Law and Identity in Colonial South Asia

Parsi Legal Culture, 1772–1947

This book explores the legal culture of the Parsis, or Zoroastrians, an ethnoreligious community unusually invested in the colonial legal system of British India and Burma. Rather than trying to maintain collective autonomy and integrity by avoiding interaction with the state, the Parsis sank deep into the colonial legal system itself. From the late eighteenth century until India’s independence in 1947, they became heavy users of colonial law, acting as lawyers, judges, litigants, lobbyists, and legislators. They de-Anglicized the law that governed them and enshrined in law their own distinctive models of the family and community by two routes: frequent intragroup litigation often managed by Parsi legal professionals in the areas of marriage, inheritance, religious trusts, and libel, and the creation of legislation that would become Parsi personal law. Other South Asian communities also turned to law, but none seems to have done so earlier or in more pronounced ways than the Parsis.

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Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947*
In memory of Douglas W. Buchanan (1951–2007)
Law and Identity in Colonial South Asia

Parsi Legal Culture, 1772–1947

MITRA SHARAFI
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Table of Cases

This list covers prominent reported suits between Parsis during the colonial period. It is selective. Cases are listed in order of the first plaintiff’s family name. Where the first plaintiff had a Parsi name predating the nineteenth-century adoption of European-style surnames, the case is listed under the first plaintiff’s patronymic (i.e., father’s first name), which followed the plaintiff’s first name. Where the first plaintiff was a Parsi woman, the case appears under her first name if no other name was provided.

Bánáji, Limji Nowroji v. Bápuji Ruttonji Limbuwállá and others ILR 11 Bom 441 (1887) page 58, 62, 258, 264–70
Capadia, Kaikushru Bezonji Nanabbboy v. Shirinbai Bezonji Capadia and others ILR 43 Bom 88 (1919) 58, 105, 144, 170
Cursetjee, Ardaseer v. Perozeboye 6 MIA 348 (1854–7) 172–3
Darukhanawala, Mancherji Hormusji v. Motibai, wife of Mancherji Hormusji Darukhanawala BHC PJ 1894 109 210, 229
Dustoor, Pesbotam Hormasji v. Meherba’i ILR 13 Bom 302 (1889) 139, 180, 183–4
Ghandy, Jiwaji Dinshaw and others v. Bomanji Ardesbir Wadia and others 5 Bom LR 655 (1903) 83, 269
Kaikhasru, Era’sha’ alias Kharsedji, Minor, by the Guardian Kaikha’sru alias Kha’ersedji Dosa’bhai v. Jerba’i, wife of Ratanji Rastomji ILR 4 Bom 537 (1880) 38, 219
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Manekbai, formerly wife of Nadirshaw Jamshedji Vachha and at present wife of Rustomji M. Kapadia v. Nadirshaw Jamshedji Vachha ILR 60 Bom 868 (1936) 211, 229


Mistry, Hirabai Jehangir v. Dinshaw Edulji Karkaria ILR 51 Bom 167 (1927) 280

MITIBI’I V. Limji Nouroji Bana’ji and others; Harriwullubda’s Callia’nda’s v. Ardasar Fra’miji Moos ILR 5 Bom 506 (1881) 136, 146, 157

Motiwalla, Shapurji Bezonjee v. DossaBhoy Bezonjee Motiwalla ILR 30 Bom 359 (1906) 156–7, 242


Ruttunjee, Mihirwanjee v. his brothers Poonjee Bhaee and Dada Bhaee, sons of Ruttunjee Manukjee Paruk 1 Borradaile’s Reports 141 (1800–20) 144–5

S. (the wife) v. B. (the husband) ILR 16 Bom 639 (1892) 226

Saklat, D. R., A. B. Mehta and others v. J. Hormasjee ILR 7 Rang 561 (1929) 23, 289


Saklat, D. R. and others v. Bella and one ILR 2 Rang 91 (1924) or 3 Burma LJ 30 (1924) 22–3, 285–9

Saklat and others v. Bella ILR 53 IA 42 (1925–6) or 28 Bom LR 161 (1926) 22–3, 285–9

Shirinbai, Bai v. Kharshedji Nasarvanji Masalavala ILR 22 Bom 430 (1898) 139, 184, 209

Tarachand, Jamshedji Cursetjee v. Soonabai and others ILR 33 Bom 122 (1909) 58, 62, 170, 250, 260, 264, 266–8, 270

