Summary: 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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Enthusing the Faith:

Religious Trusts and the Parsi Legal Profession

During the latter half of the nineteenth century, Parsi charitable trust suits relating to religious funds and properties started arriving in the upper courts. These conflicts were power struggles among the people controlling the money and property subtending Zoroastrian fire temples, towers of silence, cemeteries, rest houses, sanitoria, and charitable funds.¹ Often, these disputes turned on intragroup differences over religious doctrine, power relations, and collective identity. Could ethnic outsiders be initiated into the religion? Did sea travel by high priests invalidate the religious ceremonies carried out after their arrival?² Did priests determine practical operating procedures within a fire temple or was this a privilege of the patrons who funded the temple? These questions were resolved not by priestly or community bodies, but in court.

Around the same time as religious trust suits became common, Parsis started flourishing in the colonial legal profession. They soon became judges in the upper courts. In 1906, the first Parsi was appointed to the Bombay High Court bench. By 1930, the first Parsi had become a Privy Council judge in London. Patterns in litigation and the legal profession converged: by a lucky confluence of factors, Parsi

¹ Parsi bodies were buried in Parsi-only cemeteries (or sections of cemeteries) in Rangoon, Colombo, London, Berlin, and elsewhere because the Parsi population was too small to justify maintaining a dakhma. In these situations, the usual prohibition on burial did not apply. See Patel and Paymaster, V: 196; Desai, History, 196–7; Sharafi, “Bella’s Case,” 50–8.
lawyers and judges managed many of the lawsuits among their co-religionists.

Through law, these figures became intellectual middlemen in the negotiation of their own community's image and identity.

The micro- and macro-effects of intragroup litigation were in tension with each other. On the one hand, the frequency and vigor with which Parsis turned to the courts came at a terrible social price. As it does today, litigation between Parsis ripped apart families, friends, and entire communities. Major lawsuits lasted for years. They dragged litigants around the world on appeal and for the collection of evidence “on commission.” Intragroup litigation bankrupted, embittered, and aged its Parsi participants. By oral history accounts, the ugliest Parsi trust suits hastened the deaths of their more sensitive participants. Despite the heartbreak, though, the repetition of a painful microprocess created something collectively productive. In a different colonial context, Steve Stern has suggested that intragroup litigation in colonial courts weakened the colonized community vis-à-vis the colonizers. The British Indian setting reflected an alternative outcome. Among the Parsis, the ceaseless airing of dirty laundry in the general Anglosphere produced embarrassment. Arguably, familiarity with the legal forum exacerbated intragroup conflict. But it was also enabling. By the coincidence that a corps of Parsi lawyers and judges existed, intragroup lawsuits simultaneously became a source of legal power for the community. The figure that epitomized this phenomenon was Dinshah

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5 See ibid., 409.
D. Davar, the first Parsi judge of the Bombay High Court. Between 1906 and 1916, a series of Zoroastrian trust suits landed in his court. He decided them in ways that reflected his religiously orthodox vision of Parsi identity. Davar’s career showed that the ethnic and religious identity of colonial judges mattered. Through the production of usable precedents, South Asian judges and lawyers interpreted the culture of the colonized for the colonial legal system. Sometimes they described “cousin” communities. At other times, they inserted themselves into controversies in their own communities. Either way, these judges put the force of colonial law behind one side of intragroup disputes. Davar epitomized this phenomenon in the context of Zoroastrian charitable trusts.

**In-Fighting**

Fighting in court came at a cost. Niklas Luhmann has described the shift from social fighting to litigation as a move from one normative vocabulary to another. With this shift came a certain trauma and irreversibility. Stewart Macaulay has emphasized the destructive quality of litigation to long-term contractual relationships. In an effort to avoid litigation, Macaulay observed that businesspeople who wanted to preserve good relations would not insist on their strict legal rights. Going to court destroyed relationships, a result particularly difficult to bear in close, face-to-face

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communities where people could not melt anonymously into a mobile and shifting population.

As one of the world’s great mercantile minorities, Parsis had networks of trust and trade spanning the globe. Persia was a motherland of one type.\textsuperscript{10} Britain was another.\textsuperscript{11} Parsis enjoyed high mobility but low anonymity along their global diasporic circuits. The process of making inquiries across national and imperial borders produced remarkably private information about Parsis overseas. With the rise of fears over group extinction, the community became even more tight-knit and self-aware. These anxieties were heightened by the advent of the census in 1871: rates of marriage and birth rates among Parsis were comparatively low, and the average age at marriage was high.\textsuperscript{12} Occasionally, elite Parsi men also married European women. Orthodox Parsis wanted these couples’ children to be ineligible for initiation into the Zoroastrian religion.\textsuperscript{13} For those who subscribed to a notion of racial purity, this form of desired exclusion further diminished the total number of Parsis.


\textsuperscript{11} See, for instance, Suit No. 5 of 1913, 1913–20 PCMC Notebook, I: 43–44; Suit No. 10 of 1933, 1929–35 PCMC Notebook, IV: 138–41. See also Chapter 2 at notes 142–4.


\textsuperscript{13} See Sharafi, “Judging Conversion”; “Bella’s Case,” 76–8, 149–70.
In other diasporic mercantile minorities, disputes were typically handled within the group.\textsuperscript{14} Social sanctions and taboos kept inside fights out of court. But the Parsis lacked the community institutions and culture to contain their own intragroup disputes. The case law between them was a catalogue of conflicts between siblings, relatives, spouses, friends, neighbors, parents and children, landlords and tenants, and former co-litigants.\textsuperscript{15} In \textit{Petit v. Jijibhai}, the British judge F. C. O. Beaman suggested that “too much dirty linen” was being aired. He had in mind the historical prevalence of lower caste servant mistresses and extramarital children among Surat’s Parsi patriarchs.\textsuperscript{16} In another Parsi trust case between members of one family, Davar remarked caustically: “It appears to me that the members of the family have no real occupation in life and they amuse themselves principally by carrying on acrimonious correspondence and litigating amongst


themselves.” One judge commented that he had abandoned hope for a settlement in a Parsi trust suit “due to the feelings of the parties having become embittered during the progress of the suit.” Each side accused the other of lying in court. Other cases between Parsis involved accusations of addiction and imbecility. Allegations of violence, venereal disease, and adultery all featured prominently in the Parsi Chief Matrimonial Court. By suing their co-religionists, Parsi plaintiffs showed their willingness to reveal secrets in the colonial courtroom. The desire for victory or punitive litigating overrode any sense that disputes among Parsis ought to be kept off the public stage. In many cases, the impulse to litigate also overshadowed the desire to preserve long-term relationships.

Two examples illustrated the phenomenon. The case of Bomanjee Byramjee Colah was born out of the breakdown of relations within one family. Pestonji Jeevanji v. Chinoy, by contrast, reflected the disintegration of civility within the Parsi community of Secunderabad, a British military cantonment sitting within the subcontinent’s largest princely state of Hyderabad. Both cases were unusual in that they moved far beyond South Asia. Colah’s case arose in the New York Court of

19 For allegations of imbecility and addiction to morphine, opium, and alcohol, see Vatchagandy v. Vatchagandy in D. D. Davar, Judgments (1910).
20 For some of the most extreme cases, see Suit No. 14 of 1939, 1937–41 PCMC Notebook, III: 117–55; Suit No. 16 of 1940, 1941–8 PCMC Notebook, III: 198–200. See also Chapter 5 at notes 165–9.
21 For a probable case of punitive litigating among Parsis, see “Rangoon Defamation Case. Personal Attendance Necessary,” Poona Observer (22 May 1914), 5.
Common Pleas. The Secunderabad case was appealed to the Privy Council in London. Both exemplified the destructive effects of litigation on Parsi relations. And both illustrated the degree to which this breakdown unleashed a flow of compromising information in the public arena.

The Parsi merchant B. B. Colah arrived in New York in 1870 carrying $100,000 in gold. He had battled his two brothers in the Bombay courts for his share of their father’s inheritance. Having succeeded, he left his wife and children in Bombay in order to make “a pleasure trip of the world.” He began in Calcutta then proceeded to Europe and continued west to New York. Financed by his portable inheritance, Colah went on “a long and reckless spree in this city, and his conduct became a matter of such public notoriety that he was taken into custody as a person of unsound mind.” Colah’s case arrived before the New York Court of Common Pleas because he was deemed a “wandering lunatic.” He was committed to one asylum after another and was examined by a string of New York psychiatrists.

The Court had to decide how to convey Colah back to Bombay and how to protect his gold. No other Parsis could be located in New York. However, an American army major named Alexander George Constable took an interest in the case. Constable had spent fourteen years in Bombay Presidency and claimed to have been well acquainted with the “habits, customs, language, characteristics and

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23 I owe all Colah case materials to Kathryn Burns-Howard, who discovered the case during her archival research on the New York Court of Common Pleas. I thank her for her exceptional generosity in sharing with me images of these primary sources.

24 “Mr. Jarvis must pay up. Ordered to account for the Colah Estate,” NYT (24 August 1886), 8.

religious faith and practices of the Parsis.”

