, too. Davar made a similar point when he rebuked the plaintiffs in Petit v Jijibhai for leaving the women out. The women could subsequently come to court and demand an entirely new trial, as they had not had a chance to represent themselves in the earlier case to which they had not even been parties. The French and Rajput women in 1908, like Bella in 1916, appeared indeed to have been convenient loci for the male struggle over reform.

---

740 Vachha, 120-2.
743 The French and Rajput women in 1908, like Bella in 1916, appeared indeed to have been convenient loci for the male struggle over reform.
explored in chapter 2. Unfortunately, the secondary literature on Parsi history mirrors the primary one: there is a distinct paucity of research on Parsi women’s history.744

Silent as they may have been, the entirety of aspiring converts described in the Bombay testimony emerge as three groups linked to Parsi men or their households: (1) wives and mistresses, (2) children, and (3) servants or slaves. Attempted conversion seems to have been bound up with the bonds of intimacy, kinship, and household. The larger literature on conversion in colonial South Asia is strikingly silent on the Zoroastrian context.745 It is divided between those who view conversion as motivated by belief and those who give primacy to other incentives, particularly economic and civil benefits.746 Only Peter Hardy, writing

744 Aside from some work on intermarriage as a source of community controversy, the only work devoted exclusively to women in Parsi history seems to be Jennifer Rose, “The Traditional Role of Women in the Iranian and Indian (Parsi) Zoroastrian Communities from the Nineteenth to the Twentieth Centuries,” *Journal of the K. R. Cama Oriental Institute* 56 (1989), 1-103. Kulke, Hinnells and Palsetia also discuss nineteenth-century reform movements and female education. [Kulke, 104-8; Hinnells, “Parsis and British Education, 1820-1880,” 158-61 in Hinnells, *Zoroastrian and Parsi Studies*; Palsetia, 140-52.]

745 None of the recent anthologies on conversion in colonial South Asia note discussions of conversion to Zoroastrianism even in passing. See, for instance, Peter van der Veer, ed. *Conversion to Modernities: The Globalization of Christianity* (New York: Routledge, 1996); Oddie, *Religious Conversion Movements*; and Robinson and Clarke. Nor does Gauri Viswanathan do so in her book, *Outside the Fold: Conversion, Modernity, and Belief*. Unfortunately, the single reference to Zoroastrianism in Viswanathan’s book is factually incorrect. She claims that Hindu law was applied to Zoroastrians by the colonial courts. [Viswanathan, *Outside the Fold*, 78.] This was never so. Except in areas covered by the Parsi Acts of 1865, English law applied to Parsis generally: *Naoroji v Rogers* 4 Bom HCR (1866-7) 1-118.

on conversion to Islam in Bengal, has drawn attention to social reasons for conversion.\textsuperscript{747} Reformist testimony in the Bombay commission inserts the Parsis into this larger discussion by reinforcing Hardy’s focus on the social.\textsuperscript{748}

Interfaith intimacy has received surprisingly little attention in the scholarly literature on conversion.\textsuperscript{749} In Suzanne Brière’s case, conversion preceded marriage, and was in fact a ritual necessity if the marriage ceremony was to be a Zoroastrian one.\textsuperscript{750} The \textit{Times of India}’s account of her initiation described a young woman eager to join her husband’s community, having requested admission of her own accord. She was required to recite the morning and evening prayers, but Mrs. Tata had “not only learnt to recite them by rote, but also to understand the meaning of these and other religious texts necessary for the purpose.” About fifty priests participated in the ceremony, and the guests includes the Parsi registrar of the High Court, R. D. Sethna, at whose plush Malabar Hill home the ceremony was held.\textsuperscript{751} The Chief Justice of Bombay, Sir Lawrence Jenkins attended, as did the Parsi conservative Member of Parliament in Britain, Sir M. M. Bhownaggree; Dastur Hoshang Jamasp, High Priest of the

\begin{flushright}
Sathianathan Clarke, “Conversion to Christianity in Tamil Nadu: Conscious and Constitutive Community Mobilization towards a Different Symbolic World Vision,” 323-50; Downs, 381-400; and Webster.
\textsuperscript{747} Peter Hardy, \textit{The Muslims of British India} (London: Cambridge University Press, 1972), 8.
\textsuperscript{748} Hardy, 8.
\textsuperscript{749} The work of Gauri Viswanathan is an exception. See Viswanathan, \textit{Outside the Fold}, 153-76. In a very different historical context, see also Tamer el-Leithy, “Coptic Culture and Conversion in Medieval Cairo, 1294-1524 AD” (PhD dissertation, Princeton University, 2005), 1-33, 258-60.
\textsuperscript{750} For her own description of the initiation ceremony emphasizing the last-minute nature of the arrangements, see Sooni Tata’s letters to her mother (1903), 246-74 and 276-305 in file 96 of J. R. D. Tata Papers (TCA).
\textsuperscript{751} According to the future Chief Justice of Bombay, Sir Norman Macleod, R. D. Sethna was the favourite of the Chief Justice, Lawrence Jenkins (1899-1908). Macleod described Sethna as a manipulative figure who used his privileged position to frame Macleod’s assistant, Shantaram, on false charges of corruption. [Norman Macleod, “Reminiscences from 1894 to 1914,” HRA/D63/A5, 61-79 in Macleod of Cadboll Papers (HCA).]
Deccan; the grandfather of Indian industrialization and Suzanne Brière's uncle-in-law, J. N. Tata, and other scions of leading Parsi "merchant prince" families.\textsuperscript{752}

Community was indeed central to the conversion of Suzanne Brière. Her letters to French friends several years into married life (and just a few months before litigation began) were suffused with an aura of happiness and a sense of belonging in her new social world.\textsuperscript{753} She wrote that

\begin{quote}
[a]ll of the sweet Parsi ladies that I see here are for the rest charming and I could almost say that I am the object of their kindness, they are all so affable and nice. One of them said to me a week ago, complimenting me on a new sari and [given] a myriad tiny things that women know so well how to see and that I try to multiply here to prove that a French woman and Parisian can always find a place for herself, she then said to me: ‘Oh Soonaï! You are our star!’ That was nice, wasn’t it, and perhaps few of my Parisian sisters would give me the same compliment. The tone was so sincere and the look so frank that I even felt that everything that comes from my Parsi sisters moves me when I sense their sincerity.\textsuperscript{754}
\end{quote}


\textsuperscript{753} The plaint in \textit{Petit v Jijibhai} was admitted on 17 November 1906. [Plaint in \textit{Petit v Jijibhai} (BHC)].

\textsuperscript{754} “Toutes les douces Parsies que je vois ici sont du reste charmantes pour moi et je pourrais presque dire que je suis leur [bienfaisance] toutes elles toutes affables et gentilles. L’une d’elles me disait, il y a de cela une semaine, pour me complimenter sur une sari nouvelle et [vue] une myriade de petits riens que les femmes savent si bien voir et que je m[évertue] ici a multiplier pour prouver qu’une Francaise et Parisienne [s’est] toujours eu quelqu’endroit qu’elle se trouve, elle me disait donc: Oh Soonaï! Your [sic] are our star!” C’était gentil n’est ce pas et peut être peu de mes soeurs de Paris me feraient ce meme compliment. Le ton était si sincere et le regard si franc que je me suis senti meme comme tout ce qui vient de mes soeurs Parsies m’émeut quand
Mrs. Tata may not have been the first mate of a Zoroastrian to believe she had converted.

Some concubines of Parsi men thought they had converted, too. The “poor old Rajput woman” in Petit fell into this category. She remained an even more shadowy presence throughout the suit than the French Mrs. Tata, due no doubt to her status and race. Neither the judgment nor the case papers give her name. What is noted is that she was the mistress of a Parsi man, and “in a much humbler sphere of life” than Mrs. Tata. Having borne her Parsi partner several children and nearing the end of her life, she expressed the desire to become Zoroastrian. A willing priest was found, and she was allegedly invested with the sacred shirt and thread.

From at least the 1830s, if not before, there are records of similar cases of interfaith concubinage. The most noted pattern was the practice among some “Parvara Houses” of the Gujarati mofussil where Parsi men would take lower caste dubra women as their servants and mistresses. Dastur Dhalla was asked to perform the initiations of fourteen children born to Parsi men and their

je sens leur sincérité.” [Letter from Soonaï Tata (née Suzanne Brière) to Delphine Ménant (Bombay, 13 July 1906), 3-6 in Correspondence, Papers of Delphine Ménant (MG).]

756 According to Davar, “really speaking the fight was on behalf of the French wife of the 6th Plaintiff: the other lady we heard very little of and was merely mentioned incidentally.” [Parsi Panchayat Case (Davar), 5.]
757 Parsi Panchayat Case (Davar), 5.
758 Parsi Panchayat Case (Davar), 38. Davar noted carefully that the practice was not “common,” but not unknown either. [Parsi Panchayat Case (Davar), 43.] Traditionally, female members of the dubra (or dubla) caste were domestic servants. Men were agrarian labourers. See R. E. Enthoven, Tribes and Castes of Bombay (Bombay: Government of Bombay, 1920), I, 341-7; and P. G. Shah, The Dublas of Gujarat (Delhi: Bharatiya Adimjati Sevak Singh, 1958), 1-10, 63-84.
non-Parsi mistresses in Bombay, Karachi, Lahore, Rangoon, and Sukker.\textsuperscript{759} The records also hint at patron-concubine relationships with women of African extraction in Madagascar and with South-East Asian and Chinese women in Burma and Penang.\textsuperscript{760} What made these women different from the Rajput woman was that they typically made themselves invisible, not attempting to gain public access to the ethno-religious world of their Parsi partners.

It was a different story when it came to the offspring of these unions. The Parsi fathers of these children frequently tried to “smuggle” their children into the Parsi Zoroastrian community.\textsuperscript{761} The practice, detailed by Davar in his 1908 judgment, maintained a patina of shamefulness, but was grudgingly tolerated by many Parsis in the Gujarati countryside, particularly in an earlier age before the Parsis “progressed in education, wealth and civilization.”\textsuperscript{762} The Mazagon “converts,” nine adults initiated into the religion in 1882, were the children of Parsi fathers and non-Parsi mothers.\textsuperscript{763} So were a number of mistress-born children initiated into the faith without the permission of the Parsi Panchayat in the early nineteenth century. The fathers and priests responsible were

\textsuperscript{759} Dhalla, Autobiography, 387.
\textsuperscript{760} The mother of Dinbai Todyvala was part-African. As she never married Dinbai’s father, it is probably fair to assume that she was his concubine while he was in Madagascar. [“Testimony of Jamshedji Dadabhai [Khajotia],” 27 in Dinbai v Erachshaw D. Todyvala Suit No. 3 of 1916, in Judgment Notebook of the Parsi Chief Matrimonial Court (3-4-1916 to 24-3-1920) (BHC).] The concubine of Kharshedji Merwanji Morina was from Penang, and was probably Chinese, Malay or Burmese [“Plaintiff’s Exhibit F: Copy of Resolution Numbers 8 and 9 out of the resolution passed on 28 June 1836, File No. 12, filed before the Commissioner (translation)” (9 February 1916) in Saklat v Bella, 105 (PCOR)]. Dhalla also refers to the “yellow-skinned Chinese mistresses” of Parsi men. [Dhalla, Autobiography, 711.]
\textsuperscript{761} The phrase was Davar’s. [Parsi Panchayat Case (Davar), 38.]
\textsuperscript{762} Parsi Panchayat Case (Davar), 38.
\textsuperscript{763} See text accompanying notes 975-9 (below).
excommunicated by the panchayat for performing the initiations contrary to panchayat orders.764

Admission was also sought for children adopted by Parsis and raised as Zoroastrians. These cases blur into the previous one because in many cases, adoption of an apparently unrelated child was a convenient euphemism used to cover one’s tracks when a child was conceived through extra-marital relations, typically with a non-Parsi woman. The story of the benevolent Parsi adopter became a familiar trope, providing the mortar that held together dissonant worlds of ethnically exclusive respectability and intercommunal practice.

Two cases explored in the 1908 litigation left imprints into which Bella’s case could comfortably slide eight years later. Davar used the stories of two women named Soonabai and Jivi to develop a simple test: where a Parsi man adopted or exhibited unusual generosity toward an apparently unrelated non-Parsi child and tried to initiate the child into the religion, paternity could be inferred.765 Both examples involved informal adoption, by which I mean some combination of financial support, cohabitation, and the assumption of a parental role from childhood. As explained in chapter 1, Zoroastrianism did not permit formal adoption, with the result that informal adoption was the only option. Bella’s adoptive father brought unusual formality to the situation when he had the Burmese “ear-boring” ceremony performed upon Bella when she was about ten. The ritual consisted of a ceremonial piercing of the ears, along with a celebratory feast. According to Burmese custom, the ceremony publicized the adoption of a

764 “Plaintiff’s Exhibit F: Copy of Resolutions No. 8 and 9 out of the resolution passed on 28 June 1836. File No. 12 filed before Commissioner (translation)” in *Saklat v Bella*, 105 (PCOR).

765 See *Parsi Panchayat Case (Davar)*, 38-43.
Davar’s test was notably well aligned with Zoroastrian religious obligations. The scholar-priest J. J. Modi noted that although committing adultery was heinous, the man who did it was required to “bring up his illegitimate children along with his legitimate children.”

Davar’s first case was Soonabai, a 25-year-old woman who gave testimony in Petit. The man who had taken her into his home and raised her was the Parsi, Dhanjishah Motabhoy Vakil, also a witness in Petit. Vakil was a hospital assistant of humble means in the service of the Nawab of Cambay. He claimed to have found Soonabai at the hospital in their native state of Junagadh after her own father had died there. She was three or four years old. Her natural father was a wandering Hindu mendicant, according to Vakil. He had apparently arrived at the hospital with a fever and cough, telling Vakil that Soonabai’s mother had died on the way to Junagadh. The man died in hospital, and the hospital peon reported that there was no one to take care of the child Soonabai. Vakil gave orders for her to be given over to some Hindu who would be willing to take her in. Davar found it astounding that in a city like Junagadh, “none could be found.” Vakil took pity on her and brought her home with him. Davar was unconvinced:

This charitable gentleman undertakes the burden of taking over the child of a wandering Hindu Bawa, because no Hindu was found who would either take her or put her in some charitable Hindu Institution. His salary is now Rs. 140. Twenty odd years ago, it was possibly smaller. He is burdened with a family of his own, but that does not deter him. He not only takes this little parentless Hindu waif, but he suddenly develops a wealth of affection for the

---

766 “Defendant’s Evidence. No. 34: Deposition of Shapurji Cowasji, the second defendant. In the Chief Court of Lower Burma. Cross-examined by Mr. Connell” (27 February 1918) in *Saklat v Bella*, 709 (PCOR). See also note 108 (above).

child. He admits treating her as his own daughter. He brings her up with his own children, dresses her as his own children, teaches her Gujarati and the prayers of his own religion, and gets her to be admitted into the Zoroastrian faith by having her Navjote ceremony performed with that of his own children. The child is given a Parsi name and is trained to address him with the affectionate appellation of bawaji (father). 768

Vakil even found a suitable Parsi husband for Soonabai—from a parvara family where Parsi patron and Hindu servant mistresses (or the descendants thereof) presumably had offspring of their own to marry off. He arranged and paid for Soonabai’s wedding and dowry, and saw her settled in Surat. He claimed the priests at her initiation and marriage knew of her origins and that they voiced no objection. 769

Vakil’s conduct toward Soonabai suggested that she was more to him than he wanted to admit. “It is most difficult to believe that a Parsi living away from his native place, in a Native State, by no means in affluent circumstances, should deliberately impose upon himself the burden of bringing up the child of a man who casually turns up in his hospital and dies,” remarked Davar drily. 770

Soonabai had a vague recollection of the place she used to live before moving into the Vakils’, which only discredited her adoptive father further. She remembered living in the vicinity of his dispensary in Junagadh. 771 Davar was convinced that Vakil had formed a liaison with Soonabai’s mother, and kept her in nearby lodgings where he could visit mother and daughter discreetly. 772

---

768 Parsi Panchayat Case (Davar), 40.
769 Beaman, “Parsi Panchayat Case Notes,” 27 (BHC).
770 Parsi Panchayat Case (Davar), 40.
771 Beaman, “Parsi Panchayat Case Notes,” 22 (BHC).
772 Parsi Panchayat Case (Davar), 40.
The second example was a lower caste *dubra* servant woman named Jivi who bore two sons while a servant in the Bhownaggree household in Surat. The witness Pestonji Framji Bhownaggree described her as his grandfather’s female servant. There was no husband in sight, and the expense of raising the two boys seems to have been generously covered by Jivi’s Parsi employer. The Bhownaggree family had purchased Jivi as a domestic servant “from the famine stricken people.”\textsuperscript{773} Originally Hindu, she was then converted to Zoroastrianism to minimize purity precautions that would need to be taken inside the Bhownaggree household. When Jivi died, her body was left on the Towers of Silence, or possibly the *chotras*, in Surat.\textsuperscript{774} Her death rites were funded by the witness’ family and were performed publicly. Significantly, her two sons were raised and supported by the household, continuing as servants of the family. One son named Rustom married Rupli, another alleged Hindu convert to Zoroastrianism. After Rupli died, Rustom married two other Parsi women consecutively. His son by the last marriage worked as a stationmaster and “passed as Parsi,” hushing up the secret of exogamy. Rustom was devout, performing morning and evening prayers and visiting fire temples.\textsuperscript{775}

Davar was convinced that Jivi was the secret concubine of Bhownaggree’s grandfather. When pushed to identify the father of Jivi’s two sons, Bhownaggree at first pleaded ignorance. Subsequently, he claimed to recall a man named Sorabji who had also been purchased and brought to the house by his grandfather. Davar’s response was caustic, and deserves reproduction in full:

\textsuperscript{773} Beaman, “Parsi Panchayat Case Notes,” 6-7 (BHC).
\textsuperscript{774} On *chotras*, see text accompanying notes 178-80 (above).
\textsuperscript{775} Beaman, “Parsi Panchayat Case Notes,” 6-7 (BHC).
Unless these persons were the progeny of either the witness’ own grandfather or some other male member of the Bhownagree family, the story told by this witness is preposterous. A man may buy a low-caste Hindu girl from famine-stricken people for domestic service, but he does not go buying a husband also for her, as this first witness wished us to believe at first. Then, again, he does not allow these purchased waifs to breed in his house and submit himself and his family to the nuisance of having Dubra infants brought up in his house. What can be the object of investing Dubra children with Sudra and Kusti, getting them married, and taking them to the Towers at the expense of the family. Surely this witness was much too intelligent to believe that his ancestors would do all these things for the children of a Dubri woman, brought as a sort of domestic slave and fed in the house in return for work done! It is to my mind quite clear that Sorabji was either an ancestor of this witness—some elderly male member of the Bhownagree family, or that Sorabji was a fictitious name given to the younger members of the family to screen the delinquencies of some male member of the witness’ family.776

Soonabai and Jivi’s cases serve as telling precedents for the hypothesis proposed in chapter 1. The generosity of Bomanji and Shapurji Cowasji Captain toward Bella was suspect in exactly the same way as was that of hospital attendant Vakil to Soonabai, and of grandfather Bhownaggree to Jivi’s two children. In all three cases, the claim of informal adoption was probably a social fiction—code for a paternal reality.777

Then there was slavery. As Indrani Chatterjee has shown, the abolition of slavery in India in 1843 was half-hearted. Well into the 1870s, courts continued to uphold the rights of masters over their slaves.778 And in contrast to the agrarian or plantation model of Atlantic slavery, slaves in India were very much part of

---

776 Parsi Panchayat Case (Davar), 37-8.
777 The association between adoption and illegitimacy existed in common law Britain, too. See generally note 122 (above).
778 Chatterjee, Gender, Slavery and Law in Colonial India, 223. The law of master and servant was so draconian that the forms of servitude that replaced slavery were often indistinguishable from it. [Michael Anderson, “India, 1858-1930: The Illusion of Free Labour” in Douglas Hay and Paul Craven, eds. Masters, Servants and Magistrates in Britain and the Empire, 1562-1955 (Chapel Hill: University of North Carolina Press, 2004), 422-54.]
their masters’ households, making the case for the slavery-to-kinship continuum proposed by Miers and Kopytoff.779 The same point was made by the priestly author and witness Sanjana, who wrote that amongst the ancient Persians, slaves were regarded as members of the family, and were occasionally admitted into the religious community, too.780 During the Bombay commission, there was heated disagreement both over the claim that some Parsi families would have converted their slaves, and that Parsis might have owned slaves at all, despite the legality of the institution at the time.781 It was claimed that, like Jivi, these slaves were converted for the sake of ritual convenience. The Zoroastrian purity laws made it difficult for a non-Zoroastrian to attend to many household duties inside an observant home.782 The practice of altering the status of domestic labor as a way of bypassing exacting purity laws was by no means unique to the Parsi community. Amongst Shia Muslims, temporary marriage between a female servant and a male member of the household was a convenient way of allowing the servant to sidestep the requirements of hijab or Islamic dress. The marriage normally remained unconsummated. It served as a formal device that allowed the

779 Chatterjee, Gender, Slavery and Law in Colonial India, 1-33. For a useful bibliography on the Miers and Kopytoff thesis, see Chatterjee, Gender, Slavery and Law in Colonial India, 26 at note 99; and Suzanne Miers and Igor Kopytoff, eds. Slavery in Africa: Historical and Anthropological Perspectives (Madison, WI: University of Wisconsin Press, 1977).
780 D. P. Sanjana, Eastern Iranian Civilization in Avesta Times (1885), 323-4 in J. C. Tarapore, ed., Collected Works of the Late Dastur Darab Peshotan Sanjana (Bombay: British India Press, 1932). Although compare with Sanjana’s later views on conversion at text preceding note 717 (above).
781 A similarly contested point was whether Parsis may have been slaves at any point, as suggested by Sir Thomas Herbert (1606-82). See Paymaster, 41-2. See also Paymaster, 79, for an account of a Gujarati Parsi named Shapur who went to Persia, where he was blinded and enslaved by a Persian Muslim, and then was purchased, adopted and brought back to India by a Parsi named Peshotan during the sixteenth rivayat mission.
servant to carry out her duties more efficiently.783 Ritual convenience was the main reason why slaves were allegedly converted. It was also claimed that masters may have sought to convert their slaves out of gratitude for their loyalty and domestic service, and out of charity.784

During the Bombay commission, the discussion of slave converts began with the rivayats. The rivayats documented early modern discussions between Indian and Persian Zoroastrians on points of religious controversy. In 1768, a Parsi from Surat named Mulla Kaus and his ten-year old son, later known as Mulla Firoz, left India for Persia seeking the advice of the Zoroastrian elders of Yazd and Kerman on a number of doctrinal issues. Until the late eighteenth century, missions of Parsis periodically traveled to Persia seeking religious advice. Questions and answers were written down and became the rivayats, a body of texts stretching from the fifteenth to eighteenth centuries.785 The Ithoter Rivayat was the last such text.786

One of the questions in this rivayat addressed the conversion of non-Parsi slaves to Zoroastrianism. In his testimony on the alleged servant Jivi, the witness Bhownaggree claimed that Parsis in Gujarat at times bought the children of famine-stricken Hindus and employed them as domestic slaves, when the

---

784 Madon, not the witness, made the suggestion. [“Plaintiff’s Evidence. No. 10: Kawasji Edulji Dadachanji. In the Court of Small Causes, Bombay. Examined by Madon” (1 March 1916) in Saklat v Bella, 201-3 (PCOR).]
785 These texts might have provided core sources for a colonial project in the formulation of Zoroastrian law. Why they did not remains a mystery, although a comment by Beaman J in Petit v Jijibhoy may offer a clue: “It is true that the Rivayats may not command much respect.” [Parsi Panchayat Case (Beaman), xviii.] See also Parsi Panchayat Case (Davar), 53; and note 361 (above).
786 Vitalone, Persian Revayat “Ithoter.”
practice was legal. But because having food prepared and water fetched by non-Zoroastrians violated Zoroastrian purity laws, Parsi masters allegedly invested their slaves with the sacred shirt and thread; taught them the Zoroastrian holy text, the Zend Avesta; and initiated them into the religion. One priestly witness in *Petit v Jijibhai* observed that “an old-fashioned Parsi will not drink water touched by a Juddin [non-Parsi], and he will not eat food cooked or prepared by him.” By the early twentieth century, this taboo had broken down in many circles.

Reformists like Madon argued that the slave conversions had been performed out of charity. Conversion implied emancipation: Zoroastrians were not meant to be held as slaves. However, the slaves in question do not seem to have been freed post-conversion. The *Ithoter Rivayat* stated that these converted slaves prepared wheat cakes for use in religious ceremonies, and took part in other religious services that required purity. Priests then consecrated the *daroons* they had prepared, and other Zoroastrians consumed the meal cooked by the converts. When the slave converts died, however, their bodies were not left on the Towers of Silence. Priests claimed that it would be unseemly to mix the bones of true-born Zoroastrians with those of the slaves, given that they were the children of outsiders. “Thus, while these people are alive they make use of

---

787 Slavery was abolished in most of the British Empire in 1833, but in India in 1843. See I. Chatterjee, *Gender, Slavery and Law in Colonial India*.
788 Dastur Darab quoted in *Parsi Panchayat Case (Davar)*, 53.
789 By 1885, the Hindu reformist judge N. G. Chandavarkar described the Parsis as a community “that freely allows its members to dine with the people of other communities and tolerates the free employment of Goanese cooks and butlers in the Parsi household.” [“Religious and Social Reform. The Parsis (*Indu Prakash*, 16 March 1885)” in Kaikini, 152.
790 Madon cited Persian scriptures and unwritten law on this point. [“Plaintiff’s Evidence. No. 10: Cross-examination of Kawasji Edulji Dadachanji (taken on commission). In the Small Causes Court, Bombay” (1 March 1916) in *Saklat v Bella*, 201 (PCOR).]
them for all the religious preparations, and after their death they do not allow them to be laid in the [Towers of Silence].”791

Mulla Kaus and his son came to Persia to ask, among other things, if this was acceptable. The answer was a resounding no. It was deplorable that Parsi priests and laymen

should eat food prepared by those youngsters while they live and then once they die and stand to face God’s mercy, they should make such base comments about their poor bodies, arguing inappropriately that they are sons of juddins and that their moral remains should not be united with those of the behdins in the [Towers of Silence]. It is not right!792

Orthodox witnesses in Bella’s case were sceptical. Under questioning from Madon, the prominent Bombay Parsi Kawasji Edulji Dadachanji first refused to accept that Parsis would have owned slaves at all, believing that Parsis “had a higher standard of morality.” He suggested that the people in question may have been servants rather than slaves.793 But no matter what they were, he doubted that they could have been converted, and that Parsis would then eat food prepared and water fetched by them.794

Reformists were equally obstinate. Vimadalal got nowhere in his cross-examination of the reformist witnesses, J. D. Nadirshaw and P. A. Wadia. The latter was a professor of history, economics, logic and moral philosophy at Wilson College. He was also a reformist activist, as Secretary of the Zoroastrian Conference and the Iranian Association, and editor of the latter’s journal. Wadia

792 Vitalone, Persian Revayat “Ithoter,” 162.
793 On the other hand, the term servant may have served as a euphemism for slave. This usage certainly existed in the U.S. context. See, for instance, Linda Przybyszewski, The Republic According to John Marshall Harlan (Chapel Hill: University of North Carolina Press, 1999), 21.
stood behind the authority of the *Ithoter Rivayat*, finding it doubly plausible that out of religious charity, Parsi masters may have converted their slaves, then treated them “with the greatest consideration.”795 When it came to these slaves’ death rites, Wadia added his own commentary, taunting Vimadalal with references to “Daji, Vimadalal and Company.” This trio, claimed Wadia, was the orthodox clique that had stirred up the “artificial agitation roused in our day” over whose body could be left on the Towers of Silence for exposure to the vultures. Nobody cared about it before, Wadia insisted. Finally, Wadia offered further evidence in other *rivayats* of the practice of conversion before the late eighteenth century. The fifteenth-century *Nariman Hoshang Rivayat* stated that it was the duty of a good Zoroastrian to take slaves into the religion. The sixteenth-century *Kaus Mahyar Rivayat* referred to the practice of admitting grave diggers, *durwans* (doorkeepers) and other low-status Indians into the religion.796

The second reformist witness, J. D. Nadirshaw, was the retired building superintendent and casual priestly Persianist already encountered. He insisted that the stories of Parsis buying child slaves during famines, and of the slaves’ subsequent conversion, were valid. The use of the word “purchased” in the *Ithoter Rivayat* implied slavery as opposed to servanthood, according to Nadirshaw.797 This historical case study furnished a precedent for the conversion

of outsiders. Conversion did not even require religious conviction. The classical texts required only that the convert protect the Zoroastrian clan from injury.798

According to reformist witnesses in *Saklat v Bella*, aspiring converts fell into two groups. Non-Parsi mates along with the children of Parsi men aspired to convert (or were encouraged to do so) because of their ties of intimacy and kinship to those men. Slaves were alleged to have been converts for reasons of ritual convenience, and perhaps due to their masters’ charity and gratitude for loyal service. The critical tie was being part of a familial or household unit. As with the partners and children of Parsis, the bond between master and slave was only strengthened, not weakened, by conversion. If the allegations were true, the slave cases confirm Indrani Chatterjee’s portrait of Indian slavery existing through close household ties.799

**Conclusion**

The Bombay commission reinflamed a debate that had been festering since *Petit v Jijibhai*. Reformists advanced an expansive *birth-and-conversion* model of community membership—being Parsi was above all about the Zoroastrian religion. The orthodox pushed for an exclusively ethnic *birth-only* vision of what it meant to be a Parsi. Being Zoroastrian was an option only for those inside the ethnic circle. Within this framework came a discussion of why outsiders would want to convert, if permitted. The orthodox made an inverted “drain of wealth” argument: it was material greed that would drive conversion, particularly by the

798 Yasna XII in “Defendant’s Evidence. No.27: Nadirshaw” in *Saklat v Bella*, 457 (PCOR).
799 Chatterjee, 1-33.
lower castes of India. Parsi funds and resources were enormous, but they would be exhausted if the “floodgates” of conversion were thrown open. Reformist witnesses countered that in the past, only a small number of individuals with social links to Parsi men and households had in fact converted to Zoroastrianism, or tried. The argument consisted of the twin points that conversion was permitted by the religion and custom, and that social ties to Parsis, not material greed, had been the dominant motive.

Another way to understand the debate is through the anxieties of each side. Orthodox Parsis feared the exhaustion of communal property and dilution of ethnic stock. In census India, low Parsi numbers and the growing viability of Indian independence only intensified this concern in orthodox circles.\textsuperscript{800} Reformists worried about the denial of social messiness—of attempting to be willfully blind toward the mixing of Parsis and non-Parsis in close domestic contexts. They were troubled by social fictions, and the hypocrisy and daily infelicities required to sustain them. Reformists acknowledged ethnic muddle in the interests of acknowledging kinship and, at one time, the maximization of household convenience.

Both sides agreed on one thing: the relative unimportance of belief. The point deserves attention because the literature on colonial conversion has been dominated by the question of belief—particularly in studies of the conversion of South Asians to Christianity. That literature has revolved around the question: did Indians convert because of the content of Christianity as a system of belief, or for

\textsuperscript{800} See Dhalla, \textit{Autobiography}, 701-15.
the accompanying perks? By contrast, the Parsi debate revolved around the type of “accompanying perks” that predominated: were they material or social? Neither side dwelt upon belief. Nor did any aspiring convert to Zoroastrianism leave a conversion account. The belief-or-perks binary seems to be a model uniquely suited to the Christian context, and one onto which the Zoroastrian conversion debate cannot be mapped.

Ethnic and religious identities have coincided in Jewish, Jain, and Sikh communities for most of their existence. It was the same for the Parsis until the identity crises of the early twentieth century. Litigation over the French Mrs. Tata and Bella forced the Parsis to articulate the relationship between ethnicity and religion in stark terms. Furthermore, Parsis were well aware that the conversion debate was just as normative as it was historical. The Bombay commission...

---

801 See note 746 (above).
802 The exception was one brief moment when certain priests seemed receptive to the conversion of two bona fide American believers. See text preceding note 717 (above). The only written records left by any of the three aspiring converts in either Bombay court case are the letters of Mrs. Tata. They are rich in social details of her new life amongst the Parsis. But they are utterly silent on the spiritual experience of being—or believing herself to be—Zoroastrian, despite the fact that one recipient, Delphine Ménant, was a scholar of Parsi history with an excellent knowledge of the Zoroastrian religion. See letters from Soonaï Tata to Delphine Ménant dated 1 June 1906 (Matheran); 16 June 1906 [Bombay?]; 13 July 1906 (Bombay); 11 August 1906 (Bombay); and 15 April 1910 (unnamed location); all in Correspondence, Papers of Delphine Ménant (MG). On the work of Delphine Ménant, see her Les Parsis; or, in translation, M. M. Murzban’s The Parsis in India.
803 Compare to the conversion accounts left by Parsis converting to Christianity. See note 724 (above).
reflected not only how Parsis perceived themselves in the past and present, but also how they \textit{would like} to think of themselves in the future. Whoever won “the law” on the issue of conversion would have prescription made description through the grip of the state and the drip of precedent.\textsuperscript{805}

FIGURE 13
“THE CRY OF THE POOR PARSI”

“What a shame! I am too poor even to get into a chawl for the poor!”
(Mrs. Bapsy Sabawalla has exposed the scandalous way in which the poor are kept out of the chawls built for the Parsi poor.)”
[Hindi Punch (11 October 1925), 21.]
[By permission of the British Library (SV 576).]
“HOOVERING OVER THE HONEYCOMB”

“(Parsi, Christian, Hindu and Mahomedan communities are all anxious to take advantage of the Nowrojee Maneckjee Wadia Charity Trust Fund, and it redounds highly to the credit of the Parsi Trustees of the Fund that they have been distributing three lakhs and more every year to the deserving objects of all communities, in accordance with the cosmopolitan intentions of the donor.)”

[Hindi Punch (10 May 1914), 23.]
[By permission of the British Library (SV 576).]
FIGURE 15:  
“MR. PUNCH’S FANCY PORTRAITS.  
MR. JUSTICE DINSHAW D. DAVAR 
asking the Parsees to turn Hindus in the matter of Charity.  
‘Yes, my brethren, no more of Cosmopolitan Charity, which has brought world-wide renown and fame for the Parsee name! Only sectarian charity, in your own narrow circle, like your brother, the shrewd Hindu!’”  
[Hindi Punch (7 June 1908), 12.]  
[By permission of the British Library (SV 576).]
The Bombay commission put purity on trial in two ways. Orthodox Parsis doubted Bella’s ethnic purity. Bella’s supporters in turn disputed the necessity of the purity rituals that the orthodox insisted were essential—if they conceded that she could be admitted at all. Chapters 1 and 6 treat the question of ethnic purity, tracking the contest between the old, customary model of patrilinearity and the newer, more restrictive eugenics-based model, all against the ironic backdrop that Bella’s natural father was probably the brother of her adoptive father, and Parsi after all. This chapter examines rituals of purity.

Even if it were conceded that Bella could convert theoretically, the plaintiffs argued that her initiation would still be invalid according to the Zoroastrian purity laws. The priest who traveled from the Deccan to Rangoon nullified his state of ritual purification, or *barashnum*, when he made the long-distance sea voyage. The same thing would have happened to the consecrated bull’s urine, a key ingredient in the initiation ceremony, which had been brought by steamer to Rangoon from Udwada in Gujarat, home of the most

---

806 I am using the spelling of this term as it appears in the Privy Council Office records. A more accurate transliteration of the term is *barašnūm*. See Choksy, *Purity and Pollution in Zoroastrianism*. Throughout this chapter, I refer to the ceremony not by its full name, *barashnum-i-no-shab* (i.e. *barashnum* of nine nights) but for the sake of convenience, by the shortened version of its name, *barashnum*. 
sacred holy fire in India. Both elements were mandatory, insisted Bella’s opponents.

Bella’s counsel responded by attacking ritualism itself. Madon selected the most unusual and, to colonial European sensibilities, distasteful elements of the purification rites in question, exposing them to public scrutiny during cross-examination in an attempt to ridicule orthopraxy. His exchange with the orthodox high priest Sanjana lies at the heart of this chapter. Their discussion of the travel restrictions imposed by Zoroastrian purity laws serves as a point of entry into the larger themes of the role of ritual and the reasonable limits of sacrifice. Their disagreement over the necessity for female nudity and the consumption of consecrated bull’s urine during purity rites tap into wider conflicts over aesthetic codes of disgust and sexual propriety in the colonial setting. These exchanges also say a lot about attempts to re-professionalize the priesthood, continuing the story of priestly demotion begun in chapter 3. Finally, the hostile cross-examination of Sanjana by Madon paralleled discussions in other South Asian locales. The kala pani taboo on long-distance sea travel in Hindu traditions, along with colonial discourses on female nudity across the subcontinent, made the Madon-Sanjana exchange reminiscent of discussions outside of the Parsi context. This episode was a Parsi variation on the well-sung colonial theme of ridicule-and-reform. At the same time, it continued the narrative thread of Bella’s

---

808 There was also the suggestion that Bella ought to have had a double navjote, given her dubious status. Even orthodox witness Darab Pesotan Sanjana stated that it was no longer the custom, though. See “Plaintiffs’ Evidence. No.11: D. P. Sanjana” (9 March 1916) in Saklat v Bella, 238, 241 (PCOR).
case, looping round the purity laws as the technical gatekeepers of Parsi identity. Ironically, what was an important and extensive discussion of Zoroastrian purity rituals during the Bombay commission was virtually wiped off the record by the judges who decided *Saklat v Bella*. They regarded purity rituals as peripheral to the points of law at issue. This chapter resurrects a discussion rich in visions of religious identity, if undervalued in legal terms.

The study of Zoroastrian ritual has been dominated by philological analysis. The notable exception is J. J. Modi’s *The Religious Ceremonies and Customs of the Parsees* (1922). It remains the most comprehensive guide to Zoroastrian rituals, and draws equally from scripture and contemporary practice. Since Modi’s classic, a steady stream of annotated translations and close textual studies in both English and German have made the philological scriptural tradition the dominant one. Most recently, a Heidelberg-based

---

809 See “Defendant’s Evidence. No.39: Judgment by Mr. Justice Young” (23 April 1918) in *Saklat v Bella*, 726 (PCOR); and “Is the Ritual of ‘Barashnum’ essential?” (1925), *Parsi Prakash* VI, 224-31.


research group focusing on Zoroastrian ritual has produced a volume edited by Michael Stausberg, many articles in which extend this vein of scholarship.\textsuperscript{812}

By contrast, the non-scriptural side of Zoroastrian ritual remains understudied. For anthropologists and scholars of religion aiming to document current practices, the problem has been one of access. As Jamsheed Choksy has noted, the fact that Parsi fire temples are open to Parsis alone means that only scholars who are themselves Parsi can observe religious rituals inside the fire temple.\textsuperscript{813} Similarly, the fact that the ritual procedures of hereditary corpse bearers, or \textit{nassassalars}, are open to Parsis born into that class alone explains perhaps why no single anthropological study has been undertaken to date on \textit{nassasalar} practices.\textsuperscript{814} Unusually, Mary Boyce was allowed to watch Iranian Zoroastrian rituals from a distance while in Sharifabad in 1963-4. The result was \textit{A Persian Stronghold of Zoroastrianism}, the only in-depth study of contemporary Zoroastrian ritual based on fieldwork, rather than textual sources, by a non-Zoroastrian scholar.\textsuperscript{815} Jamsheed Choksy's \textit{Purity and Pollution in Zoroastrianism} is unique and valuable in balancing textual sources and Choksy's


\textsuperscript{813} Choksy, xvi.

\textsuperscript{814} This would be a very rich area for future research. The most detailed discussions of the \textit{nassesalars} are Modi, \textit{Religious Ceremonies}, 60-7; and Choksy, 107-110. See also (on Iran), Mary Boyce, \textit{A Persian Stronghold of Zoroastrianism based on the Ratanbai Katrak Lectures, 1975} (New York and London: University Press of America, 1989), 46-7 at note 17, and 149-52.

\textsuperscript{815} Boyce, \textit{A Persian Stronghold}. Data on Iranian Zoroastrians has been largely unobtainable since the 1979 Islamic Revolution in Iran. [Choksy, xviii.]
own personal observations on late twentieth-century practice, made possible by his own membership in the Parsi community.\textsuperscript{816}

In the past decade, a clear division of labor has developed between Zoroastrian and non-Zoroastrian scholars. The former have written on ceremonies taking place inside the fire temple, particularly priestly rituals.\textsuperscript{817} The latter have made the best of their restricted position by focusing on ritual patterns external to the sacred interior space of the temple, whether by examining religious practice up to the gates of the temple, or by looking at ritual practices in the Parsi home.\textsuperscript{818}

Historians have done comparatively little work on ritual because of the dearth of historical sources. What does exist can be put into three broad categories. European travel accounts have offered one body of sources documenting Zoroastrian ritual practice during the colonial period. As John Hinnells and C. G. Cereti have shown, these sources are generally ungenerous in their views, particularly when commenting on aspects of Parsi ritual to which Europeans could not relate.\textsuperscript{819}

\textsuperscript{816} Choksy, xi, xvi.
\textsuperscript{819} John R. Hinnells, “British Accounts of Parsi Religion, 1619-1843” in his Zoroastrian and Parsi Studies, 117-40; and C. G. Cereti, “Prejudice vs Reality: Zoroastrians and their Rituals as seen by two Nineteenth-century Italian Travellers” in Stausberg, 461-80. For European travel accounts
Second is a body of writings on ritual by Parsis from the turn of the
twentieth century. These sources, in English and Gujarati, are the products of
two overlapping traditions associated with orthodoxy that I discussed in chapter
2: theosophy and the mystical Ilm-e Khshnoom movement. Both movements
endorsed ritual as a more meaningful source of spirituality than the academic
accounts of scripture produced by European philologists and their Parsi
disciples.820 These writings deserve the attention of scholars, but more as
sources on theosophy and Khshnoomism than on general ritualistic practice in
the early twentieth century.821

Finally, there are the legal records. Rashna Writer and Jesse Palsetia
have examined the treatment of ritual in the Parsi identity litigation, but through
published sources alone, which offer minimal detail on ritual practice.822
Unpublished court records remain a wholly untapped source through which to get
at historical ritual practice. The Bella case records, unlike the published
judgments, reveal multiple conflicting interpretations of Parsi ritual practices in

on the Zoroastrians of Persia in the same period, see Mary Boyce, ed. and trans., Textual
820 Tavaria, 53.
821 See Boyce, Textual Sources, 135-9; Nasarvanji F. Bilimoria, Zoroastrianism in the Light of
Theosophy; Phiroze Shapurji Masani, The Zoroastrian Ideal Man (Bombay: [n.p.] 1931);
Framroze Sorabji Chiniwalla, Essential Origins of Zoroastrianism (Bombay: Parsi Vegetarian and
Temperance Society of Bombay, 1942); Nanabhoy F. Mama, A Mazdaznan Mystic. Life-Sketch of
the Late Behramshah Navroji Shroff, the 20th Century Exponent of Zarthushti Elm-e-Khshnoom
(i.e. Esotericism of Zoroastrianism) (Bombay: Zarthusht Dinh Sahitya Mandal, 2001, reprinting of
1944 edition); Khursshedji Kavasji Suntoke, “In Memoriom: Behramshah Naoroji Shroff,” in
Behram Shroff Frashogard Memorial Volume (Bombay: n.p., 1930) and Dini Avaz 3: 5-6 (I am
indebted to K. N. Dastoor for his translation of this source from the Gujarati); Tavaria. For
Khshnoomist writings of the past few decades, see K. N. Dastoor, The Glimpses from the Life
Story of Baheramshah Navroji Shroff. A Revelationist of Zarathushtrian Mysticism, Presented on
the Occasion of his 50th Death Anniversary (Baj) (Bombay: n.p., 1977); and the Mumbai-based
Khshnoomist newsletter, Parsi Pukar. I am grateful to K. N. Dastoor for making Parsi Pukar
available to me.
822 Writer, 116-49; and Palsetia, 226-76.
1916. Like an intentionally loud conversation held in a crowded public place, these transcripts represent both an internal discussion between Parsis about their ritual practices and an oblique communication with the colonial public. Parsi conversants discussed rituals on the judicial stage, cognizant of the fact that they were on stage, and that the house was both open to the public and packed. I want to use these sources to get at a rare thing: historical rather than scriptural understandings of ritual from multiple Parsi perspectives.

**Purity and Mobility**

Zoroastrianism was so deeply environmentalist in its theology that it was dubbed “the first ecological religion.”823 The religion imposed strict prohibitions on the pollution of the elements, preventing contact between impure material and earth, fire and water.824 This principle governed many aspects of ritual and daily life.

