

Mitra Sharafi. *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947*. Studies in Legal History Series. Cambridge: Cambridge University Press, 2014. Illustrations. 368 pp. \$99.00 (cloth), ISBN 978-1-107-04797-6.

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## Parsi Legal Culture: A Detailed Ethnography of a Distinctive Tradition

Mitra Sharafi's account of Parsi legal culture is a comprehensive and detailed legal ethnography of the Parsis of the early twentieth century. It studies the way in which Parsis in Bombay (India), Burma, and generally in the British Empire took to the law as profession as well as a means to solve their disputes. The book is a most important contribution to the field of almost nonexistent scholarship on colonial Parsi social history. While there are a host of interesting old biographies, which Sharafi uses expertly, there are very few critical studies of the colonial experience of the Parsis. Sharafi looks at a range of Parsi legal developments in the formalized British courts, primarily from 1865 onward, when the Parsi Matrimonial Acts were codified and the Matrimonial Court set up. Most of her case histories are from the early twentieth century.

The most striking and ambitious claim of the book is that the Parsis were exceptional in inserting themselves in positions of power in the colonial legal system so that the agents in the colonial legal field—from legislation to dispute settlement—were themselves Parsis. Thus, she suggests that they manipulated colonial structures to suit their community's needs, perceptions, and tastes. This might be seen as an intervention in the debate on the modalities of colonial rule and its impact on Indian communities. The debate in the field has ranged from the argument that the imperial administrators ruled by local mores and the colonial era was no great break from previous rulers to the argument that the colonial rulers

transformed Indian society beyond recognition, either by excessive, inadequate, or inappropriate intervention.[1]

Sharafi's position seems to support the first argument that colonial rule was undertaken by extensive collaboration with the natives. However, she is less interested in this historiographic argument. As befitting the lawyer that she is, her book focuses on attesting how the natives used the system for their own new and burgeoning social and religious interests. Thus, her book documents the changes that were ongoing through the nineteenth and early twentieth centuries, not buying the argument of changeless Indian society, nor the unremitting anticolonialism. She suggests that the Parsis were similar to the other Indians who worked the colonial system and contributed to its making but were exceptional in the extent to which they inserted themselves in the colonial system to work it for themselves. She develops this understanding in order to situate the elite Parsis employed as colonial judges and lawyers adjudicating Parsi disputes and inter-Parsi personal and religious matters.

The attempt to demonstrate Parsi agency and "their desired models of the family and the community" as somehow autonomous of the imperialist reading of Zoroastrian history makes for a most thought-provoking read (p. 24). Sharafi talks of a Parsi *habitus* in the law in Bombay to answer the question of autonomy. She says Parsi *habitus* was first visible in the 1830s and reproduced in concentrated form with the development of a subcul-

ture of Parsi litigation until 1947. She outlines this inhabitation of the legal system over a very long period with thick descriptions and immense detail about the use of the courts both as litigants and the types of cases that come to court and legal professionals manning the courts. Her footnotes, as detailed as her text, provide context to the Parsi practices with reference to Hindu, Muslim Jewish, and Armenian case law as well as broader imperial references to Australian and African cases and legal practices.

Sharafi's book examines Parsi legal engagement through three "mirrors" through the colonial period of 1772 to 1947 (p. 30). The three are legal culture and litigation; legislation, primarily the Matrimonial Acts and the Matrimonial Court; and Parsi legal engagement on questions of trust law and membership in the community.

Section 1 analyzes legal culture primarily through litigation, chiefly matrimonial and personal issues taken to court. Here she argues that Zoroastrian legal material and rules were not translated until late in the colonial period and thus were not seen to be guiding the Parsis in the early period. She also suggests that the Parsis had no robust legal institutions. This contention is contradicted in the second section with some documentation of the role of the Parsi Panchayat and admitting that early nineteenth-century information on the Parsi Panchayat was not accessed or accessible. Thus her study of Parsi litigation is primarily from the early twentieth century when the colonial courts were firmly established. She examines the field of legal pluralism for the Parsis and finds only references to informal friends and family as sources of legal authority in this period. There is no reference to panchayats as judicial bodies in this late period. There is a tantalizing reference to formal arbitration bodies. This could form the subject of another important study. It would also be interesting to follow up the Parsi Panchayat in an earlier period, from the early nineteenth century, and examine cases even on appeal to the British courts from the panchayat. Harry Borradaile's two-volume *Reports of Civil Causes Adjudged by the Court of Sudder Adawlut* (1863) are full of appeals against panchayat decisions of different castes in the 1800s-20s.