Toddiwala, Erachshaw Dosabhai v. Dinbai, wife of Erachshaw Dosabhadi Toddiwala ILR 45 Bom 318 (1921) 43, 227–32

Wadia, Navroji Manekji and others v. Dastur Kharsedji Mancherji and others ILR 28 Bom 20 (1904) 57, 245–6
A Note on Transliteration, Citation, and Abbreviation

In deciding how to spell Parsi words in English, I have felt torn between a duty of fidelity to the Gujarati, on the one hand, and to the Anglicized usage of the colonial period, on the other. Colonial Parsi elites lived in a bilingual world that cycled constantly between English and Gujarati. Accordingly, I include the proper transliteration of Parsi Gujarati terms the first time they appear, but subsequently use the colonial Anglicized spelling. Where multiple spellings of the same name existed in English (in Roman script), I use the version that most closely reflected the Gujarati (for example, Dinshah rather than Dinsha or Dinshaw). I have adapted a version of the Modern Standard Gujarati transliteration system for Gujarati, representing an anusvar over a nonterminal vowel not as a tilde over the transliterated vowel (e.g., bãdobast), but as ň or ñ after the vowel (e.g., bañdobast). For Persian, I have used the International Journal of Middle East Studies transliteration system. Although there is no capitalization in the Indo-Iranian languages transliterated here, I have capitalized transliterated terms to parallel the English. I have relied on the work of other scholars for transliteration of languages I do not read. Translations are my own (Patel and Paymaster included), except where otherwise indicated.

The date following case citation information is the date of the law report volume, not of the filing of the case (reflected in the case number) or of judgment. However, a date preceding citation information reflects the date of judgment. On citation conventions for case law, see my online “Research Guide to Case Law” (accessed on 17 February 2013): http://hosted.law.wisc.edu/wordpress/sharafi/research-guide-to-colonial-south-asian-case-law/

Records from the Bombay High Court (BHC) pertain to Original Side suits, except for Parsi Chief Matrimonial Court (PCMC) suits and where otherwise indicated. Suits fell under the court’s Original Civil Jurisdiction (OCJ) when they originated in the city of Bombay, rather than in the mofussil. I refer to PCMC suits by giving suit number and year, notebook title, and page reference. Roman numeral references to PCMC notebooks describe separately paginated (or
unpaginated) sections within each volume. I have not given the names of the parties to PCMC suits (many held in camera) because of my terms of access to these records. Where a PCMC case was reported in the press, however, I have referred to the parties by name. India Office Records, which are held at the British Library, are identifiable by shelfmarks beginning with “IOR/.” At the time this research was done, the case records of the Judicial Committee of the Privy Council (JCPC) were housed at the Privy Council Office in London.

In general, I have used colonial spellings of place names in India (e.g., Naosari rather than Navsari). When speaking of postcolonial Bombay, I use the name “Mumbai” in references to the city after its official 1995 name change.

Abbreviations for law reports, journals, legislation, courts, and archives are as follows:

[AHR – American Historical Review]
[AI – Advocate of India]
[AIR Lower Burma – All India Reports Lower Burma]
[AIR Oudh – All India Reports Oudh]
[AIR PC – All India Reports Privy Council]
[AIR Rang – All India Reports Rangoon]
[All LJ – Allahabad Law Journal]
[Am. J. Comp. L. – American Journal of Comparative Law]
[Am. J. Leg. Hist. – American Journal of Legal History]
[Am. Jurist Law Mag. – American Jurist and Law Magazine]
[APAC – Asia, Pacific, and Africa Collections [formerly Oriental and India Office Collections (OIOC)], British Library]
[Beng. LR – Bengal Law Reports]
[BHC – Bombay High Court (Original Side), Mumbai]
[BHC PJ – Bombay High Court Printed Judgments]
[Bom. HCt Rep. – Bombay High Court Reports]
[Bom LJ – Bombay Law Journal]
[Bom LR – Bombay Law Reporter]
[BL – British Library]
[BTJC – Bombay Times and Journal of Commerce]
[Burma LJ – Burma Law Journal]
[Cal LJ – Calcutta Law Journal]
[Cam LJ – Cambridge Law Journal]
[Colum. JL & Soc. Pros. – Columbia Journal of Law and Social Problems]
[Crim. LJ of India – Criminal Law Journal of India]
[CSSH – Comparative Studies in Society and History]
[Eng. Rep. – English Reports (England)]
[EPW – Economic and Political Weekly (India)]
A Note on Transliteration, Citation, and Abbreviation