Fire deserved special care and protection. The devout Zoroastrian cook was careful not to fill a pot to the very top in order to avoid water splashing into the fire.825 In the early colonial period, Europeans observed that Parsis avoided “the calling of smiths” because of the requisite abuse of fire.826 Parsi priests wore a white cloth or *padan* over their mouth and nose during ritual ceremonies to avoid polluting the flame with their breath.827 Smoking, too, was forbidden because it brought fire into contact with the breath, which was considered

---

826 Paymaster, 50. The fact that Parsis like J. N. Tata led the industrialization of India by the late nineteenth century suggests that this taboo was progressively relaxed.
unclean. The prohibition explains the sting of references to Parsi gentlemen openly smoking “cigars as if they were the governors of Goa.” In 1908, Hindi Punch depicted hypocrisy with the image of a Parsi man piously tending the sacred fire during the holy days, then smoking a six-inch cigar behind his daily paper (fig. 16). Reformist-leaning magazines like The Parsi advertised tobacco products in their pages, commenting that Parsis could no longer be considered a community of non-smokers, and congratulating Parsi industrialists on investing in the tobacco business. Simultaneously, orthodox bodies like the Parsi Association considered banning Parsi smokers from its rolls.

The pollution of earth was also taboo. The key issue was the disposal of the dead, the corpse being considered the most polluted type of matter. If buried, it infected the earth. If cremated, it polluted fire. Exposing a body to scavengers in the Towers of Silence sullied neither. The religious prescription applied not only to the disposal of human corpses, but also to canine ones: the

---

828 Choksy, 18; “Witness No.2 [for the Defendants], Dastur Dorab Peshotan Sanjana, Examination in Chief, 4 April 1908” in Beaman, “Parsi Panchayat Case Notes,” 56 (BHC). See also note 1098 (below).
829 “Parsis and Proselytism. Another Meeting Adjourned.” Times of India (23 July 1904), 15.
830 “Pharisaism with a Vengeance! (During the Parsi Sacred Days),” Hindi Punch (20 September 1908), 21.
831 “For Parsi Smokers” and “The Tobacco Trade and Parsis,” The Parsi I: 2 (February 1905), 59; “To Parsi Smokers” (advertisement for “Messrs D. Macropolo and Co.’s High Class Turkish Cigarettes”), The Parsi I: 10 (October 1905), ix.
832 “Correspondence. Who is a Parsi? Letter from Rustom B. Paymaster, BA, LLB. Vakil, High Court,” The Parsi I: 3 (March 1905), 106.
833 Choksy, 18; “Witness No.2 [for the Defendants], Dastur Dorab Peshotan Sanjana, Examination in Chief, 4 April 1908” in Beaman, “Parsi Panchayat Case Notes,” 56 (BHC). See also note 1098 (below).
829 “Parsis and Proselytism. Another Meeting Adjourned.” Times of India (23 July 1904), 15.
830 “Pharisaism with a Vengeance! (During the Parsi Sacred Days),” Hindi Punch (20 September 1908), 21.
831 “For Parsi Smokers” and “The Tobacco Trade and Parsis,” The Parsi I: 2 (February 1905), 59; “To Parsi Smokers” (advertisement for “Messrs D. Macropolo and Co.’s High Class Turkish Cigarettes”), The Parsi I: 10 (October 1905), ix.
832 “Correspondence. Who is a Parsi? Letter from Rustom B. Paymaster, BA, LLB. Vakil, High Court,” The Parsi I: 3 (March 1905), 106.
833 The dead body was believed to fall under the influence of Druj-i-Nasush, or decomposition and destruction. Even touching it was dangerous for the living, “lest they should catch contagion and spread disease,” which is why only the nassasaalars and khandhias or hereditary corpse bearers are allowed to have contact with corpses. [Modi, Religious Ceremonies, 53.] Living matter that became detached from the body was also considered dead. This made skin, breath, nail and hair clippings, blood, semen, urine and feces highly polluting. [Choksy, 18.] See Ezekiel Moses Ezekiel, “Nails among the Jews and the Parsees” in Dr. Modi Memorial Volume: Papers on Indo-Iranica and other Subjects written by several scholars in honour of Shams-ul-Ulama Dr Jivanji Jamshedji Modi (Bombay: Dr. Modi Memorial Volume Editorial Board, 1930), 459-64.
834 Modi, Religious Ceremonies, 151-2.
dog enjoyed special protected status in Zoroastrianism. Devotees committed a great sin if a human or canine body was disposed of by burial, cremation, or by being thrown into water. During the 1870 Parsi prostitute controversy, K. R. Cama wrote in his letter to the meeting at Allbless Bagh that “the burial or cremation of corpses is not only forbidden in our Avesta but a duty against its prevention is enjoined and no informed Zoroastrian should be ignorant of it.”

The Bombay high priest put it in starker terms when he wrote to Mr. Heaton, the Rangoon Recorder, during the Parsi burial ground litigation of 1889: both burial and cremation were heinous crimes. According to the Vendidad and other religious texts, any Parsi doing so should be killed and exposed to sunshine on a raised spot. Nonetheless, compromises were made for practical reasons. Burial was practiced in the outposts of empire where Towers of Silence did not exist.

In the early twentieth century, the Parsi debate over cremation rose to a feverish pitch. Surprisingly, opponents of cremation did not accuse advocates of

---


836 “Plaintiffs’ Evidence. No.11: Darab Pesotan Sanjana. Taken on Commission in the Court of Small Causes, Bombay” (16 March 1918) in *Saklat v Bella*, 270 (PCOR).


838 See text accompanying notes 174-8 (above).


"turning Hindu." The omission may be explained by the fact that cremation was becoming popular amongst Europeans, and could no longer be deemed the sole preserve of Hindus. In tropical climates especially, many overcrowded European "stacked" graveyards like Rangoon’s exuded an unspeakable stench and constituted a “source of danger to the living and the dead.” Cremation made sense. While orthodox Parsis refused to pollute fire or air, reformists argued for cremation for aesthetic reasons. They also resorted to arguments from modern sanitation and ancient lineage. Their claim that exposure to vultures was “frightful, horrible, and ghastly” reiterated a European observation made at various points. Apologists for exposure claimed that feeding the vultures was an act of charity. Parsi reformers claimed to be the voice of modern sanitation, but the orthodox answered that the prohibition on pollution of the elements ought not to bend for “western types of thought and science.” Reformists insisted that neither fire nor air would be polluted by modern cremation: it would be electrically-powered and completed “within a twinkling of the eye” in a closed crematorium.

841 The trope of “Hindu infection” was a recurring one throughout the debates over Parsi reform. Elements of Zoroastrian practice under attack were often dismissed as inauthentic on the basis that they had been adopted under Hindu (or other outside) influence. See, for instance, Rana, (1934), 11; Karaka, xxviii; Dhalla, Zoroastrian Theology, 344; and Bengalee, 196.
842 Commenting on the burial of his own son in Rangoon’s European cemetery, a Dr. Marks said it had been necessary “to dig in numbers of places to find out a spot to inter the body, and the stench which came from the ground was something overwhelming.” ["Our Cemetaries." Rangoon Gazette Weekly Budget (8 November 1889), 9.] See also “The Burial of the Dead,” Rangoon Gazette Weekly Budget (25 October 1889), 15.
844 “From S. K. Hodivala,” Times of India (24 June 1905), 16.
845 “From M. R. Parakh,” Times of India (24 June 1905), 16.
846 “From Hormasji Dorabji Mehta,” Times of India (24 June 1905), 16.
Both methods were claimed to be of ancient lineage, and with a twist. Despite the belief that exposure was the traditional practice of the ancient Persians, it was argued that in fact it was cremation that was the original “Aryan” practice. Exposure, as practiced by the Parsis, was adopted from the Central Asian Turanians, themselves neither Aryan nor Semitic, but Ural-Altaic. Burial, apparently also practiced by the ancient Persians, was “a rite the ancient Persians adopted from their Semitic neighbours.” By allowing cremation, Parsis would get closer to the mythic Indo-European past—moving back into the authentically antique rather than forward into the unknown. The claim echoes a point made in chapter 2, where I stressed the reformist use of backward-looking language that promised a return to a purer age.

There were also proposals to sell the Towers of Silence in order to build a crematorium on the site or to turn the site into a pleasure garden. These were met—predictably—by angry accusations of sacrilege and retorts that Europeans would be eager to get their hands on the property, sitting as it did in plush Malabar Hill. Reformist Parsis were even invited to convert to another religion

---

847 On the ancient Turanians, see Sanjana, Eastern Iranian Civilization in Avesta Times in Tarapore, 130-2.
848 “The Persians in general...cover a body with wax and then bury it.” [Herodotus, Histories, I, 140.]
850 See “From Shapurji B. Katrak” and “From A. E. S.,” Times of India (24 June 1905), 15-16; and “From 'A Staunch Zoroastrian,” Times of India (24 June 1905), 16.
851 The colonial state did its utmost to acquire property on Malabar Hill, using its powers of eminent domain to take privately owned land for the construction of luxury housing for British officials. This included land owned by the Parsi, Mrs. Hamabai Framji Petit. See Secretary of State for India in Council v Hamabai Framji Petit (appeal no. 24 of 1910), Legal Department Records (Suits), vol. B-11/4 of 1908-10 (MSA); and Petit v Secretary of State for India in Council (JCPC suit no. 139 of 1913), 1914: vol. 33, judgment no. 93 (PCOR).
if they found Zoroastrianism too constraining. The controversy was satirized in the pages of *Hindi Punch*, with Mr. Best Orthodox being viciously taunted by a crematorium on legs (fig. 17).

But it was water that was the focus of so much debate in Bella’s case. Herodotus commented that the ancient Persians would “never pollute a river with urine or spittle, or even wash their hands in one, or allow anyone else to do so.” The devout Zoroastrian would transfer a small amount of water from its source into a jug before using it, so as not to dirty the main water source. Not polluting water presented unique challenges given that people had to wash. Strict Zoroastrians washed with *gomez* or *pajow*—unconsecrated bull’s urine—when they first awoke. They said the *kusti*-prayers, and only then, after purifying body and soul, could they wash with water.

The ban on water pollution was central to Bella’s case because of the way it affected long-distance sea travel. Sea travel in Bella’s period was by steamship. Along with the opening of the Suez Canal in 1869, steam travel had helped revolutionize travel between England and India during the late nineteenth century. Before steam and the canal, travel time between the two points had been roughly three months. After, it was three weeks. As a result, Bombay lawyers like John Duncan Inverarity and his judge cousin, Norman Macleod, operated upon an annual or biennial cycle of migration between Bombay and

853 “Haunted; --Or, the Best-Orthodox Parsi’s bogey,” *Hindi Punch* (10 November 1918), 23. See also an untitled cartoon on the cremation controversy, *Hindi Punch* (24 November 1918), 23.
856 Choksy, 11; Boyce, *A Persian Stronghold*, 95.
Britain. Presumably from a strict Zoroastrian perspective, steam power itself was a moderately acceptable form of energy. Steamers released water vapor and smoke from burning coal into the air, but pollutants from the fuel source itself did not enter the water. The problem was the ship’s toilets. At some point along the way, particularly on long voyages, the contents of the toilets would be dumped into the sea, polluting water. The other difficulty was the near impossibility of fulfilling one’s everyday ritual duties in the confined and diversely populated spaces of a ship’s cabin. These elements threatened the validity of Bella’s initiation.

*Barashnum* was the highest possible state of ritual purity for a Parsi. The term also referred to the ceremony that activated this state, an involved set of rituals lasting nine nights and days and requiring the recipient to be naked at key points. Two categories of people generally underwent the ceremony: *barashnumwala* priests, the top category of priest who were authorized to perform the most sacred ceremonies; and *nassasalars* or hereditary corpse bearers, who carried and prepared dead bodies for exposure, along with their

---

857 Inverarity spent several months of every year hunting on his estate in the Scottish Highlands, with stopovers in East Africa for safaris *en route*. [Munshi, 6; Ferreira, 260; and Framroze Noaroji Bunshah, “The Late Mr J. D. Inverarity,” *Bom LJ* 2: 5 (October 1924), 324.] Macleod traveled to Britain 17 times over 36 years, averaging one trip every 2.1 years. He stayed in Britain for two to four months each time. [Norman Cranstoun Macleod, “Voyages to India and Back,” HRA/D63/A8(a) in Macleod of Cadboll Papers (HCA).]

858 In 1671-2, Sir Streynsham Master observed a Parsi aversion to seafaring as a profession for this reason. Foreshadowing the age of the great Parsi shipmakers and shippers like the Wadias, though, he added that lately some had been ignoring the taboo. [Paymaster, 47.]

859 “Plaintiffs’ Evidence. No.11: Darab Pesotan Sanjana examined by Vimadalal, taken on Commission. In the Court of Small Causes, Bombay” (8 March [1916]), 230 and (22 March 1916), 287-8; and “Defendant’s Evidence. No. 30: Evidence of Dastur Kaikobad” (13 May 1916), 627; both in *Saklat v Bella* (PCOR). See also Choksy, 52.

860 The classic account is J. J. Modi’s: Modi, *Religious Ceremonies*, 97-157. The most extensive study of *barashnum* rites in English is Jamshed Choksy’s *Purity and Pollution in Zoroastrianism: Triumph over Evil.*
assistants, the khandhias. Priests needed barashnum in order to perform the highest class of ceremony.861 Corpse bearers needed it because they came into daily contact with the most polluted of substances, the corpse. The corpse was the ultimate source of spiritual toxicity. Its vulnerability attracted the forces of evil that swarmed around it with the hope of slipping in. The more moral the person, the more potent the evil of the demons who would try to enter after death—they had to muster all of their strength to break in. As a result, the corpse of a pious Zoroastrian was more dangerous and polluting to the living than that of an immoral person.862

Whether a third category of people required barashnum was a matter of debate. Some Parsis felt that initiates to the religion whose eligibility was in some way questionable also needed to undergo the ceremony. What made them questionable was normally the fact that only one parent—the father—was Parsi. In chapter 3, I suggested that the Parsi paternity rule was firmly entrenched, as the 1916 courtroom victory of the quarter-Malagasy Dinbai Todyvala implied.863 But the rules of Parsi membership were tightening with the rise of the newer, eugenics-based rule requiring that both parents be Parsi. A close analysis of this development belongs to chapter 6. Suffice it to say here that the view that the

861 These include the ceremonies of the Bâj, Yaçna, Visparad, and Vendidâd. [Modi, Religious Ceremonies, 141.]
862 Choksy, 17.
863 Dinbai v Erachshaw D. Todyvala, suit no. 3 of 1916 in “Judgment Notebook of the Parsi Chief Matrimonial Court (3-4-1916 to 24-3-1920)” (BHC); and “A Curious Parsi Matrimonial Case,” Indian Social Reformer (12 November 1916), 123.
children of Parsi fathers and non-Parsi mothers were dubious was part of the
same shift in sentiment.864

In the same vein, it was suggested that full aliens might also need to
undergo barashnum, if their admission were to be possible at all. The argument
had a hidden barb. Female initiates would have to violate their sense of modesty
by standing naked in front of a male priest if they wanted to become
Zoroastrian—something opponents probably counted on them not doing. The
critical point is that the pure state of barashnum was vitiated by the pollution
inherent in long-distance sea travel. This meant that the priest who performed
Bella’s initiation lost his barashnum on the sea voyage from Bombay to Rangoon
via Calcutta, arguably making his performance of the navjote invalid. Whether a
priest himself needed to have barashnum to perform the navjote was a further
contestable point. Reformists argued that he did not.865

Travel presented an intriguing dilemma for Parsis. Many Parsis had made
their fortunes in the colonial period through shipping in the euphemistically
named “China trade”—a reference to what consisted mainly of the opium trade,
which was legal during this period.866 Famously, the Wadia family built ships for
the British navy.867 And yet it was precisely this form of travel—long-distance sea
voyages—that threatened the replicability of Zoroastrian rites of passage in

864 See Ménant, “Social Evolution of Parsis,” JIA X: 9 (December 1921), 283; and ‘Parsis and
Proselytism. Mass Meeting at Bombay,” Times of India (22 April 1905), 19.]
865 “Defendant’s Evidence. No. 27: Evidence of Jamshedji Dadabhoy Nadirshaw taken on
Commission. In the Court of Small Causes, Bombay” (5 April 1916) in Saklat v Bella, 415
(PCOR).
866 Karaka, II, 245; “Papeti,” Deccan Herald and Daily Telegraph (12 September 1914), 4;
Strangman, 28; and Darukhanawala, Parsi Lustre, 508-10. See also note 365 (above).
867 Rusheed Wadia, 447; and Karaka, II, 60-72. See also Paymaster, 57; along with Ruttonji
Ardeshir Wadia, The Bombay Dockyard and the Wadia Master Builders (Bombay: R. A. Wadia,
1955), and his “Parsis and Ship Building” in Darukhanawala, Parsi Lustre, 494-5.
Rangoon, Aden, Colombo, Zanzibar, Singapore, Shanghai and London. The orthodox insisted that a priest’s barashnum was negated by such travel, and that barashnum was necessary to perform the initiation ceremony. Others denied that barashnum was a pre-requisite for the initiation ceremony at all. Despite his orthodoxy, the Parsi scholar-priest, J. J. Modi, took the latter view in his authoritative guide to Zoroastrian ritual. But in Bella’s case, there was no consensus on the point. Modi’s view supported Bella’s side, but was left curiously unmentioned by reformers.

Modi’s genealogy of barashnum attributed the ceremony’s origins to “times of a great epidemic.” The scholar-priest identified the original aim as purification and segregation of a person who had come into contact with a dead body, in case an infectious disease had been spread through the contact. Modi argued that similarities in the barashnum ceremony and anti-plague measures taken when the bubonic plague hit Bombay at the end of the nineteenth century attested to the wisdom of the Zoroastrian ritual. In the early twentieth century, corpse bearers would undergo the ceremony when joining and leaving the profession—as a symbolic gesture as much as to stop the spread of contagious diseases to which they may have been exposed through the handling of

---

868 See Hinnells’ Zoroastrians in Britain; and his recent work, The Zoroastrian Diaspora. The first initiation performed in Europe took place in London during the First World War, and was controversial vis-à-vis the purity laws. See Dhalla, Autobiography, 368; and Darukhanawala, Parsi Lustre, 389.
871 Modi, Religious Ceremonies, 149.
872 Modi, Religious Ceremonies, 98.
873 Modi, Religious Ceremonies, 149-51. On the effect of the 1896-7 plague on legal Bombay, see Mistry, Wadia Ghandy and Co. (1911), 8, 11, 27-9, 32, and 34.
corpses. For priests, though, the purpose was entirely symbolic: in order to administer the inner circle of ceremonies, they too had to be pure.

Contact with polluting influences, including non-Zoroastrians, nullified barashnum. Modi listed five vitiating circumstances. First, eating food or water fetched or prepared by a non-Zoroastrian would nullify barashnum. This bore resemblance to Hindu caste restrictions, resonating with the English judge Beaman’s argument in 1908 that under the influence of the Hindu society around them, the Parsis had become a caste. The failure to recite the Baj would also cancel one’s barashnum. The baj was a type of prayer recited with special intonation and muted volume at the start and finish of daily functions like meals, baths, and “calls of nature.” The third way to nullify barashnum was to recite an oath. Telling the truth was an essential part of being a good Zoroastrian. Chapter 2 has already investigated the doctrine of Asha, which imposed a duty to tell and fight for the truth. Having to swear on oath that one was telling the truth was a slur upon a Zoroastrian’s character, negating one’s barashnum. Fourthly, if a barashnumwala priest’s white turban fell off his head, even accidentally, he lost his barashnum. The same was true of his padan. The padan was the white

---

874 Modi, Religious Ceremonies, 100.
875 Modi, Religious Ceremonies, 101, 124. Ceremonies requiring the officiating priest to have barashnum include the ceremonies of Bâj, Yaçna, Visparad and Vendidâd. Those that do not include the navjote or initiation ceremony, the marriage ceremony, and Afringân. [Modi, Religious Ceremonies, 141.]
876 Modi, Religious Ceremonies, 141-5.
877 See Parsi Panchayat Case (Beaman), xix-xxii.
879 Mirza, Outlines, 394-5; Choksy, 52. Priests had to re-take the barashnum ceremony after getting married. The marriage vow, combined with the bleeding of a ruptured hymen, vitiated a priest’s pure state. [Choksy, 40-1.]
880 Choksy, 52.
cloth that priests draped over their nose and mouth during religious ceremonies to prevent the pollution of the fire by breath.\textsuperscript{881}

Finally, one could lose one’s \textit{barashnum} through travel. This included most train trips and other long travels over land. In court, the priestly witness Sanjana emphasized different views on the issue among the various dioceses or \textit{panthaks}. Priests from Naosari in Gujarat had to renew their \textit{barashnum} upon entering a train, while those from Surat had to do it even earlier—upon entering the railway platform. Priests in Bombay and the Deccan adopted looser practices: Bombay priests had exemption for local voyages from Colaba at the southern tip of Bombay to the northern community of Bandra. Deccan priests did not have to renew their \textit{barashnum} at all after train voyages, implying perhaps that Dastur Kaikobad was simply extending the liberality of his diocese by not renewing his \textit{barashnum} after the voyage to Rangoon.\textsuperscript{882}

Greater consensus existed on long sea voyages. Such trips would generally wipe out one’s \textit{barashnum}—for priests from Naosari, a single sea voyage would bar a priest from ever performing the higher ceremonies again.\textsuperscript{883} There was the initial problem of performing the \textit{baj} properly in these restricted and crowded quarters. This was a difficult and even impossible task: \textit{baj} procedures required that fresh water be fetched by a Zoroastrian, and that one avoid non-Zoroastrians. The prohibition on eating with non-Zoroastrians further

\textsuperscript{881} Modi, \textit{Religious Ceremonies}, 144.  
\textsuperscript{882} “Plaintiffs’ Evidence. No. 11: Darab Pesotan Sanjana, taken on commission in the Court of Small Causes, Bombay” (14 March 1916) in \textit{Saklat v Bella}, 261-2 (PCOR).  
complicated matters. The other issue was the pollution of the elements, which made sea travel particularly noxious. Perhaps drawing upon the Naosari rule, Modi reported that not only would a priest’s *barashnum* be negated if human waste were dumped into the sea; he would also be prohibited from undergoing the *barashnum* ceremony ever again. Crossing the sea, in other words, would destroy one’s *barashnum*, ritually handicapping a priest—in some dioceses, forever. The point had antecedents in classical antiquity: priestly Parthian and Armenian Zoroastrian kings refused to travel to Rome by sea when called by Nero out of concern for their *barashnum*.

*Nirang*, or the consecrated urine of a white bull, further complicated the *barashnum* issue. The consecrated urine of a white bull was a ritual cleansing agent. Mary Douglas has described a phenomenon she calls “medical materialism,” through which ritual purity laws are justified in light of modern scientific beliefs on hygiene. Chapter 2 suggests that orthodox Parsis were enthusiastic medical materialists, citing the high ammonium content of bull’s urine as evidence of its hygienic properties. According to orthodox opinion, if

---

884 “Defendant’s Evidence. No. 30: Evidence of Dastur Kaikobad” (13 May 1916) in *Saklat v Bella*, 627 (PCOR). See also Choksy, 52.
885 Modi, Religious Ceremonies, 143.
886 This was the practice amongst priests from Naosari in particular. [“Plaintiffs’ Evidence. No. 11: Sanjana” (14 March 1916) in *Saklat v Bella*, 261-2 (PCOR).]
888 “A single black hair on the body disqualifies it for being used as a sacred bull.” [Modi, Religious Ceremonies, 242.] See also Firoze M. Kotwal and Khojeste Mistree, “The Court of the Lord of Rituals,” 382 in Godrej and Punthakey Mistree.
890 See Wilhelm. For a “medical materialist” defence of the purity laws generally, see Modi, Religious Ceremonies, 49, 127, 149-52, 159. On the close etymological relationship in several languages between words for urine and terms for soap or cleansing agents, see Jaan Puhvel.
nirang was touched by a priest who had lost his barashnum, it too would lose its consecrated status. It was therefore essential that the bull’s urine be consecrated for the navjote—another reason Bella’s initiation might have been invalid even if outsiders could be admitted.891

Religious taboos on sea travel were not unique to the Parsi community. Similar debates over reform occurred in the same period in Hindu circles over the kala pani taboo.892 Just as Parsi priests lost their barashnum during sea voyages, so Hindus who crossed the ocean or kala pani lost their caste, a similarity noted by lawyers Madon and Vimadalal during the Bombay commission.893 Not all bodies of water were large enough to qualify as kala pani (literally, black water). Satadru Sen dismisses as myth the idea that transportation from mainland India to the Andaman Islands entailed a loss of caste.894 In the same way, traveling from the eastern coast of India to Burma by water did not count. Hindu migrants to Burma must not have faced the same sorts of dilemmas as their Parsi counterparts.895 Sailing to Europe, on the other hand, did matter. When a Madrasi Brahmin man named Narayaniah agreed to send his two young sons to

891 The first initiation performed in Europe, which was in London during WWI, was controversial because it lacked nirang. See Dhalla, *Autobiography*, 368.
892 Underpinning the taboo seems to have been a belief that calamity would befall those who crossed the ocean. See Anand, 8-9.
895 Although indentured Hindu laborers had to face the taboo when sent around the globe to meet imperial labor needs. See Brij V. Lal, *Crossing the Kala Pani: a documentary history of Indian indenture in Fiji* (Canberra: Division of Pacific and Asian History, Research School of Pacific and Asian Studies, 1998); Rehana Ebr.-Vally, *Kala Pani: Caste and Colour in South Africa* (Colorado Springs, Colorado: International Academic Publishers, 2001); and Brinda J. Mehta, *Diasporic (Dis)locations: Indo-Caribbean women writers negotiate the kala pani* (Kingston, Jamaica: University of the West Indies Press, 2004).
England under the care of Annie Besant’s theosophists for schooling in the first
decade of the twentieth century, he did so knowing that they would lose caste
from the voyage. 896

The controversy became formalized in late nineteenth-century Bengal, as
reformist members of the “sea voyage movement” formed committees, held
meetings and published proceedings. They made symbolic sea trips to Ceylon
and published collections of pandits’ scriptural defences of sea travel. The
movement’s records are permeated with admiration for the British and the
concomitant desire to travel to Britain for educational purposes. 897 Those in favor
of maintaining the taboo fought back in the literary arena. Amritalal Basu’s play,
Kālāpāni bā hindumate samudra yātrā (1893), portrayed the movement’s
proponents as arrogant and westernized. 898 Rabindranath Tagore, who himself
traveled to the west a number of times, wrote disparagingly of England-bound
Indians. In his 1894 short story, “Atonement” (“Prāyaścitta”), an Indian named
Anath Bandhu traveled to England to become a barrister, having funded his trip
by stealing from his benevolent father-in-law. He returned even more of a
wasteful and westernized snob than before, not to mention a bigamist, a fact
already explored in chapter 3. Anath’s opportunism ultimately pushed him to
undergo prāyaścitta. 899 Prāyaścitta was a ritual of penitence, restoring caste to a
person who had crossed the kala pani. Gandhi was famously excommunicated in

896 Privy Council’s Judgment in Besant v Narayaniah, 2 (PCOR).
897 Susmita Arp, Kālāpāni: Zum Streit über die Zulässigkeit von Seereisen im kolonialzeitlichen
1888 upon his departure for studies in England. After his return, his brother urged him to undergo *prāyaścitta* in expiation. He yielded.900

For those who chose not to undergo *prāyaścitta*, the story did not always end so happily. Just three years before Bella’s case, the Allahabad High Court heard a highly publicized libel suit from Benares on the taboo.901 Lakhmi Chand had returned from England in 1910, presumably having lost caste due to his trip. He dined with a man named Govind Das. Their meeting was made public by one Beshambar Das, causing the excommunication of the first Das by the Agarwalla (Bania) community. The outcaste responded by suing Beshambar Das for Rs 11,000—damages for defamation and for maliciously bringing him into the contempt of his peers. Over one hundred witnesses appeared before a full courtroom. The subordinate judge, Sirish Chandra Basu, a Sanskrit scholar, ruled on a case that attracted considerable interest from Hindu social reformers, “for the decision of the Court will have a very important bearing on the question of sea-voyage.”902 His reformist sympathies shone through, and he held that crossing the “black water” was not in fact prohibited by the Shastras. The outcasting of Govind Das was illegitimate, and constituted libel.903 But the case went on appeal to the Allahabad High Court where, one week before Bella’s 1914 initiation, the taboo and outcasting were upheld. Although the two British


901 *Bishambhar Das, defendant and appellant v Govind Das, plaintiff and respondent* AIR 1914 All 27-41. For press coverage of the case, see “Caste and Sea Voyages,” *Times of India* (19 March 1914), 8; and “Sea Voyage and Caste. Important Benares Appeal,” *WRTOS* (21 March 1914), 16.


903 *Das v Das*, 31-3.
judges applauded Govind Das’s efforts to broaden his fellow castemen’s mentality, he lost his case and had to pay the respondent’s legal fees in both courts. The decision of his caste panchayat was not a permanent order. As a result, it was not contrary to natural justice. And just as Bella’s British judge scoffed from Rangoon that the discussion of the Zoroastrian purity laws in the Bombay commission was largely irrelevant in law, so the judges in Allahabad grumbled that much time had been wasted on the theological validity of the kala pani taboo.904

The satirical magazine Hindi Punch, itself run by reformist Parsis, clearly sided with Das and the Hindu reformists.905 A 1914 cartoon entitled “The Modern Atlas” showed a crying figure labeled “Caste” collapsing under the weight of “the Question of the Sea Voyage,” which is tried to carry on its back (fig. 18). The caption read: “I can’t cast this load off my back, try as much as I can! It will be the death of me.” The editors noted that the question of the sea voyage to England and other countries continued to agitate various Hindu castes. “The orthodox are much troubled by the way in which some of the castes are unloosening the restrictions imposed against it.”906

The Das case countered what seemed to be a growing trend toward relaxation of the taboo. Hindi Punch had also satirized the debate five years earlier in 1909. This time, a young man in a black academic gown received a

905 Hindi Punch showed its reformist colors in its coverage of Saklat v Bella, but also of Petit v Jijibhoy before it. See, for instance, “The Parsi Panchayat Case,” Hindi Punch (27 December 1908), 19. See also Mitter, 155.
tika, the mark of blessing on the forehead, from a sari-clad woman. Behind him lurked the ghost of Karsondas Muljee, the first Hindu to cross the *kala pani* en route to England, saying, “Ah! How times change! In my days they excommunicated, hooted and hissed persons crossing over! Now they lionise them!” (fig. 19). The caption noted that some Hindu castes were gradually casting off the restriction on travel to England. In the place of the “old form of displeasure,” they were hosting parties for “venturesome young men, wishing them *bon voyage*, and receiving them, on their return, with open arms!”907 On a similarly hopeful note, the *Indian Social Reformer* noted a year after the Benares case, in 1915, that the First World War effort had forced many Brahmins to overcome their caste prejudices by making them cross the *kala pani*.908 In the early twentieth century, oceanic travel by steamship—with all its educational and professional benefits—violated Hindu and Parsi purity laws alike, forcing both communities to reconsider traditional definitions of sacrilege and pollution.909

The Parsi reassessment led by Madon in the Bombay commission, sprouted from rich intellectual soil: the work of a Columbia-educated Parsi priest named Maneckji Nusserwanji Dhalla. Dhalla’s book, *Zoroastrian Theology*, served as a manifesto for the reformist movement.910 It was published in 1914, the same year as Bella was initiated. Dhalla summarized the reformist—or “Parsi Protestant”—position in five points. First, with obvious parallels to the European

---

909 The *kala pani* taboo brings added significance to the fact that until 1922, the Indian Civil Service exam was held exclusively in London.
910 On Dhalla, see Palsetia, 255-6.
reformation’s attack on the liturgical use of Latin, reformists opposed the recital of prayers in an unintelligible language: the ancient Iranian language of Avestan. They argued that the Avestan text had been corrupted by incorrect pronunciations and formulae because no one knew the language. The orthodox reply was that Avestan was a divine language, and had to be maintained. There was also too much ritualism in contemporary Zoroastrianism. It had become mechanical and meaningless, replacing simple faith with a pedantic formalism. “They were only a clothing of religion, but the ethical substance of religion was of greater importance than the clothing itself.” Third, reformers denounced the intercessory prayers for the dead—again, with striking parallels to the critique of the sale of indulgences by European Protestants. Merit could not be bought at a price, and sin could not be “expiated by proxy.” The issue of women’s seclusion during menstruation was a further point of criticism. Zoroastrian practice was to isolate a woman in a room with iron furniture and utensils for the duration of her menstrual period, as even her gaze was polluting during that time.911 Reformers complained that these precautions were superstitious and cruel. The modern science of hygiene proved that menstruation was not a disease. Finally, reformers had no use for consecrated bull’s urine. The substance may have served as a disinfectant centuries before, but in the early twentieth century, there was no excuse to wash with or drink it, even in a ceremonial context.912

By mocking ritualism, Madon’s aim was to upset and embarrass Darab Pesotan Sanjana, head priest of the Wadiaji Fire Temple and one of four head

---

911 Modi, *Religious Ceremonies*, 161-8; Choksy, 97-100; and Rose, 19-25.
priests in Bombay.\textsuperscript{913} Sanjana, aged 58, was principal of the Sir Jamsetjee Jeejeebhoy Zarhosti Madresa, a priestly training school, and was well respected and published in the field of Zoroastrianism.\textsuperscript{914} Sanjana’s father had given his opinion in the Parsi prostitute controversy of 1870.\textsuperscript{915} Continuing the family tradition, Sanjana had been on the committee and sub-committee of experts called during the 1905 \textit{juddin} controversy. Like the scholar-priest, J. J. Modi, Sanjana also gave testimony in the case over the French Mrs. Tata, \textit{Petit v Jijibhai} (1908). And like Modi, he had waffled on the stand, initially favoring conversion, then claiming to change his mind in light of the evidence he had heard during the trial itself.\textsuperscript{916} By 1916, staunch orthodoxy had replaced Sanjana’s prior ambivalence, but this did not stop Madon from opening with a reminder of the 1908 affair.\textsuperscript{917} Speaking of witnesses like Modi and Sanjana, Beaman had referred in 1908 to their “invincible bigotry which proverbially dulls the sharpest wits,” as well as to “a natural stupidity and want of training in clear thought” which prevented them from disentangling their own contradictory thoughts.\textsuperscript{918}

\begin{footnotes}
\item[913] Sanjana was a high priest of the majority Shehenshai section of the Parsi community. On the divide between Shehenshai and Kadmi sects, see Karaka, I, 105-17.
\item[914] See Tarapore.
\item[917] “Plaintiffs’ Evidence. No.11: D. P. Sanjana” (8 March [1916]) in \textit{Saklat v Bella}, 231 (PCOR).
\item[918] \textit{Parsi Panchayat Case (Beaman)}, xiii. For further criticisms by Beaman of Modi (including notes to himself), see Beaman, “Parsi Panchayat Case Notes,” 45, 48, 50, 54 (BHC) and \textit{Parsi Panchayat Case (Beaman)}, xvii.
\end{footnotes}
One particular exchange between Madon and Sanjana makes contact with anthropological discussions of ritual in important ways. Madon tried to corner Sanjana into admitting the impracticality of his position on barashnum. Madon wanted Sanjana to admit that barashnum could never be renewed in outposts of empire because every priest would lose his barashnum on the sea voyage, and thus could not renew the barashnum of another who had lost it in the same way. Sanjana proposed a unique solution to the problem: the mutual administration of barashnum. If two pairs of priests arrived at the destination, they could renew each others’ barashnum by each pair performing the ceremony on the other pair—and repeating it, three times.919 Sanjana did acknowledge that his scheme was purely theoretical to date. Mutual barashnum had never in fact been administered prior to initiations performed in Rangoon, Ceylon or Aden, with the result that all initiations performed in those places were invalid.

Madon moved on to potential schemes for the transportation of nirang, as Sanjana claimed that transportation of nirang over long distances would vitiate its consecrated status. Here Sanjana again had a solution. To Madon’s delight, it emphasized the pedantic and impractical nature of Zoroastrian ritual. Sanjana’s scheme for overland travel consisted of the following. A first-class railway car would be washed with water, then a stone placed in the middle of it. Several metal boxes would be interlaid with one inch of sand on each side, and fitted into one another. Innermost would be a bottle containing consecrated nirang. The whole complex had to be conveyed by a priest whose barashnum remained intact. Madon asked sarcastically if there could be a marine version: “I expect

919 “Plaintiffs’ Evidence. No.11: Sanjana” in Saklat v Bella, 277 (PCOR).
you would suggest the chartering of a steamer for conveying consecrated nirang to Rangoon and the employment of a fleet of mobeds [priests] to administer mutual barashnum and to get up volunteer Parsi pilots and sailors to convey the boat?” Vimadalal objected to the question, but the Commissioner permitted it. Sanjana replied that if a special cabin in a steamer were prepared in the same way as his railway car, the same solution could be employed.\textsuperscript{920} This assumed that one hazard of travel by sea—the dumping of human waste into the sea—would be withheld until docking at port.

Madon made no attempt to attack Zoroastrian ritual on the basis of efficacy for the obvious reason that he could not. Only rituals promising external results—like rain—might have their efficacy tested. There was an important distinction to be made, in other words, between externally dependent and self-referential rituals. The latter, being “efficacious” according to the ritual community’s own internal norms or consensus, were in a far more defensible position than the latter.

The truth was that self-referential rituals worked if devout Zoroastrians believed they worked. It is ironic, then, that the orthodox defended the purity laws through what Mary Douglas calls “medical materialism”—the claim that ritual purification coincided with modern scientific concepts of hygiene.\textsuperscript{921} Orthodox Parsis claimed that the chemical analysis of consecrated bull’s urine revealed a high ammonium content, for instance, making it in fact an effective cleansing

\textsuperscript{920} “Plaintiffs’ Evidence. No. 11: Sanjana” in \textit{Saklat v Bella}, 277-8 (PCOR).
\textsuperscript{921} Douglas, 30-3. For examples from Zoroastrian writings, see Choksy, xvi-xxiv; and Modi, \textit{Religious Ceremonies}, 49, 127, 149-52, 159.
substance. And they argued that the Zoroastrian prohibition on burial proved wise in light of modern research on infectious diseases.

Nonetheless, hygienic defences of purity laws were post hoc justifications that fundamentally missed the point. Ritual purity and hygiene were not synonymous in their aims or rationales, regardless of an occasional coincidence of prescriptive end-points. As Choksy has argued, the point was not that purity laws were informed by some uncanny foreknowledge of microbial infections. The purity laws were about demonology, ritual pollution translating in most cases into moments of vulnerability when demons might slip in with their evil. Purity laws and rules of hygiene might coincide at times. But when they did not, purity won.

Madon knew he could not win on the question of efficacy, so he turned to practicality. The whole point of his exchange with Sanjana was to let the witness figuratively hang himself, encouraging the high priest to propose ludicrously complex, expensive and bizarre schemes that would only make his side the laughing-stock of colonial Bombay. The strategy is fascinating in light of anthropological research on ritual, which suggests that the point of ritual is in fact to be precisely as Sanjana described it: inconvenient, costly, and illogical outside of its own religious cosmology. There was even good reason to make ritual distasteful and in some ways humiliating, as I discuss below with regard to

---

922 See Wilhelm.
923 See Modi, Religious Ceremonies, 151-2.
925 Choksy, xvi-xvii.
926 Eric Hobsbawm makes the similar point that rituals only become available for maximum symbolic use when their original practical purpose becomes obsolete. [Eric Hobsbawm, “Introduction: Inventing Traditions” in Eric Hobsbawm and Terence Roger, eds., The Invention of Tradition (Cambridge, Cambridge University Press, 1983), 4.]
drinking consecrated bull’s urine and appearing naked in front of a male priest as a woman. Purifying rituals acted as memory markers, identifying clearly for the ritual community the binary “before” or “after” ritual status of the candidate.927 These rituals acted as indicators of the sincere and exclusive desire to be purified. If nirang tasted good, how would the ritual community know whether an initiate had drunken it for ritual purposes or because it was delicious? If it were easy, there would be room to doubt whether the initiate was genuinely dedicated to the goal of purification. Perhaps he or she had undergone the process “just in case” Zoroastrian eschatology turned out to be correct. Clarity and certainty were critical features of purification rituals. To avoid accidental or inadvertent purifications, procedures were typically difficult, resource- and time-consuming, and even uncomfortable.

The nine-night barashnum satisfied all of these criteria. Following correct procedures over nine nights and days was indeed challenging. Nocturnal emissions and menstruation would vitiate the whole process.928 Contact with carrion, non-Zoroastrians, barbers or bathhouse keepers had the same effect. If one bled, suffered a burn, or swallowed a tooth, barashnum would be vitiated.929 Drinking consecrated bull’s urine might also have been a challenge, but it was a challenge that evidenced one’s devotion to purity and the religion. On the same principle, the consecration of the highest category of fire temple was a difficult and costly process. Sixteen types of fire, including the “fire of a burning corpse”

928 Choksy, 50-1; Boyce, A Persian Stronghold, 114-38.
929 Choksy, 51.
and fire caused by lightening, had to be collected, purified, consecrated and unified in a complex cycle of technical, costly and time-consuming ceremonies.\textsuperscript{930} It made perfect sense, then, that Parsi rituals were as alien to everyday modes of action as both Sanjana and Madon made them out to be. That was the point.

There was another reason for Sanjana to emphasize the technical complexity and impracticality of Parsi ritual. Writing on legalism—adherence to a set of rules strictly applied—legal anthropologist Lloyd Fallers shows that the greater the gap between everyday modes of valuation (like morality) and law, the greater the need for high status by the system’s legal practitioners. Fallers is writing about sub-Saharan African legal cultures, but the same point holds for technical religious purity laws. The more demanding and inconvenient the rules of purity, the greater the power and influence required by priests in order to gain the adherence of their followers. And vice-versa: the higher the status of priests, the more easily they could insist upon acceptance of the purity laws. Furthermore, the more difficult a practice or ritual was to perform, the greater the increase in status to those capable of administering it.

Sociologists of the professions like Richard Abel make the same point about upward collective professional mobility: groups with particular skills generally attempt to monopolize and make exclusive that sphere of activity in order to increase their status and income. Abel and others have made the case for lawyers, but versions of the same story have been told for countless other

\textsuperscript{930} Modi, \textit{Religious Ceremonies}, 200-14. For a comparative list of the sixteen types as they appear in several Parsi sources, see Vitalone, “Fires,” 440.
professions around the world.931 I want to build upon the model set by J. Ruepke, who makes the argument for religious practitioners generally, and Burkhard Gladigow, who looks at Parsi priests specifically.932 The status, wealth and education of Parsi priests—as well as their influence and general reputation—had been at a notorious low-point for over a century when Bella’s commission opened in Bombay. Impoverished priests were cynically said to sell their services to the highest bidder, admitting half-Parsis or non-Parsis into the fold in order to


feed themselves. Dastur Kaikobad testified that, while the normal fee for performing an initiation could range from one rupee to several hundred, he received 3,000 rupees for performing Bella’s navjote. The flouting of the purity laws for personal gain was not just unethical, but also dangerous: the performance of invalid rituals allowed pollution to spread imperceptibly throughout the community.

Awareness of priestly circumstances extended beyond the community. In 1882, Colonel Olcott, an American founder of the theosophical movement, lamented the priests’ fall from privilege: “I ask you, men of practical sense, what is the certain fate of a religion that has descended so low that its priests are regarded by the Behedin (laity) as fit only to be employed in menial services, such as bringing things to you from the bazaar, and doing household jobs of work?” Two decades later, a Parsi named B. J. Billimoria referred more bitterly to “thy so-called priests, priests of ignorance and blindness, priests of mercenary motives, priests who have made thy very faith and religion ‘A staff of Bread’ for themselves, a ‘profession for living,’ not a profession of Sanctity and holiness.”

During the hostile exchange between Madon and the high priest Sanjana, Madon suggested that Dastur Kaikobad was a more experienced priest: Kaikobad had officiated at a higher grade of ceremony than Sanjana ever had.

933 See notes 489-90 (above).
934 This sum included travel expenses for the Calcutta-Rangoon trip, but presumably not for the Bombay-Calcutta trip, as Kaikobad was already in Calcutta to officiate at a wedding. [“Defendant’s Evidence. No. 30: Evidence of Dastur Kaikobad Aderbad Dastur Naoshirwan. In the Court of Small Causes, Bombay” (12 May 1916) in Saklat v Bella, 599 (PCOR).]
935 Choksy, 29.
936 “The Spirit of the Zoroastrian Religion. Lecture delivered by Colonel H. S. Olcott, President-Founder of the Theosophical Society, at the Town Hall, Bombay, on Tuesday, the 14th February 1882” in N. F. Bilimoria, Zoroastrianism, 8.
937 B. J. Billimoria, Warning Word, 1. See also note 217 (above).
Sanjana lashed out with a reference to the lack of education among most priests. Unlike Kaikobad, he had not officiated as a Yojdathregar priest. But this was because he had been busy with university study. Sanjana’s father did not allow him to devote his time to the performance of such ceremonies “like other illiterate Yojdathregar priests.”

The orthodox attack on Bella’s initiator was a desperate attempt to clean up the priesthood. The strict enforcement of the technical requirements of Zoroastrian ritual might help priests regain their autonomy, and with it, status and power. The vitriolic attack on Kaikobad, in other words, was simply one small piece in the larger project to revive priestly dignity and power—to “build respectability,” as sociologists of the professions put it. Scholars have commented upon the high degree of professionalization of ancient Persian ritual practitioners, the Magi. The decline of their power and authority, and of the purity laws generally, was probably the result of the loss of royal patronage that followed the Arab Muslim conquest of Persia. By disciplining one errant priest, Kaikobad’s attackers were trying to improve the image of the priesthood generally. They were defining what it meant to be a good priest by ostracizing a bad one.