The New York court noted that Colah refused to speak in English and that Constable was the only person with whom he would speak because Constable spoke “Mahratta.” The claim was curious: the Parsi language was Gujarati, not Marathi. “Mahratta” or “Maratha” was the name of a people and dynasty in early modern western India. It was possible that Constable and Colah were speaking different (though related) languages to each other, that Colah was fluent in Marathi, or simply that Constable was misleading the court. If the last option were true, it was only the start of the Major’s trickery. Constable agreed to escort Colah back to Bombay, making the trip by steamer from New York to San Francisco and then to Hong Kong and Bombay. Colah could not manage such a trip alone, and the court worried that he would not survive even if accompanied by Constable and a personal physician. Colah was suffering from “subacute mania” along with more physical ailments that made even walking around his asylum room “the utmost torture.” The court decided to send Constable with Colah and to reimburse the major for his expenses out of Colah’s gold. Years later, the outlandish sums siphoned out of Colah’s estate would be the subject of an

26 “In the Court of Common Pleas. In the matter of Bomanjee Byramjee Colah, a Lunatic” (undated), 1 in “Incompetency Hearings, 1873–95, Court of Common Pleas for the City and County of New York,” B. B. Colah Case Papers, Court of Common Pleas of New York County, Division of Old Records (New York County Clerk’s Office).

27 “Court of Common Pleas, for the City and County of New York. In the Matter of Bomanjee Byramjee Colah, a Lunatic” (23 October 1871), 3 in Colah case papers.

28 Ibid., 17.

29 “In the Court of Common Pleas. In the matter of Bomanjee Byramjee Colah,” 4; “Court of Common Please...In the Matter of Bomanjee Byramjee Colah, A Lunatic,” 18–19; both in Colah case papers.

investigation. Implausibly, Constable claimed that the trip had cost $25,000, a quarter of the value of Colah’s gold.\(^{31}\)

Constable’s dishonesty was minor compared to the larger tale of fraud surrounding the vulnerable Parsi. Constable did escort Colah back to Bombay, but Colah’s condition worsened there and he died a few years later.\(^{32}\) One reason the New York court had wanted to send Colah back to India was out of concern for Zoroastrian death rites. New York had neither Zoroastrian priests nor facilities for exposure to vultures. Both Colah’s father-in-law and Constable testified that Parsis could be buried if they died in a place without towers of silence. “[T]here are many Parsee merchants in Great Britain and in other countries foreign to their own, and ... when they die, they are buried like other people according to the usages of the country of their residence,” Constable reported accurately.\(^{33}\) Still, with the view that Colah would be better off with his family, the court decided to send him back to India.\(^{34}\) His gold would stay in the United States. Partly on Constable’s recommendation, the court retained custody of the gold. It was sold, and its proceeds were invested in a trust company in New York. The person put in charge of managing this money was a clerk of the Court of Common Pleas: one Nathaniel Jarvis, Junior. Sixteen years later, Jarvis was convicted of embezzling the money. A fund that was initially $100,000 in the early 1870s and ought to have grown by 6 percent per year totaled a paltry $33 in 1886. Jarvis blamed the disappearance of Colah’s money on a bad investment, but his records were almost nonexistent, and

\(^{31}\) “Only a Pittance Left,” 2.
\(^{32}\) “Mr. Jarvis must pay up,” 8.
\(^{33}\) “In the Court of Common Pleas. In the matter of…Colah,” 3. See also note 1.
\(^{34}\) “Court of Common Pleas…In the matter of…Colah” (23 October 1871), 6.
the court found that he had stolen most of the money. Jarvis had sent $3,000 – a mere 3% percent of the original total – to Colah’s widow and children in Bombay in the early days. By the time of Jarvis’ trial, they were nearly destitute. The court ordered the errant clerk to pay approximately $76,000. The parties ultimately settled for $65,000.35

The exploitation of Colah’s estate by two unscrupulous Americans never would have happened had it not been for his own family’s litigious in-fighting.

Before the court decided to send Colah back to India with an exploitative stranger, Colah’s own father-in-law had come to New York to collect him. Framjee Dosabhoy C. Wadia arrived in New York with power of attorney from Colah’s wife Heerabai, “authorizing him on her behalf to take charge of the person and property of the lunatic and to bring him back to Bombay.” Colah and his gold may have returned uneventfully to Bombay by this route but for the intervention of Colah’s brothers. Colah and his brothers had emerged from an inheritance suit on terrible terms. His brothers probably regarded Colah’s insanity as an opportunity to win back some of the estate. They convinced the British Vice Consul in New York to oppose the father-in-law’s application, arguing that “Mr. Wadia was not a proper person with whom to entrust either the person or the property.”36 They succeeded. Major Constable was then able to argue that the money would be safest under the court’s control. He testified that “in money matters the Parsees are a greedy people, that a prominent

35 In the NYT, see “Mr. Jarvis must pay up” (24 August 1886), 8; “The Parsee Merchant’s Estate” (16 August 1889), 8; “Tracing Colah’s Estate. Nathaniel Jarvis will now have to account for $75,000” (30 October 1889), 3; “Nathaniel Jarvis must pay up” (26 December 1889), 8. On other accusations made against Jarvis, see “May Go to the Grand Jury” (28 August 1889), 2.
36 “Court of Common Pleas… In the matter of… Colah” (23 October 1871), 5.
trait in their character is avarice, and speaking from his observation and from knowledge acquired by him while he was a resident among them, and speaking also with response to the circumstances under which the said Colah acquired his said property and his relations with his brothers on account thereof, he verily believes that the pecuniary interests of the said Colah will be abundantly promoted by retaining the property of said Colah during his life, or during his lunacy, in the custody of this Court.”

Constable’s testimony was self-serving. In-fighting among Parsi families often led to the destruction of long-term relationships and to the creation of vulnerabilities that could be exploited by opportunists like the major and the court clerk.

The Secunderabad litigation exhibited many of the same qualities. It arose from the breakdown of relations within a particular Parsi community rather than a single family. Like so many other protracted lawsuits between Parsis, it was a religious trust case. The case exemplified Parsi litigiousness at its most extreme: every adult Parsi male in Secunderabad was a party to the suit. The full case name alone occupied four pages: there were 130 appellants and 35 respondents. The suit also traveled on appeal through three levels of court until it reached the Privy Council in London. Other major Zoroastrian trust cases had been decided by the Privy Council or had stopped just short of it. But the Secunderabad case best

37 “In the Court of Common Pleas. In the matter of…Colah,” 5.
38 “In the Privy Council. No. 10 of 1907…Case for the…Respondents,” 2 in Pestonji Jeevanji v. Chinoy JCPC case papers.
40 Although many people expected Petit v. Jijibhai to be appealed to the Privy Council, it was not. See “The Butterflies and the Light,” HP (27 December 1908), 17. The Udwada Iran Shah fire
illustrated the way in which an entire Parsi community could be divided through the experience of litigation.

The Parsis of Secunderabad disagreed over whether to build a new dakhma close to their existing one. The dispute was about personalities more than theology. The legal question was this: had the land on which the towers old and new would stand been granted to the two brothers who had built the original tower of silence in 1837? Or had it been granted to them for the use and benefit of the entire Parsi community, giving ownership to the entire community, including the priests? If the latter, victory went to the general Parsi community, which wanted to build a second tower. If the former, the descendants of the original brothers had the right to prevent further construction.

The dirty laundry in the New York case had included explicit descriptions of B. B. Colah’s mental condition, sexual behavior, and physical ailments, along with the family inheritance dispute. These private matters were documented in the court proceedings and were partially reported in the press. The Secunderabad case also revealed damaging information about Parsis. As plaintiffs, the community or Anjuman made an argument that could help win its case but that promulgated a negative characterization of Parsi customs generally. In other colonial contexts,

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According to popular belief in the nineteenth century, individuals who financed the construction of dakhmas were often among the first to have their corpses consigned to them. “It is for this reason, that we find, that rich liberal Parsees of the older generations...though rich enough to build Towers at their own individual expenses, did not like, or were not allowed, to do so.” As a result, dakhma construction was usually a collective effort. The Secunderabad brothers evidently ignored this superstition. (“A Short Account of the Life of Ervad Tehmuras Dinshaw Anklesaria” in Anklesaria, Social Code, 29.)
scholars have observed the irresistible allure of colonial law when presented alongside other dispute resolution systems.\textsuperscript{42} Even colonized subjects who opposed the exposure of sensitive community information in the abstract found themselves drawn to the colonial courts, tempted by the possibility of winning a particular dispute. Immediate, individual interests often overrode long-term, collective ones. The net result was the public display of controversial “inside” information.

Many Zoroastrian trust suits of the early twentieth century put sensitive religious rituals in the spotlight. Parsis used nirang (Guj. nīraṅg), the consecrated urine of the white bull, as a purifying agent for ingestion and external cleansing in religious ceremonies.\textsuperscript{43} Nirang was discussed in detail and ridiculed by the Parsi parties on one side of Saklat v. Bella.\textsuperscript{44} The nine-night purification ceremony known as barashnum was a major theme of inquiry during the Bombay evidence-collection phase of the same suit.\textsuperscript{45} This ceremony required the recipient, even if female, to be naked in front of male priests. In Petit v. Jijibhai, Justice Beaman had exclaimed that only people “in the lowest stage of development” would agree to undergo such a rite.\textsuperscript{46} European observers characterized both nirang and barashnum as uncivilized, with Parsi reformists soon joining in. The Secunderabad case touched on a

\begin{thebibliography}{99}
\bibitem{43} Modi, \textit{Religious Ceremonies}, 64–5.
\bibitem{44} See Sharafi, “Bella’s Case,” 272–5.
\bibitem{45} See ibid., 276–8.
\bibitem{46} \textit{Parsi Panchayat Case}, xvi.
\end{thebibliography}
Zoroastrian ritual that was an even bigger target for European critics: the exposure of the dead to vultures in the towers of silence.  

