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978-1-107-04797-6 - Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947

Mitra Sharafi

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## 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.

Mitra Sharafi is an assistant professor of Law and Legal Studies at the University of Wisconsin – Madison, with an affiliation appointment in History. Her work has appeared in a variety of scholarly journals and has been recognized by the Andrew W. Mellon Foundation, the National Science Foundation, and the Social Science Research Council.

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MITRA SHARAFI

*University of Wisconsin – Madison*



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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.

<i>Bánáji, Limji Nowroji v. Bápuji Ruttonji Limbuwállá and others</i>	ILR 11 Bom 441 (1887)	page 58, 62, 258, 264–70
<i>Capadia, Kaikushru Bezonji Nanabhoy v. Shirinbai Bezonji Capadia and others</i>	ILR 43 Bom 88 (1919)	58, 105, 144, 170
<i>Cowasji, M. and others v. Bella and another</i>	AIR 1919 Lower Burma 56	22–3, 285–9
<i>Cursetjee, Ardaseer v. Perozeboye</i>	6 MIA 348 (1854–7)	172–3
<i>Darukhanawala, Mancherji Hormusji v. Motibai, wife of Mancherji Hormusji Darukhanawala</i>	BHC PJ 1894 109	210, 229
<i>Dustoor, Peshotam Hormasji v. Meherba'i</i>	ILR 13 Bom 302 (1889)	139, 180, 183–4
<i>Ghandy, Jiwaji Dinshaw and others v. Bomanji Ardeshir Wadia and others</i>	5 Bom LR 655 (1903)	83, 269
<i>Hormusjee, Modee Kaikhooscrow v. Cooverbhaee and others</i>	19 Eng. Rep. 168 (1809–65), reproducing 6 MIA 448 (1854–7)	56, 79, 142–4, 146
<i>Kaikhasru, Era'sha' alias Kharsedji, Minor, by the Guardian Kaikha'sru alias Kha'rsedji Dosa'bhai v. Jerba'i, wife of Ratanji Rastomji</i>	ILR 4 Bom 537 (1880)	38, 219
<i>Karkaria, Dinshaw Edalji v. Jehangir Cowasji Mistri</i>	ILR 47 Bom 15 (1923)	279–80

- 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
- Manik-jee, Khoorshed-jee v. Mehrwan-jee Khoorshed-jee and Dada-bhaee Khoorshed-jee* 18 Eng. Rep. 173 (1809–1865), reproducing 1 MIA 431 (1836–7) 143–4
- Mistry, Hirabai Jehangir v. Dinshaw Edulji Karkaria* ILR 51 Bom 167 (1927) 280
- Mithiba'i v. Limji Nowroji Bana'ji and others; Harrivullbhadra's Callia'nda's v. Ardasar Fra'mji Moos* ILR 5 Bom 506 (1881) 136, 146, 157
- Motiwalla, Shapurji Bezonjee v. Dossabhoy Bezonjee* Motiwalla ILR 30 Bom 359 (1906) 156–7, 242
- Petit, Sir Dinsha Manekji, Bart. and others v. Sir Jamsetji Jijibhai, Bart., and others* ILR 33 Bom. 509 (1909) 22–3, 31, 33–4, 83, 99, 183, 218, 241–2, 245, 247, 254, 260, 263–4, 268–71, 276, 288–9, 304, 314–15
- Ruttunjee, Mihirwanjee v. his brothers Poonjeea 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 another* AIR 1920 Lower Burma 151 22–3, 285–9
- 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* LR 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 Dosabhai 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., *bādobast*), but as *ñ* or *ṁ* 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

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*A Note on Transliteration, Citation, and Abbreviation*

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

Austral. J. Asian L. – *Australian Journal of Asian Law*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*Bull. Sch. Orient. Afr. Stud. – *Bulletin of the School of Oriental and African Studies*Burma LJ – *Burma Law Journal*Cal LJ – *Calcutta Law Journal*Cam LJ – *Cambridge Law Journal*Colum. JL & Soc. Probs. – *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)

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Getty Res. J. – *Getty Research Journal* (US)

HCA – Highland Council Archives (Inverness, Scotland)

Hist. J. – *The Historical Journal*Hist. Worksh. J – *History Workshop 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*J. Afr. L. – *Journal of African Law*J. Anthropol. Soc. Bombay – *Journal of the Anthropological Society of Bombay*JAOS – *Journal of the American Oriental Society*JAS – *Journal of Asian Studies*JBBRAS – *Journal of the Bombay Branch of the Royal Asiatic Society*J. Brit. Stud. – *Journal of British Studies*J. Burma Stud. – *Journal of Burma 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*J. Internat. Assoc. Buddhist Stud. – *Journal of the International Association of Buddhist Studies*JKRCOI – *Journal of the K. R. Cama Oriental Institute*J. Law Religion – *Journal of Law and Religion*J. Legal Stud. – *Journal of Legal Studies*JLH – *Journal of Legal History*J. Mod. Hist. – *Journal of Modern History*