Finally, an important qualification needs to be made to the professionalization thesis. I do not mean to dismiss legalism in law or religion as

938 A yojdathregar priest was one capable of performing the most sacred category of Zoroastrian ceremonies, having undergone and retained barashnum himself.
940 Macdonald, 197-8.
942 Choksy, 7.
a mere cover for the quest for power and status. Both fields drew upon internal bodies of thought—rule-of-law ideology and what Choksy calls Zoroastrian “demonology”—to justify renewed legalism within an extensive conceptual framework.  

My argument is simply that the complexification of knowledge and skill required by the legalism of both professions served an equally important external purpose. Legalism simultaneously furthered the “professionalization project”—whether it was successful (in the legal case), or less so (in the priestly example). That the internal logic of colonial jurisprudence and Zoroastrian theology deserve to be taken seriously does not exclude the fact that they produced significant social ripples. One of these waves—the attempted re-professionalization of the priesthood—pulled the high priest Kaikobad under. Parsi lawyers Vimadalal and Madon, on the other hand, found themselves coasting along the crest of a happier wave, experiencing the rising prestige and influence of Parsis as they excelled within the legal profession.

Purity, Propriety and Disgust

Madon began by ridiculing orthodox ritualism for its impracticality. He then shifted tact, rejecting specific rituals aesthetically and even viscerally by appealing to colonial notions of propriety and disgust. The strategy was a standard one in the colonial setting, where so many reform movements had been launched—by British missionaries in the earlier period and by Indian reformers in the later—

---


944 Macdonald, xiii.
through public relations campaigns that showcased the distastefulness of South Asian practices.\textsuperscript{945}

Bella’s lawyer opened with a topic calculated to make Sanjana offend his colonial audience: the practice of drinking consecrated bull’s urine as part of ritual purification. When Suzanne Brière underwent her initiation in 1903, her husband told her not to tell anyone about this part of the ceremony. Like many Parsi reformers, he found it a “disgusting” source of embarrassment, particularly (one suspects) vis-à-vis Europeans.\textsuperscript{946} Madon began by questioning his witness about the use of nirang after miscarriage. The status of the corpse in Zoroastrian theology made miscarriages particularly polluting. Giving birth to a stillborn baby meant that for a time, a woman had carried a corpse inside her womb, making that organ like “a grave or a receptacle of the dead.”\textsuperscript{947} To cleanse her womb, an


\textsuperscript{946} Needless to say, Sooni Tata immediately wrote to her mother in France with all the details: “I ate pomegranate leaf and made the gesture of bringing to my lips a little pewter cup (like at the Musée Guimet) that contained bull’s urine. It is said to be a purification agent, but of course nobody drinks it or even touches it with his or her lips. It is a custom that comes down from ancient antiquity. Ratan told me not to tell anyone about it because he finds it disgusting (so please don’t talk about it) but I find that it’s natural, and they could not abolish it for me.” [“J’ai mangé une feuille de grenadier et fait le geste de porter à mes lèvres une petite cuvette en étain (comme au Musée Guimet) dans laquelle se trouvait de l’urine de boeuf. C’est une coutume qui remonte à la plus haute antiquité. Ratan m’a dit de ne pas raconter cela parce qu’il trouve ça dégoûtant (n’en parle pas, donc) mais je trouve que c’est naturel et qu’on ne pouvait pas l’abolir pour moi.”] [Letter from Sooni Tata to her mother (1903), file 96 of J. R. D. Tata Papers, 280-2 (TCA).]

\textsuperscript{947} “Plaintiffs’ Evidence. No.11: Sanjana” (17 and 28 March 1916) in Saklat v Bella, 279 and 331 respectively (PCOR).
injection of nirang was required—interpreted by a Pahlavi commentator as meaning that the woman be given nirang to drink.

Madon then revealed his reformist colours. He challenged Sanjana to produce more textual support for the drinking of nirang. According to Madon, this single passage on miscarriage was the only example that existed in the Zoroastrian canon—a thin foundation for the ceremonial practice of drinking “this filthy substance.” Madon’s comment was reminiscent of the reformist Dhalla’s reference to the practice of rubbing “the dirty stuff” on one’s face, hands and feet upon waking in the morning. In the same vein, Hindi Punch sarcastically proposed that the final disciplinary sanction of the Parsi Anjuman might be to make a renegade Parsi drink a glass full of “the unspeakable product of the bull” every morning. A year later, it raved sarcastically about “the sweet fragrance effervescing from the holy water of the holy bull,” declaring nirang to be “gold before and after meals, gold at all times.”

Sanjana admitted that there was only one textual reference to the practice. But this was because so much of Zoroastrian scripture was destroyed when first Alexander, then the Arab Muslims attacked the ancient Persian capital of Persepolis. Drinking nirang had not been proven to injure the human body, and it was crucial to consider the sacred meaning and effects of the

---

948 “Plaintiffs’ Evidence. No.11: Sanjana” (17 March 1916) in Saklat v Bella, 279-80 (PCOR). For a similar attack upon the use of nirang following miscarriage (although from a theosophist rather than reformist perspective), see B. J. Billimoria, Warning Word, 2.
949 Dhalla, Zoroastrian Theology, 350.
950 “The Rangoon Romance,” Hindi Punch (7 June 1914), 19.
substance. The same distaste for nirang had accounted in part for the conversion of a Parsi woman to Christianity three years earlier in 1913, as she explained in a letter to Sanjana. At another point in the commission, Madon discredited a signatory to an anti-Bella petition by referring back to the nirang issue. Dr. Sorabji D. Desai had been a witness in the earlier conversion case of Petit v Jijibhai. Madon portrayed him as a semi-lunatic by reminding the commission that in Petit, Dr. Desai had said that the urine of the cow affected the course of Jupiter—a claim that had been reported in all the prominent newspapers of Bombay.

The use of urine as a ritual cleansing or medicinal agent was by no means unique to the Parsi community. The consumption of “the five sacred products of the cow”—including cow’s urine and dung—was required by the Hindu Santāpana penitential rites. The use of animal and human urine, both internally and externally, was an Ayurvedic technique believed to cure a long list

---

956 Patrick Olivelle, trans. The Law Code of Manu (Oxford: Oxford University Press, 2004), 202 and note at 289 (11.166), 206 (11.213). The other three products were milk, curd (yoghurt) and ghee. See also Saurabh Dube and Ishita Banerjee Dube, “Spectres of Conversion: Transformations of Caste and Sect in India” in Rowena Robinson and Sathianathan Clarke, eds., Religions Conversion in India: Modes, Motivations, and Meanings (Delhi: Oxford University Press, 2003), 243-5.
of ailments.\textsuperscript{957} The imbibing of human urine was part of yogic traditions, and was taken up by the urine therapy movement from the late colonial period onward.\textsuperscript{958}

Reformists attempted to sanitize Parsi religious practices by highlighting distasteful elements, then excising them. The orthodox did the exact opposite, clinging to the same practices as symbols of their religious autonomy. Nirang was simply the latest target for reformist critics, a continuation of the earlier European—and very much Christian missionary—critique of Parsi death rites.\textsuperscript{959}

Even more than nirang, the exposure of the dead to vultures in the Towers of Silence was a target for outside critique. The nineteenth-century Florentine scholar Paolo Mantegazza wondered how Parsis could “observe without horror those fowls roosted on the tamarind trees without thinking that they might be digesting the tender flesh of their own child, or the heart of the mother.” Angelo De Gubernatis, another Italian scholar and traveller, found repugnant the idea that “a part of your blood, of your flesh, of your beloved forms may be ignobly lost in the voracious jaws of greedy beasts which shall soon digest the infamous meal perched on the roof of your own house.”\textsuperscript{960} At the beginning of the twentieth century, George Birdwood described the towers as “the gloomy platforms” where Parsis left their loved ones’ corpses “to be torn by devouring jackals and hungry

\textsuperscript{959} On the influence of Christianity (and particularly Protestantism) upon European accounts of Zoroastrianism, see Hinnells, “British Accounts of Parsi Religion,” 117-19.
\textsuperscript{960} Paolo Mantegazza and Angelo De Gubernatis in Cereti, 470-1.
vultures. Reformers took their cues from this tradition, describing the practice of exposure to vultures as repulsive. They also described it as “cruel,” resonating with the very particular use of the term in the imperial Gothic literary mode.

Another target for reformist critics was the barashnum ceremony. The participant began by drinking nirang. He or she then sat on stones within the compass of certain circles, and while moving from one cluster of stones to another, rubbed his or her body with more nirang, sand, and finally, water. At some point, the sacred dog would be led past the individual, performing sagdī (literally, being seen by the dog). The dog, like the vulture and other carrion-feeders, enjoyed special status in Zoroastrianism: as a scavenger, it limited the spread of disease and infection. By the late nineteenth century, the rite in India

961 George Birdwood, “Letter. The Phrase ‘Towers of Silence.’ From George Birdwood,” Times of London (8 August 1905), 9. Birdwood corresponded with prominent Parsis in Britain including M. M. Bhownageree and Dadabhai Naoroji, and also designed the Wadia mausoleum at Brookwood Cemetery in England. His brother was a judge in the High Court of Bombay in the 1880s. See items 5, 8, 14, 16, 18, 47, 57, 65, and 82 in Sir George Birdwood Collection, MSS Eur F216 (OIOC).


964 See Choksy, 40-52 for a detailed description of barashnum rites. For an early twentieth-century photograph of a reenactment of the ceremony, see Kotwal and Mistree in Godrej and Punthakey Mistree, 375 (photo 9a).

965 See Boyce, A Persian Stronghold, 92-5.


967 Modi, Religious Ceremonies, 129-30. On the role of the dog in Zoroastrian death rituals, see Boyce, A Zoroastrian Stronghold, 139-63; Tarapore, 166-7; and Karaka, I, 197-8. For satirical cartoons using images of Parsi canine reverence, see “For the Faithful Dog,” Hindi Punch (13 September 1908), 11; “Lucky Dog!” Hindi Punch (20 September 1908), 21 [fig. 23 (below)]; and “Destroying the Kharfastars!” Hindi Punch May 1910 in Burjorji Nowroji Apakhtyar, Cartoons from the ‘Hindi Punch’ for 1910 (Bombay: the author, 1911), 34.
was performed almost solely upon priests, along with hereditary corpse bearers.968 Opponents of conversion, however, argued that *barashnum* was essential for converts, and that cases like the initiations of Bella, the French Mrs. Tata and the quarter-Malagasy Mrs. Todyvala were void for lack of it. Defenders of the women, on the other hand, argued that the ceremony was clearly an unreasonable requirement: it would so violate a woman’s modesty that no respectable woman would have her *navjote* performed if she had to undergo *barashnum* first.969

Mary Boyce has documented a partial solution amongst the Zoroastrians of Iran: the priest and the female initiate stood on either side of a doorway, with another woman conveying actions and messages between the two.970 Eighteenth-century Indian sources referred to post-menopausal women undergoing *barashnum* naked, there being less risk of arousal between initiates and priests given the women’s advanced age. The older women would then perform the ceremony upon young women, also naked as intended. This practice was condemned by Iranian Zoroastrians in 1773 when consulted by Parsis through the last of the *rivayats*, or correspondence between Indian and Iranian Zoroastrians on doctrinal issues: women could not act as priests.971

There was no getting around ritual nudity for the Parsis of India in the early twentieth century. Female initiates would have to undergo the full ceremony

---

968 On the corpse bearers, see Modi in Beaman’s “Parsi Panchayat Case Notes,” 49 (BHC); and Boyce, *A Persian Stronghold*, 111.
969 See *Parsi Panchayat Case (Davar)*, 56-7; and *Parsi Panchayat Case (Beaman)*, xvi.
970 Boyce, *A Persian Stronghold*, 128-9. A similar procedure was used during *Rīman* purification rites, originally undergone by Parsis for less serious types of pollution than those necessitating *barashnum*. A female candidate would bathe out of the sight of the male priest when undergoing this type of ritual cleansing. [Choksy, 75.]
971 Vitalone, *Persian Revayat “Ithoter,”* 208 (Question and Answer 78).
naked, by orthodox accounts, or have their navjote declared invalid. For reformers, barashnum was part of a larger campaign against Zoroastrian ritualism generally, holding it up as an example of the irrationality and absurdity of ritual. The proposition was deeply ironic in one sense: any female undertaking the ceremony had to trade sexual for ritual purity—an unacceptable prospect by standards of propriety in British and reformist Parsi circles alike. Moreover, the idea of a female of reproductive capacity undergoing barashnum was perplexing given the limited time during which a woman could retain this pure status: it would only last until her next menstrual period.972

The question had been a major issue in Petit v Jijibhai. Even before litigation began, there was disagreement in the sub-committee of experts appointed by the Parsi Panchayat over barashnum. The sub-committee decided that conversion was permitted, but that safeguards ought to be put in place to prevent opportunistic conversions. One of these was the barashnum ceremony.973 Seven members of the committee voted for barashnum to be required of converts like Mrs. Tata. But two voted against, with another one claiming that all the restrictions imposed were far too severe. The canonical text in favour was the Vendidad, which stated that barashnum was necessary “in cases of serious pollution.” Not being of entirely Parsi parentage constituted serious pollution, according to barashnum advocates.974

973 On the other safeguards, see Ménant, “Social Evolution among Parsis,” JIA X: 6 (September 1921), 190-1 and X: 7 (October 1921), 211-2.
974 Ménant, “Social Evolution,” JIA X: 7 (October 1921), 212.
The point was at issue in the *Petit v Jijibhai* trial, too. In his published work, the expert witness, Parsi scholar-priest J. J. Modi did not mention that half-Parsis or complete aliens had to undergo the *barashnum* ceremony before initiation. In his testimony, however, he argued that it was essential. He was convinced that a group known as the “Mazagon converts”—nine adults who were the offspring of Parsi fathers and alien mothers—had undergone the nine-night *barashnum* prior to their initiation in 1882. Their case had provoked a pamphlet war between priests, who also happened to belong to opposing sects of the *kabisa* calendar controversy dating from the eighteenth century.975 Dastur Jamaspji Minohurji had performed the *navjote* ceremonies of the Mazagon “converts.” Another high priest, Dastur Peshotan—“between whom and Dastur Jamaspji there always existed great rivalry and unfriendliness”—rejected the initiations as invalid.976 Crucially, Dastur Peshotan wrote in a pamphlet, there had been no *barashnum* ceremony.977 Dastur Jamaspji replied with his own pamphlet, insisting that *barashnum* was not necessary.978 Modi disagreed with both. From conversations with informants, Modi was convinced that the Mazagon “converts” had undergone the nine-night ceremony. He also felt it was necessary for the validity of their initiation, citing Zoroastrian scripture as his source.979 Modi read this requirement as applying not just to initiates with a Parsi father alone,

---

975 See note 28 (above).
976 *Parsi Panchayat Case (Davar)*, 47.
977 *Parsi Panchayat Case (Davar)*, 48.
978 *Parsi Panchayat Case (Davar)*, 48.
979 “The *Vendidad* has such a passage. The ninth chapter the spirit of it shows that the *Barashnum* was contemplated as a part of the *Navjote* in the case of Aliens. There is no other passage in the Zoroastrian scriptures which makes the *Barashnum* a necessary part of the *Navjote.*” [Modi in Beaman, “Parsi Panchayat Case Notes,” 45.]
but to initiates without Parsi parents, including Suzanne Brière, the French wife of R. D. Tata. The judge, Davar, accepted his reasoning, dismissing the impropriety of the ceremony:

It is possible that the undergoing of this ceremony, in so far as it may involve the candidate going through certain forms, might not conform to some people’s ideas of decency, but that is a matter that we are not concerned with. If a party [cares] to enter a particular religion, he or she must go through the prescribed ceremonies however irksome they may be.

The other judge in the case could not have disagreed more. Beaman sputtered that he found it “difficult to believe that any cultured adult foreigner could bring himself to submit to this extremely primitive ceremony of initiation, while certainly no grown cultured woman, who wished to join the Zoroastrian faith, could conceivably [be] asked to do so.” If the orthodox insisted on this ceremony, they would only gut their own plan to keep out the “least desirable class of convert.” It was only people “in the lowest stage of development” who would agree to undergo such an initiation rite. The point would also come up in Dinbai v Erachshaw Todyvala (1916). The husband’s principal explanation for abandoning his quarter-African wife was that she was not a Parsi, her mother being half-Malagasy. But a back-up argument was that she was not a proper Parsi because she had not undergone barashnum before her initiation. The Parsi Chief Matrimonial Court rejected both.

---

980 “I can point out passages from the sacred books of our religion, to show that the Barashnum is a necessary part of the Navjot in cases of those not born of Parsi parents on both sides.” [Modi in Beaman, “Parsi Panchayat Case Notes,” 45.]

981 Parsi Panchayat Case (Davar), 57. See also “Is the Ritual of ‘Barashnum’ essential?,” Parsi Prakash VI, 224-31.

982 Parsi Panchayat Case (Beaman), xvi.

983 “A curious Parsi Matrimonial Case,” Indian Social Reformer (12 November 1916), 123. However, Dinbai did drink nirang. See note 562 (above).
The British judge in Rangoon was struck by the impropriety of the rite regardless of the participant’s sex. C. P. R. Young exclaimed,

the Barashnum is an archaic and primitive ceremony of lustration, in which the whole body of the recipient is washed by the priest who performs the rite from head to foot during nine successive nights, and is obviously one as Beaman J pointed out which no adult of either sex would be willing to undergo unless absolutely convinced of its necessity, and in the present day no Zoroastrian undergoes it, except certain priests who do so at their ordination and the corpse bearers.984

Young was presumably unconvinced by the Vendidad’s reference to “serious pollution.” He held that there was no scriptural basis for the idea that dubious initiates had to undergo barashnum. Only the Rivayats mentioned it, but they required not just converts, but also normal Zoroastrians to undergo barashnum before initiation. They also recommended that all Zoroastrians continue undergoing the ritual regularly afterwards. Young reasoned that barashnum seemed to be not so much a condition for initiation as an outward sign of superior holiness.985 On appeal, judges Robinson and MacGregor in the Chief Court of Lower Burma implicitly agreed.986 The Privy Council in London did, too. The judges there ruled that barashnum was not necessary for Bella’s initiation and even chastised the judges in the French Mrs. Tata’s case for spending so much time on the issue.987

Criticism of female nudity spanned a range of situations in colonial South Asia, including the nakedness of some sannyasins or female Hindu ascetics,

986 The appellate judges did not mention barashnum. See D. R. Saklat and others, Appellants v Bella and others, Respondents AIR 1920 Lower Burma 151-5.
987 Saklat v Bella 53-4 IA (1926-7) 49-50.
everyday toplessness among certain tribes and communities in the south, and
ritual nudity during fertility, rain and mother-goddess rites across the sub-
continent. But according to European missionaries and legislators, being civilized
meant covering up—despite the heat and humidity, religious pollution laws, and
cultural view in certain traditions that bodily exposure implied deference to a
superior, whether human or divine. By making the propriety-based argument
against female nudity in *barashnum*, Madon was tapping into a discourse of
civilization, westernization and Christianization that had suffused the colonial
world by 1916. It was a discourse that resonated instantly with European
judges like Beaman and Young, but left the orthodox judge Davar cold.

This discourse was intriguing because it operated in tandem with another
pulling in the opposite direction: the colonial discourse that aimed to draw women
in *purdah* out of the inner quarters of the home. Colonialists in India urged
upper caste Hindu and Muslim women to expose themselves more in a locational
sense whilst instructing other women to expose themselves less in a bodily
sense. It was a matter of turning down the shame in one case, and turning it up
in another. The two discourses worked in concert with each other, compressing
“civilization” into a space somewhere between the oppressions of the *zenana*

---

989 See, for instance, Merry, “Kapi’olani at the Brink,” 51, 54.
990 On *purdah* parties organized by British women, see “Mrs. Scott’s Purdah Party,” *Times of India* (26 March 1888), 4; “Ladies’ Page: Social Intercourse,” *The Parsi* I: 1 (January 1905), 30-1; “A ‘Here and There’ Entry,” *Deccan Herald and Daily Telegraph* (23 September 1914), 4; and Norman Macleod, “Letters from India” (17 December 1921), HRA/D63/A1 in Macleod of Cadboll Papers, 33A (HCA). There were also Indian campaigners like Cornelia Sorabji, the daughter of a Parsi who converted to Christianity, and the first woman to complete a Bachelor of Civil Law degree at Oxford. See Sorabji; and items 119, 120, 130, 137, and 150 in Cornelia Sorabji Papers (1866-1945), MSS Eur F165 (OIOC).
and the toplessness of tribal forest women. The Parsis had proudly initiated the
criminalization of polygamy in their own community by proposing what became
the 1865 Parsi Marriage and Divorce Act.991 Following this Act and the
beginnings of female education, Parsi women were held up as a symbol of the
community’s enlightened and progressive ways.992 Madon emphasized female
nudity in *barashnum* to smudge these cultural punctuation marks, embarrassing
the community not with the charge of excessive control of its women, but with
that of forced female *immodesty*. Implicitly, he was aligning Parsi ritual with tribal
and polytheistic practices, hoping to rattle the convictions of all but the most
staunchly orthodox defenders of the purity laws. Madon wanted to embarrass
the community into deleting ritual nudity from its gestural canon, a result that
would also help validate Bella’s initiation.

**Conclusion**

According to reformists in the Bombay commission, the restrictions upon mobility
imposed by *barashnum* and *nirang* were impractical and ridiculous. Bella’s
defenders portrayed the consumption of consecrated bull’s urine as distasteful,
and the nudity involved in purification rites, immodest and barbaric. In his cross-
examination of the high priest Sanjana, the pleader Madon was tapping into two
pre-existing European discourses on Parsi and South Asian practices generally.
The first was one of squeamishness and disgust for elements of Zoroastrianism

991 See Bengalee.
Affairs. Parsee Exclusiveness,” *Times of India* (23 May 1905), 4; and Hinnells, “Parsis and British
Education,” 157-61.
like exposure to vultures after death and the consumption of bull’s urine. The second was a larger discourse about civilization and femininity, bodily propriety and shame. Half of the latter body of thought focused on teaching certain women—elite Muslim and Hindu women—to expose themselves more by venturing out beyond the inner quarters of their homes. The other half attempted to inculcate an Anglicized sense of sexual shame in women who lived or worshipped in full or semi-nudity. Madon also ridiculed ritualism for its impracticality and legalism, building implicitly upon the Parsi reformist critique by Dhalla and promoting the professional and educational interests of Parsis who needed to travel long distances by sea, particularly to England.

The orthodox response was to stand by these rites, at some level perhaps hoping to scare away potential female converts. In defence of nirang, orthodox Parsis resorted to medical materialism by superimposing modern hygiene upon the purity laws. Anthropologists of ritual might have come to the rescue with the argument that being impractical, uncomfortable and even bizarre were key traits of ritual. As a clear test of faith and marker of status, the challenging elements of ritual were essential to distinguishing it from an everyday act. Furthermore, the attack on Bella’s iniatiator, Kaikobad, was a disciplinary effort that fed into the larger project of re-professionalizing the priesthood.

Despite its richness, the Bombay commission’s discussion of purity rituals has been relegated to the storage room of the Privy Council, unpublished and unknown since 1916. The Bombay commission, essentially an all-Parsi body,
clearly regarded the purity laws as a critical piece of Parsi identity. But the British judges in Rangoon and London waved it away as peripheral.993

At no point in Saklat v Bella was the ethnic divide between legal practitioners starker. Over the long legal history of Bella’s case, it explained why a British judge misunderstood death commemoration ceremonies in 1887; why a Parsi judge investigated the permissibility of conversion even though the 1906 case before him did not strictly require it; and why British judges disregarded testimony on purity rituals collected by Parsi lawyers in Bombay in 1916.994 When the legal system reached deep into Zoroastrianism, it was the ethnicity of the legal professionals that was critical to the determination of outcome.

994 On Banaji v Limbuwalla ILR 11 Bom (1887) 441-8, see text accompanying notes 373-95 (above). On Petit v Jijibhai ILR 33 Bom (1909) 509-609, see text preceding note 455 (above).
FIGURE 16:
“PHARISAISM WITH A VENGEANCE!
(DURING THE PARSI SACRED DAYS)”
[Hindi Punch (20 September 1908), 21.]
[By permission of the British Library (SV 576).]
FIGURE 17: “HAUNTED—OR, THE BEST-ORTHODOX PARSI’S BOGEY

"(The Crematorium controversy is raging furiously among a section of the Parsis)."

[Hindi Punch (10 November 1918), 23.]
[By permission of the British Library (SV 576).]
FIGURE 18:  
“THE MODERN ATLAS”

“Atlas Caste—I can’t cast this load off my back, try as much as I can! It will be the death of me. 
(The question of sea voyage to England and other foreign countries continues to be agitated in different Hindu castes. The orthodox are much troubled by the way in which some of the castes are unloosening the restrictions imposed against it.)”

[Hindi Punch (17 May 1914), 12.]  
[By permission of the British Library (SV 576).]
“O TEMPORA! O MORES!”

“Shade of the Late Mr. Karsondas Muljee (the first Hindu Reformer to cross the kala pani and go to England)—

Ah! How times change! In my days they excommunicated, hooted and hissed persons crossing over! Now they lionise them!

(Some of the Hindu castes are gradually casting off the restriction against a voyage to England, and in place of the old form of displeasure are giving addresses and entertainments to venturesome young men, wishing them bon voyage, and receiving them, on their return, with open arms!)

[Hindi Punch (14 November 1909), 13.]
[By permission of the British Library (SV 576).]
CHAPTER 6
The Libel Suits:
Mixing in Burma

When the High Priest of the Deccan came to Rangoon for Bella’s initiation, other Parsis took advantage of his presence. It was a rare thing to have a Zoroastrian priest of his stature in Burma, and the backlog of important and unperformed ceremonies was building up. Shapurji’s wife (and Bella’s adoptive mother) had her own initiation performed by Dastur Kaikobad. She and Shapurji also underwent the formal Zoroastrian marriage ceremony. Another Parsi family, the Contractors, arranged for the initiation of their child, a boy named Behram. None of these ceremonies had been available to the Parsis of Rangoon for decades, if ever. At least by orthodox accounts, the rites required a priest with barashnum, the highest state of ritual purity. Orthodox Parsis would contend that the ceremonies remained unavailable in Rangoon: both Kaikobad and the white bull’s consecrated urine lost their ritual purity on the trip over, a phenomenon explored in chapter 5.

Orthodox newspapers in Bombay were acerbic in their coverage. In response, there was more litigation from Rangoon. The fathers of Bella and the boy Behram were outraged by claims that their children were “half-castes,” and Shapurji Captain’s marriage, a sham. In Bombay, the reformist Zoroastrian Conference launched a libel suit of its own when it was implicated in the ceremonies by an orthodox paper. The newspapers were sued not under libel in civil law, but with the added sting of the criminal law.

995 Contrast with note 869 (above).
Two broad allegations sparked the spin-off libel cases. The first was that Shapurji and his wife were not really married. They had undergone Burmese but not Zoroastrian marriage rites until the High Priest of the Deccan visited in 1914, thirty-five years after cohabitation had begun. This claim fed into a larger subcontinental disdain for Burmese customary law and marital mores. The standard view among Bombay lawyers, in particular, was that the legal system in Burma was a shaky enterprise characterized by vague customs, unprepared lawyers, and a casual post hoc definition of marriage. The second claim was that certain members of the Rangoon Parsi community were less Parsi than others because they were of mixed ethnic background. Infusions of Burmese and lower caste Hindu blood tainted their claim to being ethnically Parsi, even if they were of Parsi paternity. The view reflects a deeper struggle between the older, patrilineal rule whereby the offspring of Parsi men and non-Parsi women could be initiated into the fold; and a newer, more restrictive formula for membership inspired by eugenics and a racialized sense of “Persianness.”

996 The term Burmese was a general one covering multiple ethnic groups residing in Burma, among them the Burmans, Talaing, Karen, Shan, hill tribes and island peoples. See British Burma Gazetteer (Rangoon: Government Press, 1880), 141. The term Burmese generally appeared in the Saklat v Bella records, hence my adoption of the term. On a few rare occasions, though, witnesses spoke of Burman customs. Presumably, most of the Burmese interacting with Parsees were Burman by ethnicity. See “Plaintiffs’ Evidence. No. 21: Deposition of Witness No. 1 for the Plaintiffs: Burjorji Panthuky. In the Chief Court of Lower Burma” (19 February 1917), 392; “Defendant’s Evidence. No. 34: Deposition of Shapurji Cowasji, the second defendant. In the Chief Court of Lower Burma” (27 February 1918), 710; both in Saklat v Bella (PCO).


998 I use the term race rather than ethnicity in this chapter because it was the vocabulary used in the primary sources. The Parsi use of race in the early twentieth century was not a reference to the four or five “great division[s] of mankind,” but rather to a “tribe or nation of people of common stock.” That said, then as now, the term race probably implied a greater degree of essentialized traits than ethnicity. I am using the definition of race devised by Peter Robb’s 1992 workshop at
The study of race in colonial South Asia has focused rather narrowly on European perceptions of race, and how these shaped relationships between Europeans and South Asians.\(^{999}\) Similarly, the scholarly literature on the eugenics movements of the early twentieth century has generally been restricted to European and American perceptions of racial purity and degeneration.\(^{1000}\) But


racial self-perceptions and eugenics-based thought existed among South Asian populations, and formed constellations of power and pedigree "between colonized populations" as much as between colonized and colonizer.

This chapter considers how one colonized community, a group of Zoroastrian immigrants to South Asia, understood race in relation to other non-Europeans. It considers Parsi notions of racial degeneration in relation to the newly colonized Burmese in whose land the Parsis were living, and conceptions of racial purity vis-à-vis the ancient Persians from whom they traced their lineage. In doing so, it joins a small but growing body of scholarship that examines colonial perceptions of race from a South Asian perspective. It also pushes into an area in which very little work has been done: racial perceptions between colonized populations.

Finally, an opening comment on sources. Defamation case law is a treasure chest for historians of race. This is true not just for South Asianists, but for historians of any multi-ethnic common law society. The literature on African American “passing” for white has generally focused upon inheritance and family

---


1002 Most works on South Asian immigrant populations in Indian Ocean societies that do treat race confine themselves to the political and trade-related aspects of those relations. See, for instance, Robert G. Gregory, *India and East Africa: A History of Race Relations within the British Empire, 1890-1934* (Oxford: Clarendon, 1971); and Michael Stenson, *Class, Race and Colonialism in West Malaysia: The Indian Case* (St. Lucia, Australia: University of Queensland Press, 1980).
law cases. But defamation law is prime and relatively untouched digging ground. There is a plethora of cases in which individuals accused of being black sued for slander to defend their racial reputation as white. Legal historians of colonial South Asia have also left the defamation vein untapped, a missed opportunity given the richness of these cases not only for views of race, but also of caste and gender. The libel cases sparked by *Saklat v Bella* are advertisements for the case law of defamation as a source type generally.

**Defamation Parsi Style**

From using private violence to calling upon community bodies like the Parsi Panchayat for help, there were many ways to react to a potential libel. Messrs Captain and Contractor chose to re-establish their honor in court. It was by no

---

1005 See the following cases in Helen Tunneciff Catterall, ed. *Judicial Cases concerning American Slavery and the Negro* (Shannon, Ireland: Irish University Press, 1968): Eden *v* Legare (1791), II, 274 (South Carolina); Kings ads. Wood (1818), II, 307 (South Carolina); Atkinson *v* Hartley (1821), II, 317 (South Carolina); Scott *v* Peebles (1844), III, 299 (Mississippi); Cauchoux *v* Dupuy (1831), III, 493 (Louisiana); Boulemet *v* Philips (1842), III, 546 (Louisiana); Dobard *v* Nunez (1851), III, 614 (Louisiana); Johnson *v* Brown (1832), IV, 187 (District of Columbia); and Linney *v* Maton (1855), V, 290 (Texas). From a later period, see the 1913 Arkansas case of *Morris v State* 160 S. W. 387.
1006 On caste, see the Benares *kala pani* case (1910-14) discussed in text accompanying notes 901-4 (above). See also *Sri Vidyा Sankara Narasimha* ILR 6 Mad (1883) 381, 395; *Trailokya Nath Ghose v Chandra Nath Dutt alias Singh* ILR 12 Cal (1886) 424-7; *Thiagaraya v Krishnasami* ILR 15 Mad (1892) 214; *Basumati Adhikarini v Budram Kolita* ILR 22 Cal (1894) 46; *Keshavlal v Bai Girja* ILR 24 Bom (1900) 13; and *Nathu Velji v Keshawji Hirachand* ILR 26 Bom (1902) 174. On gender, particularly aspersions on Indian women’s chastity, see *Parvathi v Manna* ILR 8 Mad (1884) 175-81; *Chhotalal Lalubhai v Nathabhai Bechar* ILR 25 Bom (1901) 151; *Thakur Das Sar v Adhar Chandra Missri* ILR 32 Cal (1905) 425-8; *Namubai v Daji Govind Warang* ILR 35 Bom (1911) 421; and *Bai Shanta v Umrao Amir Malik* ILR 50 Bom (1926) 162. For a slander case involving both gender and caste identities, see *Sukkan Teli v Bipad Teli and another* ILR 34 Cal (1907) 48-50.
means an unusual choice between Parsis. This chapter begins by fitting the
Captain and Contractor libel suits into the larger tradition of litigation between
Parsis, particularly when delicate “private” matters were concerned. Parsi
litigants’ engagement with colonial law threatened their community’s privacy and
public image. Codes of ritual purity had generally kept what Parsis did in fire
temples from public view. But in the early twentieth century, Parsi
litigiousness unraveled liturgical privacy, paving the way for invasive judicial
inquiries into core religious principles.

Personal reputation was another interior realm ripped open by Parsi
litigiousness. Snubs and insults became more than just gossip once
defamation proceedings were filed. And when one side started telling all, it was
easy to get carried away. One Parsi commented on the retributive leaks of
private information that were so common during these trials:

If in the unravelling of the little history, facts come out and names are
mentioned which one would be extremely loath to utter except with great
respect, it certainly shall not be the fault of the party who have been goaded to
self-defence by the aggressive action of those who have sought assistance of
the Law, the Police, and now finally the Press, in defying the matured
judgment and wounding the deep susceptibilities of the majority of an
enlightened community.

1007 Particularly after Davar’s 1908 ruling in Petit v Jijibhoy, non-Parsis were not allowed to enter
Zoroastrian fire temples. On the ways in which the architecture of Parsi fire temples was designed
to keep passers-by from accidentally seeing the sacred fire from the street, see S. Wadia, A
Study of Zoroastrian Fire Temples, 60, 114.
1008 It is important to distinguish privacy from secrecy. Zoroastrian rites were private rather than
secret. They could be described, and reenactments, photographed for an outside audience. See
note 1391 (below).
1009 The distinction between shame and guilt cultures may prove useful here. In honor-
and shame-based cultures, personal dignity is by definition a social matter, giving defamation suits
huge potential influence over the definition of the self. See Bertram Wyatt-Brown, Southern
1010 "Letters to the Editor. The Recent Parsi Conversion. From ‘Truth,’” WRTOS (18 April 1914),
45.
The fact that so many leading journalists, editors and publishers—like lawyers and judges—were Parsi may have made reaching for the law of defamation a reflex. Presumably, libel proceedings were a relatively familiar and routine part of professional life in both lines of work. Ironically, an area of law designed to protect privacy often ended up magnifying the publicity and scandal of the slur.

Speech offences in colonial India came in four forms: obscenity, seditious libel, criminal defamation, and civil defamation. The first three were criminal offences. Obscenity covered songs, in addition to acts and publications, that “annoyed” others in public and had the tendency to deprive and corrupt those whose minds would be open to immoral influences. Anticipating a clash between Hindu traditions and the Victorian mentality that had framed the test, a special exception was made for religious sculptures, paintings and

---

1011 Leading Parsis in the world of journalism included the editor of Hindi Punch, Barjorjee Naoroji Apakhtyar; journalist R. P. Masani; Jam-e Jamshed editor, J. B. Marzban; Rast Goftar editor, Kaikhasru Navrojee Kabrajee; Sanj Vartaman editor, Rustom N. Vatchaghandy; lawyer, journalist, and editor of the Parsi almanac, Parsi Prakash, Rustam Barjorji Paymaster; Oriental Review editor R. S. Rustomji; Cawasji Temulji, who edited the Poona Observer and Civil and Military Gazette; Sind Observer editor, Dinsha Nanabhai Patel; Akhbar-e Soudagar editor, Byramji Bomanji Patel; Gujurat Mitr editor, Shawaksha H. Khasukhan; Kaiser-I Hind editor, Framji Kaswaji Mehta; Feroz S. Taleyrkhan, editor of the daily and weekly, The Parsi; Parsi Sansar editor, Rustomji Kharsedji Sidhwa; and Rast Goftar editor, Pallonji Burjorji Desai. See Darukhanawala, Parsi Lustre, 247-9, 298-9, 303, 305, 374-7 and 379; and “Report on Indian Papers published in the Bombay Presidency for the week ending 28th March 1914 (No.13 of 1914),” 3-4 (L/R/5/169) (IOR). See also note 1027 (below) on Marzban. On other Parsi journalists, see Darukhanawala, Parsi Lustre, 265, 302, 304. See generally B. K. Karanjia, “Parsi Pioneers of the Press (1822-1915)” in Godrej and Punthakey Mistree, 479-82; and Kulke, 115-20.

1012 For the opposite view (i.e. that defamation law was primarily protective of privacy, as intended), see Lawrence M. Friedman, “Name Robbers: Privacy, Blackmail, and Assorted Matters in Legal History,” Hofstra Law Review 30 (summer 2002), 1093-1132.


1014 Sections 292-4, IPC in Ranchhoddas and Thakore, IPC, 245-6.
Seditious libel was the colonial state’s favored mode of suppressing nationalist newspapers in the early twentieth century. The state deemed sedition (which included seditious defamation) so poisonous a crime that it carried a discretionary penalty of transportation for life. The fourth variety of speech crime—civil defamation—included civil libel and slander, the written and oral forms of defamation, respectively. These were forms of action entailing damages rather than the fines, incarceration, or transportation of the criminal law. Finally, the Indian Penal Code’s sections 499-502 created criminal defamation, a creature brought out of its cage when the statements were so vicious that they exceeded the civil law’s capacities.

Shapurji Captain and J. D. Contractor could have sued under civil libel, but instead they filed all three suits under sections 499-500. The penalties on offer could be harsher than in civil law, generally fines and up to two years’ imprisonment. But the requisite elements were also more demanding. The plaintiffs had to prove intent—that the libels had been committed with the intention of damaging their reputations, or the knowledge that such damage was likely. Like the mental element across the criminal law, intent was a

---

1015 The exception to s.292 IPC read: “[I]ts section does not extend to any representation sculptured, engraved, painted or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.” [Ranchhoddas and Thakore, IPC, 245-6.] On colonial perceptions of Tantric eroticism, see generally Hugh B. Urban, *Tantra: Sex, Secrecy, Politics and Power in the Study of Religion* (Berkeley: University of California Press, 2003).
1016 See, for instance, *Queen-Empress v Bal Gangadhar Tilak and Keshav Mahadev Bal* ILR 22 Bom (1898) 112-52; and *Queen-Empress v Jogendra Chunder Bose* ILR 19 Cal (1892) 35-47.
1018 In 1912, s. 499 of the Indian Penal Code read: “Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person” (emphasis added). [Ranchhoddas and Thakore, *IPC*, 439.]
notoriously difficult thing to prove. Their prosecutions were privately run and funded.\footnote{The private nature of these suits is reflected by the fact that Shapurji Cowasji Captain, not the state, decided to drop the charges following apologies from the defendants in both of his suits.} The colonial state refused to prosecute for criminal offences in a number of areas, criminal defamation being one.\footnote{See section 198 of the Code of Criminal Procedure in D. E. Cranenburgh, \textit{The Code of Criminal Procedure being Act V of 1898 as Amended up to 1923} (Calcutta: Law-Publishing Press, 1924), 128-9. Criminal breach of contract and offences against marriage were other areas covered by s.198.}

Litigating “private” matters between Parsis was by no means rare. The Parsi-Parsi case law is a catalogue of conflicts between parent and child, brothers, relatives, spouses, friends, neighbors, landlords and tenants, and former co-litigants.\footnote{For a case of a son suing his mother, see \textit{Dinsha Framji Marker v Dossibai Framji Marker} 5 January 1909. In D. D. Davar, "Judgment Notebook (5 January 1909-7 October 1909)" (BHC). On suits between brothers, see \textit{Mancherji Manokji Poonjiajee v Framji Manockji Poonjiajee} 2 Bom LR (1900) 1026-1041; \textit{Fardunji Edalji v Jamsedji Edalji} ILR 28 Bom (1904) 1-4; and \textit{Rustomji Byramji Choksi v Bejonji Byramji Choksi and others}, \textit{Times of India} (10 March 1913), 10.] The blind British judge Beaman thought that “too much dirty linen” had been aired in the celebrated case of \textit{Petit v Jijibhai}.\footnote{\textit{Petit v Jijibhai} ILR 33 Bom (1909) 576.} Davar’s
excursus on lower caste servant mistresses among the Parsis of Surat is the ultimate case in point. By suing their co-religionists, Parsi plaintiffs showed their willingness to reveal their secrets in the colonial courtroom. The belief that victory—or perhaps simply punitive litigating—was within reach overrode a sense that disputes among Parsis ought to be kept off the public stage.

The sizeable presence of Parsi lawyers and judges may have made Parsis feel the colonial legal system was hardly an “outside” forum at all. The Mistry-Karkaria libel litigation of 1922-6 is a perfect illustration. It was one of the most highly publicized Parsi libel episodes in the early twentieth century.
Parsis were involved at every level and capacity. In the first of two suits, Mr. Karkaria was convicted of criminal slander for accusing the wife of his Parsi neighbor of keeping her husband’s relative as a lover. The accusation was made in open court in the course of assault proceedings involving the same parties. Karkaria was initially convicted by a Parsi magistrate named Khandalavalla. Karkaria was fined Rs 50 under section 500 of the Indian Penal Code, the same provision the Rangoon Parsis used in 1914. On appeal, he lost again before the Scottish Chief Justice Norman Macleod and another Parsi judge, the former advocate Jamshedji Kanga.

The feud continued as Mrs. Hirabai Mistry, the woman accused of adultery, filed a civil suit to recover Rs 10,000 in damages. Both sides consulted two of Bombay’s top Parsi lawyers. Karkaria went to Jamshedji Kanga, who had then moved from the bench into the Advocate General’s seat. Kanga advised him not to worry: Mrs. Mistry could only win civil compensation if she could show she suffered “special damage” from Karkaria’s comment, which was unlikely. Mr. Justice Crump dismissed the suit on this basis. But Mrs. Mistry appealed. Her counsel was P. B. Vachha, Parsi advocate, legal historian, and Persianist. Vachha argued that in India, unlike in England, adultery was a crime. This gave

---

1 "Jam-e Jamshed’s Appeal," Advocate of India (20 June 1913), 8, and “J. B. Marzban: Dr. Sukhia Episode” (20 June 1913) Parsi Prakash V, 155-6.


the judges a way to side-step the English precedents that stood in Mrs. Mistry’s way. Sir Amberson Marten and Mr. Justice Kemp seized the opportunity and overruled Crump. Even in England, the rule that a woman had to prove “special damage” was “barbarous.” Applying it in India would only spread the harm. Mrs. Mistry won Rs 1,000, “a princely sum in 1926,” to be paid toward her legal costs.1030

Parsis were present at every stage in the Mistry-Karkaria suits—as litigants, legal professionals and officials.1031 The number of Parsi legal figures in the four spin-off libel cases to Saklat v Bella was equally remarkable. One of the lawyers representing the Jam-e Jamshed in Rangoon was a Mr. Marzban from Bombay, presumably a lawyer relative of the family who ran the newspaper. Shapurji’s lawyer Lentaigne was joined by two Parsi lawyers from Rangoon, P. R. Ginwala and P. D. Patel.1032 Another Parsi lawyer named F. S. Doctor led J. D. Contractor’s libel suit, again with P. D. Patel.1033 Mr. J. Hormasji, Deputy-Registrar of the Chief Court of Lower Burma, was also present.1034 Back in Bombay, Vimadalal, who was leading the case against Bella during the Bombay commission of Saklat v Bella, was also advising the Marzbans behind the

---

1031 In addition to the figures already mentioned, the solicitor’s firm representing Mrs. Mistry was the old Parsi firm, Wadia Ghandy and Co. See the firm’s memoirs by its managing clerk, A. J. C. Mistry: Wadia Ghandy and Co. (1911) and (1925). The Prothonotary of the High Court was also Parsi. P. B. Malabari’s judicial duties included chamber work in non-contentious matters and hearing applications by paupers for leave to sue. On the Prothonotary’s Office, see Mistry, High Court, 12, 35. Malabari’s book, Bombay in the Making, was cited in Mrs. Mistry’s slander case on a point of legal history. [Mistry v Karkaria, 171.]
1034 The libel suits took place in the magistrates’ courts, not in the Chief Court of Lower Burma. As a result, it is not clear whether Hormasjee was present in some official capacity, or was sitting in the public gallery. A joke was made during proceedings about his typically Parsi features. See text accompanying note 1169 (below).
scenes. At the same time, Madon, who was leading the Bombay leg of the case for Bella, was doing all the paperwork for the Zoroastrian Conference in its libel suit against the Marzbans. The star witness in that case, moreover, was Dinshaw Davar, the Parsi judge in the Bombay High Court, who had ruled against conversion in the French Mrs. Tata’s case, Saklat v Bella’s prequel.