In the mid-nineteenth century, the Oxford professor of Sanskrit Monier Monier-Williams described the Zoroastrian death rites that he had partially observed in Bombay. The body of a dead Parsi was carried into the towers and prepared for exposure by *nasasalars*, the hereditary corpse bearers who were ritually polluted by their interaction with dead matter. *Nasasalars* chained the corpse to one circle of “open stone coffins” lining the outer edge of the tower. A group of vultures swooped down on the body. Minutes later, only a skeleton remained. The *nasasalars* used tong-like instruments to transfer the bones into the tower’s central cavity. There, “the dust of whole generations of Parsees commingling [was] left undisturbed for centuries.”

Monier-Williams was initially disgusted. The “revolting sight of the gorged vultures” made him turn his back with “ill-concealed abhorrence.” But he changed his mind on learning of the theological underpinnings of the practice – a prohibition on polluting fire or earth with dead matter through cremation or burial. Being eaten by vultures was not so different from being eaten by worms, mused the professor. And he was clearly captivated by the collective and egalitarian nature of Zoroastrian death rites. As his guide explained, “Here in these five towers rest the bones of all the Parsees that have lived in Bombay for the last 200 years. We form a united body

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48 “The Towers of Silence,” *TI* (18 February 1876), 3. I thank James Jaffe for bringing this article to my attention.
49 See “Parsi Funerals,” *TI* (29 September 1926), 10.
50 Ibid.
in life, and we are united in death. Even our leader, Sir Jamsetjee, likes to feel that when he dies he will be reduced to perfect equality with the poorest and humblest of the Parsee community.”

Monier-Williams’ views were unusual among European observers. 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 [the Parsis’] own child, or the heart of [their] mother.” Angelo De Gubernatis, another Italian scholar and traveler, was repulsed by 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.” 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 hungry vultures.”

Obliquely, the Secunderabad plaintiffs tried to harness this line of critique for their own benefit. They claimed that the construction of a new tower would be unsanitary. The view scientized the basic disgust with which many Europeans viewed exposure to vultures. It was a recurring argument in dakhma-related conflicts throughout the Parsi world. The plaintiffs extended the conclusion of the Sanitary Inspector of the Cantonment, a Mr. Hill, who fifteen years earlier had found

51 Ibid.
54 On an 1886 conflict over sanitation and dakhma construction in Zanzibar, see Kased, 66–7.
the existing tower objectionable on the basis of sanitation. The existing tower sat on a "lofty hill" and occasionally emitted “a most abominable stench from the putrefaction of bodies,” particularly when the weather was hot and humid. The problem was that there were not enough vultures. Bombay did not have this difficulty. There, vultures could “strip off the soft parts in less than a minute, leaving the hard bones to take their natural course of decay.” But the Secunderabad area suffered from a shortage of the birds. Building a second tower would only create “a double source of effluvia.” With echoes of miasmic theories of contagion, the plaintiffs warned that there would “be no end to epidemics of cholera and typhoid fever.” There were many houses immediately below the site. Aiming squarely at British priorities, the plaintiffs also noted the military regiment stationed nearby. To make matters worse, the Parsi population of Secunderabad had increased rapidly in recent years and was producing a growing number of corpses. Although this fact could support the need for another tower, the plaintiffs used it to amplify the British military concern with disease generally: “the Cantonment authorities will have to consider very seriously ... the matter of these Towers.”

The argument was ultimately peripheral. The Secunderabad plaintiffs won their case initially and before the Privy Council through a close textual interpretation of the original grants of land, not because building another tower was a bad idea. Nonetheless, the appearance of the sanitation argument spoke volumes about the interplay between intragroup litigation and external perceptions of the

55 “No. 178. Exhibit 44. Petition of Cawaji Jivanji to the Cantonment Committee” (undated), 456–7 in Pestonji Jeevanji v. Chinoy JCPC case papers.
group. The plaintiffs were trying to harness European disgust for Zoroastrian death rites in the service of their own immediate self-interest: victory in one particular dispute. Ironically, the plaintiffs’ sanitation argument worked against their own long-term interests – after all, they had created and controlled the first tower of silence in Secunderabad. And it damaged the collective long-term interests of Parsis in South Asia generally, confirming negative stereotypes of Zoroastrian rites.

Externally, litigation among Parsis perpetuated negative images of Parsis before an audience of Europeans, Indians, and others. It promulgated the stereotype of the litigious Parsi. More specifically, these lawsuits revealed details about individual Parsis’ private lives, including their mental health, family dynamics, and sexual relations. Collectively, Parsi trust suits subjected religious rituals to public scrutiny and ridicule. One side of the dispute usually succumbed to the temptation to repeat typically European critiques of Zoroastrian rites, believing that this would help them win.\(^{56}\) But even so, a legal phenomenon that was so destructive at the individual psychosocial level was also productive in larger political ways.

**Judicial Ethnography and the Parsi Legal Profession**

The density of judicial ethnography in Indian case law has gone underappreciated until recently.\(^{57}\) Even when not required to do so, colonial judges wrote opinions rich in ethnographically informed content that described the history, practices, and

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\(^{56}\) Many Parsi reformers took their cues from this tradition, rejecting Zoroastrian ritual practices like exposure to vultures and use of *nirang*. See, for instance, “Parsi Lady Baptized. Embraces the Christian Religion. Her Views about Zoroastrianism,” *AI* (4 October 1913), 6.

\(^{57}\) Recent work includes Shodhan, *Question* and “Caste”; Kasturi, 137–71. Ritu Birla’s *Stages of Capital* may arguably be understood as a legal history of the Marwari community, although it is not explicitly presented as such.
authority structures of Indian communities.\textsuperscript{58} The barrister and Advocate General Thomas Strangman grumbled about a case in which “the judge, overcome by the attractiveness of the study, had composed a learned treatise on Khots” (the community involved in the case), neglecting the statutory analysis on which the case turned.\textsuperscript{59} Like the state’s more explicitly ethnographic projects, judgments like these were governmental interpretations of Indian communities past and present.\textsuperscript{60}

As the ethnic composition of the legal profession transformed itself in the late nineteenth century, judicial ethnography changed with it. From the 1870s on, South Asian advocates like Nanabhai Haridas and Badruddin Tyabji became judges of the Bombay High Court.\textsuperscript{61} With this change in personnel came a profound intellectual turn. Judges continued to produce ethnographic accounts, but they no longer did so exclusively as European outsiders. South Asian judges began describing their own and neighboring communities’ structures and practices. In so doing, they reshaped the law governing these communities, often in ways that reflected their own values.

\textsuperscript{58} For a sample, see Advocate General of Bombay at the relation of Arran Jacob Awaskar v. David Haim Devaker ILR 11 Bom 185 (1887); Haji Bibi v. H. H. Sir Sultan Mahomed Shah, the Aga Khan 11 Bom LR 409 (1911); Jan Mahomed Abdulla Datu and another v. Datu Jaffer and others ILR 38 Bom 449 (1914); Rachel Benjamin v. Benjamin Solomon Benjamin ILR 50 Bom 369 (1926). On Abraham v. Abraham 9 MIA 199 (1863), see Chandra Mallampalli, Race; “Meet the Abrahams: Colonial Law and a Mixed Race Family from Bellary, South India, 1810–63,” MAS 41 (2007), 1–42. See also Purohit; Sturman, 199–209; Shodhan, Question, 82–188.

\textsuperscript{59} Strangman, 50–1.


\textsuperscript{61} See the judgment notebooks of both judges (BHC).
By going into law, individual Parsis were not only pursuing a livelihood and a route for upward mobility. They were also representing their own community to the colonizer by crafting the official story that colonial law would tell about the Parsis. Parsi litigants often hired Parsi lawyers. In the Parsi Chief Matrimonial Court of Bombay, many suits were entirely Parsi-populated – not only by Parsi litigants and jurors, but also by lawyers and the presiding judge. But the alignment of Parsi litigants, lawyers, and judges persisted even in the mainstream colonial courts.\(^{62}\)

Parsi lawyers and Zoroastrian trust suits were inseparable. Not only did these cases involve large sums of money, such that their lawyers would be paid well. These suits also turned on controversial points of principle. One of the best examples pertained to the trust case from Rangoon, \textit{Saklat v. Bella}. Bella’s case arose in the tiny Parsi community of Rangoon, British Burma’s busiest port city. A Rangoon court decided the case initially and on its first appeal.\(^{63}\) The second (and final) appeal was decided in London.\(^{64}\) Bombay was also involved as a site for the collection of evidence; the Chief Court of Lower Burma approved the creation of a judicial commission there. Judicial commissions were bodies established in other cities or countries to collect evidence, particularly oral testimony. They were time-


\(^{64}\) See ibid., 355–95.
consuming and expensive. The Bombay commission in *Saklat v. Bella* was a massive endeavor. There were only some 300 Parsis in Rangoon, whereas Bombay was the unofficial Parsi capital of British India and the world. What better place than Bombay to ask what it meant to be Parsi? The Bombay commission collected testimony from Parsi physicians and trustees, high priests and hereditary corpse bearers, scholars and salesmen. The result was a unique survey of sorts, asking the question: was being Parsi predominantly about race or religion?