Sharafi documents an interesting overlap and orientation toward state law among Parsis and the use of formal law even in private arbitration. Anyone further interested in this state of legal pluralism could refer to the excellent work of Gopika Solanki, *Adjudication of Religious Family Laws* (2011), on Bombay. Solanki's study

provides an interesting comparison with the current state of the interpenetrated worlds of state law and community or private practice. Sharafi's description of the private arbitrators and people being warned of what "outcome might be expected from going to court" is reminiscent of Solanki's contemporary findings and suggests some modification of Parsi exceptionalism (p. 45).

The second section of the book looks at Parsi legislation. Here she looks at the making of the Parsi personal law code and the setting up of the Matrimonial Court. The Parsis rejected the application of primogeniture and coverture and lobbied for the making of their own law. The engagement of Parsi lawyers is well attested, and she documents well the twists and turns in the saga of the making of the law. This is documented with a nice set of family histories of Parsi lawyers and in-depth studies of men like D. F. Mulla. Humorous anecdotes and cartoons give a textured sense of legal life. This makes for an interesting ethnography of the full range of Parsis in law, from clerks, bailiffs, and translators, to officials in courts and jails, and judges.

The last part of this section examines the application of the Matrimonial Acts through case records. Again most of the record is from the early twentieth century. It documents in some detail various disputes in family practices: polygamy, prostitution, child marriages, domestic violence, and divorce. Sharafi demonstrates her skill as a storyteller, and you might find the story of a family you know as I did of a Parsi family in Ahmedabad and their marital quarrel (p. 146n120, the story of Jehangir Vakil). This section delineates the decline of the Parsi Panchayat as an adjudicatory body elected from the Anjuman. In the context of the present study, this is only a minor coda and thus she can conclude that there was no "robust ... forum for dispute resolution among the Parsis, the colonial courts filled the gap" (p. 82). Perhaps the courts replaced the panchayat. In fact, the Matrimonial Court with its Parsi jury is a very good panchayat in a certain sense.

The third section, titled "Beyond Personal Law," reflects on the making of the community, showing the role of lawyers and judges in settling cases with reference to the practice of trusts as well as community membership. The in-depth study of several cases—the *juddin* (non-Parsi) conversion controversy, the Parsi Panchayat case (1906-8), and Bella's case in Burma (1925)—presents the story of how the community has built its boundaries over the last hundred years. She argues that activist judges like Justice Dinshah Dhanjibhai Davar have provided ex-

tensive judgments on the basis of their own value system and ideals and knowledge about Zoroastrianism. Would they have found it impossible to do so without “their own” judges? What does it do to the colonial system to have partisan judges? Her study of the activist role of Justice Davar and others reminds one of Marc Galanter’s path-breaking article “Hinduism, Secularism and the Indian Judiciary” on Hindu judges, especially Justice Pralhad Balacharya Gajendragadkar, and their role in reinterpreting Hinduism in court.[2] Sharafi takes forward Galanter’s work on the social history of Indian judicial structures and histories.

The book is a mine of information drawn from interesting research done in various archives across the world, from the Scottish dales (to examine the background of some of the characters in her story) and London, to Bombay and Burma. The book is also beautifully illustrated with almost thirty cartoons and photographs. It should be of great interest to those interested in Parsi history, colonial lawyering, and the growth of religious communities. The extensive footnotes make it a very useful resource for academics in a range of disciplines in history and law, focusing on customary practices, legal plural-

ism, and colonial legalities. The footnotes would be more accessible if the complete references had been repeated in the bibliography. As it stands, the bibliography is a very select listing of sources. The index is also limited and does not provide comprehensive access to the text. The book will go into a second and paperback edition, where the referencing can be extended. This work has already set the benchmark and laid down the parameters for a discussion of Parsi history. It also makes a significant contribution to our understanding of the colonial experience.

#### Notes

[1]. Among others, see Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern* (Cambridge: Cambridge University Press, 2001); Bernard Cohn, *Colonialism and Its Forms of Knowledge* (Princeton, NJ: Princeton University Press, 1996); and Sudipto Kaviraj, *The Imaginary Institution of India* (New York: Columbia University Press, 2010).

[2]. Marc Galanter, “Hinduism, Secularism and the Indian Judiciary,” *Philosophy East and West* 21, no. 4 (October 1971): 467-487.

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