This blurring of personal and professional identities may be one reason why the colonial courtroom was an arena of choice for the rehabilitation of Parsi reputation. Parsi legal officials and litigants inhabited the same social and sacred worlds. Zoroastrian legal professionals may have given an air of cultural familiarity to colonial state institutions, and perhaps even instilled in Parsi litigants some sense of trust and confidence. The Captain-Contractor suits preceded the Mistry-Karkaria cases by almost a decade, but they all fit snugly into the same tradition. There was one attempt to reverse the trend—the movement to create a Parsi arbitration board for cases between Parsis. But it was short-lived and its stellar legal backers continued their careers within the colonial system. Parsis operated with such facility within that system that it is easy to see how the courts became a prime dissection theatre for Parsi private life.

1035 “Second Accused’s Statement,” WRTOS (22 August 1914), 49; Maneck Kavasji Patel, “A Character Sketch of the Late Mr. Jehangir Vimadalal, the Doyen of Parsi Orthodoxy, and the Glory and Pride of the Community” in Vimadalal Memorial Volume (Bombay: Jashan Committee of Bombay, 1937), 140. Vimadalal’s advice may also be alluded to in: “Libel Proceedings at Rangoon (Rangoon, June 1),” Poona Observer (2 June 1914), 5.
1036 See text accompanying note 626 (above).
1037 For a full (albeit polemical) account of Davar’s testimony, see “Jam-e Jamshed Defamation Case. Full Text of Judgment,” JIA IV:4 (July 1915), 135-6.
1038 On Vimadalal and Davar’s support for the arbitration movement, see text accompanying notes 640-2 (above).
Marriage Burmese Style

Around 1881, Shapurji Cowasji Captain married a young woman in Henzada, a town in Lower Burma 109 miles from Rangoon.\textsuperscript{1039} The bride’s father was a Parsi named Merwanji Nasarwanji. Her mother was Burmese. According to the customary Parsi paternity rule laid out by Davar in his \textit{Petit} ruling, the young woman could be initiated into the religious and ethnic community because her father was Parsi.\textsuperscript{1040} At that time, though, there were no Zoroastrian priests of the required state of ritual purity in Burma, making it impossible either for her to be initiated, or for the couple to marry by Zoroastrian rites.\textsuperscript{1041}

The couple was married by Burmese rites. There would have been no Buddhist clergy member priest present because Burmese marriage was considered a purely social contract. The bride and groom’s hands would have been joined with a silk scarf and a benediction pronounced “by someone with pretensions to learning.” The two would have eaten from the same bowl and shown their respect to parents and elders. A Burmese couple would then have traditionally visited the pagoda and set up house together.\textsuperscript{1042} Arrangements for the marriage were made between Shapurji’s mother and the girl’s parents. The parties would have exchanged presents and jewellery, and served their guests a meal and pickled tea. The only other two Parsis in Henzada attended the

\textsuperscript{1039} This was the distance by rail between Henzada and Rangoon in 1915. The train trip took 9.5 hours. Ferries also connected the two cities twice a week. [W. S. Morrison, \textit{Burma Gazetteer: Henzada District, Volume A} (Rangoon: Office of the Superintendent, 1915), 95, 99.]

\textsuperscript{1040} \textit{Petit v Jijibhai} ILR 33 Bom (1909) 533.

\textsuperscript{1041} Reformist and orthodox Parsis disagreed on whether priestly \textit{barashnum} (i.e. the highest state of ritual purity) was necessary for the performance of these ceremonies. See note 865 (above).

\textsuperscript{1042} Nanavati, 599; and Maung Maung, 55.
wedding, as did the bride’s Parsi father, and the Deputy and Assistant Commissioners.  

In 1914, Shapurji told the Rangoon district magistrate that he and his wife had lived as a married couple since their Burmese wedding 35 years earlier. They had been treated as such by the Parsis of Rangoon, including Shapurji’s elder brother Merwanji, who was leading the case against Bella. But to the Parsi-run Sanj Vartaman, Bombay’s largest Gujarati-language evening newspaper, marriage was a matter of ritual punctuation, not lived reality. In legal language, it was a question of law (in this case, religious law), not fact. In an article entitled, “Bella and her Half-Burmese Mother’s Navjote and Marriage,” a Rangoon Parsi named Gustad K. Nariman suggested that Shapurji’s wife was in fact his mistress. For 35 years, Shapurji and his “kept woman” had been cohabiting illegitimately. The unavailability of Zoroastrian ceremonial services was beside the point. The simple fact was the relationship had not been sanctioned by a Zoroastrian priest. In three articles of a similar bent, the morning paper Jam-e Jamshed blamed the Zoroastrian Conference, a reformist organization in Bombay that supported Shapurji, for sanctioning immorality. Together, Dastur Kaikobad and the Conference had thrust “by force into a pure Parsi Society a couple that was leading an openly immoral life for forty years.”

1043 “Parsi Defamation Suit. Bombay Editor Charged. Mr. Cowasji’s Evidence,” WRTOS (6 June 1914), 47.
1044 “Parsi Defamation Suit,” WRTOS (6 June 1914), 47.
1046 “Jam-e Jamshed Defamation Case. Full Text of Judgment,” JIA IV: 4 (July 1915), 129. Although the Zoroastrian Conference claimed to have no role in encouraging Bella’s navjote, it did have more of a connection with Kaikobad than came up in the lawsuit. Kaikobad had presided
The high priest had sanctioned an act of adultery by performing the Zoroastrian wedding ceremony for the couple, as if to therefore make the original act consonant with the Zoroastrian religion and with nature. Zoroastrianism obliged its followers to fight wickedness of all kinds, especially sexual wickedness, perfectly embodied by Shapurji and his so-called wife.1047

The article was the angry sequel to a friendship gone sour. Nariman was an official interpreter at the Chief Court of Lower Burma. He had been a close friend of Shapurji’s, and had supported efforts to have Bella initiated. Nariman had even found Shapurji a priest who was willing to come to Rangoon to initiate Bella. But the two disagreed over the priest’s grade. Nariman’s priest was a mobed, the standard and lowest priestly rank. Shapurji wanted a higher-ranking dastur. He eventually got it, but not without losing his friend to the other side.

Nariman no doubt found Shapurji’s behaviour fastidious and ungrateful. A few weeks after the initiations and marriage ceremony, an embittered Nariman published his article in the Sanj Vartaman and a similarly disparaging letter to the Jam-e Jamshed, both leading Bombay orthodox papers with a combined circulation of 11,000.1048 Shapurji returned the favor by suing his former friend as well as the editors and publishers of each newspaper in two separate suits.1049

Technically, the problem was not that the rites were Burmese, but simply that they were not Zoroastrian. But the Sanj Vartaman’s comments fit into a

---

over a meeting of the Zoroastrian Conference on 16 April 1910. [Tawarkhe-Dastoor Jamasp Ashana (History of the Jamasp Ashana Family), 146-53.]

1048 Jam-e Jamshed had a readership of 4,000; Sanj Vartaman, of 7,000. [“Report on Indian Papers (No.13 of 1914),” 3-4 (L/R/5/169) (IOR).]
subcontinental tradition of disdain for Burmese marriage law, most of which was customary and considered “morally” permissive. Burmese law did have some textual basis, but it was fragmentary, contradictory and filtered through many cycles of translation between Pali and the vernaculars of Burma. The canonical texts of Burmese law were the *Dhammathats*, thirty-six texts on various legal subjects composed between 727 and 1845 A.D. There was a general colonial consensus that neither in breadth nor depth were the *Dhammathats* comparable to the Islamic and Hindu texts resurrected and privileged by European orientalists of the late eighteenth to early nineteenth centuries, off of which colonial jurists hung their understanding of Hindu and Islamic law for most of the colonial period. Paradoxically, judges also showed only lukewarm commitment to the application of custom in Burma. They applied the test for custom so stringently that few practiced customs ever became legally sanctioned ones. As a consequence, the *Dhammathats* exercised “a disintegrating influence on the…organization of society in Burma.” The net result was a sense that Burmese “law”—and with it, institutions like marriage—did not exist

---

1050 See John Jardine, “Preface” to his *Notes on Buddhist Law* (Rangoon: Government Press, 1883), i, i-vi; and “In the Court of the Judicial Commissioner British Burma: Circular Memorandum No. 28 of 1882. Dated Rangoon, 17 July 1882” in his *Notes*, I, 1-2. See also “Burmese Buddhist law. A Plea for Codification,” *BLT* X (1917), xiv-xv; R. Grant Brown, *Burma as I saw it, 1889-1917: with a chapter on recent events* (London: Methuen and Co., 1925), 54; Maung Maung, 7-9; and “Mr. Tha Gywe on Polygamy,” *BLT* 4 (1911), cii.

1051 See Jardine, I, i-iii. See also Gaung, *Translation of a Digest of the Burmese Buddhist Law concerning Inheritance and Marriage; being a collection of texts from thirty-six Dhammathats* (Rangoon: Office of the Superintendent, Government Printing, Burma, 1900), II; and Mootham, 140 (Appendix II). On orientalist treatments of Hindu and Islamic legal texts, see Cohn, “Law and the Colonial State in India,” 65-75; and Jain, 584-90.

1052 “Mr. Tha Gywe on Polygamy,” *BLT* IV: 12 (1911), cii; and (continued) V: 4 (1912), xii, xiv.

with the same authority as did other non-European bodies of law in British India.1054

Burmese marriage law was more egalitarian than most South Asian traditions in a number of ways.1055 Unlike Hindu law, it permitted divorce, and remarriage was allowed for divorcées and widows.1056 In Burmese law, consent was essential for a marriage to be valid, unlike certain types of Hindu and Islamic marriage.1057 And if a young woman did not marry by the age of 20, she was permitted to marry anyone she liked, even without parental consent. It was the parents’ duty to arrange their daughter’s marriage at the age of 15 or 16. If she subsequently “fell into sin” for lack of a suitable mate, they were to blame.1058

Burmese law was even more liberal than the common law when it came to divorce. Unlike English and American law of the time, it permitted no-fault divorce. Spouses wishing to divorce declared their intentions before an informal group of elders, who split the property and debts equally, and decided custody on

---

1054 See Jardine, “Preface” to his Notes, I, vi; and C. J. F. Smith Forbes, British Burma and its People: being sketches of Native Manners, Customs and Religions (London: John Murray, 1878), 57. On pre-colonial or “customary” Burmese law, see Maung Maung, 1-20; and Maung Htin Aung, Burmese Law Tales: The Legal Element in Burmese Folklore (London: Oxford University Press, 1962), 1-47.
1055 Nanavati, 600; “Mr. Tha Gywe on Polygamy,” civ-cvi. The early texts were less egalitarian than early twentieth-century Burmese practices: Gaung, 20-2. On the status of Burmese women generally, see Furnivall, 15-30; and Christian, 58-65. On Burmese marriage law generally, see Jardine, I-IV and VIII; and Mootham, 12-26.
1056 Gaung, 89.
1057 Gaung, 33-4. On Hindu law, see Ernest John Trevelyan, Hindu law as administered in British India (Calcutta: Thacker, Spink and Co., 1929), 36-7, 50-5; Thomas Strange, Hindu Law; principally with reference to such portions of it as concern the Administration of Justice in the King’s Courts in India (Madras: Higginbotham, 1864), 36-7; Upendra Chandra Sarkar, On Marriage and Sonship in Hindu Law (Dacca: the author, 1941), 25-6. On Islamic law, see Neil B. E. Baillie, A Digest of Moohummudan Law on the subjects to which it is usually applied by British Courts of Justice in India (London: Smith, Elder and Co., 1875), 50-1.
1058 Gaung, 32-3.
a case-by-case basis.\textsuperscript{1059} If one party was at fault, the other party would probably get any joint property. Divorce occurred in perhaps a third of Burmese marriages. It involved neither serious stigma nor great expense.\textsuperscript{1060}

Most importantly, marriage in Burmese law was a question of fact, not law.\textsuperscript{1061} The legal status of marriage was established by certain types of conduct, and not by a wedding ceremony \textit{per se}. Cohabitation, eating from the same dish in public, and going to the pagoda and monastery together implied marriage.\textsuperscript{1062} The intent to be husband and wife was also required, but this could also be inferred from events, such as a celebratory feast.\textsuperscript{1063} The route out of a marriage was similarly action-based: where there was no eating and sleeping together, there was also no marriage.\textsuperscript{1064}

The trouble was intermarriage. Burma was effectively a colony of a colony. Its colossal next-door neighbor, British India, sent waves of Indian laborers, traders and professionals to Burma in the wake of the late nineteenth-century annexation of the territory.\textsuperscript{1065} And with the Indians—almost exclusively male—came relationships with Burmese women.\textsuperscript{1066} These women generally believed they were married because they cohabitated with their Indian mates. But when the colonial courts applied the religious law of the Indian “husband,” they often

\textsuperscript{1061} Adoption in Burma was, too. See Mootham, 57-9.
\textsuperscript{1062} Gaung, 58; Smith Forbes, 64.
\textsuperscript{1063} \textit{Ma Hla Me v Maung Hla Baw} 7 Rang LR 425; also in Maung Maung, 58.
\textsuperscript{1064} Grant Brown, 60.
\textsuperscript{1065} See text accompanying notes 137-42 (above).
\textsuperscript{1066} In Rangoon during the early twentieth century, the ratio of Indian males to females ranged between 8.2: 1 and 250: 1, according to caste and community. [Andrew, 182; see also 16-19.]
found otherwise. Classically, Burmese “wives” went to court to claim maintenance or a share of their South Asian partners’ estates after the men’s deaths, only to learn that they had never been married according to Hindu or Islamic law, and had no claim to the property. The plight of intermarried Burmese women became so serious that a legislative solution was devised. The Special Marriages Act 1872 (with its amending Act of 1923) erected some safeguards that ensured marital status for these women. But it was the Buddhist Women’s Special Marriage and Succession Act of 1938 that was tailored specifically to their situation. In the 1920s, Burma was still synonymous with free and easy love. As the Parsi barrister D. D. Nanavati commented from Bombay, “I have often heard people when talking of Burma ask with a snigger, ‘Oh isn’t that the place where you can marry for a month or two?’” In the popular imagination, Burma was to South Asia what Indiana and Nevada were to America: frontier fringes that catered to flexible fancies and freedoms.

Nariman’s comment also touched upon the issue of “publication,” a key ingredient in any suit for defamation. In its legal sense, the term simply referred to the communication of defamatory matter to any person other than the one defamed. But in the colonial context, communalism also colored the definition of publication. As the Sanj Vartaman had a larger Hindu and Muslim readership

---

1067 Mootham, 13-4; Mahajani, 30; and Moshe Yegon, *The Muslims of Burma: A Study of a Minority Group* (Wiesbaden: Otto Harrassowitz, 1972), 33. Interestingly, in marriages between Burmese women and Chinese men, it was the Burmese—not the Chinese—version of “Buddhist law” that was applied. [Mootham, 15-16.]

1068 Maung Maung, 69-70; Khin Maung Kyi, 640.

1069 See Ballhatchet, 147.

1070 Nanavati, 598.


than a Parsi one, in one sense Nariman had “published” the statement in a maximum sense. Although the Privy Council had refused to comment on such a communal test in earlier cases, the Bombay High Court had accepted that “publication” meant publicizing the piece to communities beyond one’s own.

The same usage had been insinuated in an 1889 libel case between two Bombay Parsi newspaper editors, one of whom was J. B. Marzban, an editor later sued in the Bella libel suits. In this earlier episode, Marzban attempted to provoke a reformist editor, Kabraji, by suggesting that the publication of an alleged libel against Kabraji was particularly offensive because that newspaper had been for Hindus, while Kabraji was a Parsi. Kabraji took the opposite stance. His lawyer explained that he had not begun libel proceedings against the Hindu paper precisely because members of his own community would not have read it. When Marzban repeated the libel in a Parsi newspaper, it became actionable for Kabraji: the statement had been publicized not to others, but precisely to his own kind.

Within Parsi circles, Nariman’s comment on the Captains’ Burmese marriage would have been damaging because the original wedding was not Zoroastrian. But the alleged libel would have meaning outside of the Parsi world,

---

1073 “No.32: Evidence of P. A. Wadia taken on commission. In the Court of Small Causes, Bombay” (17 June 1916) in Saklat v Bella, 672 (PCOR).
1074 The argument was made before the Privy Council in Dr. Sukhia’s libel case (1913). The judges declined to decide the point, but it had received judicial approval in the Bombay High Court earlier. [“Law Reports. Parsee Libel Suit. Sequel to a Case in the Bombay High Court,” Advocate of India (11 October 1913), 5.]
1075 Kabraji v Murzban, 535.
1076 Kabraji v Murzban, 536.
too. When Nariman made reference to the Captains’ Burmese wedding, he was tapping into colonial stereotypes of Burma as a legal and sexual wilderness.1077

**Being Mixed**

The second type of statement tried to tighten the rules of Parsi membership on the basis of race. The Bombay papers challenged the claims of individuals of mixed background to being Parsi. Their comments referred to Bella, her adoptive and birth mothers, and the boy Behram Contractor. Bella was said to be born of “an iniquitous union of a low caste, low rank juddin father and a mean, renegade mother” in *Jam-e Jamshed*, the leading Gujarati-language morning paper in Bombay.1078 In the *Sanj Vartaman*, a letter by Bella’s adoptive uncle Merwanji called Bella and her natural mother ghatans, or lower caste Hindu converts to Christianity.1079

Shapurji’s former friend also lashed out at Bella. In a letter to the *Sanj Vartaman*, Nariman wrote disparagingly of Bella’s appearance, implying that she was “so unlike a Parsi that no Parsi would accept her as a Parsi.” He was no doubt suggesting that she was too dark to be a Parsi.1080 He also called her a bastard.1081 If Nariman was using the term literally, he could have been hinting at the hypothesis laid out in chapter 1—that Bella may have been the result of an

---

1077 This sense was exacerbated by the low regard in mainland India for the quality of legal work done by lawyers in Burma. See “The Dual Agency,” *Bom LJ* 1:12 (May 1924), 610.
1080 “Parsi at Law. Alleged Defamatory Article. Charge against Mr. G. K. Nariman. The Recent Navjote Ceremony,” *WRTOS* (2 May 1914), 41. Reported versions of the trial were careful not to republish the alleged libel, making the darkness point speculative.
1081 “Parsi at Law,” *WRTOS* (2 May 1914), 41.
affair between Rebekah Jones and Bomanji Cowasji Captain. Alternatively, if
Nariman believed Rebekah Jones to have been a runaway Parsi from western
India, he may have considered both her marriage and child illegitimate because
she had married out.\textsuperscript{1082} Nariman went on to say he did not consider Bella’s birth
mother to be Parsi at all, but of alien descent. Mrs. Jones’ true ethnic identity had
been suppressed and the “death bed promise” story manufactured by the two
younger Captain brothers, according to Nariman.\textsuperscript{1083} The accusations extended
to Bella’s adoptive mother as well; she was Burmese on her mother’s side, but
Parsi on her father’s. Nariman and Bella’s uncle Merwanji called her a \textit{juddin}
or non-Parsi, and a “non-descript Indo-Burman.”\textsuperscript{1084}

Shapurji’s counsel was a star of the Rangoon bar, a British lawyer named
B. P. Lentaigne.\textsuperscript{1085} Lentaigne no doubt took on the libel case as an appendage
to the much larger job of representing Shapurji and Bella in \textit{Saklat v Bella} itself.
In the libel case, he argued that the statements conveyed imputations that
Shapurji was untruthful, immoral, and unfit to associate with those who were
otherwise. The defendants intended to damage Shapurji’s reputation, according
to Lentaigne.\textsuperscript{1086}

\textsuperscript{1082} This was a common usage of the term \textit{bastard} at the time. See Robb, 3.
\textsuperscript{1083} “Parsis at Law,” \textit{WRTOS} (2 May 1914), 41.
\textsuperscript{1084} “Parsi Defamation Suit. The Hearing Resumed,” \textit{WRTOS} (4 July 1914), 32. It is a mystery
why Shapurji did not sue his brother Merwanji for libel.
\textsuperscript{1085} Lentaigne’s name appeared first on a number of petitions by Rangoon lawyers. See
“Correspondence. The Long Vacation—Proposal to Alter its Dates” \textit{BLT} 3 (1910), liv-lv; and
untitled (on establishment of a city court) \textit{BLT} 1: 2 (May 1908), ii. Lentaigne appeared in other
major cases involving the Captains, this time against Bomanji and alongside N. M. Cowasji,
Merwanji’s lawyer son. See \textit{B. Cowasji and others v Nath Singh Oil Company Ltd.} \textit{AIR} 1919
Lower Burma 29-36. He was subsequently elevated to the bench, and in 1923 appeared as a
judge in the newly constituted High Court of Rangoon (est. 1922).
\textsuperscript{1086} “Parsis at Law,” \textit{WRTOS} (2 May 1914), 41.
Curiously, the reputations of Bella and her adoptive mother went unmentioned in Lentaigne’s case. The absence could have been a move calculated to strengthen Shapurji’s legal standing as complainant. If there was one lesson learned from the French Mrs. Tata’s case, it was that the injured party, not her relatives and friends, had to sue. And yet, why Bella and Mrs. Captain were not joined as parties is a mystery, particularly when Bella herself was a party—albeit a silent one—to the main case of Saklat v Bella. The absence of relevant women as parties to litigation, and their silence when they were parties, is a striking feature of the Parsi litigation throughout this study.

The term bastard appeared on a second occasion. Cherag, a small orthodox monthly normally focusing on theosophy, published an article that was reprinted in the Sanj Vartaman. The article reported that the high priest performed a third initiation, itself a “half-caste navjote, that is, the navjote of an issue with mixed blood in it, or of a bastard.”¹⁰⁸⁷ Contractor claimed the statement could only refer to his son, the third person initiated by the high priest after Bella and her adoptive mother. Mrs. Contractor was of Parsi parentage on both sides. For Behram to be a bastard and of mixed blood, then, his father would have had to engaged in an extramarital relationship with a Burmese or other non-Parsi woman. Mr. Contractor sued both papers. His lawyers, a team of Parsis led by F. S. Doctor, tried to distance the Contractor case from the Captain libel suits. The Contractor case had nothing to do with Shapurji Captain’s case—Mrs. Shapurji Captain “was not a pure Zoroastrian,” whereas Behram Contractor was “of a pure

Parsi mother and father and therefore the libel was of the gravest nature."

Contractor was the manager of Singer Manufacturing Company for the whole of Burma.\textsuperscript{1088} He claimed to be a well respected and leading member of the community, known both in Rangoon and Bombay. And he had been receiving letters from Bombay about the article. The statement was published with the intention of lowering Contractor in the eyes of everyone who knew him. And if it were true, he would be effectively excommunicated from the Parsi community of Rangoon. Parsis would not associate with his wife and child, and it would be difficult to attend religious ceremonies.\textsuperscript{1089}

Two of the three suits fizzled out before judgment. In a lengthy published retraction, Nariman apologized to his former friend. He also offered to donate Rs 500 to a charity of Shapurji’s choice. In a moment of forgiveness, Shapurji withdrew the charges.\textsuperscript{1090} As J. D. Contractor would insist in his suit, it was “a strange misapprehension that an offence punishable under the Indian Penal Code [could] be purged by an apology.”\textsuperscript{1091} Sanj Vartaman also apologized, and the charges were withdrawn. J. D. Contractor’s case was initially rejected by a British sub-divisional magistrate on somewhat irregular grounds.\textsuperscript{1092} The case

\textsuperscript{1088} On Singer Manufacturing Company, see note 40 (above).
\textsuperscript{1089} "The Parsi Dispute. Another Defamation Suit," \textit{WRTOS} (2 May 1914), 40.
\textsuperscript{1090} "Rangoon ‘Navjote’ Defamation Case. Mr. Nariman Tenders Apology (Rangoon, May 20)," \textit{Poona Observer} (21 May 1914), 5.
\textsuperscript{1091} "The Parsi Dispute. Rangoon Navjot Ceremony. Dastur Kaikobad’s Regrets," \textit{WRTOS} (23 May 1914), 44. In the Mistry-Karkaria slander case, Mrs Mistry refused to accept the alleged slanderer’s apology. \textit{[Mistry v Karkaria, 185.]}
\textsuperscript{1092} The hearings were \textit{ex parte}, meaning that only the plaintiffs were—and were supposed to be—present. But the sub-divisional magistrate Sitzler admitted an apology submitted by Sanj Vartaman behind Contractor’s back “improperly, irregularly, and illegally,” according to Contractor’s lawyers. Sitzler in turn accused Contractor of wasting the court’s time, being unsatisfied with an “abject apology.” Contractor’s counsel responded that criminal proceedings could not be purged by an apology. The district magistrate of Rangoon granted a reconsideration
was resurrected one level up, but died later for undocumented reasons.\footnote{The \textit{Weekly Rangoon Times and Overland} Summary's coverage ended abruptly on 23 May 1914. Other Burma- and Bombay-based newspapers offered no further details on how the case was resolved.} From Bombay, the reformist \textit{Journal of the Iranian Association} supported Shapurji's suit and celebrated noisily when he won.\footnote{See, in the \textit{Journal of the Iranian Association}, "Jam-e Jamshed Defamation Case. Full Text of Judgment," IV: 4 (July 1915), 128-40; and "Editorial: The Jam-e Jamshed Defamation Case and Sir Dinshaw Davar," \textit{JIA} VI: 5 (August 1915), 172-7.} The fact that it was silent on the Contractor case suggests that Contractor did not accept an apology or make a favorable out-of-court settlement, but simply lost.

Shapurji's case against \textit{Jam-e Jamshed} lived the longest, due largely to the tenacity of the father-and-son team that ran the daily in Bombay. Jehangir Behramji Marzban had spent decades in the wily world of Bombay journalism. The “father of Parsi journalism” and the “Mark Twain” of the Parsis was also a veteran of Bombay's libel wars.\footnote{See also notes 1027 (above) and 1104 (below).} His son, P. J. or “Pyjam” Marzban was a satirist with orthodox leanings.\footnote{Darukhanawala, \textit{Parsi Lustre}, 298-300. See also notes 1027 (above) and 1104 (below).} Reformist opponents portrayed the two as unscrupulous opportunists. The Marzbans simultaneously ran two newspapers with opposing political agenda. The \textit{Jam-e Jamshed} was “ultra-loyal” and anti-Congress in tone. The \textit{Sami Sanj}, by contrast, was "as red as any Extremist rag in the Presidency."\footnote{"Editorial: The Jam-e Jamshed Defamation Case and Sir Dinshaw Davar," \textit{JIA} VI: 5 (August 1915), 173. Interestingly, the two papers’ politics mirrored the divergent political views of the Marzbans. J. B. Marzban supported British rule, while his son was a nationalist. [R. P. Masani, “Parsis and Indian Politics” (article manuscript, 32 pages), 20; in file: “Articles by R. P. Masani. Historical. 7 No.2, Serial Number H-13 to H-21” in R. P. Masani Papers (NMML).]}

Shapurji's case against \textit{Jam-e Jamshed} lived the longest, due largely to the tenacity of the father-and-son team that ran the daily in Bombay. Jehangir Behramji Marzban had spent decades in the wily world of Bombay journalism. The “father of Parsi journalism” and the “Mark Twain” of the Parsis was also a veteran of Bombay's libel wars.\footnote{T. Darukhanawala, \textit{Parsi Lustre}, 298-300. See also notes 1027 (above) and 1104 (below).} His son, P. J. or “Pyjam” Marzban was a satirist with orthodox leanings.\footnote{T. Darukhanawala, \textit{Parsi Lustre}, 300-1.} Reformist opponents portrayed the two as unscrupulous opportunists. The Marzbans simultaneously ran two newspapers with opposing political agenda. The \textit{Jam-e Jamshed} was “ultra-loyal” and anti-Congress in tone. The \textit{Sami Sanj}, by contrast, was "as red as any Extremist rag in the Presidency."\footnote{"Editorial: The Jam-e Jamshed Defamation Case and Sir Dinshaw Davar," \textit{JIA} VI: 5 (August 1915), 173. Interestingly, the two papers’ politics mirrored the divergent political views of the Marzbans. J. B. Marzban supported British rule, while his son was a nationalist. [R. P. Masani, “Parsis and Indian Politics” (article manuscript, 32 pages), 20; in file: “Articles by R. P. Masani. Historical. 7 No.2, Serial Number H-13 to H-21” in R. P. Masani Papers (NMML).]}

Shapurji's case against \textit{Jam-e Jamshed} lived the longest, due largely to the tenacity of the father-and-son team that ran the daily in Bombay. Jehangir Behramji Marzban had spent decades in the wily world of Bombay journalism. The “father of Parsi journalism” and the “Mark Twain” of the Parsis was also a veteran of Bombay's libel wars.\footnote{T. Darukhanawala, \textit{Parsi Lustre}, 298-300. See also notes 1027 (above) and 1104 (below).} His son, P. J. or “Pyjam” Marzban was a satirist with orthodox leanings.\footnote{T. Darukhanawala, \textit{Parsi Lustre}, 300-1.} Reformist opponents portrayed the two as unscrupulous opportunists. The Marzbans simultaneously ran two newspapers with opposing political agenda. The \textit{Jam-e Jamshed} was “ultra-loyal” and anti-Congress in tone. The \textit{Sami Sanj}, by contrast, was "as red as any Extremist rag in the Presidency."\footnote{"Editorial: The Jam-e Jamshed Defamation Case and Sir Dinshaw Davar," \textit{JIA} VI: 5 (August 1915), 173. Interestingly, the two papers’ politics mirrored the divergent political views of the Marzbans. J. B. Marzban supported British rule, while his son was a nationalist. [R. P. Masani, “Parsis and Indian Politics” (article manuscript, 32 pages), 20; in file: “Articles by R. P. Masani. Historical. 7 No.2, Serial Number H-13 to H-21” in R. P. Masani Papers (NMML).]}

Wadia told the Bombay commission that the \textit{Jam'e}'s editor smoked cigars while...
writing against cigarette smoking. The younger Marzban opposed reforms he had earlier supported simply because he disliked the individuals advocating them. “They are either men against whom the editor has old resentments to score off or the men of light and leading belonging to the Zoroastrian Conference.”

The Marzbans fought Shapurji until the final stages. First, they published two further articles that their lawyers held up as apologies. Shapurji’s lawyers responded with the charge that these only aggravated the initial libel and proved malice, the most difficult element to prove in criminal libel. The Marzbans also published a public appeal for funds to cover the paper’s legal costs through the suit. The “Parsi Zoroastrian Defence Fund” was the brainchild of Dinshaw Davar, the Parsi judge in the High Court of Bombay, who made the inaugural contribution of Rs 100. The fund exacerbated the conflict, as did the support of Bombay-based reformist organizations for Shapurji.

In court, the elder Marzban tried to claim ignorance. He insisted he was only the proprietor of the paper and had little knowledge or control over what was

---

1098 On the polluting nature of smoking in Zoroastrianism, see Karaka, I, 127; and Modi, Religious Ceremonies, 160. The smoking Parsi served as a symbol of impiety and hypocrisy. See “Pharisaism with a Vengeance! (During the Parsi Sacred Days),” Hindi Punch (20 September 1908), 21 [fig. 16 (above)]; “Parsee New Year Cards—No.1. Welcome Home!” Hindi Punch (12 September 1909), 14; and “Letters to the Editor: The Towers of Silence. From Dhunjishaw Rustomji,” Times of India (24 June 1905), 16. In the early twentieth century, many noted that smoking was widespread among Parsis. See “For Parsi Smokers,” The Parsi I: 2 (February 1905), 59; “Parsis and Proselytism. Another lively meeting,” Times of India (9 July 1904), 11; and “Correspondence. Who is a Parsi? Letter from Rustom B. Paymaster, BA, LLB. Vakil, High Court,” The Parsi I: 3 (March 1905), 106. For an advertisement targeting Parsi smokers, see “To Parsi Smokers,” The Parsi I:10 (October 1905), ix. For an advertisement by the Parsi Hormusjee Aderji, “importer of high class American and English cigarettes and tobaccos,” see untitled ad in Apakhtyar, 16 (front advertising section).
published, particularly when he spent half of every week at his country house in Matheran, a favourite Parsi hill station east of Bombay. He had been in Matheran when the libels in question were published, and had not even seen the articles until reading them in print. The claim was far-fetched. Being powerless and ignorant of the content of one’s paper, combined with being out of town at the time of publication, were tired old lines. Marzban senior was recycling the classic excuse used by every editor sued for libel in India. They were particularly hard to believe coming from one of the most experienced newspaper men in Bombay. In the Bombay sequel to this case, the younger Marzban’s correspondence suggested that his father ruled Jam-e Jamshed with an iron grip. In a letter to a relative, the son once explained why he could not publish the addressee’s writing: “Pa would come down on my poor head like lightening and thunder.”

Finally, the Marzbans argued for “justification.” Justification was a defence in defamation law whereby the offending party claimed that the statements were

\[101\] See Strangman, 183-4; Mistry, Wadia Ghandy and Co. (1911), 17-18, 54. On the poor treatment of South Asian “guests” by Europeans in many hill stations, see Judith T. Kenny, “Climate, Race and Imperial Authority: The Symbolic Landscape of the British Hill Station in India,” Annals of the Association of American Geographers 85: 4 (December 1995), 709-10.\n\[102\] “Parsi Defamation Case. Accused’s Written Statement. An Expression of Regret,” Rangoon Times (1 August 1914), 14.\n\[103\] In 1885, a Madras case established that a newspaper editor could defend himself against a charge of defamation “if he proved that the libel was published in his absence and without his knowledge, and he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person.” [Ramasami v Lokanada ILR 9 Mad (1885) 387; cited in Ranchhoddas and Thakore, IPC, 446]. For the equivalent in civil libel, see Ranchhoddas and Thakore, Law of Torts, 198.\n\[104\] Jehangir Behramji Marzban came from a family of publishers. He had been a manager of three leading English dailies (The Times of India, The Advocate of India, and the Bombay Gazette) as well as editor of the magazine, Noor-e-Alam, before taking over Jam-e Jamshed as sole owner and editor. [“Obituary: J. B. Marzban” (5 December 1928), Parsi Prakash VI, 387-8.]
both true and made “for the public good.” The son argued that the words had been published in good faith. He had not wished to cause harm to Shapurji and his family, but simply intended to serve the community in a matter of great social and religious importance.

The magistrate was unimpressed. The newspaper was “ready to try every dodge it could imagine to try to shirk responsibility for the scurrilous article it had published.” The Marzbans caved in and apologized before judgment was issued. Shapurji withdrew the charges on 20 August 1914.

Both sides claimed victory. The Iranian Association published a letter to Shapurji congratulating him on vindicating his family honor against “irresponsible journalism.” It hoped the victory would bring home to those likely to “overstep the limits of decency in the public discussion of communal questions the need for greater caution and sobriety.” Shapurji thanked the association for its consistent support. Jam-e Jamshed and the Sanj Vartaman had been forced to withdraw unreservedly all allegations, offer an amply apology, and cover Shapurji’s legal costs. Back in Rangoon, though, Merwanji held a meeting of

---

1106 First exception to s.499, IPC. See Ranchhoddas and Thakore, IPC, 440. In civil defamation, truth constituted justification and a full defence, as would “fair and bona fide comment” upon a matter of public interest. The two did not need to appear together. See Ranchhoddas and Thakore, English and Indian Law of Torts, 210-17.
1107 “Second Accused’s Statement,” WRTOS (22 August 1914), 49.
1109 “Saklat v Bella and Related Defamation Cases” (1914), Parsi Prakash V, 210-1.
1110 “The Rangoon Navjot and Ourselves. Correspondence between this journal and Shapurjee Cowasji. Letter from Iranian Association (H. J. Bhabha, President; P. A. Wadia and Byramji Hormusji, Joint Honorable Secretaries) to S. Cowasji, Rangoon. Bombay, 23 September 1914,” JIA III: 8 (November 1914), 279.
Parsis to honor the editors of the two newspapers. Nariman was publicly thanked for his support on this “burning” community issue, and the younger Marzban was presented with a formal scroll.1112

The courts were not finished with the Marzbans yet. Back in Bombay, a fourth libel case erupted as the reformist Zoroastrian Conference threw down the gauntlet. Led by D. M. Madon, who also represented Bella during the Bombay commission, the Conference sued the Marzbans for an article on Bella’s case.1113 In it, the Jam-e Jamshed accused the Zoroastrian Conference of instigating Bella’s initiation. The article claimed that the organization pushed for the conversion of outsiders, “a lustful idea” inspired by the exoticism of having non-Parsi wives. The members of the conference were to be regarded as lepers, poisonous vipers, and debased vaghris, a lower Gujarati caste of bird-catchers.1114 The “Conferencias” were instigating obscenity and sin, and were bent on bringing the Parsi community to hell and ruin by encouraging intermixing. They were as bad as apostates, according to the newspaper.1115

The main witness for the defense was none other than Dinshaw Davar, the Parsi High Court judge. In the Bombay Police Court (where Davar had started his own career), he described the Zoroastrian Conference as “a counterblast to the defeat sustained by the champions of Mr. R. D. Tata in the Parsi Panchayat case.” It was a defeat for which Davar was personally

1112 Jam-e Jamshed (21 September 1914) cited in “Saklat v Bella and Related Defamation Cases,” 210-1.
1113 See text accompanying note 626 (above).
1114 See Enthoven, III, 399-406.
responsible, having delivered the ruling judgment in the case. According to Davar, the Parsi community regarded the conference as “a pestilential organization” that aimed to destroy all that was good and beautiful in the Zoroastrian religion by encouraging “mixed marriages of doubtful morality.” He denounced Bella’s reformist pleader in Bombay, D. M. Madon, and the reformist priest, Dastur Dhalla, on the same basis.\footnote{1116 “Jam-e Jamshed Defamation Case. Full Text of Judgment,” JIA IV: 4 (July 1915), 135-6. For reformist cartoons of the struggle between orthodox Parsis and the Zoroastrian Conference (and its head, Dastur Dhalla), see “Snuffing the Sun! Or, the Fool’s Paradise,” “Destroying the Kharfastarst” and “Onward! Benedictions of the Dawn on the Parsee New Year: Tuesday, 13th September 1910” in Apakhtyar, 33-4 and 79. See also, in Hindi Punch, “Ringing the Death-Knell” (25 January 1914), 19; “The Phoenix” (25 January 1914), 20; “1283-1284” (13 September 1914), 15-16; “The Evil Spirits” (24 January 1915), 19; and “Dimmed” (12 September 1915), 15.}

The Iranian Association’s account of his testimony, in turn, was merciless. “Reckless assertion, petty and spiteful vilification, rank ignorance, amazing self-contradiction” riddled the words of a man whose Inquisitor-like manner—defending “nonsense by cruelty”—sadly impressed the uncultured average Parsi. It also wondered aloud if Davar’s personal involvement in the case, as a sitting High Court judge, was not a breach of professional duty.\footnote{1117 “Editorial: The Jam-e Jamshed Defamation Case and Sir Dinshaw Davar,” Journal of the Iranian Association VI: 5 (August 1915), 173-7; and “Zarhost-no diso, ooghado peti ne kahado siso’ (Open the cupboard on the anniversary of Zoroaster’s death and produce the bottle. –a Parsi proverb),” Hindi Punch (20 June 1915), 12.}

As in Rangoon, the Marzbans argued that their statements were justified because they were of public significance. They firmly believed that juddin conversions and other “violent changes in our religious customs and ritual” would be disastrous for the Zoroastrian community. The pair had only wanted to protect the community’s interests.\footnote{1118 “Jam-e Jamshed Defamation Case,” JIA IV: 4 (July 1915), 130-1.} But the Chief Presidency magistrate rejected the claim. The
language used in the article went far beyond fair and legitimate criticism. More importantly, the Zoroastrian Conference as a body had done nothing to promote the introduction of aliens into the community, making the statements simply untrue. An apology had been tendered, but against it weighed convincing evidence of malice. The elder Marzban was fined Rs 100, and his son, Rs 600. It was the only suit of four to actually reach judgment.

Predictably, there was noisy celebration amongst Bombay’s reformists. *Hindi Punch* produced two gleeful cartoons. In the first, Mr. Best-Orthodox sat drinking and weeping—both for the anniversary of Zarathushtra’s death and for the Marzbans’ defeat. The bottle in his hand bore the label, “Success of the Zoroastrian Conference,” and he moaned, “What a sad day for me!” (fig. 20). In the second, the head of the Zoroastrian Conference, Dastur Dhalla, proudly held a flag emblazoned with the word, “SUCCESS!” (fig. 21).

The orthodox also protested. The magistrate did not seem to care that there had been a “spontaneous outburst of mofussil opinion” against the Conference. A few “youngsters who could not control themselves in a public place” proclaimed the Marzbans’ martyrdom. These Parsis were fined. Their angry statements presumably happened in the courtroom, constituting contempt of court.

1120 “Jam-e Jamshed Defamation Case,” *JIA* IV: 4 (July 1915), 140.
1121 “Zarthost-no diso,” *Hindi Punch* (20 June 1915), 12.
But there was a final twist. On appeal, the Marzbans had the lower court’s ruling overturned “on a technical ground.” Their victory was tempered by the High Court judge’s harsh words. He condemned the defamation in even stronger language than had the magistrate below.1124 Even so, the Zoroastrian Conference probably lost this battle. It definitely lost the war. The high priest Dhalla commented that during the decade of the Conference’s existence, 1909-19, reformists lost popular support and prestige as orthodoxy gained both.1125

Parsis and Burmese: Living Together

What was the final outcome of this avalanche of litigation? Bella’s adoptive father did well—not perhaps as well as if he had secured verdicts in his favor, but two published apologies and the payment of his legal costs were nothing to sniff at.1126 The other two cases, on the other hand, ended inconclusively. Both J. D. Contractor and the Zoroastrian Conference watched their cases fail on procedural points.

More significant than their official outcomes, though, is what these cases can tell us about how Parsis thought. Why would it bring a Parsi into disrepute to have it known that his daughter was part-Indian, or his wife, half-Burmese? Did it no longer matter whether the non-Parsi influences were coming from the maternal side or the paternal? And how damaging was it to one’s reputation to

1126 On the administration of legal costs in Burma, see “The Dual Agency,” *Bom LJ* 1: 12 (May 1924), 613.
have married or adopted a child by Burmese rites?\textsuperscript{1127} What was at stake if one’s claim to being “pure Parsi” was thrown into doubt? These incidents only became lawsuits because Shapurji and Mr. Contractor felt injured by the allegations that they were mixing in Burma. It was no secret that Bella’s natural father, at least, was believed to be Indian. But this was the first time intermixing with the Burmese population had been raised.

Relations between Parsi and Burmese populations seemed generally harmonious.\textsuperscript{1128} But there were a few cracks. Tension developed as some Parsis took on the role of money-lenders, a line of work generally dominated by the Marwari and Chettiar banking castes from Rajasthan and Madras Presidency respectively.\textsuperscript{1129} Over the colonial period, the Chettiars became a much resented group that “flourished at twenty-four percent per annum.”\textsuperscript{1130} Their loans often ended in foreclosure and the seizure of Burmese farmers’ land.\textsuperscript{1131} The Parsis came to Burma as part of a massive influx of over a million South Asians, hostility

\textsuperscript{1127} On the Burmese ear-boring ceremony by which Shapurji adopted Bella, see note 108 (above).

\textsuperscript{1128} For instance, many Burmese residents of Rangoon publically expressed their support for Bomanji Cowasji Captain after his conviction for professional misconduct in 1906. [Parsi Prakash IV, 47.] During these proceedings, Bomanji was represented by the Burmese lawyer, Moung Kin [In the Matter of an Advocate Burma LR 12 (1906) 154-5.]


\textsuperscript{1130} Christian, 67.