Bella’s Bombay commission was managed by Parsi lawyers on opposite sides of the conversion debate. Each was personally and politically invested in his client’s case. This was cause lawyering at its best. Representing Bella was the Parsi reformist D. M. Madon, a pleader involved with organizations like the Zoroastrian Conference that were dedicated to the reform and modernization of Parsi practices. He was both a member of and legal adviser to the reformist Iranian Association. Tributes at Madon’s death described him as suffering through years of abuse and vilification during debates over reform, humbly refusing to take credit although he

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65 See ibid., 184–5.
66 “Letter to Delphine Menant from G. K. Nariman, Chief Court, Rangoon (18 March 1912)” in Delphine Menant Papers.
67 For a sample, see the following testimony from “Plaintiff’s Evidence” in *Saklat v. Bella* JCPC case papers: “No. 8: Dinshaw Bomanji Master,” 129–59 (physician, trustee); “No. 9: Nowroji Jehangir Gamadia,” 161–85 (trustee); “No. 11: Darab Pesotan Sanjana,” 227–96 (priest, scholar); “No. 14: Khadabux Byram Irani,” 344–66 (scholar); “No. 16: Shavakshaw Burjorji Sakai,” 375–9 (hereditary corpse bearer); “No. 18: Shavakshaw Pestonji Kuka,” 382–5 (salesman). From “Defendant’s Evidence” in the same papers, see: “No. 27: Jamshedji Dadabhoy Nadirshaw,” 409–19 (scholar); “No. 28: Kaikhusru Dastur Jamaspji Jamaspasana,” 519–36 (high priest); “No. 30: Dastur Aderbad Dastur Naoshirwan,” 592–636 (high priest).
had borne many of the burdens. Madon was involved with Bella’s case beyond the Bombay commission. He had sent telegrams urging the high priest who would perform Bella’s initiation to carry out the ceremony. Parsis in Rangoon sued orthodox Parsi newspaper editors in Bombay over the papers’ coverage of the Bella proceedings. In these spin-off libel suits, the lawyer working against the newspapers was Madon. He 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 body of material into English, of arranging it, of drawing up a case and of instructing counsel.” Both inside and outside the courtroom, Madon took every opportunity to support Bella’s cause.

Against Bella was the formidable J. J. Vimadalal. The prominent solicitor was an orator and doyen of Parsi orthodoxy, as well as a prominent theosophist and devotee of the Zoroastrian mystical Ilm-e-Khshnoom movement. He was touted as “the leader of the orthodox section of the community.” 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 was involved in countless Parsi charities and organizations, particularly those with an orthodox or priestly bent (he came from a priestly family himself). The Parsi solicitor also wrote. Vimadalal adapted Euro-American writings on eugenics to the

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70 “Mr. D. M. Madon,” JIA V: 6 (September 1916), 236.
72 “Mr. D. M. Madon,” 236.
73 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), 139.
South Asian and Parsi context. As early as 1910, he published eugenics-based works alluding to the dangers of allowing outsiders into the fold.74 Bella was simply the latest in a series of female outsiders to threaten Parsi racial purity. Vimadalal tried to discredit her Bombay witnesses with every tool at his disposal, including the race science of the day.

Parsi clients did not always hire Parsi solicitors, and Parsi solicitors did not always engage Parsi advocates for court appearances. Yet Zoroastrian lawyers and clients were linked often enough to appear frequently together in the published case law.75 If these lawyers and litigants found each other through community channels, the other half of the picture was harder to track: how were Parsi judges assigned to Parsi trust suits? The mechanism that matched judges with cases was discretionary and confidential: the Chief Justice and his office made these decisions. Oral history suggested that a candidate’s ethnoreligious community was paramount in the appointment of South Asian judges.76 Given that the colonial state cared about the community identity of its Indian judges, it might similarly have favored the referral of intracommunity cases to a judge from the same community. This was certainly the pattern for the first Parsi judge of the Bombay High Court, Dinshah Dhanjibhai Davar. Davar presided from 1906 until his death in 1916. During his decade on the bench, he decided most important suits between Parsis in Bombay. For the colonial state, the channeling of community-specific case law was strategic in several ways. It

74 Mr. Vimadalal.
75 See Mistry, Reminiscences [1911], 3–6.
76 Conversation with R. P. Vachha (Mumbai, 19 February 2004 and 13 December 2009). On the importance of ethnoreligious community in the appointment of legal officials from the colonial administration’s perspective, see letter from John Morley of the India Office to Lord Minto (27 September 1910), 2 in Morley Collection, 1905–11 (MSS Eur D573) (APAC).
allowed the administration to deflect criticism for the outcomes of such cases, putting responsibility on the shoulders of the judge himself. At the same time, it advertised the fact that South Asians – albeit those vetted for loyalty to British rule – were represented at high levels within the colonial state. For the community in question, the gains were also significant. Like the Parsi matrimonial jury, the match of Parsi cases with Parsi judges may have been a reward for collective loyalty to British rule. And, like the jury, it created a bubble of group autonomy within the colonial legal system.

**Davar and Zoroastrian Trusts**

Nowhere was the intragroup power of South Asian judges more visible than in the career of D. D. Davar. He was aptly named. Davar referred to a category of high judicial officials in Achaemenian Persia. His surname was singularly appropriate for the first Parsi judge of the Bombay High Court, a post to which he was elevated on 27 October 1906. Davar was trained as a barrister at the Middle Temple in London. He made a name for himself as a formidable cross-examiner in the Small Causes Court and the Police Court of Bombay. As a judge, he was fierce and intimidating. His independence of mind and forceful personality combined with a loyalty to British rule that grew as his career advanced. Davar was best known for

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78 Entry for Dinshah Dhanjibhai Davar (admitted on 2 November 1877, called to the Bar on 9 June 1880) in Sturgess, II: 606.
his unusually harsh 1908 sentencing of the nationalist leader, Bal Gangadhar Tilak. After a special jury found Tilak guilty of seditious libel for his writings against British rule, Davar imposed a six-year sentence of transportation and a Rs 1,000 fine. Tilak’s request to appeal to the Privy Council was rejected. He was sent to a prison settlement in Mandalay, Burma. Davar’s sentence and characterization of Tilak’s mind as “diseased and perverted” invited public criticism and surprise: Davar had been one of Tilak’s own lawyers in a similar case a decade earlier. Even Davar’s own son, the barrister and future judge J. D. Davar, refused to speak to his father for a period after the Tilak sentence. When Gandhi received a similar six-year sentence in an Ahmedabad court in 1922, the judge said he was simply following the Tilak precedent.

Davar was not only forceful in his disapproval of the extremist brand of nationalist activity. He was also outspoken in his views on the Zoroastrian religion. As a witness in a 1915 defamation case between Parsi organizations, he described his position on a range of controversies over religious reform. His views were orthodox on every issue. He regarded the proposal to curtail and simplify death commemoration ceremonies as “an insult to the dead” and “extremely irreligious

81 In re Bal Gangadhar Tilak ILR 33 Bom 221 (1909).
82 See Kelkar, 18–19 (“Verdict and Sentence”), 121–40 (“Press opinion in the Tilak case”).
84 Conversation with R. P. Vachha (Mumbai, 13 December 2009).
85 Strangman, 142.
86 “Justice Davar’s Death,” 8; Jágoś, 4.
and offensive.” The idea of reforming the Zoroastrian calendar was a “childish matter” that had been “laughed out.” Changing the language of the prayers from archaic Persian languages to Gujarati was impracticable. “Nobody took it seriously,” scoffed Davar. Similarly, limiting offerings of sandalwood to the sacred fire would only create resentment. Reformists considered excess offerings a “superstitious belief” and a waste of money, but Davar disagreed. He also felt that the suggestion to cut down *ghambars* or community feasts would be opposed by those people (particularly the poor) who were regularly fed at these events.87 Davar became increasingly orthodox over the course of his adult life. In 1897, he supported the invalidation of trusts funding Zoroastrian death commemoration ceremonies.88 A decade later, it was his own ruling that protected these trusts, an episode explored shortly. He testified in the 1915 libel case that the ceremony “was a portion of the Zoroastrian ritual which must be observed and was binding on the community.”89

Similarly, at the beginning of *Petit v. Jijibhai*, Davar was open to the idea of allowing ethnic outsiders to convert to Zoroastrianism and to benefit from Parsi trusts. He even encouraged the defendants’ lawyers to accept compromise terms that he and Justice Beaman had drafted (*Figure 6.1*). It was only in the later phase of the case that Davar changed his mind, turning toward orthodoxy and opposing the idea of conversion completely.90 Davar admitted to the court in 1915 that he smoked and “went bareheaded,” neither of which an orthodox Parsi man was supposed to do. Overlooking this lapse, images of Davar from the period showed him with the