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*A Note on Transliteration, Citation, and Abbreviation*J. R. Asiatic Soc. GB Ireland – *Journal of the Royal Asiatic Society of Great Britain and Ireland*JRAI GB Ireland – *Journal of the Royal Anthropological Society of Great Britain and Ireland*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*Jura Gentium: J. Philos. Internat. L. Glob. Pol. – *Jura Gentium: Journal of Philosophy of International Law and Global Politics*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)

N.Y.U. J. Int'l L. & Pol. – *New York University Journal of International Law and Politics*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*

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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*

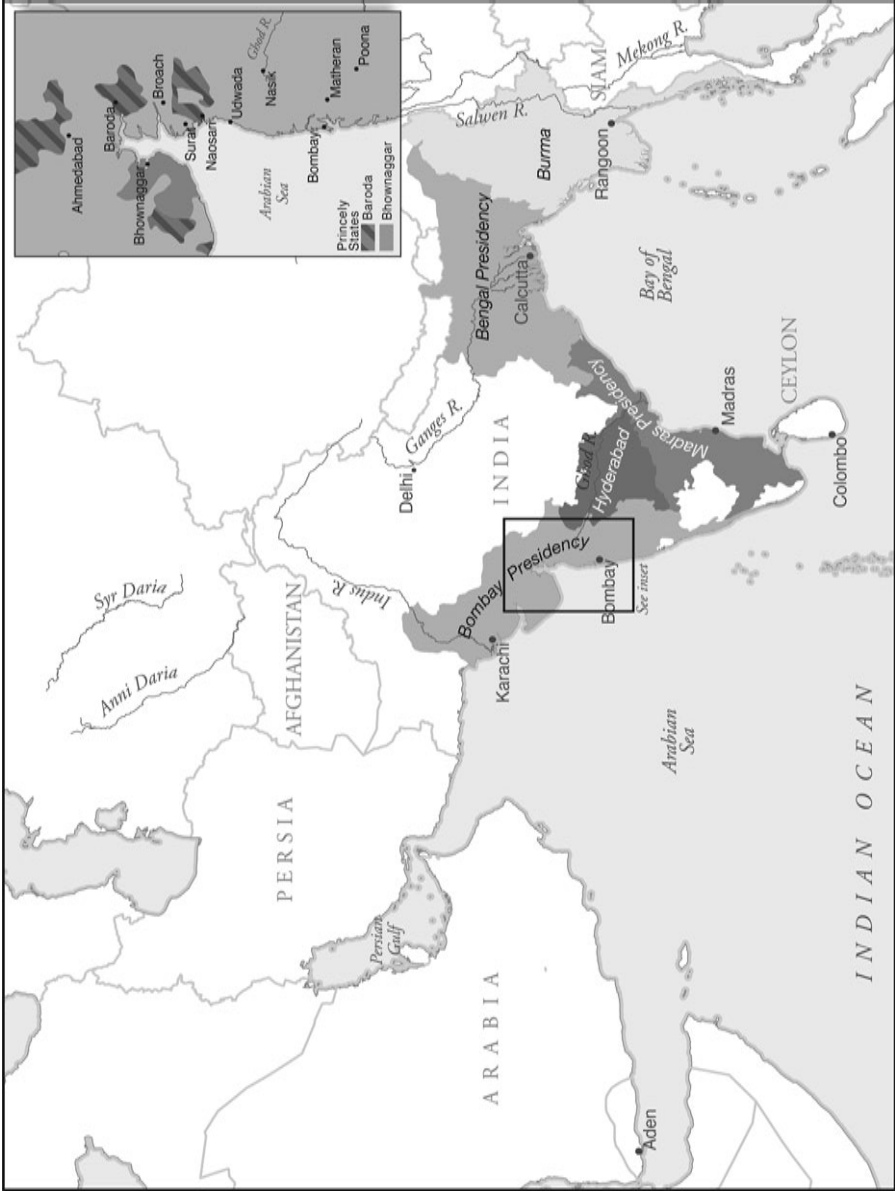
Wisc. LR – *Wisconsin Law Review*

Wisc. Women's LJ – *Wisconsin Women's Law Journal*

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.