\textsuperscript{1131} Khin Maung Kyi, 633-4. However, Adas suggests that neither as landlords nor as moneylenders were the Chettiars the “hard-hearted lot” guilty of the “swindling, cheating, deception and opportunism” of which they were accused. [Michael Adas, “Immigrant Asians and the Economic Impact of European Imperialism: The Role of the South Indian Chettiars in British Burma” in his State, Market and Peasant in Colonial South and Southeast Asia (Aldershot, UK: Ashgate Variorum, 1998), 400-401.] Chakravarti is similarly positive about the Chettiars’ role in Burma: Chakravarti, 56-68.
over which erupted in anti-Indian violence in the 1930s.\footnote{The Indian population in Burma reached the million mark in 1931. [Chakravarti, 30.] Between 1872 and 1941, the proportion of Indians of the population of Rangoon rose from 16% to 56%. [Tin Maung Maung Than, “Some Aspects of Indians in Rangoon” in K. S. Sandhu and A. Mani, eds., \textit{Indian Communities in Southeast Asia} (Singapore: Times Academic Press, 1993), 586 (table 25.1).] For further Indian population figures, see Chakravarti, 13-27. On anti-Indian violence, see Khin Maung Kyi, 635, 638; Chakravarti, 96-116; Michael Adas, \textit{Prophets of Rebellion: Millenarian Protest Movements against the European Colonial Order} (Chapel Hill, NC: University of North Carolina Press, 1979), 37-40; Max and Bertha Ferrars, \textit{Burma} (London: Samson Low, Marston and Co., 1901), 159-60; and Andrew, 34.} On the other side, Bella’s spin-off libel trials suggest that many Parsis disapproved of close interactions with the Burmese people, particularly when intimate. The challenge of being doubly diasporic confronted Parsis from Shanghai to Zanzibar. The worry was that Parsi culture could fade easily so far from the Bombay-Gujarat heartland. But in trade and the professions, it was crucial to be open and amiable in dealing with the locals. Trade and professional relationships were easy cases: close links to local business associates would not yield progeny.\footnote{That said, Parsi traders were generally business partners with other Parsis (typically, family members), rather than with local businessmen. [Kulke, 120; Palsetia, 164.]}

Intimate relationships with local women were trickier. In many place, they were not unknown, but nor were they sanctioned.\footnote{See text accompanying notes 760 (above); and Christian, 67.}

When the libel cases broke, Parsi-Burmese intermarriage was practically a thing of the past. G. K. Nariman (of libel case fame) provided French historian Delphine Ménant with a demographic sketch of the community in 1912. He reported that Rangoon had only four or five “indigenous families” in which Parsi men had married Burmese women. The Parsis of Rangoon totaled about 300 at the time.\footnote{“Letter to Delphine Ménant from G. K. Nariman, Chief Court, Rangoon (18 March 1912)” in Delphine Ménant Papers (MG).} But in 1918, Bomanji Cowasji Captain pointed to an earlier pattern of intermarriage in Burma. He knew Parsi men who had married the offspring of
intermarriage—women with Parsi fathers and Burmese mothers. Most of these women were no longer alive.\textsuperscript{1136} A specific example was a Parsi in Burma named Cowasji Mancherji. He had married the daughter of a Parsi man by a Burmese woman, and by Burmese rites. Shapurji told the court that the brother of his own wife, who like Shapurji’s wife would also have been a quarter Burmese, married one of Cowasji Mancherji’s daughters. In other words, two quarter-Burmese Parsis married each other, with the result that their children would also have been a quarter Burmese.\textsuperscript{1137} The 1889 Parsi cemetery controversy in Rangoon had also turned upon the issue of where to bury the bodies of Burmese wives.\textsuperscript{1138} Parsi-Burmese intermarriage may have been rare at the time of Bella’s case, but it had not always been so.\textsuperscript{1139}

It was the Saklat in \textit{Saklat v Bella} who laid out Parsi attitudes explicitly. Dorabji R. Saklat was a 55-year old rice broker who had come to Rangoon from Bombay in 1890 after spending six years in Calcutta. He dealt with people of all races and creeds, and mixed with them socially without restriction. “All Parsis mix similarly.” But in the same breath, he told the Chief Court of Lower Burma, that it wounded his religious feelings to worship “my God in the presence of other worshippers of race other than mine.” The reason was simple: the non-Parsi

\textsuperscript{1136} “Defendant’s Evidence. No. 34: Deposition of Shapurji Cowasji, the second defendant. In the Chief Court of Lower Burma” (27 February 1918) in \textit{Saklat v Bella}, 710 (PCOR).

\textsuperscript{1137} “Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” \textit{WRTOS} (25 July 1914), 41.

\textsuperscript{1138} “Untitled Statement by W. F. Agnew, Recorder, Rangoon” (21 May 1889) in \textit{Saklat v Bella}, 177 (PCOR).

\textsuperscript{1139} Interestingly, the same pattern existed for intermarriage between British men and Burmese women. Writing in 1945, one former British administrator commented that such marriages were rare in the past few decades. But they had been “fairly common and quite successful” following the British annexation of Burma in 1886, when there were few white women in the province. Two British High Court judges had Burmese wives, as did a president of the Legislative Council. [Christian, 62.]
lacked Parsi boon or “seed.” Saklat captured the irony of Parsi trade and travel, or perhaps its antidote: the greater the cosmopolitanism, the greater the need for clear limits on mixing if the community wanted to maintain its distinctiveness. When it came to worship, the line was drawn at the threshold of the fire temple.

Romance was trickier. Most Parsi-Burmese unions had occurred in the nineteenth century, when the number of Parsi men migrating to Burma presumably outstripped the number of Parsi women. Sex imbalance was the classic factor that triggered intermarriage by many South Asian populations. Saklat’s ambivalence was palpable. On the one hand, the children of Parsi men and Burmese women were fully entitled to membership in the Parsi community: “I know [a] good many Parsis in Rangoon and in other places of Burma who have married women of other races. These Parsis have never forfeited their position as Parsis and their children are recognised as Parsis if they are invested with sudra and kusti [sacred shirt and thread].”

---

1140 “Plaintiffs’ Evidence. No. 20: Evidence of Dorabji R. Saklat. In the Chief Court of Lower Burma” (19 February 1918) in Saklat v Bella, 389 (PCOR).
1141 The pattern occurred in the case of intermixing between British men and Indian women until the early nineteenth century. See note 198 (above). It also appeared between British men and Burmese women immediately after the British annexation of Burma in 1885. See Ballhatchet, 145-55; and note 1139 (above). In the early twentieth-century U.S. context, it also produced the Punjabi-Mexican community of California. South Asian men were prohibited from bringing wives from India to the U.S. and from marrying white women; many married Mexican women instead. See Echoes of Freedom: South Asian Pioneers in California, 1899-1965. An Exhibit in the Bernice Layne Brown Gallery Doe Library, University of California, Berkeley (Berkeley: Center for South Asian Studies, University of California, 2001), 44-9, 56-7; Karen Leonard, Making Ethnic Choices: California’s Punjabi Mexican Americans (Philadelphia: Temple University Press, 1992); and Bruce LaBrack and Karen Leonard, “Conflict and Compatibility in Punjabi-Mexican Immigrant Families in Rural California, 1915-65,” Journal of Marriage and the Family 46 (August 1984), 527-37. Taking issue with the sex imbalance argument, however, see Stoler, 2.
But there was a certain stigma attached to Burmese wives themselves. In Rangoon, Burmese wives were not received socially by all Parsi families. Saklat himself may have been to the home of a Parsi with a Burmese wife, but strictly on business. He told the court that he had never invited the Burmese wife of a Parsi to his house. He had seen Burmese women in the house of a Parsi gentleman for “entertainment” purposes.1142

And yet, the basis for one libel action against Nariman was his statement that Mrs. Shapurji Cowasji was part-Burmese. It was true—her mother was Burmese. But her father was Parsi. And if the children of such unions were happily recognized as Parsi, as Saklat said, one would think that Shapurji would simply have acknowledged the truth of Nariman’s statement, or not responded at all. That he chose to sue is significant. So was his phraseology throughout the proceedings. Shapurji stated many times that his wife’s father was Parsi, but only acknowledged her mother’s Burmese origins once.1143 Shapurji’s own ambivalence toward his wife’s Burmese background was a reflection of the flux in attitudes toward race and identity amongst the Parsis of Rangoon and Bombay. The Captain libel trials capture a moment of struggle between two competing models of Parsi identity, the patrilineal and the racial.

---

1143 For Shapurji’s only acknowledgment of his Burmese mother-in-law, see “Parsi Defamation Suit. The Hearing Resumed,” WRTOS (4 July 1914), 32. For mentions of his Parsi father-in-law, see the same article, as well as “Parsi Defamation Case,” WRTOS (1 August 1914), 42.
Who is a Parsi?:

Two Models

Shapurji’s insistence that his wife’s father was Parsi was a desperate appeal to the old “Parsi paternity rule.” If one was conceived by Parsi boon or olad—the “seed” of a male Parsi—one could be initiated into the fold. Both Davar and the Karachi high priest Dhalla noted that many Parsis disapproved. Even so, the rule had effectively become the customary principle of access.\(^{1144}\) As the witness Nadirshaw told the court during the Bombay commission, there had been no problem admitting the children of Parsi fathers and alien mothers until the French Mrs. Tata’s case arose in 1906.\(^{1145}\) The Parsi Chief Matrimonial Court in Bombay also clearly endorsed the rule in Toddyvala v Dinbai (1916). The court confirmed that a woman of Parsi paternity whose mother was part-Malagasy was herself Parsi.\(^{1146}\) The Bombay commission gave the “seed” rule a historical pedigree. “Aryan patrilinealism” was the view that Aryan peoples derived ethnic status through the paternal line alone. M. P. Khareghat, a retired Indian Civil Service judge, told the court: “the community is composed of families and those families are to be derived only according to male descent, and this idea of patriarchal descent is common to most Aryan Nations as far as I know.”\(^{1147}\) Witnesses considered the ancient Persians a branch of the Aryan race.\(^{1148}\)

\(^{1144}\) Parsi Panchayat Case (Davar), 38-43; Dhalla, Autobiography, 386, 394, 704-5, 713.  
\(^{1146}\) See text accompanying notes 512-4 (above).  
\(^{1147}\) “Plaintiffs’ Evidence. No. 6: Muncherji Pestanj Khareghat” in Saklat v Bella, 26 (PCOR).  
\(^{1148}\) “Plaintiffs’ Evidence. No. 7: Evidence of Jehangir Cursetji Daji, Court of Small Causes, Bombay” (11 February 1916) in Saklat v Bella, 93-4 (PCOR).
There had been periodic attempts to overthrow the Parsi paternity rule. In 1836, a trustee of the Parsi Panchayat had resigned in protest over the practice, and a resolution had been passed condemning the initiation of mixed offspring without the panchayat’s permission. A similar resolution had been passed almost two decades earlier, in 1818. Again in 1905, a resolution was passed at a public meeting declaring that from then on, even the children of Parsi men and non-Parsi women could not be initiated. (It had long been established that the children of Parsi women and non-Parsi men could not join the Parsi community.) The 1905 resolution was largely ignored, even by orthodox Parsis like Davar. But with the global rise of eugenics movements, the notion of Parsi racial purity found the equipment it needed to succeed. The new model, in turn, fit tidily into a general “back to religion” reaction against half a century of reformist Parsi activity that had enjoyed widespread popular support.

The new racial test privileged “blood” over “seed.” What mattered was the composite purity of an individual’s blood, not the line of male progenitors to the exclusion of the female. The new test was egalitarian: mothers mattered. They contributed as much as fathers to the constitution of their offspring. But the flip

---

1152 Strikingly, Davar did not mention the resolution at several key points. See *Parsi Panchayat Case (Davar)*, 38 and 49.
1153 On this general shift in sentiment, see Dhalla, *Autobiography*, 387.
side was a new race-based exclusivity. Burmese wives—like their European and Indian counterparts—became increasingly problematic.

The new rule was conceptually dressed by none other than Jehangir J. Vimadalal, the lawyer opposing Bella in Bombay. The Bombay solicitor was an ardent eugenicist, and published two books opposing the admission of outsiders on this basis. His views had been absorbed by many Parsis: witnesses referred to his eugenicist views during the Bombay commission. Vimadalal drew upon the writings of European race theorists like Gustave Le Bon and Houston Stewart Chamberlain. His work prefigured many of the claims elaborated two decades later by the Bombay-based journal, *Marriage Hygiene*, and by the Parsi eugenicist Sapur Desai. His work tailored the global eugenics movement to Parsi and colonial contexts. The paucity of scholarship on eugenics and colonialism (particularly in India), and on eugenics and the history of the professions (especially non-medical), makes Vimadalal a particularly important case study.

See *Mr. Vimadalal and the Juddin Question: A Series of Articles reprinted form “The Oriental Review” (1910) and Vimadalal’s *Racial Intermarriages: Their Scientific Aspect* (1922).


Vimadalal’s starting point was that intermarriage between dissimilar races produced unhealthy children.\textsuperscript{1159} Mixed offspring tended to be a “low type of progeny” that suffered from atavism or “reversion,” reviving pathological defects from the deep past.\textsuperscript{1160} The Eurasians of India, the mulatto “half-breeds” of America, and the mestizos of Peru and Paraguay appeared in the work of Vimadalal and Chamberlain as classically unhealthy and unhappy cross-breeds.\textsuperscript{1161} In the same vein, memorialists Max and Bertha Ferrars noted that the Indo-Burmese “\textit{kala} half-breeds” or Zerbadis, like the “Euro-Burman half-breed,” possessed “fewer good qualities” than any of the pure races. Chinese-Burmese “half-breeds,” by contrast, had a great future because they were a cross between such similar races.\textsuperscript{1162}

Most importantly for Vimadalal, intermixing destroyed the character of a race. Excerpts from Chamberlain asserted that race lifted individuals above

\textsuperscript{1159} In 1934-5, articles in \textit{Marriage Hygiene} stated that individuals of very different races were unusually prone to diabetes, tuberculosis, and exaggerated glandular growth. They frequently had “disproportionately large extremities” and suffered from “hemilateral asymmetry,” by which the individual resembled the father down one side of the body, and the mother down the other. [“Race-crossing and Glands (Extracts from \textit{The Eugenics Review}, April 1933),” \textit{Marriage Hygiene} 1 (1934-5), 96; and in the same issue, Eldon Moore, “Mixed Marriages from the Genetical Standpoint,” 344-5.] In 1940, Sapur Desai claimed that mixed offspring often suffered from overcrowding of the teeth in small jaws or “serious malocclusion of the upper and lower jaw,” poor circulation leading to early death, and oversized internal organs, in addition to social ostracism and an assortment of mental and moral complexes. [Desai, , 47.]

\textsuperscript{1160} “III. June 29, 1910. Is Zoroastrianism Evangelical? Mr. Vimadalal’s Reply. To the Editor,” 3; and “XVIII. August 31, 1910. Mr. Vimadalal and the Juddin Question. To the Editor, from Vimadalal,” 45; both in \textit{Mr. Vimadalal and the Juddin Question}.

\textsuperscript{1161} Vimadalal, \textit{Racial Intermariages}, 60; Chamberlain in Vimadalal, \textit{Racial Intermariages}, 87.

\textsuperscript{1162} Ferrars, 157, 161. The term Zerbadi was generally used to describe the children of Muslim Indian men and Burmese women. On this sizeable community, see Yegon, 33-5; and Mahajani, 22-3, 29. On the Chinese-Burmese, see Vesey Fitzgerald, 68-9. Writing on the Dutch East Indies, Ann Laura Stoler has observed the same association of degeneracy with the mixed offspring of Dutch-Javanese unions. [Stoler, 63-4.] On this mixed population in the Dutch Indies, see Joost Coté and Loes Westerbeek, eds. \textit{Recalling the Indies: Colonial Culture and Postcolonial Identities} (Amsterdam: Aksant, 2005).
themselves, endowing them with “extraordinary” powers lacked by those
springing from “the chaotic jumble of peoples drawn from all parts of the world.”
The person of pure race soared “heavenward like some strong and stately tree,
nourished by thousands and thousands of roots—no solitary individual, but the
living sum of untold souls striving for the same goal.”

Race was like a magnet. It drew iron filings into a unified pattern, each at a slightly different angle, but with
a common center and cause. People of mixed race, by contrast, were barred by their own constitution “from all genuine community of life.”

The mixed individual was unsuited to both parents’ original environments. Two of the strongest, most successful races of the time, the British and the Japanese, owed their power to the fact that they were “pure races.” By living on islands effectively cut off from the rest of the world, they had been able to achieve purer
“inbreeding.”

Vimadalal argued that for the Parsis, intermixing would destroy the distinctive constitution that had arisen over centuries of general endogamy:
“[i]t would disturb our physical and mental constitution, destroy our national character, loosen the hold of our common sentiments, interests and beliefs on our race and ultimately cause the disappearance of the Parsee race from the surface of the globe.”

Some intermixing had resulted from Parsi trade and travel in China, Burma and Africa. But it had been so small as to leave the general Parsi

---

1165 XVIII. August 31, 1910. Mr. Vimadalal and the Juddin Question. To the Editor, from Vimadalal” in *Mr. Vimadalal and the Juddin Question*, 45.
1166 Chamberlain in Vimadalal, *Racial Intermarriages*, 76.
character intact.\textsuperscript{1168} It was this character—in the most blatant physical terms—that was joked about in the Rangoon courtroom during Bella's case. When asked to describe typical Parsi features, the lawyer Mr. Connell pointed to Mr. Hormasji and Mr. Patel, two of the Parsis in the room.\textsuperscript{1169} At a more serious level, it was Parsi features, both physical and mental, that constituted the “soul” of the Parsi community.\textsuperscript{1170} Vimadalal did not provide a catalogue of classically Parsi physical features. But he did describe the mental component of the Parsi “soul.” “Parseeism” was a core of ethical precepts that represented goodness, and with the strength and independence to resist countervailing pressures. The collective Parsi “soul” had been molded and reinforced over centuries through religious practice—the “efficacy of the beautiful ritual”—and belief in the Zoroastrian ethical trio of good thoughts, good words, and good deeds. And it was this “soul”—this “noble bond of love, brotherliness, and unison”—that made the Parsi feel that “the shame of any member of the community was his own shame,” and rush to “repair” it. Intriguingly, none of these features could be acquired or learned, but were implicitly and exclusively tied to ethnicity for Vimadalal.\textsuperscript{1171}

Carefully engineered cross-breeding in animals and plants could produce exceptional results. But Vimadalal accepted that human beings could not be

\textsuperscript{1168} Vimadalal, \textit{Racial Intermarriages}, 64.

\textsuperscript{1169} The magistrate interjected that they could not be put in “as exhibits,” much to the court’s delight. [“Parsi Defamation Suit. Mr. B. Cowasji’s Evidence,” \textit{WRTOS} (25 July 1914), 42.]

\textsuperscript{1170} This was the standard eugenics-based use of the term. See, for instance, Peter J. Bowler, \textit{Biology and Social Thought: 1850-1914. Five lectures delivered at the International Summer School in History of Science. Uppsala, July 1990} (Berkeley: Office for History of Science and Technology, University of California at Berkeley, 1993), 85-6.

\textsuperscript{1171} XXI. September 7, 1910. Mr. Vimadalal and the ‘Juddin’ Question. From Vimadalal” in \textit{Mr. Vimadalal and the Juddin Question}, 52.
matched in the same way. Intermarriage would either have to be allowed completely, or not at all. Certainly “free and continuous crossing” would destroy the Parsi character. “It is difficult to imagine what a shocking conglomeration of hybrids, mongrels, pariahs, half-castes and no-castes of all kinds we should have amidst us in a very short time if all restrictions against alien marriages be done away with at a stroke!” Vimadalal predicted the “pollution of blood” on a massive scale:

it would mean that the English and the French, the Italian and the German, the Chinaman and the Japanese, the Burman and the Sinhalese, the Negro and the Red Indian, the Bengali, Madrasi, Kathiawari and Sindhi, the Punjabi and the Sikh, Hindus of all castes and sub-castes, as well as Mahomedans of all grades, nay even Dubras, Bhils, Chamars and men of low caste may, if they so please, adopt Zoroastrianism and cross freely and continuously with the Parsee!

Vimadalal’s inclusion of Europeans was significant. It was not “quality,” but closeness of race that mattered. While Parsis and Europeans were superior races, they were so dissimilar that intermixing would destroy the racial character of the Parsis. In fact, there existed no race close enough to the Parsis, with the exception of the Iranian Zoroastrians (who were arguably the same race), to provide a safe mix as close, for instance, as the English and Germans in

---

1173 Vimadalal, 26, 35, 37. Contrast Dhalla’s reluctant acknowledgment that some children of mixed unions had become “cultured, adventurous merchants, industrialists, bankers, people of position and status, charitable and of noble character and religious-minded—in short, people whom everyone would deem it an honour to call their own.” [Dhalla, *Autobiography*, 711.]
1174 The phrase belonged to a critic. [“VI. July 13, 1910. Mr. Vimadalal’s Misrepresentations. A Crushing Reply. To the Editor, from ‘D,’” in *Mr. Vimadalal and the Juddin Question*, 11.]
1175 Vimadalal, 36. Dubras, Bhils and Chamars were lower castes in the Bombay region. See Enthoven, I, 341-7 (Dubras or Dublas); 151-78 (Bhils); and 260-71 (Chamars or Chambhars).
America. Herbert Spencer had advised the Japanese, another “superior race,” not to intermarry with Europeans for the same reason.\textsuperscript{1177}

Along with this eugenicist main course came a side order of women’s rights. The double standard between the sexes had long meant that Parsi men could marry out—or take non-Parsi mistresses—without being excluded from the community, and that their children were also welcomed within the fold. Parsi women who married non-Parsis, along with the offspring of these marriages, were unequivocably shut out. According to Dhalla, men felt they could “hoodwink” aspects of their own behaviour that they in turn suppressed “in the weaker sex.” But with the arrival of sex-based egalitarianism, change was overdue: “if the Parsi Anjuman made up mainly of men, wish to resolve to stop their women marrying out of the community, they will have to agree to observe the same rule themselves also.”\textsuperscript{1178} The argument was a claim for consistency, not exclusion. But taken in tandem with Vimadalal’s eugenics, it reinforced the constriction of Parsi identity.

Two Parsi critiques of Vimadalal’s views emerged. One came from within a eugenicist framework; the other, from without. Eugenics was certainly not the sole preserve of orthodox Parsis.\textsuperscript{1179} Reformist publications like the Journal of the Iranian Association followed eugenics closely. In 1917, the journal expressed the hope that intelligent people would follow the latest findings of eugenics-based research. Parsis in particular ought to use eugenics as “the only healthy

\begin{itemize}
\item \textsuperscript{1177} Vimadalal, \textit{Racial Intermarriages}, 59-60.
\item \textsuperscript{1178} Dhalla, \textit{Autobiography}, 388.
\item \textsuperscript{1179} According to Adams, it is a myth that eugenics movements were essentially right-wing or reactionary. [Adams, 220.]
\end{itemize}
corrective to the wild speculations of the present day guides and philosophers of
the Parsis, to the nostrums of our social quacks and the exaggerations of
'religion' revivalists.” Looking to heavily eugenics-inspired American legislation,
the author nodded at the prohibition of marriage for the insane, paupers, and
sufferers of venereal disease, as well as for interracial (i.e. white-black)
couples.1180

In the same vein, an anonymous critic in the 1910 Oriental Review
(seemingly a reformist Parsi) fumed that Vimadalal had gotten his eugenics
wrong.1181 No leading eugenicists' work showed that intermarriage between
“higher races of mankind” caused degeneration. In most cases, sexual selection
played its part in keeping the superior races from intermingling with the inferior
ones: “the natural repulsion of civilized men to intermarry with lower races, like
the negro, is a natural protection against such a result.” But within the Indo-Aryan
family, things were different. The Parsis, as one branch of this family, could
surely intermix with other members of the same clan without detriment.1182
Vimadalal subsequently published lengthy passages from Chamberlain
suggesting that the notion of “the Aryan family” referred only to language, not
race.1183

1180 “Eugenics,” JIA VI:6 (September 1917), 231-3; Vimadalal, Racial Intermarriages, 59-60.
1181 The writer's reformist leanings are implied by his (or her) attack on traditional Parsi dress and
"reactionary" elements within the community. ["IV. July 6, 1910. (Anonymous) The Social
Problems of the Parsees" in Mr. Vimadalal and the Juddin Question, 6.]
1182 "IV. July 6, 1910. The Social Problems of the Parsees" in Mr. Vimadalal and the Juddin
Question, 6.
1183 “Relationship of language is no conclusive proof of community of blood; the theory of the
immigration of the so-called Indo-Europeans from Asia, which rests upon very slight grounds,
encounters the grave difficulty that investigators are finding more and more reason to believe that
the population which we are accustomed to call Indo-European was settled in Europe from time
The eugenics discourse of the period referred to purity and degeneration where later generations would speak of inbreeding and cosmopolitanism. But the inbreeding point surfaced at a number of points even against Vimadalal. The anonymous critic in the Oriental Review felt that Parsi endogamy was weakening the Parsis. It was inbreeding that intensified atavism and brought out pathological defects: “Think only of the nervous diathesis that must inevitably follow such a course; already signs are not wanting to show that the mental equilibrium of the Parsees is not what it ought to be.” The claim that Parsi inbreeding triggered elevated levels of mental illness was part of an ungenerous stereotype, and one that would become increasingly familiar as a Hindi film trope post-Independence.

There was also a sense that the “Parsi physique” was deteriorating. One British observer warned that the Parsis were degenerating into “a nation of weaklings.” The number of “well-built, strong men and women” was very small,
the majority being “small in stature and weak in limb.” Elderly Parsis were all “stout and fatty, suffering from liver and indigestion,” and the young were “mostly weak-kneed, hollow-chested youths and maidens, whose kidneys and liver are all affected.” Even the average Parsi’s gait was unsatisfactory—Parsis lacked “the firm and manly tread of the European.”1187 The problem in the author’s mind may have been a lack of exercise, but others thought it was genetic. The Parsi historian Karaka noted that the Parsis were getting shorter due to inbreeding.1188 The Times of India attributed Parsi physical deterioration to inbreeding, particularly in elite Bombay circles.1189 Darukhanawala’s Parsis and Sports, a directory of Parsi sportsmen and –women, and the craze for “physical culture,” may be read as efforts to assuage this fear.1190

The second reaction against Vimadalal’s line of thought was the rejection of race as a category altogether. As head of the Anthropological Society of Bombay, the Parsi writer R. P. Masani made this argument in his presidential address of 1932.1191 The Anthropological Society worked to counter superstitious beliefs of the common people—human sacrifice, love and fertility potions, and the like. But equally it strove against the “superstitions of the elite,” namely race-
based thinking. The nineteenth-century scientific study of race “according to the
divergences of their cephalic index, their color, their facial angle, their height,
their intellectual attainment and collective psychology, and other peculiarities and
qualities” had contributed huge amounts of useful data for the study of
humanity. But it also gave rise to “dire illusions and superstitions that have
militated fatally against the peace and progress of the Human Family.” It should
have come as no surprise that the “Science of White People” glorified whiteness.
Had the Chinese or Egyptians been the architects of the dominant racial
taxonomies, they would have put themselves at the top, too. Despite their
differing skin color, all people seemed to be “equally susceptible to physical,
moral or intellectual degradation.” Once the principle of race-based inequality
was rejected, the world would be free from “the nightmare of race prejudice.” The
“myopic vision of the unity of blood” would be corrected, the “right claimed by
some to dominate others” would be eliminated, and the “puny gospel of hatred at
home and hostility abroad” would be replaced by “inter-communal harmony and
international comity.”

India itself was fraught with racialized thinking. Masani argued that
Brahmins considered their blood pure vis-à-vis the lower castes, although caste
was a relatively modern phenomenon dating from Buddhist times. Hindus felt the
same way relative to Muslims, forgetting that “Hindu blood courses through the

1192 In this vein, see a note on comparative craniological analysis of lower caste *dubri* (from
among whom some Parsis took mistresses) and Parsis: Ménant, “Social Evolution of Parsis,” JIA
X: 4 (July 1921), 110 at note 31.
1193 R. P. Masani, “Presidential Address: A Survey of the Work Accomplished by the
Anthropological Society of Bombay, with Suggestions for Extending the Sphere of its Activities
and Influence,” JASB XV: 1 (1932), 38-42.
veins of large sections of the Muhammadan community.” In fact, the Hindu community had at one time consisted of a “wholesale admixture of aliens, not only the peoples inhabiting India but also Greeks and Persians.” The Englishman, of course, still exhibited a “superstitious adherence” to racial paradigms. And the average Parse was unable to “shake off his conceit of ‘blue blood.’” Based on race, the concept of India as a nation could not work—the subcontinent was simply too diverse. To Masani, a nation was not a unity of blood, but a set of common moral and material interests shared by a group of people living together.1194

Masani’s anti-racialism was a brief and solitary flash. Vimadalal’s eugenics-based arguments operated from a conceptual substrate shared by many reformists. Eugenics would ride the crest of worldwide favour until the Second World War.1195 In Rangoon and Bombay, it provided the conceptual authority and appeal to nudge a view that had surfaced intermittently before into the driver’s seat.1196 The fact that the Bella libel trials existed at all attests to the victory of “blood” over “seed.” Had the “seed” rule been the general view among Parsis, Shapurji and Mr. Contractor never would have sued in the first place. Nor would Shapurji have obtained apologies and costs. That allegations of mixing in

1196 The Parsi community expressed its disapproval of the Parsi paternity principle on several occasions. See notes 495 and 764 (above).
Burma were socially damaging in their minds suggests the triumph of the racial model of Parsi identity in 1914.

**Persianness**

Vimadalal’s defence of the “blood” rule provided one half of the conceptual meat for the new Parsi identity. His writings helped erect the fence and gate, barriers to entry that were more conscious and secure than ever before. What lay inside the gates was the notion of Persianness. The Parsi notion of race was to some extent about colour—Persians were generally lighter in complexion than Indians, Burmese and others. But more importantly, it was about origins. Tanya Luhrmann overestimates the Anglophilia of colonial Parsis.1197 It is true that many Parsis adopted English education, language and dress. They enjoyed generally excellent relations with Europeans and the colonial state. But they drew the line at intermarriage. Chapter 3 documented Parsi-initiated attempts to keep the European wives of Parsi men out of the community, denying them access to Zoroastrian ritual spaces, rites, and funds. Adapting language used in the context of American race relations, it was not “property in whiteness,” but “property in Persianness” that mattered.1198

“The Parsis are proud of what they call their blue blood,” Vimadalal told the Bombay court during his cross-examination of the reformist Nadirshaw. “Blue blood” meant descent from the ancient Persian Zoroastrians exclusively and

---

1197 See Luhrmann, 21.
“without contamination.” Nadirshaw disagreed, arguing that it was not only a myth, but a relatively recent one, too. The ancient Persians were a mixture of three “races”: the Aryan, Scythian and Semitic. The “primitive Persians” had been Aryans. The great epic heroes Sohrab and Rustom were of Scythian stock. And the Taziyans (or Arabs) were Semitic. Even in ancient Persia, there was no such thing as “pure Persians.”

In 1916, the assertion of pure racial Persianness was a recent phenomenon—not more than about forty years old, by Nadirshaw’s calculations. Only since 1800, when the Persian epic, the *Shah Nameh*, was translated from Persian into Gujarati, did Parsis begin to glorify the achievements of the ancient Persians, Nadirshaw claimed. To his knowledge, only two of the heroes in Ferdowsi’s epic—Kershasp and Sam—really existed. The others were mythical. The Parsis’ ancestors had taken pride in being the descendants of such heroes and “having Kiani blood in their veins,” but they were also aware that much alien blood had been introduced through conversion to Zoroastrianism. Many of these converts had originally been Hindus and Jews. Citing the *Dabestan*, Nadirshaw pointed to eleven other communities that had existed before the time of Zoroaster. After the prophet’s time, they followed Zoroastrianism. “In some of these communities there were Jews and Hindus...

---

1200 “Defendant’s Evidence. No.27: Nadirshaw” in *Saklat v Bella*, 465-6 (PCOR). Luhrmann dates the reassertion of racial Persianness to the turn of the twentieth century. [Luhrmann, 102-4.]
besides the Persians. The result, he claimed, was that the Parsis’ forefathers spoke only in a general way of their Persian descent, and not of pure Persian descent. Very few of the Parsis’ forefathers actually knew who their ancestors were beyond five or six generations, claimed the witness. The only exceptions were the priests, who could say they were of pure Persian stock. All sides agreed that it was impossible to become a priest by conversion.

Vimadalal’s cross-examination of P. A. Wadia, another reformist, confirmed these views. The solicitor asked if the Parsis were proud to have descended from Persian emigrants after the fall of the Sassanian empire. The exchange continued:

A. It is only after the agitation of Messrs Daji Vimadalal and Co was started that the Parsis have begun to be proud of their alleged pure descent.
Q. Before that they were not proud of their descent and blood.
A. They did not take pride in their pure descent because they knew that there was an intermixture of Hindu and other alien blood.

Reformists argued for the invention of Persian tradition. The orthodox asserted a literal and ancient Persian lineage.

The *Bella* testimony fits neatly into the larger cultural idealization of Persianness in the early twentieth century. Parsi writers and mystics glorified ancient Persian civilization and contemporary “secret” Persia. There were also proposals to create a Parsi colony situated as close to Persia as possible. More than treating Persia as an actual place, all of these used it as an ideal against

---

1206 See Hobsbawm.
which the imperfections of Parsi life in Bombay could be calibrated. And all relied 
upon a clear ethnic thread connecting Parsis to the ancient Persians.

 Ancient Persian civilization was a constant focus of Parsi literature from 
the period. J. J. Modi, the expert witness of Petit, wrote a plethora of works on 
the ancient Iranians, including studies of Judeo-Persian relations and of the uses 
of wine and archery among the ancient Persians.1207 Dastur Dhalla proposed 
sending archeological missions to Persia for the collection of antiquities.1208 The 
weekly magazine, The Parsi, featured glowing accounts of ancient Persian 
educational and legal systems.1209 It urged the study of Persian for Parsi 
schoolchildren as a means of making themselves “worthy descendants of the 
ancient Persians.”1210 The size of Persia’s ancient empire was also a point of 
pride.1211 The implicit value of ancient Persian civilization was that, aside from 
providing a narrative of origins for the Parsis, it compared so favorably to modern 
Bombay. Women, for instance, were treated equally in ancient Persia, whereas 
in modern Bombay they had only recently come to be educated and permitted to 
drive their own carriages, unaccompanied by male family members.1212 Rebuffing

1207 J. J. Modi, “Wine among the Ancient Persians: a lecture delivered before the Self-
Improvement Association...1888,” (Bombay: Bombay Gazette Steam Press, 1888); “Archery in 
Ancient Persia—A few extraordinary feats,” JBBRAS XXV (1922), 175-86; and “King Solomon’s 
Temple and the Ancient Persians,” (Bombay: Fort Printing Press, 1908). See generally the 
JBBRAS for other articles by Modi on related topics. 
1209 J. J. Modi, “Education among the Ancient Iranians,” The Parsi I: 2 (February 1905), 53-5; 
Kaikobad B. Dastur, “Laws of the Ancient Persians,” The Parsi I: 3 (March 1905), 97-100 and I: 4 
(April 1905), 138-40. 
1210 “Our Persian Mother-Tongue,” The Parsi I: 6 (June 1905), 212-3. See also “Mainly Parsi. If 
French, why not Persian?” The Parsi I: 12 (December 1905), 351. 
1212 Karaka, I, xxvi; J. J. Modi, K. R. Cama, (Bombay: Rustom J. J. Modi and J. M. Unvala, for the 
K. R. Cama Oriental Institute, [1932]), 174.
the British picture of “oriental mendacity,” Parsis boasted that the ancient Persians glorified truth-telling long before western societies ever did.\textsuperscript{1213}

By contrast, Persia’s more recent history gave cause for mourning. Persia had never regained its former glory after being forcibly converted to Islam in the seventh century by Arab Muslim invaders.\textsuperscript{1214} “Enlightened Iran, the mother of the then world academies, was to be run over and strangled by a horde of mere barbarians.”\textsuperscript{1215} Its Zoroastrian population had been oppressed and impoverished under the rule of Muslims.\textsuperscript{1216} But there was a hidden Persia that served as a Utopian ideal. Followers of \textit{ilm-e Khshnoom}, the Parsi mystical movement that began in 1905 with the revelations of the Parsi Behram Shroff, believed that a secret colony of Persian Zoroastrians lived inside Mount Damavand, a mountain in Iran to the north-east of Tehran.\textsuperscript{1217} Firdos was a self-sufficient vegetarian and environmental fantasy of clean air and water, green pastures, fresh fruit, vegetables, and grains. The animals in Firdos were treated humanely and were not killed for their meat.\textsuperscript{1218} Men and women enjoyed equal status, and no task was too low for any man or too “complex” for any women.\textsuperscript{1219} Daily life was athletic and austere. Education in the colony consisted of lessons in riding and archery, moral lessons in truth, mental independence, and the resistance of envy and greed, along with the development of the individual’s capacity for telepathy

\begin{itemize}
\item \textsuperscript{1213} See “The Ideal in Connection with the Parsis,” \textit{The Parsi} I: 3 (November 1905), 76-7. On the concept of “oriental mendacity,” see text accompanying notes 274-5 (above).
\item \textsuperscript{1214} F.R.V., “To the Parsi race,” \textit{The Parsi} I: 1 (January 1905), 7.
\item \textsuperscript{1215} Mama, 12.
\item \textsuperscript{1216} See Karaka, I, 53-90.
\item \textsuperscript{1217} See Hintze, “New Religions”; and Boyce, \textit{Zoroastrians}, 205-6. For a reformist attack on the movement, see Dhalla, \textit{Autobiography}, 382.
\item \textsuperscript{1218} Mama, 32.
\item \textsuperscript{1219} Mama, 25.
\end{itemize}
and clairvoyance. Honesty reigned, and colonists practiced the old Zoroastrian tradition of confession. Firdos’ colonists were in fact descendants of Sassanian royalty, and they preserved the treasures of Sassanian Persia, particularly its sacred texts (largely believed to have been destroyed by Alexander) in the depths of the city. Bombay was implicitly everything Firdos was not: a seething mass of capitalist greed, environmental pollution, sexism, dishonesty and instrumentalized relations.

There was also talk of creating a Parsi colony. The Parsi toyed with several options in 1905. The first of these was to start a colony in East Africa, where land for a Jewish “homeland” had been offered but refused. Another possibility was Sind. One Parsi writer named B. D. Patel published a scheme in two issues of the Parsi newspaper, Rast Goftar. His rationale for the colony was that, as peaceful and happy as were the Parsis among Indians at the moment, they were still aliens in India. If the British were to leave India, the Parsis might suddenly be vulnerable. The creation of their own colony would allow them not to rely on any host’s good favour for their wellbeing. Another writer celebrated the “spirit of roving adventure” that was so Anglo-Saxon but

---

1220 Mama, 34, 52. See also Pestanji M. Ghadiali, “Preface,” in Nasarvanji F. Bilimoria, ed., Zoroastrianism in the light of Theosophy (Madras: Blavatsky Lodge, Theosophical Society, 1898), xvi.

1221 Mama, 33.

1222 Mama, 27. See also Ghadiali, “Preface” in Bilimoria, xvi.

1223 See Kulke, 144-6.

1224 On the funding of such a colony, see “The Economic Aspect of the Proposed Parsi Colony out of India,” The Parsi I: 2 (February 1905), 43-4.

1225 “East Africa for Parsis,” The Parsi I: 12 (December 1905), 525.


1227 These articles appeared in Rast Goftar on 3 and 4 April 1904.

1228 Khan Bahadur B. D. Patel, “The Question of the Day. Do we need a Colony and can we found one?” The Parsi I: 6 (June 1905), 208-10.
also ancient Persian. A Parsi colony would allow for the “regeneration of the old Persian life with all its glorious features” and even perhaps lead to a new Persian nation in Asia.1229 K. D. Khambatta proclaimed a call to arms:

We all know full well that amongst the diverse races of India our safety lies in the well being of the British...And considering the smallness of our number if aught befell the British Rule in India, how hopelessly we would fall a prey [sic] to the swarming millions of other races if they take it into their heads to attack us? Parsis occupy the foremost position in all outdoor manly sports, but, strange to say, they have not yet thought seriously of acquiring a knowledge of the use of arms.1230

Ultimately, the consensus was that the colony should be located as close to Persia as possible.1231 Such a plan would combine the desire to create a Parsi colony with the Parsi campaign to set a positive model for their less fortunate Iranian co-religionists.1232

Finally, there were fantasies of return. Between 1921 and 1925, Reza Pahlavi, a general in the Persian army, overthrew the Qajar ruling family and founded the Pahlavi dynasty.1233 Reza Shah was an admirer of ancient Persia, and encouraged Parsis to return to and invest in the “new Iran.”1234 In turn, the Parsi-run Hindi Punch speculated fancifully that leading Parsis might populate

---

1231 “East Africa for Parsis,” The Parsi I: 12 (December 1905), 525.
1233 The Pahlavis ruled Iran until the Islamic Revolution of 1979.

347
Reza Shah’s cabinet—and even occupy his throne—were they to move back (fig. 22).1235

Undeniably, the Parsis looked to the British for protection and as a limited cultural model. But this form of imitation had its limits. Digging a little deeper, Europhilia gave way to Persophilia. One Pateti or New Year’s celebration speech by the scholar K. R. Cama testified to the deep nostalgia for Persia in the early twentieth century:

Breathed there a man in the assembly, who would not be rejoiced to say, Persia was his own, his native land. (Loud cheers.) They no doubt loved the land of their adoption, which was now to all intents and purposes their native country but the fire of their patriotism had not yet been extinguished in their hearts, which still yearned for their ancient home. (Loud cheers.)1236

A few decades later, the same sense of Persianness was given a eugenics-inspired racial pedigree. The Bella libel suits suggest its hold on Parsi identity.

Persianness had deep cultural resonances for Parsis, but it also had external strategic value. The Europeanized Parsi ran the risk of being rejected by Europeans on the basis of race being perceived to have taken on the “almost the same, but not quite” status of Homi Bhabha’s mimicker.1237 Persianness preserved Parsi self-respect. It held Parsis far enough from the British both to

---

1235 “When the Parsis regain Iran, their ancient Motherland, Sir Jamsetjee Jejeebboy Baronet will be Shah-in-Shah Jamshid sitting on the Persian Throne of the Shahs of Persia.” [“New Year Dreams—No.1,” Hindi Punch (6 September 1925), 6.] See “New Year Dreams” series (no.1-5), Hindi Punch (5 September 1925), 6, 24, 27. For a surprising pre-Pahlavi version, see “Mr. Punch Pateti Pictures—to Iran!” Hindi Punch, September 1910, in Apakhtyar, 78.
1236 The speech must have been given some time before 1909, when Cama died: “The Jamshedji Naoroz Dinner” (newspaper and date not indicated) in Delphine Ménant Papers (MG).
1237 Homi K. Bhabha, “Of Mimicry and Man: The ambivalence of colonial discourse,” in Homi K. Bhabha, The Location of Culture (London and New York: Routledge, 1994), 85-92. It is intriguing that Bhabha does not apply his model explicitly to the Parsis, despite his own Parsi background. For incidents in which Parsis were discriminated against by Britons on the basis of race, see The Bombay Incorporated Law Society Centenary 1894-1994 (Bombay: Bombay Incorporated Law Society, 1995), 161-2, 267.
help insulate them from race-based snubs, and to safeguard their future prospects in an independent India. At the same time, it distanced the Parsi community enough from Indians to facilitate close relations with the British while colonialism continued. Being Persian—neither British nor Indian—had both internal and external value.

Conclusion

Persian and Burmese influences hung in inverse proportionality in the early twentieth century. As the claim to being Persian became literalized, racialized and celebrated, having Burmese roots fell further and further into disrepute. The general view from British India that Burmese marital mores and law were a farce only worsened matters. The Bella libel cases suggested that by 1914, the topic of Burmese origins had landed with a thud in the zone of things not spoken about. The fact that it was sued upon when verbalized attested to the force of the taboo.

The creation of a more exclusive, racialized identity entailed two moves. Internally, the notion of Persianness constituted the Parsi sense of self. Externally, asserting racial purity meant restricting the flow of non-Parsi “blood” at critical points of access. The classic danger points were adoption, concubinage and intermarriage, all of which fed into the larger road to conversion. Chapter 3 looked at efforts to keep European wives out. Chapter 4 did the same for aspiring converts, a category that could include concubines and their children, servants or slaves, and lower caste Hindus. This chapter examined efforts to discourage intimate Parsi-Burmese unions. The shift from “seed” to “blood” rules of

1238 On the Parsi involvement with the nationalist movement, specifically the Congress party, see Kulke, 133-237.
membership was an internal cleansing process that stigmatized Parsis who had “gone native” on the fringes of the Indian empire.

Bella’s cases occurred as the world was falling in love with the ideas of nationalism and the self-determination of peoples. The Parsis’ focus on racial exclusivity and Persianness fit into the standard model of the ethnicized nation, with its distinct origins and culture, and its birth-only principle of membership. Or rather, it fit into half of the general formula. That formula defined and celebrated an ethnic group, then made claims to a territory reserved exclusively for the group. From nineteenth-century calls of “Ireland for the Irish” and “Egypt for the Egyptians” to schemes for Jewish, Kurdish, and Armenian states at the end of the First World War, being a “nation” meant having a physical space of one’s own. This was not an option for the Parsis, whose “mini-nationalism,” to borrow C.A. Bayly’s term, could hardly be compared to the major nationalisms vying for pieces of the subcontinent. Nor was it trying to. Aside from a brief discussion of the creation of a Parsi colony as a quasi-homeland, territorial claims were never a plank in the Parsi communal identity.

In an era of majoritarian, ethnicized nation-building, the Parsis played out the sensibility of the period as they forged a racially exclusive identity. Yet ironically, the Parsis’ small numbers and extensive travels made them quintessential cosmopolitans—and incapable of fastening their nationalist visions to any single territory. The reformist priest of Zoroastrian Conference fame, Dastur Dhalla, urged Parsis to accept a vision of the multi-ethnic nation of India,

instead of an isolationist Parsi one. The Indian nation was one organism, and the Parsis ought to embrace it rather than isolating themselves:

Live by all means as Parsis, but remember at the same time to live as Indians, as members of one society with your brethren of other communities. Woe to you, if pettiness or exclusion penetrates your brains. For exclusiveness might mean self-exclusion. Imagine a crowd of 15,000 people of all the communities of India gathered together at the Esplanade, with but one solitary Parsi among them. What a drop will he be in that ocean of humanity?1240

The orthodox response would have been to agree. One Parsi would be lost amongst 14,999 Indians—especially if he intermarried. The Parsi vision of a multicultural Indian nation and the racialized model of Parsi identity were alternate responses to the same census-inspired malaise. The Bella libel suits suggested that at the start of the First World War, most Parsis in Rangoon and Bombay considered the racial model to be the more compelling choice.