87 “Jame’ Defamation Case,” *TI* (29 April 1915), 5.
89 “Jame’ Defamation Case,” *TI* (29 April 1915), 5.
90 See Sharafi, “Judging Conversion.”
traditional Parsi man’s hat known as a *paghri* (Guj. *pāghḍī*) (Figure 6.2). On the bench, the judicial dress code of the era required him to wear a heavy, horse-hair wig.91

**Figure 6.1**

“On which track?? The Parsee Punchayet Funds and Juddin case … has been postponed … to allow the Trustees … to lay before [the community] the suggested compromise …”


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91 For an image, see Darukhanawala, *Parsi Lustre*, I: 149. Davar’s wig has been preserved at the Bombay High Court. See Mehrotra and Dwivedi, 128.
Davar was a leader of the orthodox camp. By popular accounts, he would take the long route home after presiding over *Petit v. Jijibhai* to greet crowds of supporters in orthodox neighborhoods.92 Books by sympathizers proclaimed him “a true Parsee Hero” for saving the Parsis from “racial degeneration and extinction” through his decision in *Petit*.93 After his death in 1916, *Hindi Punch* commented that the “best orthodox section” had lost its “Din-shah.” The weekly was punning on Dinshah Davar’s first name to imply that he was king (Pers. *shāh*) of the faith (Pers. *dīn*). The orthodox continued to proclaim

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92 Conversation with Fali S. Nariman (Delhi, 8 March 2004).
Davar “a pillar of the faith, the preserver and protector of the unity and solidarity of the community, which, alas! has split up into two bitter parties.”

Davar muted neither his strong personality nor his religious orthodoxy in the courtroom. On the bench, he drew on his knowledge of Parsi life, doubting representations placed before him if they contradicted his own personal knowledge. His judgments also favored religiously orthodox outcomes. The leading treatise on the 1865 Parsi matrimonial and inheritance legislation was dedicated to Davar, “whose zeal in the cause of the Zoroastrian religion will always be gratefully remembered by his co-religionists.” The judge’s orthodox biographer, M. H. Jágoś, repeated that Davar had done a great service to the Parsi community by accepting a judgeship: the move ensured that his own people’s matters would be handled properly. In becoming a judge, Davar had accepted a significant drop in income by giving up his lucrative barrister’s practice. He had done so, Jágoś implied, because he recognized the importance for the community of having a Parsi on the bench.

Some judges in colonial India refused to make public addresses outside of court or even to read newspapers or socialize widely. Figures like M. R. Sausse, the first Chief Justice of Bombay, aimed for the ideal of the objective and disconnected

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95 See Vachha, 91.
96 See Sharafi, “Judging Conversion.”
97 Rana (1934), dedication page.
98 Jágoś, 1, 4–6.
This type of judge tried to minimize his own prior knowledge of the people and issues appearing in his courtroom. The ideal was a culturally rooted one. In many South Asian systems of dispute resolution, adjudicators were supposed to bring some knowledge of the social setting to the dispute. The foundational concept in *panchayat*-based adjudication during the early colonial period in the Bombay Presidency, for instance, was to have an equal number of adjudicators chosen by each side. Fairness meant a balanced process of selecting the judges, not judicial ignorance of the controversy itself. By contrast, the rule of law ideal required that decision makers have no connection to the parties or their social worlds. Justice in many non-state systems meant maximizing contextual information about the conflict, permitting the judges to both decide the case and bring in a certain amount of evidence in the form of personal knowledge about the background context. Justice in the rule of law universe meant a different notion of fairness – one entailing a carefully managed lack of information. Each model of judgeship had its own hazards. If the disconnected judge was wholly ignorant of the social setting, he could be vulnerable to manipulation. But, equally, the connected judge’s sociocultural knowledge could blur into bias.

101 For example, see Desai, *History*, 7–8.
104 For example, Justice Jardine in *Bánáji v. Limbuwállá*. See also Sharafi, “Bella’s Case,” 127–8.
The project of empire gained mileage from the model of the disconnected judge. Rule of law values threatened to turn European judges’ ignorance of local languages and cultures into a perceived asset. These judges’ distance from the colonized population removed them from the intrigue and influence of factions within that population, enabling them to deliver fair and objective decisions. Or so the argument went. Spreading the rule of law was a classic justification for British rule. The ideal of judicial distance was an important plank within the rule of law agenda. Mithi Mukhjerjee has documented the power of the ideal in India, applying it not just to individual judges, but also to courts. The Privy Council in faraway London embodied the figure of the objective and distant imperial adjudicator. In the words of one judge of that court, “we sit there, perfectly impartial; we have no prejudices, either theological or otherwise.” Non-European judges, such as the orthodox Parsi Davar and his Hindu reformist colleague N. G. Chandavarkar lived a different ideal. They were embedded in the social life of their communities. They appreciated the subtleties of South Asian languages, religions, and cultures.

105 See Chapter 5 at note 57.
107 Mukherjee argues that newly independent India continued to project that role on to international bodies like the United Nations. See Mithi Mukherjee, India in the Shadows of Empire: A Legal and Political History, 1774–1950 (Oxford: Oxford University Press, 2010).
108 Haldane, 153.
109 Both spoke extrajudicially often. See, for instance, Davar in Jeejeebhoy, 315 at note; Davar, Hints; L. V. Kaikini, ed., The Speeches and Writings of Sir Narayen G. Chandavarkar, Kt. (Bombay: Manoranjak Grantha Prasarak Mandali, 1911).
had the local knowledge, and they used it – at times, in the service of their own
vision of community identity.

In their simplest form, trusts were legal devices that required one person, the
trustee, to control property on behalf of and for the benefit of another, the
beneficiary. By separating the enjoyment of property from its management, trusts
helped provide for the vulnerable or those incapable of preserving the property in
order to benefit from it. Trusts could be private, in which case they would be set up
for the benefit of individuals or families “for private convenience and support.”
There were also public trusts, created for the benefit of the public or a significant
subsection of it. The latter, which were also known as charitable trusts, were
governed by a different set of legal rules. Charitable trusts could be created to last
indefinitely, for instance, unlike private trusts, which could not exist for longer than
twenty-one years after the death of a particular person (or persons) living at the
time the trust came into being. Charitable trusts were also tax-exempt and were
supervised closely by legal authorities like the Attorney General and judiciary.

The law of religious endowments was of ambiguous taxonomy during the Raj.
As a subspecies of trust law (itself distinct from the personal law system), the law of
religious endowments was a curious hybrid of personal and territorial law that

111 See Iyer, lxv–lxvi.
leaned toward the latter. Particular group-specific rules developed for Islamic wakfs, Hindu religious endowments, and trusts governing Sikh gurdwaras. Nonetheless, the principles of English and Indian territorial trust law continued to subtend all religious endowments, regardless of religious affiliation. Equally, treatise authors peppered their discussion of the general principles of India’s charitable trust law with illustrations from the case law on both Hindu and Muslim religious endowments together, in distinction to the much clearer boundaries placed between Hindu, Muslim, and other bodies of family law. In family law, the religiously neutral body of law created by the Special Marriages Acts was a latecomer and always a peripheral addition to the collection of the various bodies of religiously inspired law. In trust law, the relationship was the reverse: various carve-outs (mostly legislated) for particular religious groups remained rooted in a substrate of English trust law principles. The trust law that applied to Parsi charitable trusts remained territorial during the colonial period. Because the content of these trusts was often religious, trust law became a leading site for the production of judicial ethnography about India’s many communities. Colonial case law was rich in disputes among trustees of temples and other religious bodies. Davar’s Parsi

113 Compare N. Chatterjee, 78.
114 See Narang; Agnew, 380; Chapter 2 at text accompanying note 234.
116 For example, see Agnew, 364, 370.
trust cases were just one chapter in a broader history of trustlike devices and colonized peoples across the British Empire. 118

Davar saw more than the average judge’s share of Parsi trust litigation. It was as if Parsi disputants had been saving up their trust suits, waiting for a Parsi to appear on the High Court bench. Davar delivered his two most significant religious trust suits in Jamshedji Cursetjee Tarachand v. Soonabai (on death commemoration ceremonies) and Petit v. Jijibhai (on juddin admission). Both landed in Davar’s court soon after his appointment in 1906. Both were highly publicized among Parsis and beyond. And both revealed the power of a judge in Davar’s position to write the judicial ethnography of his own community. In so doing, Davar gave his vision of community identity the force of law.