HCA – Highland Council Archives (Inverness, Scotland)
Hist. J. – The Historical Journal
HP – Hindi Punch (India)
IAQROCR – Imperial and Asiatic Quarterly Review & Oriental and Colonial Record, new series
IC – Indian Cases
ICLQ – International and Comparative Law Quarterly
IESHR – Indian Economic and Social History Review
ILR All – Indian Law Reports Allahabad series
ILR Bom – Indian Law Reports Bombay series
ILR Cal – Indian Law Reports Calcutta series
ILR Mad – Indian Law Reports Madras series
ILR Rang – Indian Law Reports Rangoon series
Ind. Med. Gaz. – Indian Medical Gazette
Indlaw Mum – Indlaw Mumbai
Int. J. Jaina Studies – International Journal of Jaina Studies
IOR – India Office Records (British Library)
IPC – Indian Penal Code
IR – Irish Reports
IS(A)A – Intestate Succession (Amendment) Act of 1939
JAAS – Journal of Asian and African Studies
JAOS – Journal of the American Oriental Society
JAS – Journal of Asian Studies
JBBRAS – Journal of the Bombay Branch of the Royal Asiatic Society
J. Burma Stud. – Journal of Burna Studies
JCLIL – Journal of Comparative Legislation and International Law
J. Conflict Res. – Journal of Conflict Research
JCPC – Judicial Committee of the Privy Council
JIA – Journal of the Iranian Association
J. Imperial Commonwealth Hist. – Journal of Imperial and Commonwealth History
JKRCOI – Journal of the K. R. Cama Oriental Institute
J. Legal Stud. – Journal of Legal Studies
JLH – Journal of Legal History
J. Mod. Hist. – Journal of Modern History
A Note on Transliteration, Citation, and Abbreviation

J. Royal Asiatic Soc. – Journal of the Royal Asiatic Society
JSCL – Journal of the Society of Comparative Legislation
J. South Asian Stud. – Journal of South Asian Studies
J. World Hist. – Journal of World History
JAH – Journal of Asian History
KH – Kaiser-i-Hind (Bombay)
Law Cont. Prob. – Law and Contemporary Problems
LQR – Law Quarterly Review (England)
LHR – Law and History Review
LR – The Law Reports (England)
LR IA – Law Reports Indian Appeals
LR PC – Law Reports Privy Council
LSI – Law and Social Inquiry
LSR – Law and Society Review
Mad LJ – Madras Law Journal
Mad. Rev. – The Madras Review
Mah LJ – Maharashtra Law Journal
MAS – Modern Asian Studies
MG – Musée Guimet (Paris)
MIA – Moore’s Indian Appeals
MLR – Modern Law Review (England)
MSA – Maharashtra State Archives (Mumbai)
NYT – New York Times
PCMC – Parsi Chief Matrimonial Court of Bombay
PCO – Privy Council Office (London)
PMD(A)A – Parsi Marriage and Divorce (Amendment) Act of 1940
PMDA – Parsi Marriage and Divorce Act of 1865 or 1936
PISA – Parsi Intestate Succession Act of 1865
SAR – South Asia Research
S. Cal. Rev. L. Women’s Stud. – Southern California Review of Law and Women’s Studies
SDA – Sudder Dewanny Adawlut
South Asia: J. South Asian Stud. – South Asia: Journal of South Asian Studies
Suth. WR – Sutherland’s Weekly Reporter
TI – Times of India (Bombay)
TL – Times of London
A Note on Transliteration, Citation, and Abbreviation

Trav. LJ – Travancore Law Journal
U. Toronto LJ – University of Toronto Law Journal
Vict. U. Wellington LR – Victoria University Wellington Law Review
Virg. LR – Virginia Law Review
Wisc. LR – Wisconsin Law Review
WRTOS – Weekly Rangoon Times and Overland Summary
Yale J.L. & Feminism – Yale Journal of Law and Feminism
Yale LJ – Yale Law Journal
South Asia and the Indian Ocean littoral in the early twentieth century, with enlargement of western India.