---

FIGURE 20:
“ZARTHOST-NO DISO, OOGHADO PETI NE KAHADO SISO”
“(Open the cupboard on the anniversary of Zoroaster’s death and produce the bottle. —a Parsi proverb.)
Best Orthodox—What a sad day for me!

[Yesterday (19th June) was the anniversary of the death of Zoroaster. The Chief Presidency Magistrate delivered his judgment in the Jam-e Jamshed defamation case, filed against the paper by the Zoroastrian Conference. The Magistrate convicted both the accused and fined the proprietor Mr. Jehangir B. Marzban Rs. 100 and the editor Mr. P. J. Marzban Rs. 600.]" [Hindi Punch (20 June 1915), 12.]
[By permission of the British Library (SV 576).]
FIGURE 21: “VICTORIOUS!” from “Chow-Chow: The Jame and the Z. C.” [Hindi Punch (27 June 1915), 14.]
[By permission of the British Library (SV 576).]
FIGURE 22: "NEW YEAR DREAMS—NO. 1"
“When the Parsis regain Iran, their ancient Motherland, Sir Jamsetjee Jijibhoy Baronet will be Shah-in-Shah sitting on the Persian Throne of the Shahs of Persia.”
[Hindi Punch (6 September 1925), 6.]
[By permission of the British Library (SV 576).]
CHAPTER 7

The Bella Judgments:
Creating Legal India

Never before had the Indian subcontinent been such a single legal unit. Like Europe, the subcontinent was historically a region, not a country. Under colonial rule, judges flattened local difference in an incremental mode of case-by-case processing. The colonial legal system pulled together cultural units that had no prior links or even knowledge of each other. What these communities shared initially was the accident of British rule. By the end of the colonial period, they were part of a new entity—what I want to call “legal India,” itself a unit within a global empire of common law.

This chapter takes *Saklat v Bella* as a case study in the creation of legal India. It offers a thick description of a mode of state summarizing that has been underestimated vis-à-vis other colonial forms of knowledge like legislation and the census. *Saklat v Bella* was decided on the basis of Hindu temple access cases from Bombay and Madras Presidencies, the managerial policies of British public schools and Oxbridge colleges, a Québecois precedent on the powers of the Catholic church, and a case from the English equity courts on Protestant dissenters. The flow of commodities and populations through the empire is well trodden scholarly ground. The capillary circulation of legal concepts and

---

1241 Although the princely states were nominally independent, British Resident’s courts operated in many of them, directing appeals to the Privy Council. See Bentwich, 141-3; and Alexander Wood Renton and George Grenville Phillimore, *Colonial Laws and Courts* (London: sweet and Maxwell, 1907), 154-61.

1242 Both literatures are vast. For a sample of the imperial commodities scholarship, see Sidney W. Mintz, *Sweetness and Power: The Place of Sugar in Modern History* (New York: Viking,
personnel is less so. Law and Society scholars have downplayed what happened inside the courtroom, but this chapter takes legal doctrine seriously, suggesting that an important new form of consciousness arose out of what judges said. It also considers the flow of legal personnel between Britain and India as legal professionals and litigants, a traffic that helped cement the sense of South Asia as a single legal unit. The creation of legal India frames the story of *Saklat v Bella* in transit—from the courts of Lower Burma and Bombay to London. This chapter begins and ends with a discussion of the complex logistics and immense resources involved in that passage.

“Legal India” was a bundle of administrative jurisdictions stretching from Zanzibar and Aden to the Andamans and Burma—and at times beyond. Rules developed in South Asia were applied to populations of Indian origin from Tasmania to Trinidad. In the process, ethno-juridical highways developed between particular communities. Colonial judges likened Parsis, Jews and

---

1243 For an early example of colonial Indian legal devices being applied in Tasmania (then Van Diemen’s Land), see “The Bengal Government request the Madras Government to forward five copies of the Koran to Van Dieman’s Land, to be used to administer oaths to Muhammadan natives of India resident there, November 1831-May 1833,” 6-7, F/4/1435 (56689) (IOR). On Trinidad, see note 1249 (below).

1244 Aden, Zanzibar, Perim, Muscat, and the Persian coast and islands were included in Bombay Presidency for appellate purposes. See Bentwich, 121, 123-4, 139-40. For specific cases from these areas, see *Khoja Shivji Somji v Hasham Gulam Hussen Tejpar* ILR 20 Bom (1895) 480-8; *Municipal Officer, Aden v Abdul Karim* ILR 28 Bom (1904) 292-4; and *Merali Visram v Sheriff Dewji and another* ILR 36 Bom (1912) 105-10.
Armenians, exchanging precedents between them.\textsuperscript{1245} Legal textbooks aligned Nepalese polyandry and the marital practices of the Malabar coast.\textsuperscript{1246} Jainism was interpreted as a type of Hinduism, a conscious legal fiction that inevitably drew this separate religious community closer to Hindu adoption and inheritance practices.\textsuperscript{1247} Important inheritance precedents for the Khojas—Ismaili Muslims who had converted from Hinduism half a millennium before—came from cases on Catholics whose ancestors had converted from Hinduism.\textsuperscript{1248} The Parsi Chief Matrimonial Court, a tribunal that owed its creation to the idiosyncracies of the Bombay Parsi Panchayat’s nineteenth-century history, served as a ready-made model for matrimonial disputes between Indian indentured labourers in Mauritius and Trinidad, and in Punjabi tribal communities.\textsuperscript{1249}

At the eye of the vortex was London. Like a meat-grinder, the Judicial Committee of the Privy Council crushed elements from across South Asia and the empire into a smooth imperial paste. There were sizeable challenges in bringing a case from India before the committee, a court that derived its authority ultimately from that nebulous zone of default autocracy, the prerogative powers of the Crown.\textsuperscript{1250} At certain points, up to a third of Indian appeals failed for non-

\textsuperscript{1245} See, for instance, \textit{Parsi Panchayat Case (Beaman)}, xiv; \textit{Benjamin v Benjamin} ILR 50 Bom (1926) 369-94; and \textit{Lopez v Lopez} 5 Bom HC Rep OCJ 172-90.
\textsuperscript{1247} See, for instance, \textit{Amava and others vs Mahadgauda} ILR 22 Bom (1898) 416-22.
\textsuperscript{1248} \textit{Jan Mahomed Abdulla Datu and another v Datu Jaffer and others} ILR 38 Bom (1914) 449-552; relying upon \textit{Francis Ghosal bin Constance Ghosal and another v Gabri Ghosal bin Lalu Ghosal and others} ILR 31 Bom (1907) 25-33.
\textsuperscript{1250} Sir H. S. Gour, “The Privy Council—and after,” \textit{Bom LJ} 4:12 (May 1927), 496-7. See also Jain, 317; and Louis Blom-Cooper, \textit{Final Appeal: A Study of the House of Lords in its Judicial Capacity} (Oxford: Clarendon Press, 1972), 103. The immediate basis for the JCPC’s powers was
prosecution, the distance, costs, and procedural complexity being fatal for lawyers and litigants in India. Even so, the Privy Council produced 2,500 rulings on Indian appeals before its Indian jurisdiction ended in 1949. Scholars have emphasized the role of the census in creating a sense of India as a totality. The Privy Council did the same, forging an “all-India” unit through the constant interpretive enterprise of likening and distinguishing Indian communities from each other in order to apply—or disapply—precedents. As the only tribunal whose rulings were binding upon all of the Indian High Courts, the Privy Council issued rulings that percolated through the South Asian legal system, regularizing practices and contributing to the creation of a singular legal India by setting communities into new cultural constellations.

Privy Council rulings mattered—in the early twentieth century, in notorious ways. Privy Councillors celebrated the legal diversity of the cases they heard. But the diversity made them dilettantes when it came to South Asian personal law. Contradicting accepted practice, the court ruled that Hindus could dispose of ancestral property by will, and that Muslim *wakfs* were void if for

---


1251 Jain, 320.
1252 Jain, 342.
1254 During the late nineteenth century, there were High Courts in Bombay, Calcutta, Madras, and Allahabad. Additional colonial High Courts were later established in Patna (1916), Lahore (1919) and Nagpur (1936). See Jain, 276-316.
1257 See Gour, 508; and Jain, 340-1.
familial benefit. The reaction to such decisions was often vociferous. The campaign to correct the Privy Council wakf decision lasted fifteen years and ended in the passage of the Mussalman Wakf Validating Act of 1913. Burmese commentators expressed horror at the inadequacy of the Privy Council’s understanding of the Dhammathats, the canonical texts of Burmese law, indicating that their ignorance had very real consequences for the population in Burma. The Privy Council’s judgments had huge influence in India. There was even the story, apocryphal perhaps, that the Privy Council was being worshipped as a deity by a community on the Rajputana plateau. Indian courts paid close attention to Privy Council decisions even beyond independence into the 1950s.

Getting to London

Bella’s second victory in Rangoon caused “the greatest alarm and dissatisfaction” amongst orthodox Parsis in Rangoon. They organized a committee whose goal it was to appeal the decision to London with the support of Bombay’s Parsi Panchayat and newspapers. The fact that Shapurji had taken

---

1258 Nagalutchme Ummal v Gopoo Nadaraja Chetty and others 6 MIA (1854-7) 309-46; and Abul Fata Mahomed Ishak and others v Russomoy Dhr Chowdhry and others LR 22 IA (1894-5) 76-89.

1259 See Kozlowski, 177-91.

1260 See Jain, 339-43.

1261 Haldane, 153; and Howell, 1. It is not known whether the Privy Council ruled on a case affecting that community specifically.

1262 J. Duncan M. Derrett, Religion, Law and the State in India (Delhi: Oxford University Press, 1999), 309-10.
Bella into the fire temple again following the appellate decision in her favor only intensified the sense of outrage amongst the orthodox.1264

The appellants faced a maze of logistical and financial challenges. Part of the money for the appeal was provided by a secret donor, a man identified at his death as an entrepreneur from Calcutta named Jamshedji Framji Madon.1265 Madon, unrelated to Bella’s reformist pleader in Bombay of the same name, was a self-made orthodox Parsi. The “Merchant Prince of Calcutta” had made his fortune as a supplier and transporter of goods, particularly army supplies. Madon was most famous for being a pioneer of the silent film industry. He founded several cinemas in Bengal and elsewhere in India.1266 An even larger amount of funding came out of the pocket of Merwanji’s son, N. M. Cowasji, who was also a lawyer in the case.1267

The first hurdle was to obtain leave to appeal to the Privy Council. Permission was left largely to the discretion of high or chief courts, and it was granted at some times and places more than others.1268 After 1908, a civil suit had to involve a minimum value of Rs 10,000 to be eligible for appeal to London.1269

1264 “Appendix IB: List of Papers Excluded (see Manuscript Copy). No. 83: Affidavit of D. R. Saklat, one of the appellants with a copy of requisition of the Parsi Community of Rangoon to the Trustees of the Parsi Trusts in Rangoon attached in reply to No. 82. 29 January 1921” in Saklat v Bella, 840-1 (PCOR).
1265 Madon contributed Rs 5,000. [“Obituary: Jamshedji Faramji Madan” (1923), Parsi Prakash VI, 113.]
1267 “Saklat v Bella. The Final Judgment” (1925), Parsi Prakash, VI, 231 at note 1.
1268 Mistry noted, for instance, that after 1884, there were few appeals to the Privy Council from the Bombay High Court. He offered no explanation. [Mistry, High Court, 40.]
1269 Asutosh Mukhapadhyay, ed. The Code of Civil Procedure (Act No. V of 1908) passed by the Governor General of India in Council on the 21st March 1908 (Calcutta: H. C. Gangooly, 1908), 43 (CCP s.110); Bentwich, 151-3; and Jain, 535-7.
value of *Saklat v Bella* for the purposes of jurisdiction in the lower courts had been set at Rs 240—presumably the cost of re-consecrating the temple. But the appellants convinced the appellate judges in Rangoon that the property involved—the temple and the land it occupied—was worth well over Rs 10,000. Because the appellants had lost twice in the lower courts, their case also had to involve some substantial question of law.1270 The judges granted permission to appeal. The case was of such “great moment to the Parsi community” that it deserved to be heard by the highest tribunal in the empire.1271

Next came the task of compiling a full record of the case to be sent to London.1272 The “paper book” included evidence, lawyers’ briefs and lower courts’ judgments, decrees, and orders. Bella’s lawyers petitioned the Chief Court of Lower Burma in 1920 to complain that, a year after the appellants had promised to submit their copies, they still had not done so despite their promise to speed up the usual process by using typewriters. Bella’s lawyers—at this point, members of a firm named Giles and Ormiston—argued that the appellants were not prosecuting the appeal “with due diligence,” and that the appeal ought to be dismissed for want of due prosecution.1273 Messrs Cowasji and Das, for the appellants, eventually did supply the paperwork, explaining that the Bombay commission papers were so voluminous that it had taken the firm 215 hours—or

1270 Mukhapadhyay, 43 (CCP s.110); and Jain, 535-7.
1271 “No. 73: Application for leave to appeal to His Majesty in Council. In the Chief Court of Lower Burma,” 825-6; and “No. 74: Order granting leave to appeal to His Majesty in Council,” 827; both in “Interlocutory Proceedings and Orders: Record of Civil Miscellaneous Application No. 68 of 1920 of the Chief Court of Lower Burma, Appellate Side” in *Saklat v Bella* (PCOR).
1272 See Bentwich, 148-9, 165-7.
1273 “Appendix IIA: Interlocutory Proceedings and Orders. No. 81: Petition of the respondents that the appeal be dismissed for want of prosecution as the appellants are not prosecuting the appeal with diligence” in *Saklat v Bella*, 837 (PCOR).
43 days of five hours’ work per day—to copy them. The appellants were ordered by the court to pay Rs 2,000 to cover the expenses of preparing the case papers for London. If procedure in Rangoon was the same as in Bombay, the case records would then have been checked and certified by the Prothonotary or Registrar of the court, and dispatched to London. The appellants in Rangoon also had to deposit Rs 4,000 with the Chief Court as security for Bella’s future legal costs—in case they lost the appeal.

It was not the first time Bella’s side had been involved in an appeal to the Privy Council. Bella’s adoptive uncle Bomanji had vindicated his name through a successful Privy Council appeal a decade earlier. In 1906, the Chief Court of Lower Burma convicted him of gross professional misconduct and dismissed him from the office of advocate. Before a “densely crowded court,” the full bench of the Chief Court of Lower Burma found Bella’s adoptive uncle guilty of advising a client to bribe a handwriting expert who was expected to give unfavourable testimony. Soon after, a “mixed congregation of Europeans, Burmese, Chinese, Mohammadans, Hindoos and other miscellaneous communities” expressed support for Bomanji. Just nine months later, Bomanji was

---

1274 “Appendix IIA: Interlocutory Proceedings and Orders. No. 79: Letter from Messrs Cowasji and Das to the Assistant Registrar, Appellate Side, Chief Court suggesting that their type-written copies of Commission evidence may be used as bench copies” in *Saklat v Bella*, 835-6 (PCOR). N. M. Cowasji was probably a partner of the firm.
1275 “Record of Civil Miscellaneous Application No. 68 of 1920 of the Chief Court of Lower Burma, Appellate Side. No. 76: Order calling upon the applicant to furnish security and expenses. 2 March 1921” in *Saklat v Bella*, 829-30 (PCOR).
1276 Mistry, *High Court*, 40.
1277 “Record of Civil Miscellaneous Application No. 68 of 1920 of the Chief Court of Lower Burma, Appellate Side. No. 76: Order calling upon the applicant to furnish security and expenses. 2 March 1921” in *Saklat v Bella*, 829-30 (PCOR). This was standard practice in JCPC appeals from Bombay Presidency. See Bentwich, 165.
1279 “Report of 21 March 1906” (1906), *Parsi Prakash* IV, 47.
vindicated by the London committee, to whom his case advanced through special leave to appeal given the Rangoon decision’s injury to his character.\footnote{In the Matter of an Advocate Burma LR 12 (1906) 154-5. On “special leave to appeal,” see Bentwich, 220-1.} The evidence against him was inadmissible: it consisted of two whispered conversations between advocates in the corridors and courtrooms of the Chief Court in Rangoon.\footnote{For full details of the incident, see Bomanjee Cowasjee v The Chief Judge and Judges of the Chief Court of Lower Burma LBR 4 (1907-8) 29-35.} Moreover, the judges found it unlikely that an advocate of his experience would risk ruining his career by recommending bribery—and telling a leading European advocate that he had done so.\footnote{Bomanjee Cowasjee vs The Chief Judge and the Judges of the Chief Court of Lower Burma Burma LR 12 (1906), xii; also reported in LBR 4 (1907-8) 40; and as “Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the appeal of Bomanji Cowasji v The Chief Judge and Judges of the Chief Court of Lower Burma, from the Chief Court of Lower Burma, delivered on the 14th December 1906,” 8 in In the matter of Bomanjee Cowasjee (Lower Burma), 1906: vol. 24, judgment no. 83 (PCOR).} Bomanji did not come to London to represent himself, working instead through British barristers who specialized in Privy Council work in London.\footnote{Bomanji’s lawyers were a Mr. Rufus, Mr. Ross, and a King’s Counsel named Isaacs. [B. Cowasjee v Chief Judge Burma LR 12 (1906) xiii.] The “Appellant’s Case” presented to the Privy Council was signed by a J. W. McCarthy. [“In the Privy Council. On appeal from the Chief Court of Lower Burma. Between Bomanji Cowasji (defendant), appellant and the Chief Judge and Judges of the Chief Court of Lower Burma (respondents),” 7 in In the matter of Bomanjee Cowasjee (PCOR).]} He must have felt he received speedy and satisfactory justice through the Judicial Committee. Two decades later, his adoptive niece, who was probably his biological daughter, felt she had received neither.\footnote{See “Epilogue: After Saklat v Bella” (below).}

Trespass and the Right of Exclusive Worship

Saklat v Bella went through three rounds of litigation in Rangoon and London. The court of first instance was the Chief Court of Lower Burma. Bella’s case
appeared there in 1915 before the British judge and former Bombay advocate, C. P. R. Young. Both he and the two judges who heard the case in the same court of appeal (the officiating Chief Judge Robinson and his colleague MacGregor) ruled first on whether Bella’s opponents had a potential case through the legal actions under which they had filed: trespass and the right to exclusive worship. Young rejected the trespass idea. It dropped out of the judicial discussion after his ruling. But both he and the appellate court felt there was an actionable case where the orthodox Parsis of Rangoon claimed that Bella violated their right to worship exclusively in the presence of their own kind. Both courts ruled that Bella’s presence did not violate this right, whether because the temple had been set up for a religious, rather than an ethnic, community; or because the test of Parsi membership was, in their opinion, a religious rather than an ethnic one. With these conclusions, they jettisoned the core of Dinshaw Davar’s 1908 ruling on the French Mrs. Tata’s case.

The case progressed on final appeal to London where in 1925 the Privy Councillors reversed the Burmese courts’ decisions and upheld Davar’s position. Fire temples were for the benefit of ethnic Parsis who were also Zoroastrian. Bella may have been the latter, but she was not the former. The trustees were free to allow her in at their discretion, but she could not enter by right.

---

Young practiced at the Bombay bar briefly before being appointed a judge of the Bombay Small Causes Court, then president of the Tribunal of Appeal under the Land Acquisition Act. He moved to Rangoon in 1904, and was Advocate-General of the Chief Court at Rangoon, before becoming Chief Justice there. [Mistry, High Court, 45.] For disparaging remarks on Young—“a stupid fellow”—and his wife, see Norman Macleod, “Reminiscences from 1894 to 1914,” 56, 60-1 (HRA/D63/A5), General Correspondence of Norman Macleod in Macleod of Cadboll Papers (HCA).
What that final decision meant for Bella depended on when one looked.

For the first half of the period 1914-25, the Privy Council ruling would have meant effective victory for Bella. Since 1889, the sole trustee of the Rangoon fire temple had been Bomanji Cowasji Captain, Bella’s adoptive uncle and in all likelihood her biological father. Bomanji had backed her at every stage, and had helped engineer her entry into the Rangoon fire temple. But in 1919, several other trustees were appointed in an effort to mitigate Bomanji’s dictatorial exercise of power. These other trustees, London judgment in hand, had the power to shut Bella out. And they used it. Bella won twice in Rangoon, but lost in London.

The discussion of doctrine in Bella’s case illustrates a phenomenon referred to in chapter 3 as “centripetal jurisprudence”: the homogenization of local legal economies through the application of precedents from communities across British India and the colonial world. This imperial circuitry did an underestimated amount of work in creating a unitary “legal India” and an empire of common law. Just as Romila Thapar has described Hinduism as a nineteenth-century product of colonialism—a fusion and evening-out of thousands of local deity cults across the subcontinent—so legal regimes were aligned between communities and regions, epitomized by the funnelling of cases from Afghanistan to the Andamans through one “dingy little room” overlooking Downing Street where between three and five judges constituted the Judicial Committee at any particular hearing.

1286 See note 41 (above).
The plaintiff-appellants tried two lines of attack. They argued first, that Bella was a trespasser. Second, they claimed that her presence in the fire temple violated their right of exclusive worship, an action developed in the context of caste-based sensibilities in Hindu South Asia. The trespass claim could take one of two forms, neither of which looked promising. The appellants could argue that Bella had committed the common law tort of trespass to the land itself or the temple sitting on the land.\textsuperscript{1288} Or they could aim for “trespass to the person.” This action could be used for every direct application of force to a human being which was not purely involuntary or accidental, and that had been inflicted without the consent of the person injured. Trespass to the person could be the civil complement to a criminal assault—in this case, psychological.\textsuperscript{1289} With intra-caste conflict over Hindu temple entry in mind, Lord Phillimore described the facts that would have to be present for this route to be viable.\textsuperscript{1290} “The juxtaposition of the two sets of persons” had to be “so repugnant to their habits of mind” that the entrance of one group into the temple entailed the departure of the other. One group’s presence had to constitute a psychological assault upon the other. But these facts did not exist in \textit{Saklat v Bella}. The Parsis in the Rangoon

\textsuperscript{11} See Urban for a similar argument about the colonial “creation” of Tantra as a unified philosophy.
\textsuperscript{1288} See Ranchhoddas and Thakore, \textit{English and Indian Law of Torts}, 299-320.
\textsuperscript{1289} Lord Phillimore did not cite any authorities for the existence of this action in a specifically psychological sense. None seemed to exist in the leading textbooks. On trespass to the person, see Ranchhoddas and Thakore, \textit{English and Indian Law of Torts}, 167-8. On the criminal side, see \textit{Cranenburgh’s Indian Penal Code being Act XLV of 1860 annotated with Rulings of the High Courts in India} (Calcutta: Crannenburgh’s “Law Publishing Press,” 1912), 400-7 (ss. 351-8 IPC).
\textsuperscript{1290} Specifically, Lord Phillimore was referring to the case of \textit{Anandrar Bhikaji Phadke v Shankar Daji Charya} ILR 7 Bom (1883) 323-9.
fire temple had remained there when Bella entered. They had not expressed
disapproval of any kind until after the incident had occurred.  

The remaining trespass option was trespass to land or to the temple. This was a civil action with significant procedural limitations. The plaintiffs were fairly powerless as beneficiaries of the Rangoon fire temple trust. They were the Parsi public that was meant to profit from the trust that governed the fire temple. But they were neither owners of the land or temple, nor were they held to be “in possession,” that is, actually or “constructively” present on the land or in the temple on some lasting basis. Actions for trespass could only be filed by individuals in either of those two categories. Furthermore, a colonial Indian provision provided that in all suits between beneficiaries of a trust and a third party concerning property vested in a trustee, the trustee would represent the beneficiaries. Bella’s opponents had filed their case just ten days after Bella entered the temple on March 21, not even waiting for an answer from the sole trustee, Bomanji. When Bomanji did reply on April 6, he made it clear that he had no intention of taking action against Bella—surely no surprise to anyone who was aware of the fault lines between the Captain brothers, or of Bella’s rumoured paternity.

These handicaps continue the story of the colonial legal system’s concentration of religious power in the figure of the trustee. Chapter 3 illustrated

---

1292 On constructive possession, see Ranchhoddas and Thakore, English and Indian Law of Torts, 305.
1293 Order 31, Rule 1 of First Schedule to the Code of Civil Procedure. See Agarwala, 755.
1294 M. Cowasji and others v Bella and another AIR 1919 Lower Burma 56.
how little the opinions of Zoroastrian priests mattered to the legal control of Zoroastrian temples and funds. It was the trust’s framers, the trustees with their wide-ranging powers, and the judicial interpreters of the trusts’ terms who determined everything from which internal temple doors could be shut to what type of human remains could be left on particular Towers of Silence. In the same way, the people for whose benefit these trusts were set up had no legal clout. Even more in India than in the imperial metropole, beneficiaries could not sue third parties if the trustees refused to back them.

Without Bomanji on their side, the Rangoon Parsis had no standing for a suit in trespass. C. P. R. Young dismissed the trespass claims in the first two paragraphs of his judgment, a position reinforced by Lord Phillimore’s judgment a decade later in 1925. With the axing of the trespass claim went any possibility of getting an injunction, an actual ban on Bella’s re-entry to the temple backed by state force. The best Bella’s opponents could hope for would be a general declaration as to the persons who were objects of the trust—with Bella excluded.

Lord Phillimore’s judgment extended the power of the trustee in another way. Applying trust funds to individuals who were not beneficiaries would be “malversation” if it deprived the beneficiaries of their entitlements. But where there was extra left over, the trustee was entitled to share it with others, provided the lawful recipients would not suffer from the sharing. Trustees of a city park

---

1295 On control over temple doors, see text accompanying notes 459-61 (above). On the terms of the trust governing Maneckji Sett’s Tower of Silence, see note 455 (above).
1296 “It is true that in England under the very similar terms of O.16, R. 8, the Courts have allowed cestuis que trustent [beneficiaries] to sue when the trustees have refused to sue.” [M. Cowasji v Bella, 56.]
1297 See Saklat v Bella (1925), 56; Ranchhoddas and Thakore, English and Indian Law of Torts, 158-9.
could admit persons from “over the border,” a public library could give access to persons from outside the strict municipality, and university professors could admit persons not members of the university to attend their lectures. In rapid flight halfway across the globe, Phillimore dropped Zoroastrian trust funds into the mold of “the great schools of Westminster, Eton and Winchester” and the Oxford and Cambridge colleges. These institutions were technically set up for the benefit of small nuclei of scholars taught by appointed masters. But over the centuries, others had been admitted through the discretionary powers of those in charge. Curiously, given the evidence from Bombay and Rangoon, the Privy Councillor reasoned that Bella’s presence would not substantially interfere with the convenience or benefit of those for whom the trust had been created—Rangoon’s Parsis, including the orthodox. Bella could not become Parsi, but she probably could become Zoroastrian. According to Lord Phillimore, it was not “substantial interference” unless the outsider present was an unbeliever. While Bella was not entitled by right to enter the temple, then, her adoptive uncle could have given her access through his discretionary powers as sole trustee until 1919. Where there were enough resources or space to go around, trustees could split any surplus amongst people of their choosing, provided offence—or more accurately, reasonable offence as defined by the colonial judiciary—would not be taken. By 1925, the trustees of Zoroastrian religious endowments were free to ignore the priests and usher in their own friends and family.

1298 These examples were not random. Both Lord Phillimore and his father (also a member of the Judicial Committee) were educated at Westminster school and Christ Church College, Oxford.
The right of exclusive worship was part of a colonial arsenal of anxiously crafted concessions to religious pluralism in India. In 1858, Queen Victoria had reiterated Warren Hastings’ promise to respect Islamic and Hindu provisions on the family, inheritance, and religious practices. Hastings’ was a vow reduced to tatters after the incident that triggered the Indian Mutiny in 1857: the rumoured coating of rifle cartridges with beef and pork lard. Indian soldiers had to rip open the cartridges with their teeth, making the incident ritually polluting to Hindus and Muslims alike. The result was the largest anti-colonial revolt in the history of British India. The Indian Penal Code sported a battery of provisions meant to protect religious sensibilities. The principle underlying sections 295-7 of the Code was that “every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another.”1299 Section 295 threatened with imprisonment of up to two years anyone who destroyed, damaged or defiled a place of worship with the intention of insulting that religion—or with the knowledge that followers of that religion would be likely to consider such destruction an insult to their religion. Defiling included making an object of worship ritually impure. The next section imposed a prison term of up to a year or a fine, or both, for disturbing a religious assembly. And Section 297 permitted a year’s prison sentence for anyone who committed a trespass in a place of worship with the intention of wounding religious feeling, or the knowledge that they would be likely to do so.1300

1299 Ranchhodas and Thakore, IPC, 248.
1300 See Ranchhodas and Thakore, IPC, 249-51.
Bella’s opponents could have pushed to have their case pursued through these criminal provisions. That they did not signals a rare moment of mildness—or perhaps the realization that the state would have little interest in prosecuting a little girl. Their options in civil law, in turn, were limited. Aside from the problem of standing that proved fatal to Bella’s opponents in their trespass claim, there was the difficulty that the action required immediate violence to personal property or persons, along with injuries. Bella’s opponents would have to argue for psychological injuries, a concept that would be a hard sell given the absence of complaint at the time. Their final strategy was to pursue the right of exclusive worship.

The right of exclusive worship was judicially developed in two Hindu temple access cases in 1882-3. Coupled, the Vengamuthu case from Madras Presidency (1882) and the Chitpavan Brahmin suit from Bombay (1883) charted an intriguing set of moves. The first was an explicit finding of jurisdiction legitimating the invasive brand of British legal pluralism discussed in chapter 4. The second was the transformation of the right to worship from a tool for inclusion into one of exclusion. In *Vengamuthu v Pandaveswara Gurukal*, a temple dancing girl was outcasted for dancing at the house of a lower caste individual. She refused to purify herself by drinking the five products of the cow, or *pancha gavyam*, afterward. Subsequently, she tried to make an offering to a deity during a festival, but the temple priests refused to accept it.

---

1302 The person in question was of the Komati community. The Komatis’ collective claim to be part of the merchant Vaisya caste was doubted in the reported judgment. [*Vengamuthu v Pandaveswara Gurukal and another* ILR 6 Mad (1883) 151.]
1303 The *pancha gavyam* or *panchagaya* was a mixture of milk, ghee, curds, dung and urine.
She sued them, claiming damages for the loss of honour. The dancer’s case traveled from the court of the district *munsif* (or local judge) to district court to the Madras High Court. On final appeal, the High Court ruled that individuals were entitled to take part in the public worship of their religious community, and that the priests had violated this right. The dancing girl won her case.\(^{1304}\)

The following year (1883), a group of Chitpavan Brahmins in Bombay asked the Bombay High Court to prevent another group of Brahmins—of the Palshe caste—from entering and worshipping in the *sanctum sanctorum* of the Chitpavan’s Hindu temple. They argued that the right of worship was a right of *exclusive* worship, and that it was being violated by the newcomers’ presence in the inner shrine of the temple. The right as it appeared in Bella’s case crystallized in the judgment of Mr. Justice West.\(^ {1305}\) The Chitpavan Brahmins won.\(^ {1306}\)

The cases offer a window onto the essence of British legal pluralism. Chapter 4 contrasted British legal pluralism with other empires’ legal systems that took a much more hands-off approach to intra-community disputes. The discussion of jurisdiction in the two temple entry cases ended in an explicit endorsement of

\(^ {1304}\) *Vengamuthu*, 151-3.

\(^ {1305}\) One of the first Indian judges in the Bombay High Court, Nanabhai Haridas, heard the case with West, but did not even enter a concurring line at the end of West’s judgment. This was the general pattern during the pre-1900 period of South Asian judgements. Even when the case pertained to a judge’s own community (Haridas was Hindu), he generally remained silent while a European judge delivered the judgment. A poem written about Haridas in 1884 (probably written by the Scottish star of the Bombay bar, J.D. Inverarity) reflected the racial dynamics at play: “Though dark thy shine, & though askew thine eye/ Thy judgments pass/ Both clear & straight, wouldst thou thy name belie/ O Horrid ass!” [*The Bombay Beucle as constituted 29 April 1884*] (HRA/D63/A1), General Correspondence of Norman Macleod in Macleod of Cadboll Papers (HCA). The same phenomenon occurred in the Madras dancing girl case, *Vengamuthu*, where Mr. Justice Muttasami Ayyar remained silent while the European judge, Sir Charles Taylor, delivered the court’s decision. After 1900, this convention began to change. On occasion, European judges deferred to their South Asian colleagues in cases of a cultural or religious character. On Beaman’s deference to Davar in *Petit v Jijibhoy*, for instance, see note 202 (above).

\(^ {1306}\) *Anandram Bhikaji Phadke and three others v Shankar Daji Charya and twelve others* ILR 8 Bom (1883) 323-9.
intervention. Lawyers on the losing side of both cases tried to argue that the courts had no jurisdiction over religious disputes within a community. In the Madras case, they claimed that the dancing girl ought to have appealed to the temple committee, rather than the civil courts. It was an argument the district court found convincing. The judge, his ethnicity unrecorded in the published judgment, ruled that temple practices were non-justiciable in the civil courts.\textsuperscript{1307} If the dancer wanted redress, she would have to turn to the religious authorities themselves. This judge was in turn overruled by the Madras Chief Justice, a Briton named Turner, who happily declared the civil courts the defenders of excluded individuals’ right of worship.\textsuperscript{1308}

In the Bombay case, Mr. Justice West justified the court’s jurisdiction at length, rejecting the no-jurisdiction argument made by the excluded Brahmins’ counsel. Through a finding of jurisdiction came a programmatic statement of the aims and extent of British legal pluralism. Regulation II of 1827 established that the internal economy of a caste was not to be interfered with by the courts. But this did not mean that all questions of “caste usage, right or privilege” were off-limits. West looked to Sir Thomas Strange, author of the canonical work on Hindu law, for support. According to Strange, a British court ought to be very careful not to meddle in any religious matter, but “in so far as it happens to be inseparable from the question of right; upon which alone, as it concerns property, or the civil duties of life, it is its proper function to adjudicate.”\textsuperscript{1309}

\textsuperscript{1307} Vengamuthu, 152-3.
\textsuperscript{1308} Vengamuthu, 153.
\textsuperscript{1309} Strange, \textit{Hindu Law}, I, 93 (3\textsuperscript{rd} ed.) in Phadke, 329.
This slippery slope was a familiar one. English courts justified intermeddling in the disputes of dissenting Protestant sects at home, and had developed the unconvincing distinction between intra-denominational disputes involving property and civil rights, over which they had jurisdiction, and those religious disputes with no effect upon individual freedom or ownership, over which they had none. Colonial judges found a ready-made case law at their disposal. In the Bombay temple access case, the judge even spoke of British dissenters in colonial language. English courts ruled on the civil rights of dissenters, but they had no authority over what he called by analogy “their caste questions.”

Gauri Viswanathan has argued that the administration of a religiously plural society in colonial India and the inclusion of Jews, Catholics and dissenting Protestants in nineteenth-century Britain were parallel developments. By the early twentieth century, cross-fertilization between the judicial approach to dissenters, Catholics and Jews in Britain, on the one hand, and to non-Anglican communities in colonial India, on the other, was unmistakeable. Viswanathan looks to novels and the thought of Thomas Macaulay, a leading architect of assimilationist policies in India and Britain. The same linkages can be tracked in judicial discourse—in the incremental accumulation of case law, a low-visibility mode of ostensible replication that allowed judges to extend and redirect linkages in often imperceptible ways.

---

1310 Or at least, this was one colonial judge’s depiction of the English case law. See comments of West J on Cooper v Gordon LR 8 Eq. 249 in Phadke, 329.
1311 Phadke, 329.
1312 Viswanathan, Outside the Fold, 4-14.
The Bombay Brahmins’ case relied upon such judicial tweaking. Justice West fashioned a defence of judicial intervention in intra-religious disputes in India out of the British dissenters’ case of *Cooper v Gordon* (1869) and the Québécois Catholic case of *Brown v Curé...de Montréal* (1874). In the latter, the Privy Councillor judges delivered probably the most explicit defence of judicial involvement in internal religious disputes in the history of British colonial case law.\(^{1313}\) The court overruled the Catholic church’s refusal to bury the Catholic printer Joseph Guibord in consecrated ground due to his association with the *Institut canadien*, a literary society whose library included books on the prohibited Index of Rome. The Privy Councillors could not accept the “very grave proposition” that the French Catholics of Lower Canada had consented to be bound by the authority of the Inquisition—a declaration of Anglican sectarianism in full bloom.\(^ {1314}\) Crucially, the committee held that where a dispute was “of a mixed spiritual and temporal character,” the courts would be bound to investigate alleged violations of individual rights.

And like father, like son. The Guibord judgment was delivered by none other than Sir Robert Phillimore, the father of the judge who would present the Privy Councillors’ ruling in *Saklat v Bella* half a century later in 1925. Funneld through a caste dispute between Brahmins in Bombay Presidency, the father’s intervention in Catholic affairs of mid-nineteenth-century Montréal permitted the son to jump into a dispute amongst Rangoon’s Zoroastrians in the interwar


\(^{1314}\) Dame Henriette Brown, 218.
period. The Phillimores exemplify capillary circulation in two ways. Their familial link provided a powerful but invisible conduit for legal concepts. So did the institutional route by which both reached the Privy Council. Both father and son had long careers in the English ecclesiastical courts before being named to the Judicial Committee. Their biographers call their Privy Council appointments “surprising,” and yet this is only so if one fails to realize that the Judicial Committee of the Privy Council was the final court of appeal for an eclectic jumble of jurisdictions. It was the highest tribunal for the empire. But it also heard certain appeals from the prize and admiralty courts. And the ecclesiastical courts sent their appeals to the Privy Council, which probably explains how the Phillimores came to occupy positions of such coincidentally imperial influence. The Phillimores’ ecclesiastical-to-colonial progression offer a variant of Viswanathan’s point. After ruling on “internal” Church of England disputes for decades, the two judges may literally have felt “at home” as they turned to Catholic Montréal and Zoroastrian Rangoon.

Back in Bombay, the Montréal case created a solid foundation for West’s interventionist edifice in the Bombay Brahmins’ case. The British dissenters’ case

1315 Phillimore senior wrote the 2,466-page monolith, *The Ecclesiastical Law of the Church of England* (London: Sweet, 1873). He ruled on the lawfulness of numerous points of Anglican ritual, including the use of incense, the elevation of the consecrated elements, the addition of water to wine during consecration, the singing of the *Agnus Dei* between consecration and reception of communion, and the making of the sign of the cross and adoption of excessive prostration by priests. His son delivered judgments on the use of lighted candles at the communion table, sculptural representations of the transfiguration and ascension, the use of Catholic-style ceremonial dress, and the proper geographic location to be adopted during consecration prayers.

1316 See *Oxford Dictionary of National Biography* entries for Sir Robert Joseph Phillimore (1810-85) and Walter George Frank Phillimore (first Baron Phillimore) (1845-1929). Writing on the Judicial Committee’s jurisdiction in 1912, Bentwich commented that the court “had a wider jurisdiction than any court known to history.” Prior to 1912, it had also exercised jurisdiction over cases on patents and copyright, lunacy, and Oxford and Cambridge Universities. [Bentwich, 15.]

1317 See Bentwich, 362-96.

1318 See Bentwich, 397-417.
of Cooper v Gordon did not. Its inclusion by West exemplified judicial fudging at its best. West cited Cooper breezily in support of the point that the courts could intervene in intra-religious disputes involving property or civil rights. In fact, Cooper provided better authority for the exact opposite view. In Cooper, a dispute over leadership erupted amongst a congregation of Protestant dissenters known as the “Independents” in Reading, England. The co-pastor claimed to hold his office for life, while the majority of the congregation believed it had dismissed him. The Vice-Chancellor in Equity, Sir John Stuart ruled that a dissenting sect was not the established church, but a voluntary association of private persons. As such, “[t]his Court would be very slow to interfere, and more probably would not interfere at all, with the discretion of the majority.” And it did not. But Justice West counted on the fact that a one-sentence reference citing only the starting page of the case and speaking “pretty nearly” and “in principle” would make the inversion imperceptible in the sea of colonial case law.

The judges in Saklat v Bella took up the right of exclusive worship from the 1882-3 cases. In the first appeal in Rangoon, officiating Chief Judge Robinson noted the right’s inversion over time. The right had been born as protection for individuals who had been excluded from temples. By the end of the Chitpavan Brahmin case, it had become a tool used by those doing the excluding. As Mr. Justice West said in that judgment, the courts had to guard this right (in its exclusive incarnation), the risk being that high-caste Hindus would be otherwise able to maintain their sanctuaries and worship “only so far as the lower castes

1319 Cooper v Gordon (1869) LR 8 Eq 258.
chose to allow them.” Bella’s opponents were asking the court to substitute “Parsis” for “high-caste Hindus.”

Judicial incrementalism twisted one type of entitlement into its opposite. The dancing girl case enshrined the individual’s entitlement to worship in law. Entitlement became right with the Chitpavan Brahmin case, as did an inversion in its use—from protection for the individual being excluded to protection for the collectivity excluding. The right was also described in distinctly Hindu terms in both cases: “the right of exclusive worship of an idol at a particular place set up by a caste.” With Saklat v Bella, another transformation occurred. The right to exclusive worship was extended to cover mosques as well as temples, implying that it was a general right applicable to Hindus and Muslims—and to followers of any other religion too, like Zoroastrianism. But who exactly could be excluded? Here the Privy Council made its second addition: one could exclude on the basis of religion, but not ethnicity or “race.” Bella was not a Parsi, but she was probably a Zoroastrian. In a sense, the Privy Council was implicitly injecting its own definition of “reasonable” offence: Parsis could only be reasonably offended and the temple defiled by Bella’s religious status—namely, if she were a non-Zoroastrian—not by her ethnicity.

How did the Privy Council conclude Bella was a Zoroastrian? The nonchalance of their decision is breathtaking in light of Davar’s painstaking 1908 judgment, which itself left the conversion question unanswered. Relying upon the reasoning of Robinson and MacGregor in Rangoon, Lord Phillimore accepted first, that

---

1320 Phadke, 329.
1321 Phadke, 324.
1322 Saklat v Bella AIR 1920 Lower Burma 153.
conversion was permitted by Zoroastrianism. For him, scriptural exhortations to convert trumped subsequent Parsi practice to the contrary. He also dismissed the claim that *barashnum* was a necessary component of conversion rites, its only textual basis being one of the *rivayats*, the early modern correspondence between Iranian and Indian Zoroastrians that some considered dubious.\textsuperscript{1323} Bella, he concluded, had successfully converted to Zoroastrianism.

But she was not Parsi. And ultimately, it was the construction of the trust terms that mattered. Bella’s fate turned upon Lord Phillimore’s reading of the *constructive* intention of the framers of the Rangoon fire temple trust. Even the creation of this trust was a retroactive, judicial affair—the Privy Council pieced together several documents spanning the Rangoon cemetery and fire temple management schemes of the late nineteenth century and read into them the establishment of a trust. The Chief Court in Rangoon felt that the documents imposed a trust for the benefit of a religion, not a race. But Lord Phillimore disagreed: the “framers” probably could not have imagined the separation of religious and ethnic identities, and so in all likelihood intended that the benefits of the trust be confined to “persons who possess the double qualification of Zoroastrians and racial Parsis.”\textsuperscript{1324} Dinshaw Davar’s 1908 conclusion was affirmed and the appellate judges of the Chief Court of Lower Burma, overruled.

\textsuperscript{1323} See, for instance, *Parsi Panchayat Case (Beaman)*, xviii.  
\textsuperscript{1324} *Saklat v Bella* 8 IA (1926-7) 50-3.
Colonial Legal London

For the first time in the *Saklat v Bella* litigation, the legal professionals controlling Bella’s case in London were exclusively British.\(^{1325}\) It is interesting that the Parsi litigants did not send their own counsel to London from Rangoon or Bombay.\(^{1326}\) From the 1890s, litigants from Québec and Australia began sending their own counsel rather than relying solely on lawyers in London.\(^{1327}\) By 1925, Indian appellants were occasionally sending Indian lawyers to represent their interests, particularly when a maharaja was involved.\(^{1328}\) Within the next fifteen years, Indian lawyers started coming to London and staying for longer periods in order to handle cases coming from India.\(^{1329}\)

From the late nineteenth century on, the flow of South Asian law students to read for the bar in London grew from a trickle into a flood. London was a Mecca for Indian lawyers.\(^{1330}\) A joke circulating in legal circles at the time recounted the story of a European lawyer who entered the Lincoln’s Inn library to

---

\(^{1325}\) Aside from the British lawyers involved in Bella’s case in Rangoon, there was a Parsi lawyer named Mr. Doctor, who appeared for Bella’s side to complain of the appellants’ three-year delay in preparing the case papers for the Privy Council appeal. See *D. L. Saklat and others v Bella and one* Burma LJ 3 (1924) 30-2. Other non-Europeans involved in the case were the Burmese judge, Mr. Justice May Oung and an Indian lawyer named Mr. Das. There were also at least five Parsi lawyers involved in the spin-off libel cases. See chapter 6 (above).

\(^{1326}\) The first Parsis to visit Britain in any capacity came as litigants. See “Navroji Rustom Manek Seth (1663-1732), the First Amongst Parsis to Visit England in 1723” in Darukhanawala, *Parsi Lustre*, 335.