Before and beyond big cases like these, Davar was busy with the daily business of administering Parsi trusts. These trusts often combined strictly religious purposes (like funding religious ceremonies) with other philanthropic efforts like education, poor relief, and medical care. All fell under the banner of charitable trusts. Parsi trusts of this kind required judicial approval at many points. For the appointment of a new trustee or any expenditure of trust funds that strayed from the literal purposes of the trust, judicial approval was often required. Trustees came to court asking for clarification on what they could and could not do, sometimes requesting changes to the original trust terms themselves. In one 1913 case, Davar

deleted the trust term that prevented schools of the Parsi Girls’ School Association from teaching in English. Religious education was part of the curriculum of these schools.\textsuperscript{119} His role in the everyday administration of Parsi trusts also had a major effect on the distribution of trust-owned real estate in Bombay. In 1909, he approved the sale of land held by the Bombay Parsi Panchayat near the towers of silence, for instance.\textsuperscript{120} He also shaped the purposes for which trust-held real estate would be used. In 1912, Davar approved the construction of chawl housing for poor Parsees by the N. M. Wadia Trust.\textsuperscript{121} Perhaps because of this major housing project, he diverted funds the following year from another Parsi trust – from the proposed construction of more subsidized housing to the job of covering the everyday expenses of the Bomanji Petit Parsi General Hospital. Both options were presented by the parties to the 1913 case. It was Davar who made the choice.\textsuperscript{122}

He was not overly constrained by a sense of judicial cautiousness. Like judges in so many other settings, Davar used legal doctrines as vehicles that would take him to his desired destination. At times, he applied opposite doctrinal approaches to similar fact patterns. Two contrasting trust administration matters that came to Davar in 1907 made this point nicely. In both, wealthy Parsees had left money to carry out charitable and religious projects for Parsees. It was allegedly impossible to follow their wishes because circumstances had changed since the time when the wills were

\begin{itemize}
\item \textsuperscript{120} “Towers of Silence Land,” \textit{TI} (17 March 1909), 4. The sale was part of an exchange of land that may have related to a public road-widening project.
\item \textsuperscript{121} “Habitations for Parsees,” \textit{TI} (20 March 1912), 4.
\item \textsuperscript{122} “The Dolimeherjee Charity. Dhunjibhoy Sorabji Dolimeherji and another v. the Advocate-General of Bombay and others,” \textit{TI} (22 September 1913), 8.
\end{itemize}
written. A judge could approve the use of the money for a different charitable purpose. The determination of impossibility was for Davar to decide.

In the first case, a deceased Parsi named E. R. Soonawalla had donated a large piece of land in the Bombay neighborhood of Mahim. He had wanted an agiary (Guj. agīārī), a type of fire temple, to be built in honor of his dead wife, Soonabai. Two trustees came to court arguing that Soonabai’s agiary would be impossible to build. The population of Parsis in Mahim had fallen too low to make the project viable: there were now just fifty families in the area. For these trustees, impossible meant impracticable. Judges had to balance fidelity to the testator’s wishes against the best interests of the current population. The two trustees asked Davar to allow them instead to combine the funds with another fund left by the settlor; the second fund had been created to build a Parsi community hall. Davar refused. He adhered to the classic idea of upholding the intentions of the settlor, staying true to the desires expressed in the original text. Incidentally – and more to the point – he felt that it would be good to build a fire temple in Mahim, where there was currently none. He doubted the facts presented to him. Only fifty Parsi families in Mahim? “This I think can hardly be accurate.”

The personal knowledge of this socially embedded judge hovered over every fact presented by the trustees’ Parsi advocate. Showing great concern that the settlors’ intentions be protected, Davar ordered the construction of a new fire temple. In this situation, literalist legal interpretation dovetailed with orthodox Parsi values.

Five months later, Davar came to the opposite conclusion in a similar case. A wealthy Parsi merchant named Hormusji Framji Warden had died in 1885, leaving money to build a community hall for Parsi marriages and dinners. The trustees came to Davar with the same impossibility argument: too many of these halls had been built since Warden wrote his will. Could the money instead be used to build an operating theater for Parsis in the Parsi General Hospital? This time, Davar agreed. In a forty-three-page unreported opinion, he explained why he was using the equitable *cy-près* doctrine to divert the money to another charitable purpose.\footnote{Re Hormusji Framji Warden, deceased. Hirjibhai Bomanji Warden and another, petitioners (16 September 1907), “Hon. Justice Davar. Judgments (8 July 1907–19 December 1907),” 1–43 (BHC).} *Cy-près*, from the old legal French for “near here,” allowed judges to authorize the use of trust funds for a purpose similar to but different from the settlor’s original purpose when that purpose was “impossible.”\footnote{See Oppé, 294–5; Agnew, 357–60. For the legal history of the *cy près* doctrine in another common-law context, see Lawrence M. Friedman, *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law* (Palo Alto: Stanford University Press, 2009), 152–61.} *Cy-près* preserved the validity of the trust and responded to the present needs of the recipient community. It paid less heed to the intentions of the settlor. Sterner, more traditional judges would either require the original purpose to be followed or invalidate the term (or trust) entirely. In the Warden case, Davar’s approval for the alternative scheme hinged on his loose definition of the word “impossible.” To use *cy-près*, following the settlor’s wishes had to be impossible. This time, Davar claimed that “impossible” did not mean physically impossible, but simply not possible under current circumstances – or even unsuitable or impracticable.\footnote{Re Warden, 12.} Without a word about his narrower, more
traditional approach in the earlier Mahim case, he went through a long line of cases that reflected a generous recent use of *cy-près.* Reading the Warden and Soonawalla decisions together, Davar looked less driven by legal doctrine than by his own views of current community needs.

Davar had consulted the acting Attorney General of Bombay, a Briton named E. B. Raikes, on the Warden medical proposal. Raikes argued for a narrow definition of “impossible.” A wide definition would create a dangerous precedent. Would future Parsi philanthropists make similar bequests if they saw courts disregarding settlors’ intentions? Raikes thought not. But on the contrary, insisted Davar, “right-minded charitably inclined people” would be *more* likely to leave money for charitable purposes if they knew it would not be wasted: “We are living in progressive times. Our surroundings, circumstances and modes of thought are undergoing changes. What may appear to be crying wants today may be useless superfluities in the future. ... [A donor] would in my opinion be more inclined to devote his property to charity if he felt that the Courts in India would be always alert to see that in the future under altered circumstances his funds would not be wasted on purposes that may become useless and cease to be beneficially employed.” Davar’s willingness to disregard the donor’s intentions was viewed with suspicion in some quarters, noted *Hindi Punch:* “after all, a donor’s last wish must be respected” (*Figure 6.3*). The judge’s reasoning privileged current social

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127 The doctrine would be used often for Parsi trusts in the 1950s–’60s. See Desai, *History*, 141, 228.
needs over fidelity to a particular legal doctrine – or even to a consistent model of judgeship.

Figure 6.3

“Justitia: Here you are, sir! A good round sum – 82,000 odd. May it do you much good! [Parsi General Hospital] Fund: As many thanks as rupees, ma’am, and more than I can tell!”

Being Parsi was central to Davar’s stance in both cases. It affected his acceptance of the facts presented to him. It also subtended his views of what the community needed. Non-Parsis around Davar deferred to him on this basis. At another point in the Warden case, Davar consulted the Attorney General at the time when the position was occupied by Basil Scott, a future High Court judge. Scott said he was not in a position to judge whether a Parsi community hall would be useless, given current Parsi needs. As Davar noted, this Attorney General was “good enough to remark that no one could be in a better position than this Court [i.e., Davar] to come to a conclusion upon the point which is likely to give satisfaction to the Parsi
community.” The pattern repeated itself across Davar’s case load. In *Petit v. Jijibhai*, Davar’s British partner on the bench also made clear his deference on ethnoreligious grounds. Davar was a Parsi judge in a Parsi case. Beaman was not. For European legal officials, Davar had unique authority in Zoroastrian trust cases. Unsurprisingly, Parsis felt the same way. Davar was famous for being hot-tempered on the bench. His Parsi biographer noted that if he was not known for his circumspection, at least his cases were useful to the Parsi community. “Saheb’s people” (meaning Parsis) and the government seemed to appreciate him equally. Davar assumed the burden and privilege of judicial interference with South Asian religion. He alleviated Europeans of a politically charged job while maximizing his own community’s autonomy in the courts.

**Death and Conversion**

Judicial intervention cut deep into Zoroastrianism. Davar delivered his rulings in *Tarachand v. Soonabai* and *Petit v. Jijibhai* in 1906–8, during his first few years on the bench. Although both suits pitted one set of trustees against another, the first was best understood as a struggle against European ignorance of Zoroastrian practice. This gap was exploited by Parsi parties seeking to invalidate the trusts and inherit the property in question. The second was a principled intragroup struggle between reformists and orthodox Parsis over the same question that would later trigger *Saklat v. Bella*: was ethnicity (or race) an essential part of Parsi identity?

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129 *Re Warden*, 4.
130 *Judgments*: *Petit v. Jeejeebhoy* 1908, 193.
131 “First Parsee Judge”: Jāgoś, 3, 6.
132 Jāgoś, 1, 4.
Davar’s ruling in *Tarachand* reached back, reversing a ruling that had frustrated the performance of death commemoration ceremonies for decades. His decision in *Petit* cast a long shadow forward: the Privy Council’s 1925 decision in *Saklat v. Bella* deferred to Davar’s *Petit* judgment.