\(^{1327}\) Québécois lawyers who appeared before the JCPC in the early twentieth century included Lafleur, Archambault QC, Robidoux QC, Aimé Geffrion QC, and Brosseau QC. See also Bentwich, 330. I am indebted to Peter Howell for his identification of the same phenomenon pertaining to Australian appeals. [Meeting at Sidney Sussex College (14 October 2005), Cambridge (UK).] See also Haldane, 144.

\(^{1328}\) Lawyers who appeared for Indian litigants in 1925-6 included South Asians named Fatehsingh, Abdul Majid, Narasimham (for the Raja of Ramnad), P. K. Subha Rao (for the Maharaja of Vizianagaram), Parikh (for the Raja Jyoti Prashad Singh), and K. Ali Azfal (for Raja Dhakeshwar Prasad Narain Singh). See Law Reports Indian Appeals (1925-6).

\(^{1329}\) Rankin, 17.

encounter a sea of South Asian faces. He approached the lone Briton in the corner, enquiring dryly, “Dr. Livingstone, I presume?”

Parsis came to London to study law in particular. Becoming a British-trained barrister required significant funds. Back in India, though, it bestowed greater professional powers and privileges than what Indian-trained pleaders enjoyed—despite the fact that the bar exams were less rigorous and almost entirely non-Indian in content. As one embittered contributor to the *Bombay Law Journal* complained, higher privileges were given to the Indian barrister who had traveled 8,000 miles to lose his health, wealth, affection and nationality, putting money in the pockets of English shopkeepers by developing expensive tastes and objectionable habits. As early as the 1860s, Parsi philanthropists were providing prize funds for Parsi students to read law at the Inns of Court. From that period onward, many of the leaders of the Parsi community in legal and political domains were London-trained barristers. Bomanji Cowasji Captain first came to London as a student of Lincoln’s Inn some time before 1890—unusually, after being admitted as an attorney of the Calcutta High Court and the

---


1332 As London was the main destination for Parsi students of law, so Edinburgh was for students of medicine. See Hinnells, *Zoroastrians in Britain*, 119-20. On three of the earliest Parsi students in Britain, see Fischer, 339-51.

1333 “Creation of an Indian Bar,” *Bom LR* 1: 6 (November 1923), 313.


1335 See Hinnells, *Zoroastrians in Britain*, 82; and Darukhanawala, *Parsi Lustre*, 132-3 (Pherozeshah Mehta); 153 (Sir Hormazdiyar Phiroze Dastur), 154 (Furdoonji Sorabji Taleyarkhan), 266 (Camajee B. N. Cama), 356 (Sir M. B. Dadabhoy), 367 (Sardar Davar Tehmuraz Kasas Modi),
Chief Court of Lower Burma.\(^{1336}\) Dinshaw Davar had also been at Middle Temple and was called to the Bar in 1880, and the first Parsi member of the Judicial Committee of the Privy Council, Sir Dinshaw Fardunji Mulla, was an honorary bencher at Lincoln’s Inn.\(^{1337}\) After *Saklat v Bella*, R. D. Dadachanji, the commissioner during the Bombay segment of the case, acted as a benefactor to more than one young Parsi boarding with British families and studying law at the Inns.\(^{1338}\)

In the early twentieth century, this current of colonial exchange widened to include a small but powerful cadre of Indian lawyers and judges overseeing Privy Council appeals on an ongoing basis. Syed Ameer Ali was followed by Sir Dinshaw Mulla, the first Parsi Privy Councillor, who served from 1930 to 1934.\(^{1339}\) Indian lawyers began to accompany appeals from India.\(^{1340}\) In the 1930s, South Asian lawyers like Mohammad Ali Jinnah started moving to London in order to handle such appeals on a general basis.\(^{1341}\) There were Parsi lawyers in London, but none seem to have specialized in Indian appeals to the Privy Council.\(^{1342}\)

To appear before the Privy Council, one had to be either a lawyer practicing in London, or “a solicitor admitted by the High Court in India or the

\(^{1336}\) “Appellant’s Case,” 1 in *In the matter of Bomanjee Cowasjee* (PCOR); *Bomanjee Cowasjee Burma LR*, xi.


\(^{1338}\) See note 613 (above).


\(^{1340}\) Particularly when an Indian prince was a litigant. See note 1328 (above).

\(^{1341}\) See note 1329(above). The experiences of Ameer Ali, Mulla and Jinnah could provide the focus of a study on the creation of legal India through London-based lawyers and judges. On Jinnah, see Pannoun, 7-8.

\(^{1342}\) R. D. Dadachanji is one example. See note 613 (above).
colonies. As a pleader, Madon would probably not qualify for Privy Council practice. But solicitor Vimadalal would have been an obvious choice to send to London with the Rangoon appeal. N. M. Cowasji, as a star of the Rangoon bar and Merwanji’s own son, also would have been a well trusted lawyer capable of protecting orthodox interests before the chief imperial tribunal. He was also the main engine—both financial and in his capacity as a lawyer—behind the appeal to London. For some reason though, neither was sent.

_Saklat v Bella_ was left in the hands of the elite group of London barristers that routinely handled such cases. Counsel for Bella’s opponents included two seasoned British advocates who had retired to London having returned from careers in India. For decades, Sir George Lowndes and E. B. Raikes had been leading advocates at the Bombay High Court. Their services were much sought after by Privy Council litigants, including the government of Bombay, and they were ubiquitous—whether on the same side or in opposition—in Privy Council cases from South Asia. Lowndes and Raikes would also have known many Parsi lawyers in Bombay from their days in Bombay. The other lawyer working against Bella was a “King’s Counsel” or “silk” named Dunne. He, along with Bella’s lawyers Upjohn (another senior barrister) and Draper, were part of a small

1343 _In the Matter of the Petition of Twidale_ ILR 16 Cal (1889) 636-8. Most of India and the colonies did not operate with the dual system of barristers and solicitors, such that “solicitor” was being used in a broader sense than Bombay colloquial usage implied. See note 645 (above). The Chief Court of Lower Burma constituted a “High Court” for the purposes of appeals to the Privy Council, being the highest civil court of appeal in Lower Burma. [Bentwich, 138-9, 150 at note (t).]

1344 See note 1267 (above).

1345 See, for example, “Memo from Legal Department, Government of Bombay, to Marquis of Crewe, His Majesty’s Secretary of State for India, London. Bombay, 12 April 1912” in Secretary of State for India in Council _v_ Hamabai Framji Petit and Appeal No. 24 of 1910 in Re resumption of Plot of Land on Malabar Hill Legal Department Records (Suits), vol. B-1/4 of 1908-10, 254 (MSA); and _Hamabhai Framjee Petit v Secretary of State for India in Council_ (JCPC suit no. 139 of 1913) 1914: vol.33, judgment no.93, 19-22 (PCOR).
circle of London barristers who represented most Indian parties before the Privy Council. Even so, Bella’s opponents seem to have had the stronger team. Their counsel had the benefit of many years’ experience in Bombay. Bella’s lawyers also made some errors in their court argument. The Privy Council records summarize each day’s session in a single sentence or two, and do not provide details on the legal arguments presented. But they note that during the final session before judgment, Bella’s counsel presented argument “in correction of his previous speech,” and that opposing counsel then responded “on new authorities.”

The three presiding Privy Councillors were represented by Lord Phillimore, who delivered the court’s judgment. Unlike other higher courts in Britain, the Judicial Committee could not issue dissenting opinions. Administrators reasoned that colonials would only be confused—and British authority, undermined—by anything but a single, unanimous judgment. The rule was an intriguing illustration of the “waiting room” and “childhood” metaphors employed to describe colonial India. Both images worked to smooth over the awkwardness of sustaining liberal democracy at home and imperial despotism abroad. One could believe in self-government for a “mature “ political society like Britain without endorsing it for a political “child” like India. “Children” needed

---

1346 In addition to the five lawyers involved in Bella’s case in London, this elite in 1925 included barristers named Wallach, Kenworthy, Brown, Hyam, Upjohn KC, and De Gruyther KC. See also Haldane, 146.
1347 “Minutes of the Judicial Committee: 15 July 1924 to 30 April 1926,” 242 (21 July 1925) (PCOR).
1348 Haldane, 144.
1349 Rankin, 18–19.
1350 See Dipesh Chakrabarty, Provincializing Europe: Postcolonial Thought and Historical Difference (Princeton: Princeton University Press, 2002), 8–9; and Uday Singh Mehta, Liberalism
clarity and simplicity in the form of single, unanimous judgments from the Privy Council.¹³⁵¹

Only one of the three judges who decided Bella’s case had any experience in India. Lord Phillimore had been an ecclesiastical and admiralty judge whose appointment to the Privy Council in 1913 came as a surprise. Phillimore had never been a judge in India, and may never even have visited.¹³⁵² Yet he was a frequent presence in Indian and East Asian appeals, and was noted in British divorce cases involving India for his rulings on domicile.¹³⁵³ Similarly, Lord Blanesburgh (or Robert Younger) had no personal experience with India. A chancery judge before his elevation to the Judicial Committee, Blanesburgh was an opponent of judicial activism, a stance perhaps reflected in the Privy Council’s anti-reformist position in Bella’s case.¹³⁵⁴ The Irish judge, Sir John Edge, by contrast, had been Chief Justice of the High Court of the North-Western Provinces (later Agra) from 1886. He remained in India for twelve years until 1898, when he returned to London and became Judicial Member of the

---

¹³⁵¹ The unanimous judgment also made it harder to identify the positions of individual judges in any particular case.
¹³⁵³ Two of Lord Phillimore’s Straits Settlements (Singapore) decisions were reported in the same year as his *Saklat v Bella* decision. See *Goh Choon Seng v Lee Kim Soo* LR AC (1925) 550-5; and *Attorney General for the Straits Settlements v Pang Ah Yew* LR AC (1925) 555-61. Phillimore’s rulings were noted in the Scottish divorce cases of *Lendrum v Chakravarti* Scots LT (1929) 102; and *Agnes Isobel MacDougall v Anand Shanker Rao Chitnavis* Sessions Cases (1937) 393-4.
Edge joined the Privy Council in 1909, and heard Bella’s case at the age of 83, a year before he died.\textsuperscript{1356} One judge was notable for his absence. Syed Ameer Ali was the first Indian Privy Councillor (1909-28), and part of the reliable core of Indian appeals judges in 1925.\textsuperscript{1357} He was probably on leave at the time of Bella’s case.\textsuperscript{1358} Particularly in appeals from Patna and Allahabad High Courts, Ameer Ali delivered the court’s ruling.\textsuperscript{1359} This contrasted sharply with the pattern more common in the last third of the nineteenth century, where South Asian judges generally remained silent while their European colleagues spoke for the court.\textsuperscript{1360} A Shia Muslim of Perso-Arab descent, Ameer Ali had been called to the bar at Inner Temple in 1873. He was an advocate and magistrate in Calcutta for thirty years before retiring to Britain with his English wife in 1904.

\begin{footnotesize}
\begin{enumerate}
\item The fact that the Privy Council was a retirement post for legal professionals returning from India like Sir John Edge, E. B. Raikes and Sir George Lowndes, meant that there would generally be a time lag in their personal knowledge of South Asia.
\item “Obituary. Sir John Edge,” \textit{Times of London} (2 August 1926), 11. One of Sir John Edge’s daughters was famous for her novels on the “Eurasian problem.”
\item Ameer Ali was not present to hear a single Privy Council case between 11 July and 29 October 1925, the period when Bella’s case was heard. [Minutes of the Judicial Committee: 15 July 1924 to 30 April 1926, vol.27 (PCOR).]
\item For a sample of Ameer Ali’s judgments in the year that Bella’s case was heard, see the following cases in LR 53 IA (1925-6): \textit{Jawahir Singh v Udai Prakash and another}, 36-41; \textit{Ganesh Lal Pandit and others v Khetramohan Mahapatra and others}, 134-42; \textit{Raja Dhakeshwar Prasad Narain Singh v Gulab Kuer and others}, 176-86; and \textit{Masit Ullah and others v Damodar Prasad}, 204-14.
\item See note 1305 (above).
\end{enumerate}
\end{footnotesize}
Paying the Price

Costs were the invisible snake in the grass, and a poisonous one when the legal fees exceeded the sums being fought over. The allocation of costs typically occupied a few cryptic lines tacked on to the end of most judgments. The actual sums payable to the courts and lawyers did not normally appear in colonial judgments. Only by digging through the unpublished case papers can one track them, and even then, not always. Bella’s Privy Council papers do not quantify the expense of the final appeal, but only of the costs preceding London—standard record-keeping practice at the Privy Council Office.

Costs for the Rangoon and Bombay portions of Bella’s case were almost Rs 12,000 on each side, or almost Rs 24,000 in total. Putting this figure into context is hard in a society where a court peon made Rs 6 per month; a bachelor’s personal servant, Rs 15; and a court clerk, Rs 25.1361 By contrast, the Parsi president of the Tribunal of Appeal in Bombay made Rs 20,000 per month. Depicting the president as a “lucky dog,” the satirical weekly Hindi Punch commented that his salary was high enough “to make the mouths of other dogs water” (fig. 23).1362 During the Bella proceedings in South Asia, Rangoon advocates’ fees accounted for just under half the costs. The Bombay commission cost slightly over half.1363

---

1361 “The Law School,” Times of India (12 December 1889), 3; and Norman Macleod, “Reminiscences from 1894 to 1914” (HRA/D63/A5), 38 in Macleod Papers (HCA).
1362 “Lucky Dog!” Hindi Punch (20 September 1908), 21.
Costs in London were undoubtedly huge. The fees for having a barrister read the over one thousand pages of written records alone would have been £125 or Rs 1,875.\textsuperscript{1364} The correction of proofs, whether English or Indian, entailed separate charges, as did instructing on a case and attending consultations and sessions on the payment of costs itself. Attending the hearing was over £3 per day. Being present for a judgment cost over £1, and being ready to appear in court even when not actually called upon was over £2 per day. The Judicial Committee heard Bella’s case over four days.\textsuperscript{1365} The judgment was presented on a fifth day.\textsuperscript{1366} Lawyers’ fees for these court appearances, then, would have been over £13 per lawyer, totaling over £65 given the five lawyers present. Counsels’ fees alone then have been about £200, or Rs 15,000. Council Office fees for lodging petitions and obtaining orders, subpoenas, and other required forms all bore their own costs in addition.\textsuperscript{1367} Other Privy Council appeals from the colonies in the same period cost £6,000-7,000, the equivalent of Rs 80,000-105,000, making it likely that Bella’s case accrued costs higher than the minimum Rs 50,000 estimated here. The exhorbitant costs of litigating in the Privy Council was one reason why in 1921, Sir Hari Singh Gour proposed a bill in

\textsuperscript{1364} I take the conversion factor of Rs 15 to the pound from an internal reference in A. J. C. Mistry’s 1911 memoirs of the firm, Wadia Ghandy and Co. [Mistry, \textit{Wadia Ghandy and Co.} (1911), 8]. This rate is confirmed for the period 1899-1908 by \textit{The Imperial Gazetteer of India: the Indian Empire Vol. II: Historical} (Oxford: Clarendon, 1908), vii.

\textsuperscript{1365} These sessions occurred on 16, 18, 20 and 21 July 1925. ["Minutes of the Judicial Committee…1924-26," 234, 236, 238, and 242 (PCOR)].

\textsuperscript{1366} Lord Phillimore delivered the judgment on 22 October 1925. Interestingly, none of the other judges who decided Bella’s case were present. ["Minutes of the Judicial Committee…1924-6," 261 (PCOR)].

\textsuperscript{1367} For a detailed list of Privy Council appeal-related fees, see Bentwich, 326-7.
the Central Legislative Assembly of India that the Privy Council be replaced with a final court of appeal in India.1368

Costs in London may have matched, but probably exceeded, the costs of bringing Bella’s case through the courts up until that point.1369 If the overall costs reached Rs 50,000, they would exceed the Rs 40,000 sum Bomanji raised decades earlier to rebuild the Rangoon fire temple. The cost of establishing whether Bella could enter the temple would then have been the same as the cost of building the temple itself, and over 167 times the cost of re-consecrating the temple after Bella’s entry, if indeed purification was necessary. While a poor Indian family could live on Rs 7 or 8 per month, Indian High Court judges in the Chief Court of Lower Burma made Rs 4,000 per month, and the viceroy of India, five times that.1370 The kind of funds involved in Bella’s case positioned the Captain family and its financial backers at the latter end of the scale. Fighting in court—particularly when it ended in London—was an option available only to the most affluent of colonial elites.

Bella’s side won costs for the first two rounds in Rangoon: her uncle Merwanji and his allies had to pay their own legal expenses plus over Rs 10,000 for Bella’s side.1371 But the judge Young blamed both sides for the unreasonable

---

1368 See Jain, 344.
1369 The cost of bringing a Rhodesian appeal to the Privy Council in 1914-18 was £6,000-7,000, the equivalent of Rs 80,000-105,000, making my calculation of the minimum costs in Bella’s case look conservative. See John H. Harris, The Greatest Land Case in British History: The Struggle for Native Rights in Rhodesia before the Judicial Committee of His Majesty’s Privy Council (London: Denison House for the Anti-Slavery and Aborigines Protection Society, 1918), 4. For lower figures, however, see Gour, 507.
1370 Karaka, I, 103; Chakravarti, 40; and Ahmad, 263 (respectively).
1371 Interlocutory Proceedings and Orders. No. 71: Decree. 28 July 1920. In the Chief Court of Lower Burma. Civil Appellate Jurisdiction. Civil 1st Appeal No. 4 of 1919. Dorabjee Rustomjee Saklat, Sheriar Khodabux Irani, Jamsetjee Burjorjee Sootaria (plaintiffs), appellants versus Bella,
amount of time spent on the Bombay commission. He penalized Bella and her adoptive father by making them pay a third of their own costs for Bombay, with the plaintiffs covering the other two thirds. With Bella’s defeat in London came a reassessment. The Judicial Committee was famous for its merciful allocation of costs. In Bella’s case, it lived up to its reputation. The Committee could have ordered Bella’s side to pay both sides’ legal expenses retroactively—covering eleven years of litigation. Instead, each side would be responsible for its own costs all the way down. In the French Mrs. Tata’s case in 1906, the British judge Beaman had commented that the parties had spent money “like water” to fund the litigation. The comment would have been an understatement for Saklat v Bella. Despite the Privy Council’s attempt to spread the financial burden, the legal expenses on each side alone must have been staggering.

But money was not the issue. The orthodox celebrated in Bombay and Rangoon. In Bombay, D. P. Sanjana, the orthodox priest of purity ritual fame, hosted a gathering at a leading Bombay fire temple. A slew of speakers expressed their gratitude to the Privy Council for keeping Bella and her ilk beyond the pale. The Rangoon version was hosted by the local priest who had first been approached unsuccessfully to initiate Bella: B. D. Unwalla. Merwanji’s

---

minor represented by her guardian ad-litem Saporji Cowasji (2nd respondent), Saporji Cowasji (defendants), respondents in Saklat v Bella, 816 (PCOR).


1373 See Bentwich, 332-4.

1374 The only exception was costs on preliminary matters. Bella’s side had been originally ordered to pay the plaintiffs’ costs for this portion of the litigation. The Privy Council upheld this arrangement. [Preliminary judgment; and “Order at the Court at Buckingham Palace, the 16th day of December, 1925. Present: The King’s Most Excellent Majesty, Lord President, Lord Chamberlain, Sir John Gilmour, Sir Arthur Steel-Maitland, Sir Beilby Alston” in Saklat v Bella, 1-2 (PCOR).]

1375 Petit v Jijibhoy 33 ILR Bom 561.
son N. M. Cowasji, the barrister who was the driving force behind the London appeal, received a casketed scroll from Rangoon’s orthodox Parsis and another from Bombay’s. The plaintiffs who were still alive received a ceremonial shawl each.\textsuperscript{1376} Merwanji had died by this point. So had Bella’s adoptive father Shapurji. But the fraternal feud lived on—in the youngest uncle Bomanji, his nephew N. M. Cowasji, and of course, in Bella, whose bitterness at losing the case turned her against the Parsi community for life.\textsuperscript{1377}

Conclusion

The common law seems distinctly ill-suited to colonialism because it required so many books—and constantly. Having law reports distributed to every corner of the empire was surely impracticable at the best of times.\textsuperscript{1378} Legal textbooks must have played a particularly crucial role in such settings.\textsuperscript{1379} At the same time, the case-based nature of the common law set up a mechanism for the consolidation of empire at close range.\textsuperscript{1380} Case by case, colonial lawyers and judges, South Asian and British, stirred disparate cultural worlds into the same

\begin{flushright}
\textsuperscript{1376} “Saklat v Bella,” \textit{Parsi Prakash} VI, 231 at note 1.
\textsuperscript{1377} See “Epilogue: After Saklat v Bella” (below).
\textsuperscript{1378} This may have been one reason, among others, to offer special subscriptions for unbound and “thin paper” editions of the law reports. See advertisement at back of 52 IA (1925).
\textsuperscript{1379} The importance of textbooks in shaping colonial law has been underestimated. The leading publisher of law textbooks in colonial India was Thacker, Spink and Co., based in Calcutta and with offices in London, too. A study of the role of Thacker Spink textbooks in the colonial legal system would shed light on this important mode of legal consolidation and transmission.
\textsuperscript{1380} These comments apply to areas of “high law” like the law of trusts for religious endowments, that were managed by professional lawyers and judges through litigation in courts of record. The law of master and servant seems to have been an exceptional area of “low law” that was much more dependent upon local legislation and the summary judgments of lay magistrates. See Douglas Hay and Paul Craven, “Introduction” in Hay and Craven, 54-58.
\end{flushright}
subcontinental mixing bowl. The Judicial Committee of the Privy Council led the way in “holding the empire together” through case law.\textsuperscript{1381}

Bella’s case illustrates the homogenizing process by the startling array of pan-imperial precedents applied, spanning French Canada, Hindu Madras and Bombay, and the English public schools. The case arrived in London just as South Asian lawyers were beginning to appear more frequently before the Judicial Committee of the Privy Council, and as the first South Asian Privy Councillors themselves were also being appointed. Neither group appeared in the London segment of \textit{Saklat v Bella}. In South Asia, though, Parsi lawyers ran the Bombay commission exclusively, and populated much of the bench during the spin-off libel trials in Rangoon and Bombay. Key players in the litigation were also personally steeped in the experience of legal London. Bomanji Cowasji Captain studied in London at the Inns of Court, and had his name cleared of the charge of professional misconduct by the Judicial Committee before Bella’s case was heard by the same tribunal. Most importantly, the Privy Council endorsed the earlier decision of the first Parsi judge in the Bombay High Court, accepting Dinshaw Davar’s distinction between being ethnically Parsi and religiously Zoroastrian, and deeming the former to be a prerequisite for the law’s protection.

In this sense, Bella’s case illustrated a classic colonial pattern: it was the colonial “man on the spot” who took the more aggressive role in intervening in colonial communities, while superior metropolitan officials showed greater

\textsuperscript{1381} Haldane, 154.
reluctance. The Privy Council’s approach of privileging orthodox Parsi opinion must have felt safe. It made particular sense given that from the 1890s on, the Judicial Committee was increasingly under attack for misunderstanding the subtleties of the empire’s many legal traditions. The Rangoon courts had happily declared that Parsi trusts were for the benefit of a religion, not an ethnicity. In London, this confidence evaporated. The Committee delivered a judgment that was weak and watery—diluted as it was by the language of trustees’ discretion—but that in its final application handed victory to the orthodox. The British administration had nothing to gain from siding with reformers in a debate that offered no potential “civilizing-mission” value, and that only threatened to encourage Parsi-European intermarriage. At the same time, siding with the orthodox meant deferring to the opinion of one of the leading legal luminaries from the Parsi community itself. Dinshaw Davar died shortly before being able to testify in Bella’s case. But his 1908 ruling provided the conceptual lining for the case, bringing *Saklat v Bella* full circle. What began as a dispute within the community was fought out in a colonial public arena, decided by British judges in Rangoon with the evidence of an all-Parsi commission in Bombay, then passed to a European trio of judges in London who handed it back to the Parsi community with a spin privileging the orthodox. The Privy Council deferred both to Davar and to the Parsi trustees in Rangoon. Orthodox Parsis might in principle

---

1383 See Gour, 493, 500; and Swinfen, 10-11.
1384 The final report from the Committee to the King allowed the plaintiffs’ appeal “in part” and denied that Bella was entitled “as of right” to enter the fire temple. She could enter if the trustees used their discretionary powers to allow it. They did not. [“Order at the Court at Buckingham Palace, the 16th day of December, 1925” in *Saklat v Bella*, 1-2 (PCOR).]
have disapproved of litigation between Parsis in the open colonial forum. But in pushing Bella out, they pulled colonial law in. At one level, the case of *Saklat v Bella* looks like a story of Parsi exceptionalism: in substance, the judgment cordoned the Parsis off from other communities, privileging ethnic exclusivity. But in form, the exercise of using the common law to get to this exclusive end-point meant stirring Parsidom into legal India through the centripetal jurisprudence of empire.

1385 See text accompanying notes 640-2 (above).
(Mr. Rustomjee Merwanjee Patel, the retired Chief Judge of the Bombay Small Causes Court, since President of the Tribunal of Appeal, has been retained in the latter appointment for another year. Rs. 20,000 yearly, enough to make the mouths of other dogs water!)

[Hindi Punch (20 September 1908), 21.]
[By permission of the British Library (SV 576).]
CONCLUSION

Everyone is at liberty to enter the places of worship of the Jews, Christians and Muslims. Unshod, anyone is permitted to enter even a Hindu temple. We allow no one to step into our fire temples.

-Dastur M. N. Dhalla, High Priest of Karachi

This study highlights the paradox of Parsiness. Late colonial Parsis were the quintessential cosmopolitans, spread across and integrated in the imperial world through trade, education and travel. At the same time, the community was highly exclusive when it came to its membership and sacred spaces. *Saklat v Bella* was about the interaction between these countervailing tendencies. In Bella’s case, the litigating of Parsi identity compromised Zoroastrian religious privacy, exposing “internal” debates over purity, ritual and conversion to public view. The question of who was in and who was out was thrashed out most thoroughly not by the panchayats or the priests, in the press or in literary, legislative, educational, or popular settings, but in the courtroom.

How did this happen? Half of the answer lies with the Parsis; the other half, with the colonial legal system. The Parsi approach to Zoroastrian rites was private, but not secretive. Zoroastrianism was not “emphatically esoteric.” Unlike hermetic traditions like Tantra, it was not conceptually fortified to deny intellectual access to outsiders. The distinction was a critical one when it

---

1387 I borrow this phrase from Urban, who refers to Tantric traditions. [Urban, xii.]
1388 Even the secrecy of many Tantric traditions could not keep their contents beyond the reach of European scholars and travellers for the entire colonial period. See Urban. Research on secret
came to assessing the reach of colonialism into Parsi religious affairs. The
decentralized structure of priestly authority, coupled with a strong Parsi legal
profession, also helped explain how Parsi-Parsi disputes landed in court with
such regularity. These factors combined with what on the British side was a
particularly invasive brand of legal pluralism. The result was the “ethnographic
court,” a phenomenon that meant that large amounts of colonial ethnography
was written by judges.

According to the purity laws, it was the presence and line of sight of non-
Zoroastrians that could pollute sacred spaces. Entry into fire temples was barred
to outsiders, and the architecture of those temples was designed to prevent the
unintentional sighting of the consecrated fire by outsiders. But there were no
prohibitions on outsiders’ acquisition of knowledge of Zoroastrian rites. Photos
of non-consecrated replicas and reenactments were allowed. Descriptions of
sacred rites could be given. The result was that European travellers and scholars
could and did gain some knowledge of Zoroastrian beliefs and practices.

intellectual traditions in colonial settings could yield particularly interesting insights into the
\(^{1389}\) See note 34 (above).
\(^{1390}\) I refer to the late colonial period. In an earlier period, European scholar-travellers
encountered occasional priestly reluctance to divulge information about Zoroastrian rites. See
Nora Kathleen Firby, *European Travellers and Their Perceptions of Zoroastrians in the
\(^{1391}\) For examples, see Kotwal and Mistree, “The Court of the Lord of Rituals,” 375.
\(^{1392}\) For a sample, see Abraham Hyacinthe Anquetil-Du Perron, *Extracts from the Narrative of
Anquetil du Perron’s Travels in India: chiefly those concerning his researches in the life and
religion of Zoroaster, and in the ceremonial and ethical system of the same religion as contained
in Zend and Pehlvi books* Kavasji Edalji Kanga, trans. (Bombay: Commercial Press, 1876); John
Wilson, *The Parsi Religion, as contained in the Zend-Avesta, and propounded and defended by
the Zoroastrians of India and Persia, unfolded, refuted, and contrasted with Christianity* (Bombay:
American Mission Press, 1843); and Haug. See also comments of Dinshaw Davar generally:
Parsi Panchayat Case (Davar), 50. On European accounts of Zoroastrianism generally, see
Firby; and John R. Hinnells, “British Accounts of Parsi Religion.” Note also the German scholarly
tradition of Iranology and Indology generally: Valentina Stache-Rosen and Agnes Stache-Weiske,
*German Indologists: Biographies of Scholars in Indian Studies Writing in German* (Delhi: Max
Their accounts in turn informed the rulings of colonial judges.\(^\text{1393}\) In Bella’s case, the testimony of 32 witnesses—all but three of whom were Parsi—was also freely elicited on the topic of the community’s sacred practices.\(^\text{1394}\) Not once was it suggested that this information ought to be withheld from outsiders.

This dissertation is about colonialism in its specifically legal form, that is, the colonization of South Asian legal systems by a version of the common law—and at times, the reverse process of de-Anglicization. The legal colonization process was often blurry and obscure. From the upper echelons of executive government, assurances of legal pluralism were given and repeated often. Particularly after the military and civil revolt of 1857, a renewed weariness of offending South Asian religious sensibilities set in.\(^\text{1395}\) At the same time, though, legal pluralism conjured up nightmarish images of moral relativism uncaged. Judges in faraway corners of the common law world laced their solliloquys on the dangers of leaving communities to their own laws with examples from South Asia. In a jurisprudence of the colonial Gothic, the slippery slope always led to India: what started with Mormon group marriage would inevitably end with the human sacrifices of the *thugs* and the *sati* of Hindu widows.\(^\text{1396}\)

\(^\text{1393}\) Large amounts of scholarship were cited by judges in *Petit v Jijibhai*, for instance. For a post-colonial equivalent, see the case on Irani identity, *Jamsheed A. Irani v Banu J. Irani* 68 Bom LR (1966) 794-809.

\(^\text{1394}\) For a list of names, see “Appendix D: Witnesses in *Saklat v Bella*” (below).

\(^\text{1395}\) Consider, for instance, Queen Victoria’s comment to Lady Canning. See note 348 (above).

\(^\text{1396}\) See George Reynolds, *pl. in err. v United States* 98 US (1879) 166; and “Is Polygamy a Crime? Arguments in the United States Supreme Court in the Case of a Convicted Mormon,” *New York Times* (15 November 1878), 4. I am grateful to Joan Gordon for alerting me to this strain within American legal thought.
The reality of British legal pluralism in India was quite different. Legal pluralism in India was closely supervised, being applied by the colonial courts themselves and not farmed out to religious communities, at least at the upper levels. The tendency was obvious from the late eighteenth century, with the burst of compilations and translations of Islamic and Hindu religious texts by legal orientalists like William Jones and Henry Thomas Colebrooke.\(^{1397}\) Having the *Hedaya* and the *Laws of Manu* in English allowed colonial judges (entirely European at that time) to sever their reliance upon “native law officers.” The officers were South Asian experts in religious law whom colonial jurists regarded with ambivalence, suspecting their honesty and competence. The officers’ positions were abolished in 1864.\(^{1398}\) Another defence mechanism was the all-purpose phrase, “justice, equity and good conscience.” Judges could minimize the application of South Asian religious law where it violated this vague trio, an exit route that cloaked the visceral reactions of European judges in jurisprudential legitimacy.\(^{1399}\)

The translation and compilation of canonical texts, abolition of law officers, and inclusion of moral instinct-related escape clauses were small steps toward the colonization of South Asian legal systems. Getting communities to participate in the colonial legal system was another. Being religiously private but not secretive—or being exclusive about presence and membership, but not knowledge—meant that Parsis were not prohibited from “talking to” the colonial

\(^{1397}\) See note 362 (above).
\(^{1398}\) Jain, 581-3; Benton, *Law and Colonial Cultures*, 39.
\(^{1399}\) Jain, 436-41.
legal system. Other groups were not as cooperative. Elite Muslim and Hindu women who lived in purdah would not appear in court. Gandhian lawyers went on strike, refusing to “play” in the colonial legal system. Theosophists took a vow of secrecy that was binding even in the courtroom. Jehangir Vimadalal, the solicitor working against Bella in Bombay, refused to testify on theosophy in proceedings unrelated to Bella’s case without being explicitly released from his vow by the theosophist leader, Annie Besant.

The decentralized nature of Parsi priestly structures also helped explain why the Parsis were such hearty consumers of colonial law. Although within each of the five traditional panthaks or dioceses, there was a clear hierarchy of priestly authority, between them there was none. Even in the pre- and extra-colonial setting, disputes between members of different panthaks were taken to the local raja for resolution. There was also the fact that priestly authority in Bombay was somewhat ambiguous. When the panthaks were agreed upon around 1290, Bombay was little more than a fishing village. It became a city when the British

---

1400 Many thanks to Dirk Hartog for bringing this distinction to my attention.
1401 See note 737 (above).
1403 Evidence for the Defendant. No. 86. Exhibit CC: Pledge of the Esoteric Section when the Plaintiff was admitted (taken to H. P. Blavatsky, 1894)” in Besant v Narayaniah (JCPC suit no. 23 of 1914) 1914: vol. 19, judgment no. 48, 494 (PCOR).
1405 See the agreement of roughly 1290 in Mirza, Outlines, 234-5; and of 6 June 1685 in Paymaster, 105-6.
1406 For example, disputes concerning the placing of the padam or ritual veil over the mouth of corpses and the crossing of the legs of corpses were taken to the Gaekwars of Baroda. See Ménant, “Social Evolution of the Parsis,” JIA 10: 5 (August 1921), 151. See also Paymaster, 99.
relocated there from Surat for trade, which was also when the Parsis began to migrate to Bombay. No new panthak was created for Bombay, such that Parsis looked to the authorities from their ancestral panthaks in Gujarat. Again, if a dispute arose between Parsis from different panthaks, there could be a deadlock within the system. And what of the Bombay Parsi Panchayat? The body was in many ways created and supported under British patronage, but a mid-nineteenth-century crisis over polygamy led to the erosion of its general authority in the community.1407 The number of lawsuits against trustees of the panchayat attested to this loss of authority. The French Mrs. Tata’s case, in which reformists sued the trustees of the Parsi Panchayat, is a prime example.1408 The existence of an army of Parsi legal professionals must also have lubricated the slide into litigation.

Like the Cherokee of the American southeast, the Parsis were a colonial community that had “internalized the myths of liberal constitutionalism.”1409 The prevalence of eminent domain cases filed by Parsis suggested some degree of confidence in the system. In those cases, Parsis who had been forced to sell their land to the colonial state for “public purposes” sued the state in the colonial courts.1410 They could hardly have had a more formidable opponent, and in its

---

1407 See notes 571-2 (above).
1408 See the latter half of chapter 3 (above).
1409 Norgren, 299.
1410 A leading case was the Privy Council appeal of Mrs. H. F. Petit, who challenged the Bombay government’s compulsory acquisition of her land on Malabar Hill. See Secretary of State for India in Council v Hamabai Framji Petit and Appeal No. 24 of 1910 in re: resumption of plot of land on Malabar Hill LDR (Suits), vol. B-1/4 of 1908-10 (MSA); and Hamabai Framji Petit v The Secretary of State for India In Council (JCPC suit no.139 of 1913) 1914: vol. 33, judgment no. 93 (PCOR) and ILR 39 Bom (1915) 279-96. For a sample of other reported cases, see The Trustees for the Improvement of the City of Bombay v Jalbhoy Ardeshir Sett and another ILR 33 Bom (1909) 483-99; The Municipal Commissioner for the City of Bombay and another v Muncherji Pestonji
own territory. Their faith in the legal system was emphasized by the fact that Parsis continued to initiate such suits during the early twentieth century, even though they almost always lost.1411

Finally, the colonial legal system extended its tentacular reach through an unintentional, organic process that undoubtedly occurred in other colonial settings, too. Even those who may have been opposed in principle to the resolution of “internal” disputes in open court initiated proceedings when they thought it was in their immediate best interests—namely, when they thought they had a better chance of winning there than through community organs of dispute resolution. If any Parsis expressed dissatisfaction with the extended jurisdiction of the colonial courts, it was the orthodox. Orthodox Parsis led the movement for an all-Parsi arbitration system.1412 And yet, in Saklat v Bella, it was orthodox Parsis who initiated proceedings and appealed to the higher courts both times. The result of these individual choices was that simply by offering itself as an option, the colonial legal system gained a foothold even amongst people who in principle may not have wanted it to.1413


1411 Two rare cases in which Parsi litigants won were Dossabhai Bejanji Motivala v The Special Officer, Salsette Building Sites ILR 36 Bom (1912) 599-606; and Kuverji Kavasji Shet v Municipality of Lonavala ILR 45 Bom (1921) 164-70. There was also the well known Cama brothers’ case, although in that case the government did its best to confuse the Privy Council’s findings, portraying the decision as a victory for the state: Merwanji Muncherji Cama and another vs Secretary of State for India in Council, LDR Vol.B-1/1 of 1907-10: Serial No. 253 of Compilation 1910: suit no.63 of 1910 in the High Court of Bombay (MSA).

1412 See text accompanying notes 640-2 (above).

1413 For a similar argument on forum shopping between organs of the colonial state, see Benton, Law and Colonial Cultures, 148-9, 166.
By jumping into internal community disputes, the colonial courts made themselves into factories for legal ethnography. *Petit v Jijibhai* and *Saklat v Bella* set the rules of membership of the Parsi community. Other decisions determined the powers of the religious heads of the Khoja and Bohri Muslim communities, and defined internal leadership structures for the Bene Israel Jews.\(^{1414}\) Judges decided whether Baghdadi Jewish marital practices would be the general norm for all Indian Jews, and whether Khoja and Cutchi Memon Muslims retained the Hindu joint family structure from the period before their collective conversion to Islam.\(^{1415}\) With all of these decisions came lengthy excurses on the history, social structures and religio-cultural practices of the communities in question. And it was ethnography shadowed by the muscle of the state. Judicial discourse, unlike many other types of discourse, was implicitly backed by force.\(^{1416}\)

The twist of course came in the late nineteenth century as South Asians began to populate the bench and bar.\(^{1417}\) An invasive brand of legal pluralism gradually came to mean that not Europeans but South Asians were making judgments on internal religious disputes. Where lawyers and judges of one

\(^{1414}\) On the powers of the Aga Khan, head of the Khojas, see *Haji Bibi v His Highness Sir Sultan Mahomed Shah, the Aga Khan* 11 Bom LR (1909) 409-95. On Bohri leadership, see “Judgment in the Borah Case. Suit No. 941 of 1917. *The Advocate General vs Vusufalli Ebrahimji and others*” and “The Hon. Mr. Justice Marten. Borah Case. Long Cause. Evidence and Arguments. From 30\(^{th}\) August 1920 to 4\(^{th}\) February 1921” (BHC). On internal power structures within the Bene-Israel community, see *The Advocate General of Bombay, at the relation of Arran Jacob Awaskar and others v Davi Haim Devaker and two others* ILR 11 Bom (1887) 185-98.

\(^{1415}\) On polygamy in the Indian Jewish context, see *Rachel Benjamin v Benjamin Solomon Benjamin* ILR 50 Bom (1926) 369-94. On Khoja inheritance practices, see *Jan Mahomed Abdulla Datu and another v Datu Jaffer and others* ILR 38 Bom (1914) 449-552. For the Cutchi Memon equivalent, see *Mahomed Jusab Haji Adam Nurani c Haji Adam Haji Usman Nurani* ILR 37 Bom (1913), 71-6; and *Mangaldas N. Motivalla and another v Abdul Razak Haji Sulaiman* AIR 1914 Bom 17-21.

\(^{1416}\) See note 805 (above).

\(^{1417}\) See Mistry, *Wadia Ghandy and Co.* (1911), 73-6; Gagrat, 32-3; Setalvad, 7; and Appadurai Breckenridge, 360.
community were ruling on the religious life of another, this may have raised communal eyebrows.\textsuperscript{1418} But the Parsis used this professional route to turn British legal pluralism on its head—from a system in which Europeans managed the internal religious affairs of colonized communities, into one controlled by members of the community itself. And, given that the Parsis were left out of Hastings’ foundational promise to Hindus and Muslims, it meant a Parsification of the common law. Unlike the Cherokee, who endorsed the common law system but were unrepresented by their own, the Parsis both used the system and increasingly ran it.\textsuperscript{1419} They did so—and here was the twist to the twist—in the way the common law required: by linking their own community conceptually to very different religions and cultures across legal India and the empire.

In a period stuck on the idea that each ethnicity deserved its own exclusive space, much larger, more territorially dominant “nations” fought for theirs through anti-colonial independence movements and world wars. For the Parsis, the mode of combat was not political or military, but legal. The space in question was tiny, consisting of fire temples, Towers of Silence, and cemetaries, rather than whole provinces or subcontinents. But it was equally symbolic of a bond that, by the end of \textit{Saklat v Bella}, was deemed to be one of blood and not

\textsuperscript{1418} Mohammad Ali Jinnah, a Khoja Muslim and the future “father of Pakistan,” acted as counsel in many cases involving the personal law of communities other than his own. Among them were a number of Privy Council appeals on the Hindu joint family and adoption, including \textit{Mt Bahu Rani and another v Thakur Rajendra Baksh Singh} AIR 1933 PC 72-5; \textit{Amrendra Man Singh Bhramarliar and another v Sanatan Singh and other} AIR 1933 PC 155-64; and \textit{Bhup Narain Singh v Gokul Chand Mahton and others} AIR 1934 PC 68-72. For a list of reported cases pleaded by Jinnah between 1898 and 1939, see Ahmad, 381-411.

\textsuperscript{1419} I refer to the period in which the famous Cherokee removal cases came before the U.S. Supreme Court (1831-2). See Norgren, 269-77.
practice or sociability. A machinery that produced legal ethnographies for most communities did much more for the Parsis. Largely through Parsi efforts, it forged identity.
EPILOGUE

After *Saklat v Bella*

After she lost her case, Bella continued living in Rangoon with her husband, the Parsi merchant D. J. Kolapore. Kolapore, the “uncrowned king of Rangoon” had started as a Singer sewing machine salesman but then came into money from some unidentified source, possibly as a result of his marriage itself. He led a luxurious life and threw lavish parties. Parsis in Mumbai today recall that the Kolapore dining-room table could seat several dozen.

Mr. Kolapore was a sociable, happy-go-lucky personality who did not let the *Saklat v Bella* litigation bother him. Bella was different. She had been popular amongst the Parsis of Rangoon before the Privy Council ruling. Afterwards, Bella became a bitter, chain-smoking young woman who rejected everything Parsi. She refused to attend Parsi functions, and saw only a few Parsi friends. Parsis knew that she lived in a house near the Shwe Dagon Pagoda, a gold-covered Buddhist stupa affectionately called the “Ice Cream Cone Upside Down,” but very few ever saw her. No photographs seem to exist of Bella. The only image that survives is a 1914 *Hindi Punch* cartoon that depicts Bella as a young teenager in

---

1420 Virtually nothing has been published on the aftermath of Bella’s case, or on the Parsi exodus from Burma. The most detailed work on the WWII flight of South Asians from Burma does not mention the Parsis: Hugh Tinker, *A Forgotten Long March: The Indian Exodus from Burma, 1942* (London: F.E.P. International, 1975) [reprinted from *Journal of Southeast Asian Studies* 6: 1 (March 1975), 1-15]. As a result, most of this epilogue is derived from oral history sources. Many thanks to Tanaz Panthakey (Mumbai, 2 March 2004); Fali Nariman (Delhi, 8 March 2004); Mrs. G. N. Rattansha and Dr. Lakshmi Chandra (Mumbai, 17 March 2004); Prof. Jehangir Mistry (Mumbai, 13 June 2004); Roda Bhagwagher, Mani Nariman Bhagwadia and Mr. and Mrs. Daruvala of the Cama Convalescent Home (Mumbai, 28 January 2006); Jerestin Sidhwa (Mumbai, 3 February 2006); Pesi Ginwala (Mumbai, 5 February 2006); Sam and Pheroze Bugwadia (Mumbai, 9 February 2006); Homi Eduljee (Mumbai-Ootacamund, 26 February 2006); Manek Sidhwa (Toronto, 9 March 2006); and others who have requested anonymity. Wherever possible, I have used scholarly works and contemporary newspapers to corroborate oral accounts.
an Edwardian smock dress (fig. 24). Bella was fluent in Burmese, and wore only Burmese attire after she lost her case. Her health deteriorated in the decade after the Privy Council ruling. She died some time before 1937, in her 30s.