Before there were any Parsi judges in the Bombay High Court, an important Parsi trust case was decided by the British judge John Jardine. His 1887 ruling in *Limji Nowroji Bánáji v. Bápuji Ruttonji Limbuwállá* had a devastating effect on Zoroastrian death commemoration ceremonies for decades. *Muktad* ceremonies (Guj. *muktād*) were rites held during the last ten days of the Zoroastrian calendar to commemorate the death of particular Parsis ([Figure 6.4](#)). Wealthy Parsis often left money in their wills for the creation of *muktad* trusts. This money would fund the performance of these ceremonies following the donors’ own deaths. The trusts were supposed to last forever. The trouble was that this standard Parsi practice violated a rule of classical English trust law (and free-market economics): the rule against perpetuities. Gregory Kozlowski, Ritu Birla, and Nurfadzilah Yahaya have documented the collision between this rule and traditional forms of giving in multiple parts of the British Empire. A similar conflict occurred in the Parsi context. According to the rule against perpetuities, trusts could not last indefinitely – in perpetuity – unless they were charitable, meaning that they were of public

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133 See Vachha, 77–8; Jardine, “Indian Official Opinions.”
136 See Kozlowski, 148–9; Birla, *Stages*, 89–96; Yahaya, 183–191. See also Agnew, 370.
The question for Jardine was whether the *muktad* trust before him would benefit a particular individual or a larger group instead. Even if the trust’s purpose was to benefit the Parsi community alone, it would count as “public.” Jardine found that the ceremonies in question were for the benefit of the souls of particular dead Parsis. The benefit consisted of “consolation to the spirit of *certain* dead persons and comfort to *certain* living persons.” Even if the trust’s purpose was to benefit the Parsi community alone, it would count as “public.” Jardine found that the ceremonies in question were for the benefit of the souls of particular dead Parsis. The benefit consisted of “consolation to the spirit of *certain* dead persons and comfort to *certain* living persons.” The words of the will did not point to benefits available to the entire Parsi community, according to Jardine. The trust looked more like a gift to a private company than a charitable donation: there was no public benefit. As a result, the trust was invalid because it was framed to exist in perpetuity.

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137 Over the centuries, the list of what constituted a charitable purpose evolved around the 1601 Elizabethan Statute of Charitable Uses’ roster of acceptable categories. 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 taxes.” [Preamble to the Statute of Charitable Uses 1601 (43 Eliz. c.4).] This list lived on in colonial India. See Iyer, lxvii–lxviii; Desai, *History*, 397–8.


139 Ibid., 447.
“In Praise of the Dead… In the days of muktad, just ended with the advent of the New Year, the Parsees offer prayers and recite the good actions of their dead.”

At least eight muktad trusts were challenged in the Bombay High Court after the Limbuwállá ruling. All were invalidated on the authority of Jardine's judgment.\(^\text{140}\) Parsi lobbyists began to press for a statute that would validate muktad trusts for 60–80 years, if not forever. Their plans were foiled by dissent within the community. In response to lobbyists' petition, reformists sent the government a counter-requisition opposing the proposed bill. They argued, among other reasons, that a statute would only encourage ceremonial excess.\(^\text{141}\) In 1908, another case presented itself. This time, it landed in Davar's court. The plaintiff was a Parsi barrister named J. K. Tarachand who represented himself. The defendants, pressing for the validation of the trusts, were backed by the Bombay Parsi Panchayat.\(^\text{142}\) Although no one acknowledged it, the case had the whiff of a test case. Davar complimented Tarachand on his mature and conciliatory approach throughout the case, his willingness to lose (should the trust be upheld), his offer to waive his fees (and not recoup them from the trust funds), and his desire for clarification rather than financial gain (should the trust be void). Tarachand's own share of the trust was “so small that it would not have been worth his while troubling about it if his motive had been merely to share in the division of the funds.”\(^\text{143}\)

\(^\text{140}\) Six of these cases were unreported, namely Dinbai v. Hormusji Dinsha Hodiwalla, Suit No. 267 of 1890; Dhunbaiji v. Nowroji Bomanji, Suit No. 565 of 1889; Cowasji Byramji Gorewalla v. Perrozbai, Suit No. 281 of 1892; Maneckji Edulji Allbless v. Sir Dinsha Maneckji Petit, Suit No. 96 of 1892; R. R. Dadina v. The Advocate General, Suit No. 49 of 1895. The one reported case discussed by Davar was Cowasji N. Pochkhanawalla v. R. D. Sethna ILR 20 Bom 511 (1895). [Tarachand v. Soonabai, 153–62.] However, there were still other cases not mentioned by Davar. For example, see Dady Nassermanji Dady v. Acting Advocate General 7 Bom LR 324 (1905).


\(^\text{142}\) Ibid., 88.

\(^\text{143}\) Tarachand v. Soonabai, 211–12.
J. K. Tarachand gave Davar the chance to reverse Limbuwálá, an opportunity Davar seized. The Parsi judge was scathing in his account of Jardine's judgment. If Jardine was the distant, “objective” arbiter celebrated by rule of law ideals, he was also the ignorant Briton, utterly unfamiliar with the religious practices at issue and prone to being misled by opportunistic litigants. According to Davar, Limbuwálá had been a farce. It was a collusive suit manufactured by the parties. It only succeeded because a gullible British judge was ostensibly in control. The parties agreed to portray the trusts in a way that would produce invalidation. They could then share the spoils among themselves. Davar noted that the testimony of a single witness, the scholar-priest J. J. Modi, had been presented to Jardine.\footnote{For a chronology of Modi’s life events (in Gujarati with some English), see Modi, Religious Ceremonies, 1–30 (terminal section). See also Stausberg, Die Religion, II: 106–8; Ringer, Pious Citizens, 116–19; Sharafi, “Judging Conversion,” 165–70.} Modi had been cross-examined for fifteen minutes and was not allowed to explain himself. Modi and the rest of the Parsi community were shocked to see Modi’s testimony used to invalidate muktd Tại trusts, an outcome he never would have supported.\footnote{Tarachand v. Soonabai, 149–51.} The consultation of Zoroastrian texts in the post-Limbuwálá cases was virtually nonexistent, and when there was witness testimony, it was perfunctory. Davar retraced the process by which a single inept judgment had been mindlessly replicated, crushing what Davar regarded as a centuries-old practice.\footnote{Ibid., 153–62. The same snowball effect wreaked havoc on other Bombay communities. For an example affecting the Khojas, see Jan Mahomed Abdulla Datú v. Jaffer.}

In Tarachand v. Soonabai, Davar ruled that muktd Tại trusts were of public benefit, hence charitable and exempt from the rule against perpetuities. He offered a detailed reading of Zoroastrian theology and ritual practice. Davar explained that
the *muktad* days were the holiest days of the year for Parsis and that undertaking the proper ceremonies was a religious duty.\textsuperscript{147} These days fell on the last days of the Zoroastrian calendar. They were not tied to any particular individual’s death date, unlike commemoration ceremonies held at particular intervals after a person’s death.\textsuperscript{148} Second, it was the Zoroastrian belief 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, also known as 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. “[T]he *Judgment is irreversible,*” insisted Davar. “There is nothing in the scriptures for the redemption of the soul after the final judgment of the fourth day.”\textsuperscript{149} Prayers would be of no use to a particular soul more than four days after death, so *muktad* ceremonies could not benefit any individual soul.\textsuperscript{150} Third and most famously, Davar pointed out that the *muktad* ceremonies included prayers. Some were for the deceased and his or her family. Others were for the Parsi community. And there were even some for the well-being of all people.\textsuperscript{151} Here was Davar’s precious public benefit. Because *muktad* ceremonies included prayers for all of humanity, the trusts that funded them were for *public* benefit and could validly exist in perpetuity.

\textsuperscript{147} *Tarachand v. Soonabai*, 174.
\textsuperscript{148} Davar described individualized death commemoration 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.” (*Tarachand v. Soonabai*, 176.)
\textsuperscript{149} *Tarachand v. Soonabai*, 176.
\textsuperscript{150} Ibid., 176.
\textsuperscript{151} Ibid., 180.
Davar made other less Zoroastrian-specific arguments. Drawing on recent case law addressing Catholics in Ireland, he pointed to the argument that a trust for religious purposes was by definition charitable. There was no need to show any additional, particular type of public benefit. Furthermore, there had been much discussion in Tarachand of the benefit accruing to Parsi priests, who relied on muktad ceremonies for a good part of their meager incomes. The plaintiff 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 because it helped support priests.

Davar’s judgment in Tarachand was a detailed investigation of Zoroastrian theology and ritual practice. His primary project was to discredit the view that muktad ceremonies produced private benefit alone. This was at the heart of Jardine’s claim that the provision of benefit to and from specific individuals (or their souls) made the trust noncharitable and void. As reflected by his early work in trust administration, Davar was driven more by his perception of the community’s social needs than by legal doctrine or a model of judicial restraint. In Tarachand, he waved precedent aside with breathtaking boldness. Davar claimed not to be bound by an earlier decision if it 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

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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 “manifestly absurd or unjust.” Davar’s Tarachand ruling exemplified his willingness to strain conventional legal reasoning for the preservation of religious practice.

Davar’s community identity and politics shone through in Petit v. Jijibhai, too. The case involved a French woman named Suzanne Brière who had married into the illustrious Tata family of Parsi “merchant princes.” She was married in a purportedly Zoroastrian ceremony and had been initiated into the religion through the navjote ceremony immediately before. Orthodox Zoroastrians challenged the validity of the navjote because Mrs. Tata did not have a Parsi father – a necessary precondition for eligibility, in their view. The lawsuit approached the issue of conversion obliquely rather than head on. Did the French Mrs. Tata have the right to benefit from the funds and properties of trusts created for Parsis? Even if Mrs. Tata had become a Zoroastrian (a question the judges avoided), could she be called a Parsi? This question presupposed a semantic distinction between the terms Parsi and Zoroastrian. Prior to Davar’s judgment, the two terms had been used interchangeably. For Davar, however, Parsi was a racial term (in the language of the day) whereas Zoroastrian was a religious one. His ruling in Petit separated the

155 Tarachand v. Soonabai, 147. Italics original.
156 See Introduction at note 98.
terms with the far-reaching effect that trust deeds framed for the benefit of Parsis came to be interpreted in the newly restricted, ethnic sense. The distinction seeped into the everyday speech of Parsis, reflecting the profound social influence of Davar’s judgment.\textsuperscript{158} Davar put the distinction simply. An English woman could marry a French man 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 the fact that he or she was ethnically Parsi.\textsuperscript{159} It was Davar’s 1908 judgment that formalized the contraction in the understanding of the term Parsi.

Davar made many other arguments in \textit{Petit}. It was true that ancient Zoroastrian texts not only permitted conversion to Zoroastrianism, but encouraged it – a position that was only logical given that the religion must have gained adherents, by definition, when it began. Since their arrival in India, however, Parsis had not accepted converts into the fold. And customary practice trumped text, according to Davar.\textsuperscript{160} He also made a floodgates argument: if ethnic outsiders were permitted to benefit from Parsi trust funds and properties, India’s lower castes would convert in huge numbers to avail themselves of the Parsis’ vast charitable funds. In crassly economic terms, they would deplete Parsi wealth.\textsuperscript{161}

\textsuperscript{158} See Writer, 148; “Second Accused’s Statement,” \textit{WRTOS} (22 August 1914), 49. For instances of the general use of the term \textit{Parsi Zoroastrian} after 1908, see coverage of three Parsi defamation cases by \textit{WRTOS}: “The Parsi Dispute. Another Defamation Suit,” 40; “The Parsi Dispute. Application in Revision” (23 May 1914), 44; “Parsi Defamation Case. The Community in Rangoon” (19 June 1914), 2; “Parsi Defamation Case. The Anjuman Meeting” (1 August 1914), 42.

\textsuperscript{159} \textit{Parsi Panchayat Case (Davar)}, 59–60.

\textsuperscript{160} \textit{Petit v. Jijibhai}, 532–3.

\textsuperscript{161} Ibid., 551. See also Sharafi, “Bella’s Case,” 197–205.
Together, the *Limbuwállá* and *Petit* cases epitomized the phenomenon that became possible as South Asians rose to the upper ranks of the colonial judiciary. Judges could rule in their own communities’ intragroup disputes, shaping these groups’ legal ethnography in the mold of the judges’ own politics. Dinshah Davar revalidated trusts funding *muktad* ceremonies. He ruled against the entitlement of ethnic outsiders to enjoy trust property in the hugely divisive conversion debate. Even in his unreported work on the administration of trusts, he pushed certain types of developments over others, shaping the microprocesses of religious life at the local, spatial level. Nowhere did law more clearly meet Zoroastrian theology and ritual than in Davar’s courtroom.

**Litigation, Trusts, and Charity**

Charity was a theme that permeated these suits – and not just because the trusts themselves had charitable aims. The Parsi legal professionals who became involved often did so because they supported one side personally. Some even waived their fees. Dinshah Davar may have accepted a judgeship despite the drop in income out of a charitable impulse toward his own community. He was not the only one to combine law and charity. Parsi solicitors and magistrates gave up evenings and weekends to act as informal mediators among their co-religionists, particularly those in troubled marriages. Elite Parsis acted as delegates of the Parsi Chief

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162 For example, see Mistry, *Reminiscences* [1911], 78.
163 See text accompanying note 98. By contrast, when offered a judicial position with a salary of Rs 1,500 per month, then barrister Mohammad Ali Jinnah declined. He aimed to earn Rs 1,500 per day. [Nisar Ahmad Pannoun, *Jinnah the Lawyer* (Lahore: Mansoor Book House, 1976), vii.]
Matrimonial Court on an unpaid basis. Given the large number of underprivileged female plaintiffs who approached that court, charity may have been an important motive.

Most Parsi lawyers were paid when they acted in Parsi lawsuits. But this, too, had a potentially charitable twist. In Parsi trust suits, judges normally charged all sides’ legal fees to the trust.164 What this meant was that the parties, usually trustees, had no personal financial reason to stay out of court. Granted, they may have had to provide money up front for certain kinds of legal expenses. But they would normally be reimbursed later from the trust funds. In other words, the litigation would ultimately be free for the litigants as individuals. This fact was significant: fees in these suits could be staggering.165

The upshot was the diversion of charitable funds: instead of going to the neediest members of the community, large chunks of Parsi trust funds paid lawyers. A Hindi Punch cartoon depicted the phenomenon with alacrity during the proceedings in Petit v. Jijibhai (Figure 6.5). Two vultures – the agents of Zoroastrian death rites by exposure – appeared dressed as barristers in black gowns and white collar bands. Grinning and bespectacled, each had a bundle of papers tucked under his wing, one labeled “plaintiffs’ costs” and the other “defendants’ costs.” The two were perched on a huge sack of coins representing the funds of the Parsi Panchayat. They were happily helping themselves. “Ha, ha, ha, ha! Jolly this, to feed on

165 See, for example, Udvādā, 11; Petit v. Jijibhai, 561; Desai, History, 26; Sharafi, “Bella’s Case,” 387–90.
somebody else’s sinews!” chortled 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.”

166 “The Vultures,” *HP* (13 December 1908), 21.
The illustrated weekly’s cynicism was perhaps misplaced. The funds intended to help the neediest of Parsis were instead being spent on lawsuits. Parsi philanthropy was subsidizing Parsi litigation. But the fact that so many of the lawyers were Parsi themselves meant that much of the money never left the community. On the one hand, money intended to spawn cooperation and generosity
between Parsis was funding conflict. But, on the other, it was diverted from one collective aim – charitable aid to the neediest – to another: the acquisition of fluency in colonial law. Parsi familiarity with the structures and language of the colonial legal system brought increased autonomy and control. If the vulture barristers gorging themselves on panchayat funds could have stepped back, they may have observed that there were benefits more principled than the simple greed animating them. Of course, legal profiteering was not the only way to achieve the type of mobilization developed among Parsis. But self-interest helped produce a pool of Parsi lawyers large enough to further another perhaps coincidental and unanticipated aim: the creation of a bubble of semiautonomy within the courts and, with it, of a state-endorsed, Parsi-authored account of Parsi history and religion.

**Conclusion**

Parsi disputing behavior was oriented not toward exit from the state but rather toward infiltration of its institutions and assimilation of its methods. Unlike minorities that pursued separatism or that moved to a place at which they could become the majority, the Parsis stayed where they were, increasing their control over the legal processes that affected them through a two-pronged approach. The first prong was the pursuit of legislation by and for Parsis, creating a body of Parsi personal law governing marriage and inheritance. The second was semicontrol of intragroup litigation by Parsis in the colonial courts. The first Parsis who lobbied for colonial legislation in the 1830s–’60s must have seen clearly what they needed to do and what benefits could result. The road to colonial legislation was sufficiently
straight and clear, if not necessarily easy, that its pursuit could be described as a deliberate strategy.

The route to increased control of litigation was different. Particularly in the mainstream colonial courts (as opposed to the Parsi matrimonial courts), nobody could have known exactly where it would lead or if all the pieces would fit together in a productive way. And yet they did by a fortuitous intersection of conditions – both heavy intragroup litigation and a significant presence in the legal profession. From the late nineteenth century on, disputes about the proper administration of Parsi charitable trusts began coming to court in growing numbers. From about the same time, Parsis started rising to the upper ranks of the legal profession in Bombay. With the appointment of the first Parsi judge in the Bombay High Court, the pieces locked. Parsi trust suits and their Parsi lawyers found themselves in Dinshah Davar’s court. Drawing on his own personal knowledge and an increasingly orthodox vision of Parsi identity, Davar crafted the judicial ethnography of his own community. He extended the Parsi comprador tradition from the world of trade into the world of law. South Asians had been acting as officials in the colonial legal system since the beginning of East India Company rule. However, it was only from Davar’s period that they began acting in the same capacity as European judges and

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167 For cases in which all of the advocates and solicitors’ firms were Parsi (or in which the firms had at least one Parsi founding partner), see Ardeshir Dadabhoy Baria and others v. Dadabhoy Rustomjee Baria and another ILR 69 Bom 493 (1945); joined cases of In re Shapurji Ratanji Tata and Pirojshah Ratanji Tata, insolvents, and Shapurji Ratanji Tata and another v. Byramji Muncherji Tata and another ILR 1945 Bom 395. An all-Parsi cast was particularly common in the PCMC, where post-1906, a Parsi judge from the Bombay High Court was usually named presiding judge. See, for instance, Cowasji Nusservanji Patuck v. Shehra Cowasji Patuck ILR 1938 Bom 75. The Bombay Parsi Panchayat frequently turned to Parsi lawyers for their professional advice. See Desai, History, 159–60, 222–5, 237–50, 299–301, 338–9, 376.
in the highest courts of India and the empire. Davar’s work on the bench captured the potential of South Asian judges ruling on their own communities’ religious affairs. There were other Parsi judges after him and other Zoroastrian trust suits that they decided. But Davar’s career best illuminated the magic moment that occurred for Parsis, even if it came with the inevitable pain and suffering of in-fighting on the public stage.

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