In the winter of 1941-2, Japanese forces invaded Rangoon. The British administration of Lower Burma had assured the population that Rangoon would be well protected if the Japanese attacked. Parsis in Rangoon experienced a rude awakening. Realizing a Japanese attack was imminent, British administrators abandoned the city overnight. The rest of the colonial arrivals—some Europeans but predominantly South Asians—were left defenceless. Roads out of the city were paralyzed as hundreds of thousands panicked and tried to flee Rangoon. Those who left early reached Chittagong by boat and continued to Calcutta by train, a route that became unviable as Japanese forces occupied the waters around Rangoon. Those who fled later had to exit overland. Between 10,000 and 50,000 South Asians probably died on the “forgotten long march.” Travelers had to cross from Burma into northeast

1421 “Bella—the Waif” from “The Rangoon Romance (Bella and the Anjuman),” Hindi Punch (7 June 1914), 13.
1423 Mahajani, 143-4.
1425 Tinker, 2-3. Tinker is highly critical of the British administration for failing to assist the South Asians fleeing Burma.
India by land—in most cases, on foot—through mountainous jungle terrain.  

Despite the official British denial of racial discrimination during the exodus, Parsis recount that the exit routes were restricted along racial lines. The “white route” was for Europeans only. It was intended to be the easier way out. The “black route” was for South Asians. Ironically, the white route was in fact the less hospitable one. Parsis took the black route. One family of jewelers left Rangoon with their most valuable jewels in a small suitcase. Each night, a member of the family slept guarding the suitcase. The experience made one brother a restless sleeper for life.

Bella’s husband came to Bombay, a city with more than a few war-time refugees from Rangoon. Parsi trusts across Bombay created jobs for the Parsi refugees of Burma. About 40-50 of the 300-350 Parsis who had fled Burma during the Japanese invasion returned to Burma after the end of the Second World War. But with the rise to power of the military regime, they left their lives in Burma a second time. By the time of the military coup of 2 March 1962, most Parsis had returned to India.  

---

1426 See Pearn, 32; and Upfill, 202-3. On Rangoon under Japanese war-time rule, see Christian, 122-35; and Tin Maung Maung Than, 590-3.  
1427 Parsi accounts may be referring to the fact that the Tamu-Palel road, a pass that led through the mountains on the Burmese-Indian border, was open to Europeans only. This was admitted in private correspondence between British administrators. [Tinker, 14.]  
1428 Parsi stories about the exodus from Burma are particularly valuable given the paucity of South Asian accounts of this episode generally. Writing in 1975, Tinker lamented this silence: “a story so the story of the march by the Indians of Burma faded out of the public consciousness, and now—more than thirty years later—many of the participants are dead, and the story is forgotten.” [Tinker, 15.]  
1430 246,000 Indians returned to Burma after the Second World War. [Khin Maung Kyi, 642-3.]
They were individuals who generally had few ties to India, and familial links to Burma.

Mr. Kolapore and Bella probably had no children of their own, but they may have adopted a little girl named Mary, who presumably accompanied Mr. Kolapore to Bombay. Mr. Kolapore became the in-house manager of the sea-facing Cama Convalescent Home in Bandra, a leafy Indo-Portuguese suburb of Bombay. He remained active and jovial into his later years. His friends called him a “Jolly Jingo,” a Parsi who enjoyed good food and company. Kolapore died some time in the 1970s or 80s.

The High Priest who initiated Bella, Dastur Kaikobad, returned to Poona in western India a broken man as a result of *Saklat v Bella*. He died within a few years of the London judgment.

The Rangoon priest who refused to initiate Bella, B. D. Unwalla, turned grey overnight as a result of the conflict. His descendants say he never got over the case.

The two elder Captain brothers—Merwanji and Shapurji—died before the Privy Council issued its ruling. The youngest brother, Bomanji, died four years after the judgment, in 1929. Two years after that, the Bombay solicitor J. J. Vimadalal died, aged 61.

Both Sir Dinshaw Davar and the French Mrs. Tata died before the Privy Council delivered its judgment. Davar expired at the hill station of Matheran

---

before his testimony could be taken from his bedside for Bella’s case. Mrs. Tata contracted tuberculosis through voluntary work during the First World War, and died of complications in 1923.

The solicitor J. J. Vimadalal’s three elderly nieces live in Mumbai, with memories of “Uncle Jehangir”’s oratorical skills and charisma. The son of P. R. Ginwala, Bella’s lawyer in Rangoon, resides in the same city. He remembers his father’s stories about the case. Sir Dinshaw Davar’s great grandson is also in Mumbai, and owns a bungalow once owned by the judge in the hill station of Khandala. The great-grandson of Sir Frank Beaman, the other judge who decided the French Mrs. Tata’s case, lives in Dublin, where he keeps a scrapbook of the judge’s writings.

The Rangoon fire temple was bombed during the Japanese invasion of Burma. The shops along the outer wall of the temple were rebuilt, and a Muslim man is now believed to collect the rent. The fire temple itself was never reconstructed. The Parsi burial ground in Rangoon has been razed. Apparently, a hotel now stands on the site. Parsis in Mumbai believe the descendants of one Parsi-Burmese family may still be living in Rangoon, but no one knows the family’s name.

Stories about Bella’s case lie fading in the memories of Parsis in India,

---

1433 See “Defendant’s Evidence. No.27: J. D. Nadirshaw” (26 April 1916), 428; “Exhibit S: Telegram from Jehangir Davar (Matheran) to Jehangir Vimadalal (Bombay), filed before Commissioner” (25 April 1915), 57; and “Appendix 1A: Interlocutory Proceedings and Orders. No. 65: Order on the petition of defendants, praying for orders of the Court with regard to the costs incurred upon the Commission” (2 December 1918), 783; all in Saklat v Bella (PCOR).

England, Canada, and beyond. They were either very young when their families left Burma, or are the descendants of those who were.
FIGURE 24:

“BELLA—THE WAIF”
from “The Rangoon Romance (Bella and the Anjuman)”
[Hindi Punch (7 June 1914), 13.]
[By permission of the British Library (SV 576).]
APPENDIX A

Cases involving Parsi parties heard by D. D. Davar,
Bombay High Court Judge (1906-16)

I. Inheritance Suits:

A. Reported:

1. Dinshaw Sorabji Mody and another v Dinshaw Sorabji Mody and others:
   ILR 31 Bom (1907) 472-9.

2. In the Matter of Hormusji Framji Warden (deceased), Hirjibai Bomanji Warden and another:
   ILR 32 Bom (1908) 214-46.

3. In re the Costs and Expenses of Messrs Crawford, Brown and Co.; and In Re Bai Dossibai, widow and other; and In Re Jiwaji Framji Marker and other. Bai Dossibai, widow of Framji Cawasji Marker, and another v Messrs Crawford Brown and Co., Solicitor:
   ILR 32 Bom (1908) 428-32.

4. Sirdar Nowroji Pudumji and another v Putlibai, wife of N. B. Vakil:
   ILR 37 Bom (1913) 644-51.

5. Kaikushru Bezonji Nanabhoy Capadia v Shirinbai Bezonji Capadia and others:
   ILR 43 Bom (1919) 88-102.

B. Unreported:

1. Hormusji Cursetji Ashburner v Bomonji Cursetji Ashburner:
   Suit No. 478 of 1879, 17 April 1908 in Davar, “Judgments (7 Jan. 1908-7 Dec. 1908).”

2. Byramji Jehangirji vs Cooverbai:

3. Bapuji Nusserwanji Vatchagandy and another v Sorabji Ardeshr Vatchagandy:
4. **Rustomji Edulji Laher v Jehangir Edulji Laher:**

5. **Bai Jaiji Nusserwanji Kathoke v Bai Soonabai widow:**

6. **Sirdar Nowroji Pudumji and another v Putlibai, wife of Nadershaw Bomanji Vakil and others:**

7. **Bai Hirabai v B F Commissariatwalla**

8. **Merwanji Jehangir Vakil v Manaji Cooverji Rajeshirke:**

9. **Jerbai H. Warden and another v Bai Ratanbai J. A. Wadia,**
   Testamentary Suit No. 18 of 1913, 16 Jan. 1914 in Davar, “Judgments (1914).”

**II. Suits relating to Religious Trusts**

**A. Reported:**

1. **Jamshedji Cursetji Tarachand v Soonabai and others:**
   ILR 33 Bom (1909) 122-213.

2. **Sir Dinsha Manekji Petit, Bart and others v Sir Jamsetji Jijibhai, Bart and others:**
   ILR 33 Bom (1909) 509-609.

**B. Unreported:**

1. **Byramji Edulji Soonawalla v Jehangir Edulji Soonawalla and AG of Bombay:**
   Suit No. 158 of 1907, 11 March 1907 in Davar, “Judgments (9 Nov. 1906-29 June 1907).”

2. **The Advocate General of Bombay v Fardoonji A. C. Fardoonji and others:**
III. Personal Injury suits:

A. Reported:

1. Temulji Jamsetji Joshi v The Bombay Electric Supply and Tramways Company Ltd:
   ILR 35 Bom (1911) 478-87.

2. Jehangir Muncherji Lali v The Bombay, Baroda and Central India Railway Company:
   ILR 37 Bom (1913) 575-94.

B. Unreported:

1. Perin Ardeshir Patel v the G. I. P. Railway Co.; and Ardeshir Dhunjibhoy Patel v the G. I. P. Railway Co.:
   Suit No. 426-7 of 1907 in Davar, “Judgments (7 Jan. 1908-7 Dec. 1908).”

III. Other suits involving Parsis or Parsi firms:

A. Reported

1. Wadia Ghandy and Co. v Purshotam Sivji:
   ILR 32 Bom (1908) 1-7;

2. Sir Jehangir Cowasji Jehangir v The Hope Mills, Ltd and others:
   ILR 33 Bom (1909) 216-20;

3. Sorabji Nusserwanji Pochkhanawalla v C. A. Patwardhan, the Chief of Sangli and others:
   ILR 40 Bom (1916) 134-58
   (liquidation of a company).

B. Unreported

1. Pherozshaw Hormusji Cooper v Michael Bocarro:

---

1435 These cases were negligence suits filed against railways.
1. **Suit No. 390 of 1906, 12 Nov. 1906 in Davar**,
   “Judgments (9 Nov. 1906-29 June 1907)” (employment).

2. **Himutlal Maunji v Dinshaji Hirjibhoy Daruwalla**:
   Suit No. 733 of 1906, 22 Dec. 1906 in Davar,
   “Judgments (9 Nov. 1906-29 June 1907)” (debt).

3. **Readymoney and Co v Mansur Khachar**:
   Suit No. 90 of 1906, 2 Feb. 1907 in Davar,
   “Judgments (9 Nov. 1906-29 June 1907)” (banking).

4. **Bai Bachoobai Manekji Gagrat v Jehangir Hormasji**:
   Suit No. 732 of 1906, 9 Feb. 1907 in Davar,
   “Judgments (9 Nov. 1906-29 June 1907)” (forgery of promissory notes).

5. **Sukhdeo das [Maegraj] v Dinshawji Burjorji Wadia**:
   Summary Suit No. 86 of 1907, 9 March 1907 in Davar,
   “Judgments (9 Nov. 1906-29 June 1907)” (hundies).

6. **Amthalal Bhugwandass v Cursetji Dhunjisha and Nusserwanji Nowroji**:
   Suit No. 449 of 1907, 14 March 1907 in Davar,
   “Judgments (9 Nov. 1906-29 June 1907)” (costs).

7. **Shavaksha Ruttonji Bomonji v Hugh Hogarth and Sons, a firm**:
   Suit No. 213 of 1910, 4 Feb. 1911 in Davar,

8. **The Advocate General of Bombay v Fardunji Ardeshir Cursetji Fardunji and others**:
   Suit No. 882 of 1908, 23 March 1911 in Davar,
   “Judgments (19 Jan. 1911-17 July 1911)” (non-Parsi trust).

9. **Ahmedbhoy Habibhoy v Sir Dinsha Maneckji Petit and others**:
   Appeal No. 20 of 1909, 10 April 1911 in Davar,
   “Judgments (19 Jan. 1911-17 July 1911)” (costs).

10. **Payne and Co. v Pirosha Nusserwanji Patell**:
    Suit No. 75 of 1911, 16 June 1911 in Davar, Judgments (19 Jan 1911-17 July 1911) (costs re: Parsi divorce case).
11. **Cooper Madan and Co. v Bejanji Shapurji Madan and others** Suit No. 463 of 1889, 17 Nov. 1911 in Davar, “Judgments (21 July 1911-1 Dec. 1911)” (liquidation of company).


13. **Gulbai, widow and others v Nowroji Cursedji Postwala and another:**

14. **Andrew Jule and Co. v Ardeshir Bomonji Dubash and others:**

15. **The Advocate General of Bombay v Pestonji Cursedji Tarapore:**
APPENDIX B

Translations of
Jewish Conversion and Marriage Certificates
in Ghandy v Wadia (1903)

(1) Translation of B. A. Wadia’s Hebrew conversion certificate made before the London Beth Din (Court of the Chief Rabbi) [from Ghandy v Wadia 5 Bom LR (1903) 658]:

“A certificate to certify that Bomanji Wadia has taken on himself the Jewish faith and he was circumcised for the sake of such conversion in accordance with the Mosaic Law in the presence of three witnesses on Tuesday the second of the month of Ab and on Wednesday the tenth of the same month in the year 5652 underwent the religious immersion in accordance with the law. And his name in Israel was called Reuben the son of Abraham. Our Patriarch. To testify the above I have signed on Monday the 15th of the Month Kislew 663. (signed) Moshe Haim Haimsohn. Doyen of the City of London. Seal of the office of Chief Rabbi.”

(2) Translation of Jewish marriage certificate of B. A. Wadia and Fanny Epstein [from “Minute Book of 1892,” London Beth Din (Court of the Chief Rabbi)]:

“On the 3rd day of the week the 6th day of the month [Thisrey] in the year 5653 AM corresponding to the 27th of September 1892 the holy covenant of marriage was entered into, in London between the Bridegroom Bomanji Ardeshir Wadia and his Bride Fanny Epstein. The said Bridegroom made the following declaration to this Bride. ‘Be thou my wife according to the law of
Moses and of Israel. I faithfully promise that I will be a true husband unto thee. I will honor and cherish thee. I will work for thee; I will protect and support thee, and will provide all that is necessary for thy due sustenance, even as it beseemeth a Jewish husband to do. I also take upon myself all such further obligations for thy maintenance, during thy lifetime, as are prescribed by our religious statute.’ And the said Bride has plighted her troth unto him, in affection and in sincerity, and has thus taken upon herself the fulfilment of all the duties incumbent upon a Jewish wife. This covenant of marriage was duly executed and witnessed this day, according to the usage of Israel.”

---

I am grateful to Orit Bashkin and Guy Geltner for their translation from the Hebrew.
APPENDIX C

Testimony of B. A. Wadia in
Ghandy v Wadia (1903)

[from “Return of Commission to take Evidence in London,” Ghandy v Wadia (OCJ suit no.52 of 1903), 17-20 (BHC).]

Testimony of B. A. Wadia, taken on commission in London; given oath on the Old Testament.

Cross-examined by John Ashton Cross:

Q. Were you brought up as a Parsee?
A. Yes

Q. Are you of Parsee race?
A. Yes originally.

Q. Have you ceased to be of the Parsee religion?
A. Certainly.

Q. When did you cease to be a Parsee?
A. About two months prior to my marriage.

Q. Were you converted to any other faith or religion?
A. I was converted to the Jewish faith.

Q. As we have heard you were circumcised and duly received as you knew?
A. I was circumcised strictly according to the Mosaic law of circumcision.

Q. Were you received into the Jewish faith with the fullest intention of becoming a Jew?
A. Yes certainly.

Q. Where were you domiciled at the time?
A. I came over here. I meant to make this country my home and to be domiciled here.

Q. Did you duly give notice to the District Registrar of the part of London in which you were living of your intended marriage and procure the usual notice for the Ecclesiastical Authorities?
A. Yes.

Q. Have you at any time thrown off the Jewish faith?
A. Never.

Q. Has any one ever suggested a doubt about the validity of your marriage before?
A. They have not.

Q. So far as you know you are the husband of Mrs. Wadia, the lady who is here present?
A. Most undoubtedly.

Q. Are you still domiciled in England?
A. Yes certainly.

Q. You still intend to remain in this country?
A. I have no desire to go back to India and I intend to remain in this country.

Cross-examined by Ellis Jones Griffith.

Q. You have had at different times two religions?
A. Yes—not concurrently.

Q. You were brought up as a Parsee?
A. Yes.

Q. By parentage you are a Parsee?
A. Yes.

Q. When first did you leave Bombay?
A. In 1884.

Q. How old were you then?
A. I must have been about 17 or 18 years only.

Q. You were a strict Parsee then?
A. I do not know that I was then because I had dropped the Sudra.

Q. The fact that you had dropped the Sudra before leaving India was a sign of your not being a strict Parsee?
A. Yes it was.

Q. The fact that a man does wear the Sudra before leaving India was a sign of your not being a strict Parsee?
A. Yes it was.

Q. The fact that a man does wear the Sudra is a sign that he is a Parsee?
A. In ordinary circumstances it would be so.

Q. You returned back to India in 1888?
A. Yes.

Q. You were in India from 1888 til when?
A. I have been so many time backwards and forwards that I cannot give you the dates of all my visits.

Q. Was it in India that you met the lady who subsequently became your wife?
A. Yes.

Q. You knew she belonged to the Jewish faith?
A. Yes.

Q. Were you on friendly terms with the lady when you were in India?
A. I had certainly known her.

Q. Was there any talk of marriage between you and the lady when you were in India?

(John Ashton Cross here objects to this question and continues his objection until end indicated below. Answers to these taken subject to the objection.)

A. No.

Q. When was marriage first mentioned between you?
A. When I came over the England about the end of 1891.

Q. Did you know then that you would not be able to marry this lady unless you adopted the Jewish faith?
A. After having certain conversations with her father who is a very strict Jew I certainly came to that conclusion.

Q. And was it after you had had this information from her father that you began to think about the Jewish faith?
A. Yes certainly.

Q. And had it not been for the lady you would probably not have adopted the Jewish faith to this day?
A. I really do not know what might have been passing in my mind. I might have had a missionary round me and he might have made me a Christian.
Q. Do you treat all religions in the merry spirit you are displaying now?
A. I treat religion in a very broad spirit. I do not believe merely in the ritual bigotry of it.

Q. Is circumcision a ritual?
A. Yes. I may not believe in it but I had to go through with it.

Q. Why did you have to go through with it?
A. Because I was determined to be a Jew.

Q. Why were you willing to go through it?
A. Because I was determined to be a Jew.

Q. Why were you willing to go through it?
A. If by going through it certain difficulties could be overcome I was willing to go through it.

Q. And the motive for your change of religion was your proposed marriage?
A. Certainly in the beginning.

Q. And now?
A. I have become a Jew by conviction now.

Q. When did you become a Jew by conviction?
A. Well—the process is so subtle—I cannot say.

Q. When was the crowning stone put upon the edifice of your conversion?
A. My conversion actually took place on 20 July 1892.

Q. That is you were converted then mentally and spiritually as well as by ritual?
A. Yes.

Q. Who converted you? What teachers?
A. There was the Rev. Mr. Spiers.

Q. How many conversations had you with him before July 1892?
A. About half a dozen.

Q. Anybody else?
A. I saw the Chief Rabbi. I had a very interesting conversation with him.

Q. Which Synagogue do you attend?
A. I do not attend any Synagogue. There are a lot of Jews who do not. I am given to understand that almost 90% of the people who belong to the St. John's Wood Synagogue never go there.

(The said John Ashton Cross here closes his objection.)

Q. Are you a Parsee?
A. I am not—could not possibly be.

Q. When did you cease to be a Parsee?
A. 20th July 1892.

Q. If you ceased to be a Parsee on that date is it true that you wore the Sudra since then?
A. Well—come few years ago I was very ill, so dangerously that it might have terminated fatally. After my recovery my mother wanted me to put this on. I told her it would be simply a farce as I was a Jew and she knew it and for all it signified I might just as well have a piece of twine round my waist. But I did it to please my mother.

Q. Have you described yourself as a Parsee in legal documents since then?
A. No—except by inadvertence.
Q. Do there happen to be three inadvertencies?

A. Which are those?

Q. In the Settlement of 18th July 1907 were you described as a Parsee.

A. I think I am.

Q. In the Appointment of 30th October 1902 were you described as a Parsee?

A. No—there is nothing.

Q. But in the Power of Attorney of same date you are so described?

A. But this Power of Attorney was drafted by Messrs Payne Gilbert Sayani and Moos in India and it was an inadvertence on their part.

Q. You were described as a Parsee in two legal documents subsequent to your conversion?

A. Yes.

Q. I suppose you know about the Parsee religion?

A. I know very little about it.

Q. You wore the Sudra and Headgear just to please your mother.

A. Yes.

Q. The Headgear is worn out of doors?

A. Yes.

Q. Did you wear it out of doors?

A. Sometimes—but I dropped it sometimes. I dropped it immediately [after] my mother died.

Q. When do you suggest that you changed your domicile?

A. Well—practically the time when I got married. I went to India on visits.
Q. You have property there now?
A. I have no property there except in this trust fund and certain commissions.
Q. Referring to your knowledge of Parsee people and of the Parsee religion I suggest that a Parsee does not cease to be a Parsee on changing his religion?
A. It seems to me to be a contradiction in terms. I cannot agree with you. A Parsee on changing his religion ceases to be a Parsee.
Q. Of course you mean a Parsee by race?
A. That is a point which is very ticklish. It is impossible for him to remain a Parsee. I cannot conceive of a Parsee not being a Zoroastrian or a Zoroastrian not being a Parsee.
Q. So the moment a Parsee changes his religion he ceases to be a Parsee altogether. Is that what you suggest?
A. That is what I suggest.

Re-examined by John Ashton Cross
Q. No matter how you have been described in any documents have you ever intended to give up the Jewish faith?
A. Never.
Q. Or to deceive anyone into thinking that you were a Parsee?
A. No—never.
Q. This Appointment of 30th October 1902 was that your own act and deed?
(Witness is handed the document referred to and after perusing same answers)
A. Yes.
Q. Do you desire to act upon it?

A. Yes—most certainly.
APPENDIX D

Witnesses in *Saklat v Bella* (1914-25)

(1) Witnesses for the plaintiffs:

(a) before the Bombay commission in the Court of Small Causes, Bombay:

i. Muncherji Pestanji Khareghat

ii. Jehangir Cursetji Daji

iii. Dinshaw Bomanji Master

iv. Nowroji Jehangir Gamadia

v. Kawasji Edulji Dadachanji

vi. Darab Pesotan Sanjana

vii. Nusserwanji Sorabji Jamsetji

viii. Rustamji Edulji Sanjana

ix. Khadabux Byram Irani

x. Vaman Prangovind Patel

xi. Shavakshaw Burjorji Sakai

xii. Rustamji Bomanji Gandhi

xiii. Shavakshaw P斯顿ji Kuka

xiv. Merwanji Dhunjibhai Sakai

(b) before the Chief Court of Lower Burma, Rangoon:

xv. Dorabji R. Saklat

xvi. Burjorji Panthuky
xvii. Burjorji Unwala
xviii. Dhunjishaw B. Desai
xix. Lt. Col. Berry
xx. V. N. Kemp
xxi. B. K. Ray Chowdhry

(2) Witnesses for the defendant:

(a) before the Bombay commission in the Court of Small Causes, Bombay:
   i. Jamshedji Dadabhoy Nadirshaw
   ii. Kaikhusru Dastur Jamaspji Jamaspasana
   iii. Nanbhoy Nowroji Katrak
   iv. Dastur Kaikobad Aderbad Dastur Naoshirwan
   v. Khodayear Sheriar Irani
   vi. Pestanji Ardeshir Wadia
   vii. Hormusji Jehangir Bhabha

(b) before the Chief Court of Lower Burma, Rangoon:
   viii. Shapurji Cowasji [Captain]
   ix. N. N. Burjorji
   x. Bomanji Cowasji [Captain]
   xi. N. N. Parakh
**GLOSSARY**

*agiary*  
general term for Zoroastrian fire temple, which  
houses a sacred fire

*Ahriman*  
evil spirit associated with darkness and the forces  
of evil in Zoroastrianism; in cosmic struggle against  
Ahura Mazda and the forces of good

*Ahura Mazda*  
“Lord of Wisdom,” the term used for God; associated  
with light and the forces of good in Zoroastrianism;  
in cosmic struggle against Ahriman and the forces  
of evil

*amesha spentas*  
the seven holiest yazatas or divine beings created  
by Ahura Mazda

*Anjuman*  
the Zoroastrian community; body of elders who  
administer affairs on behalf of the Zoroastrian  
community

*apatitha*  
rare and casual form of customary Burmese  
 adoption entailing no right to inherit; lower grade  
than *keittima* adoption

---

1437 Terms included here derive from Persian language forms (Avestan, Pahlavi, Pazand, Dari, and modern Persian), Parsi Gujarati, Hindi (or colonial “Hindustani”), Sanskrit, Burmese, and Arabic, among others. Definitions are drawn from Modi’s *Religious Ceremonies of the Parsis*, Enthoven’s *Tribes and Castes of Bombay*, the 1908 *Imperial Gazetteer of India*, and glossaries provided by Godrej and Punthakey Mistree’s *Zoroastrian Tapestry*, Choksy’s *Purity and Pollution in Zoroastrianism*, and Hinnells’ *Zoroastrian Diaspora*. Spellings vary in the colonial sources, and do not follow current scholarly conventions of transliteration. For linguistically accurate transliterations and etymology, see glossaries in Godrej and Punthakey Mistree, and in Choksy. For a guide to terms of non-European origin used in colonial India generally, see Yule and Burnell’s *Hobson-Jobson: A Glossary of Colloquial Anglo-Indian Words and Phrases.*
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Asha</em></td>
<td>Zoroastrian principle of truth and moral righteousness</td>
</tr>
<tr>
<td><em>Atash Adaran</em></td>
<td>middle category of consecrated fire; temple in which such a fire is housed</td>
</tr>
<tr>
<td><em>Atash Behram</em></td>
<td>highest category of consecrated fire; fire temple in which such a fire is housed</td>
</tr>
<tr>
<td><em>Atash Dadgah</em></td>
<td>lowest category of consecrated fire; temple in which such a fire is housed</td>
</tr>
<tr>
<td><em>athornan</em></td>
<td>a member of the hereditary Zoroastrian priestly class</td>
</tr>
<tr>
<td><em>Avesta</em></td>
<td>body of Zoroastrian holy scriptures</td>
</tr>
<tr>
<td><em>Avestan</em></td>
<td>ancient Persian language</td>
</tr>
<tr>
<td><em>barashnum</em></td>
<td>purification ceremony lasting nine nights (full name: <em>barashnum-i-no-shab</em>); the highest form of purification; ritual quality retained by one who has undergone this ceremony</td>
</tr>
<tr>
<td><em>barashnumwala priest</em></td>
<td>priest capable of performing the most sacred category of Zoroastrian ceremonies, having undergone and retained <em>barashnum</em></td>
</tr>
<tr>
<td><em>behdin</em></td>
<td>member of the Zoroastrian laity; earlier used to refer to Zoroastrians generally</td>
</tr>
<tr>
<td><em>boon (or olad)</em></td>
<td>male “seed” or paternity</td>
</tr>
<tr>
<td><em>Brahmin</em></td>
<td>highest caste in the Hindu social hierarchy;</td>
</tr>
</tbody>
</table>
traditionally assigned to priesthood

*Chinvat Bridge* in Zoroastrian theology, place of final judgment for the soul after leaving the body at dawn of the fourth morning after death

*chotra* unconsecrated stone structures where bodies of Zoroastrians of polluted or dubious status are left for exposure to vultures

*crore* unit denoting one hundred lakhs, or ten million; written 1,00,00,000

*dagli* ceremonial white overcoat for Zoroastrian males that fastens with ties

*dalits* non-caste South Asians known in the colonial period by the pejorative term *untouchables*, and by Gandhi as *harijans* (children of God)

*dare mehr* ritual area of a fire temple where high liturgies are performed

*dastur* Zoroastrian high priest

*Dhammathats* canonical body of Burmese legal texts written between 727 and 1834 AD

*dokhma* “Tower of Silence”; stone consecrated structures where bodies of Zoroastrians are exposed to vultures in traditional death rites

*Dubra (or Dubla)* a lower caste in Gujarat, particularly around Surat;
traditionally working as domestic servants (women) and agrarian labourers (men)

durwan  doorkeeper

Farvardigan  death commemoration ceremonies for the souls of the departed; held during the last ten days of the Zoroastrian calendar; term used by Iranis equivalent to the Parsis’ muktad

Ferdowsi  author of the Persian epic, the Shahnameh (Book of Kings); lived circa 935-1020 AD

fravashi  guardian spirits of the souls of the living and dead

Gaekwars  ruling family of Baroda, a princely state in western India with a Parsi population

Gatha  hymns of the prophet Zarathushtra; part of the Avesta

gomez (or pajow)  unconsecrated bull’s urine; used for cleansing outside of high ceremonial contexts

Hanafi  dominant school of Islamic legal interpretation amongst Sunni Muslim communities in colonial India

Ilm-e Khshnoom (or Khshnoomism)  Zoroastrian mystical or occult movement; began in 1905 with the revelations of Behram Shroff

Irani  Zoroastrian Iranians who migrated to South Asia and joined Parsi communities in the nineteenth and twentieth centuries
| **juddin**   | an ethnic non-Parsi or “alien” |
| **keittima** | standard form of adoption in Burmese customary practice entailing full rights of inheritance; indicated by familial conduct (e.g. eating together in public), and by public acts of recognition (e.g. Burmese ear-boring ceremony) |
| **khandia**  | Zoroastrian hereditary corpse bearer who assists *nassasalars* by lifting the funerary bier |
| **kore**     | border of a sari |
| **kusti**    | sacred thread or wool cord worn around the waist with which a Zoroastrian is invested at the time of initiation; generally worn with the *sudra* |
| **lakh**     | unit denoting one hundred thousand; written 1,00,000 |
| **madressa** | in the Zoroastrian context, priestly training school for *athornans* |
| **mathabana**| white scarf worn around the head by Parsi women; traditionally tucked behind the ears and tied at the nape of the neck; worn especially when praying and visiting the fire temple |
| **Mithra**   | lord of contract; one of three *yazatas* that carries out the final judgment of a soul on Chinvat Bridge |
| **mobed**    | Zoroastrian priest |
**mofussil**

countryside; in the context of colonial Bombay, territory within Bombay Presidency that was outside of the city of Bombay, including areas of Gujarat with sizeable Parsi populations like Surat

**mojri**

slipper-like shoes with pointed toes traditionally worn by Zoroastrians

**muktad**

death commemoration ceremonies for the souls of the departed; held during the last ten days of the Zoroastrian calendar; see also *Farvardigan*

**nassasalar**

Zoroastrian hereditary corpse bearer who prepares bodies for exposure to vultures in Towers of Silence

**navjote**

initiation ceremony into Zoroastrianism in which initiate is invested with the sacred shirt and cord

**Navroze (or Jamshedji Navroze)**

Zoroastrian New Year, falling typically around March 21; due to debate over the calculation of the Zoroastrian calendar, one of two dates for the start of the year; see *Pateti*

**nirang**

consecrated urine of a white bull; used as an agent of ritual purification in high ceremonial contexts

**padan**

white cloth draped over the nose and mouth of priests to prevent pollution of fire by their breath during Zoroastrian rituals

**Pahlavi**

middle Persian language in use from the third to
palak: ceremonial “son” adopted by a Zoroastrian man without male issue to carry out rituals for the benefit of the man’s soul after death; customary form of informal adoption conferring no rights of inheritance.

panchayat: council of elders of a caste or community; Bombay Parsi Panchayat est. 1787.

panthaks: the five Zoroastrian dioceses of Gujarat established around 1290.

Parsi (or Parsee): community of Zoroastrians that migrated to South Asia after the seventh-century conquest of Persia by Arab Muslims.

Pateti: Parsi Zoroastrian New Year, falling generally in September; following a debate over the calculation of the Zoroastrian calendar, the more major of the two dates taken to indicate the start of the new year; see Navroze.

pheta: traditional red or black felt hat worn by Parsi men.

purdah: traditional practice of living in seclusion by elite Muslim and Hindu women.

Qajar: early modern dynasty that ruled Persia from 1796 until the rise to power of the Pahlavi dynasty in 1925.
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rashn</td>
<td>lord of justice; one of three yazatas that carries out the final judgment of a soul on Chinvat Bridge</td>
</tr>
<tr>
<td>rivayats</td>
<td>body of texts documenting correspondence and meetings between Zoroastrians of Persia and India to discuss doctrinal questions between the fifteenth and eighteenth centuries</td>
</tr>
<tr>
<td>sagdid</td>
<td>purificatory ceremony in which a Zoroastrian is looked at by the sacred “four-eyed” dog (a dog with special markings above its eyes)</td>
</tr>
<tr>
<td>shethiya</td>
<td>affluent individuals, merchant “princes”</td>
</tr>
<tr>
<td>Sraosh</td>
<td>lord of prayer; one of three yazatas that carries out the final judgment of a soul on Chinvat Bridge</td>
</tr>
<tr>
<td>sudra</td>
<td>sacred white shirt with which a Zoroastrian is invested at the time of initiation; generally worn with the kusti</td>
</tr>
<tr>
<td>vakil</td>
<td>under Mughal rule, lawyer; in Bombay during the colonial period, the lowest rank of legal counsel, having lower income and status than barristers, advocates or solicitors; and exercising fewer rights of audience than barristers or advocates</td>
</tr>
<tr>
<td>Vendidad</td>
<td>text in the Avesta on the Zoroastrian laws of purity and pollution</td>
</tr>
<tr>
<td>wakf</td>
<td>Islamic legal device allowing property to be</td>
</tr>
</tbody>
</table>
“stopped” or held outside of the normal market for religious, charitable or familial benefit

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>yazata</td>
<td>heavenly spirits deemed worthy of worship by Zoroastrians</td>
</tr>
<tr>
<td>Yojdathregar priest</td>
<td>priest capable of performing the most sacred category of Zoroastrian ceremonies, having undergone and retained barashnum</td>
</tr>
<tr>
<td>Zarathustra (or Zoroaster)</td>
<td>Spitaman Zarathushtra, prophet living in Persia circa 1200 BC; founder of the Zoroastrian religion; Zarathustra derives from Persian, Zoroaster from Greek</td>
</tr>
<tr>
<td>Zoroastrian (or Zarhosti)</td>
<td>followers of the religion based upon the teachings of the prophet Zarathustra; Zoroastrian derives from Greek, Zarhosti from Persian</td>
</tr>
</tbody>
</table>
BIBLIOGRAPHY

I. Primary Sources

a. Archival Legal Records

(1) Privy Council Office Records (PCOR), London:

i. Case papers of JCPC Appeals: 1438
   *In the matter of Bomanjee Cowasjee (Lower Burma)* (1906),
   *Besant v Narayaniyah* (1914),
   *H. F. Petit v Secretary of State for India in Council* (1914),
   *M. M. Cama and H. M. Cama v Government of Bombay* (1915),
   *Saklat v Bella* (1925) and others

ii. Minutes of the Judicial Committee:
   vol. 27 (15 July 1924 to 30 April 1926)

(2) India Office Records (IOR), Oriental and India Office Collections (OIOC),
British Library, London:

i. Bombay Judicial Proceedings
ii. Reports on Indian Newspapers published in Bombay Presidency

(3) Beth Din (Court of the Chief Rabbi), London:

i. Chief Rabbi’s authorization and minute book entry for marriage of Bomanji Ardeshir Wadia of Bombay and Fanny Epstein of Warsaw, at St. John’s Wood Synagogue, London (18 September 1892)

(4) Bombay High Court (BHC), Mumbai:

i. Case papers (Original Side): 1439
   *Banaji v Limbuwalla* (1887)
   *Ghandy v Wadia* (1903)
   *Petit v Jijibhai* (1906)
   *Tarachand v Soonabai* (1907)
   *Wadia v Wadia* (1912) and others

ii. Judges’ notebooks:
   - F. C. O. Beaman
   - D. D. Davar
   - N. C. Macleod
   - A. B. Marten

---

1438 Years indicate the year of volume in which the case papers appear.
1439 Years indicate year in which suit was filed.
the Parsi Chief Matrimonial Court and others

(5) Maharashtra State Archives (MSA), Mumbai:
   i. Legal Department Records (suits):
      * Cama v Secretary of State for India in Council (1910)
      * Secretary of State for India in Council v Petit (1910)
      and others

(6) Bombay Parsi Panchayat, Mumbai:

(7) N. M. Wadia Charities, Mumbai:
   i. Plaintiffs’ case papers (including maps) in the suit of *N. M. Wadia v Dastur Kharsheedji Mancherji* (1900)

b. Private Papers

(1) Oriental and India Office Collections (OIOC), British Library, London:
   i. MSS Eur D839: Maurice Henry Weston Hayward Papers
   ii. MSS Eur F165: Cornelia Sorabji Papers
   iii. MSS Eur F216: Sir George Birdwood Papers
   iv. MSS Eur G135: S. G. Haji, “Genealogical Tree” (29 August 1905)

(2) Manuscripts and University Archives, Cambridge University Library, Cambridge:
   i. Hardinge Papers

(3) National Library of Wales, Aberystwyth:
   i. Sir Lawrence Jenkins Papers

(4) Highland Council Archives (HCA), Inverness:
   i. Macleod of Cadboll Papers

(5) Trinity College Dublin Manuscripts Department, Dublin:
i. MSS 5875: Private memorandum on an interview with W. B. Yeats and A. C. Bose of the University of Bombay (1937)

(6) Musée Guimet (MG), Paris:
   i. Delphine Ménant Papers

(7) Nehru Memorial Museum and Library (NMML), Delhi:
   i. B. G. Kher Papers
   ii. R. P. Masani Papers
       and others

(8) Tata Central Archives (TCA), Pune:
   i. J. R. D. Tata Papers

**c. Law Reports**

*All India Reporter Allahabad Series (AIR All)*
*All India Reporter Bombay Series (AIR Bom)*
*All India Reporter Lower Burma Series (AIR Lower Burma)*
*All India Reporter Madras Series (AIR Mad)*
*All India Reporter Privy Council Series (AIR PC)*
*Balasingham’s Reports*
*Bombay High Court Reports (Bom HCR)*
*Bombay Law Journal (Bom LJ)*
*Bombay Law Reporter (Bom LR)*
*Burma Law Journal (Burma LJ)*
*Burma Law Reports (Burma LR)*
*Indian Law Reports Allahabad Series (ILR All)*
*Indian Law Reports Bombay Series (ILR Bom)*
*Indian Law Reports Calcutta Series (ILR Cal)*
*Indian Law Reports Madras Series (ILR Mad)*
*Indian Law Reports Rangoon Series (ILR Rang)*
*Lower Burma Rulings (LBR)*
*Law Reports Appeal Cases (LR AC)*
*Law Reports Equity Division (LR Eq)*
*Law Reports Indian Appeals (IA)*
*Law Reports King’s Bench Division (LR KB)*
*Law Reports Privy Council Appeals (LR PC)*
*Law Reports Queen’s Bench Division (LR QB)*
*Law Reports Probate Division (LR Probate)*
*Lower Burma Reports (LB Rep)*
*Madras High Court Reports (Mad HCR)*
Maharashtra Law Journal (Mah LJ)
Moore’s Indian Appeals (MIA)
New Law Reports (NLR)
Scots Law Times (Scots LT)
Sessions Cases (Sess C)
Sutherland’s Weekly Reports (SWR)
United States Supreme Court Reports (US SC)
Upper Burma Reports (UB Rep)

d. Newspapers, Magazines and Journals

Advocate of India (Bombay)
The Asian Age (Delhi)
Bombay Chronicle (Bombay)
Bombay Law Journal (Bombay)
Burma Law Journal (Rangoon)
Burma Law Times (BLT) (Rangoon)
Deccan Herald and Daily Telegraph (Poona)
Cambridge Law Journal (Cambridge)
Hindi Punch (Bombay)
The Islamic Review (Woking)
The Indian Social Reformer (Bombay)
Journal of the Anthropological Society of Bombay (JASB) (Bombay)
Journal of the Bombay Branch of the Royal Asiatic Society (JBBRAS) (Bombay)
Journal of the Iranian Association (JIA) (Bombay)
Oriental Christian Spectator (OCS) (Madras)
The Mahratta (Poona)
Marriage Hygiene (Bombay)
The New York Times (New York)
The Parsi (Bombay)
Parsiana (Mumbai)
Parsi Pukar (Mumbai)
Poona Observer and Civil and Military Journal (Poona)
Rangoon Gazette Weekly Budget (Rangoon)
Rangoon Times (Rangoon)
Times of India (Bombay)
Times of London (London)
Weekly Rangoon Times and Overland Summary (WRTOS) (Rangoon)

e. Other Published Primary Sources


Bentwich, Norman. *The Practice of the Privy Council in Judicial Matters in appeals from Courts of Civil, Criminal and Admiralty Jurisdiction and in*
Appeals from Ecclesiastical and Prize Courts with the Statutes, Rules and Forms of Procedure. London: Sweet and Maxwell, 1912.


*J. J. Vimadalal Memorial Volume*. Bombay: Jashan Committee of Bombay, 1937.


*Mama, Nanabhow F. A. *Mazdaznan Mystic. Life-Sketch of the Late Behramshah Navroji Shroff, the 20th Century Exponent of Zarthoshti Elm-e-Khshnoom (i.e. Esotericism of Zoroastrianism)*. Bombay: Zarthushti Din Sahitya Mandal, 2001, reprinting of 1944 edition.*

Manual of Civil Circulars Issued by H. M. High Court of Judicature, Bombay, Appellate Side, for the Guidance of the Civil Courts and Officers Subordinate to it. Published under the authority of the Chief Justice and Judges. Bombay: Government Central Press, 1912.

Manual of Circulars Issued by H. M. High Court of Judicature, Bombay, Appellate Side, for the Guidance of the Civil Courts and Officers Subordinate to it. Published under the authority of the Honourable the Chief Justice and Judges. Bombay: Government Central Press, 1925.


--- “Social Evolution of the Parsis. Translated from the French of Delphine Ménant.” *Journal of the Iranian Association* IX: 10 (January 1921) 268-9; IX: 12 (March 1921) 331-8; X: 4 (July 1921) 107-14; X: 5 (August 1921) 148-58; X: 6 (September 1921) 184-91; X: 7 (October 1921) 211-20; X: 9 (December 1921) 283-91; X: 11 (February 1922) 350-5; X: 12 (March 1922) 385-9; and XI: 1 (April 1922) 1-7.


---“King Solomon’s Temple and the Ancient Persians.” Bombay: Fort Printing Press, 1908.


The *Parsi Panchayat Case in the High Court of Judicature at Bombay* (Suit No. 689 of 1906). *Sir Dinsha Manockji Petit and others, plaintiffs v Sir Jamsetje Jeejeebhoy and others, defendants*. Judgment of the Honourable Mr. Justice Davar delivered Friday, 27th November 1908; and Judgment of the Honourable Mr. Justice Beaman delivered Friday, 27th November 1908. Bombay: n.p., n.d.

Patel, Bahman Behram and Rustom Barjor Paymaster. *Parsi Prakash: Being a Record of Important Events in the Growth of the Parsi Community in Western India, Chronologically Arranged*. Bombay: Bombay Parsi Panchayat, 1878-1942. (Gujarati)


Strange, Thomas. *Hindu Law; principally with reference to such portions of it as concern the Administration of Justice in the King’s Courts in India*. Madras: Higginbotham, 1864.


*Tawarikhe-Dastoor Jamasp Ashana (History of the Jamasp Ashana Family)*. Bombay: Mumbai Vertman Press, 1912. (Gujarati)


*Udwada Iranshah Aatash Behram Case No Chukado (Judgment of the Case of Udwada Iranshah Aatash Behram. Includes a brief narration of its origins, judgments of the courts at Pardi and of the Honourable High Court at Bombay. Compromise at the Privy Council also included)*. Rangoon: Bombay Burma Press, 1933. (Gujarati)


455

Wilhelm, Eugene. *On the Use of Beef’s Urine according to the Precepts of the Avesta and on Similar Customs with Other nations*. Bombay: Maneckji Barjorji Minocherhomji at the Bombay Samachar Press, 1889.


**II. Secondary Sources**


Bhabha, Homi K. *The Location of Culture.* London and New York: Routledge, 1994.


Downs, Frederick S. “Christian Conversion Movements in North East India,” 381-400. In Robinson and Clarke, eds. *Religious Conversion in India*.

Dube, Saurabh and Ishita Banerjee Dube. “Spectres of Conversion: Transformations of Caste and Sect in India,” 222-54. In Robinson and Clarke, eds., *Religions Conversion in India*.


Godrej, Pheroza J. “Faces from the Mists of time: Parsi Portraits of Western India (1750-1900),” 620-59. In Godrej and Punthakey Mistree, eds. *A Zoroastrian Tapestry*.


---“The Ideas of the Hindu Race in the Writings of Hindu Nationalist Ideologues in the 1920s and 1930s: A concept between two cultures,” 327-54. In Robb, ed. The Concept of Race in South Asia.


Lal, Brij V. *Crossing the Kala Pani: a documentary history of Indian indenture in Fiji.* Canberra: Division of Pacific and Asian History, Research School of Pacific and Asian Studies, 1998.


--- “Introduction: South Asia and the Concept of Race” in Robb, ed., *The Concept of Race in South Asia*.


