

Parsi Legislation and Community Identity in Colonial Punjab

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This article argues, to legitimize a distinct Parsi identity and to avoid submergence under majoritarianism of Muslims and Hindus, living within the constraints of anglo-legalism, provided a possibility to protect Parsi community interests tied up with patriarchal structure. It explores, instead of maintaining collective autonomy and integrity by avoiding interaction with the colonial state, the Parsi community sagged deep into the colonial legal system. They de-Anglicized the law by incorporating legal amendments and clauses to adjudicate issues related to marriage, divorce, inheritance, and religious trusts, which were in consonance with their own distinctive models of the family and community. The reform minded Parsi middle class used the discourse of legality to build walls between the sexuality of women in the familial and extra familial domains. The terms of discourse on male and female sexuality reflected middle class aspirations to ideological hegemony, underpinned by bureaucracy of colonial Punjab which aligned colonial authorities with the nationalist patriarchy.

Introduction

During the first half of the twentieth century, a commitment to the application of personal law was central to evolving notions of distinct religious identity among diverse religious communities under the British rule. Chatterjee proposes, ‘the growth of civil society under colonial rule as a site, populated by modern, western-style associational institutions remained confined to an elite minority by excluding commoners.’¹ The civil society, comprised of Indian elite was a site for negotiation and resistance with modernity imposed on India in colonial fold. In the final decades of the eighteenth century, British East India Company administrators incorporated Hindu and Muslim law into Anglo-Saxon legal system by constituting civil and criminal courts. In accordance with the Hastings Plan of 1772, Muslim law was applied in cases regarding marriage, inheritance and other ‘religious’ matters brought by Muslim groups before Anglo-Indian courts.² Muslim lobbying for reform of the law of religious trusts and Anglo-Islamic personal law began in the 1870s and continued into the 1930s. The Hindu movement for broad personal law reform also gained force in 1920s–30s. In this regard various legislations and bills were presented to control and manage religious endowments and charitable trusts by their respective religious laws. Abul Kasem’s Musalman Waqfs Registration Bill 1921 and Dr Gour Hindu Religious and Charitable Trusts Bill 1924 are a few examples. In doing so, particularly Punjabi Muslim elite contested the primacy afforded to customary law by the Punjab Laws Act of 1872³. Parsi legislative lobbying

started four decades before the Muslim movement and almost a century before the Hindu one.

During the last century of colonial rule, a series of politically charged reform movements tried to reform the practices affecting South Asian women such as criminalizing *sati* (burning of Hindu widows on their dead husbands' funeral pyres), destigmatizing the remarriage of Hindu widows by introducing (Hindu) Widow Remarriage Act 1856.⁴ Debates about gender the political mileage gained by Parsi elites by passing legislation on marriage and divorce, rejection of polygamy (1865) and extra-marital relationship with prostitutes a basis for divorce (1936) was a direct product of the social reformist movements swirling around gender in the late colonial period. In both cases of Muslims and Hindus, the possibility of Indian independence and rising communal identities stimulated efforts to define what it meant to be Muslim or Hindu through the law of marriage, inheritance, and religious endowments.⁵ However Parsis did not aim to break away from British rule but the likely continuation of colonialism pushed Parsis to assert greater control over law. Under the East India Company, the colonial courts applied Hindu and Islamic law to Hindu and Muslim family cases, respectively. Although the colonial courts' understanding of Hindu and Islamic personal law was distorted through the selective and imperfect translation of texts and the Anglicized assumptions of European judges, there was some attempt nonetheless to avoid the wholesale application of English law.⁶ By contrast, English law was applied to Parsis because of the view that Zoroastrianism, unlike Hinduism or Islam, lacked a body of religious law. Here was the crucial background condition against which Parsi legal culture emerged. On legislation and enforcement of personal law for Indian communities, Gregory Kozlowski, Robert Ivermee and Asad Ahmad argued administration of Muslim and Hindu personal law meant to construct distinct identity in a colonial milieu.⁷ Scholars like Jerold Auerbach and Mari Matsuda have suggested that adopting common-law legalism eroded the cultural and religious integrity of minorities like Jews and indigenous Hawaiians in the United States. Unlike them the Parsi lobbyists, legislators, lawyers, judges, jurists, and litigants de-Anglicized the law that controlled them and integrated themselves in colonial legal system to forge a distinct identity under Muslim and Hindu majoritarianism. Jatinder Kaur, Harish Sharma, Minoti Chakravarty-Kaul, Gurmeet Kaur discussed custom and women law of inheritance in colonial Punjab. They argued women were subject to patriarchal laws under customary laws. Acceptance of women's right to inheritance of property would not be economical for the prosperity of province because it would lead to the fragmentation and sub-divisions of holdings and hence threatened the colonial order.⁸ Mitra Sharafi and Anshu Malhotra's work on Punjab reveals the nationalist elite strengthened the patriarchal traditions in the name of women reforms. The reform-espousing elite were uncomfortable with the recourse to religious pursuits resorted to by some widows in their path to asceticism⁹.

This article shows Parsis used colonial law to give force to a particular vision of community which gave rise to nationalist patriarchy to perpetrate control over women through the Parsi Marriage and Divorce Acts of 1865 and 1936.

Reformist and nationalist notion of women, sexuality, honour and patriarchy, were hegemonic construct and aligned with Parsi social and community life forms. Colonial authorities were aligned with nationalist patriarchy rather than to lead process of reform. This was the preferred mode of governance.

The account in this article is based on the original unexplored archival sources which include Punjab Proceedings of Home and Judicial Department 1939 on Parsi legislation in colonial Punjab. These historical documents are available in the Punjab Secretariat Archive Lahore. It constitutes a valuable source for understanding socio-cultural conditions in society in which these sources were produced. Studying these texts as historical sources raises questions regarding their origins, the relationship between colonial state, Parsi elite as its collaborators and women as subject. These sources show the colonial state's management of issues was coercive and biased. These sources reflected the imposition of nationalist patriarchy through bureaucratic and judicial powers, ostensibly devoid of context. The sources also reflect the conflicting voices raised by Lahore Parsi organisations which identified laps and defects in the legislation which was imposed one, however the courts were not delegated powers to safeguard the interests and rights of women, keeping in view the socio-existential problems they confronted.

Parsi community in colonial Punjab

The Parsis are a community in India that trace their ancestry and religious identity to pre-Islamic, Zoroastrian Iran (pre-651 C.E.). The Parsis presently number approximately 110,000 individuals worldwide, and over 70,000 individuals in India.¹ The Parsis are the descendants of Iranian Zoroastrians who migrated to and settled in India in order to preserve their Zoroastrian religion. Zoroastrianism is the religion associated with the teachings and revelation of the Iranian prophet and priest Zarathustra, or Zoroaster as referred to by the ancient Greeks. From the time of their arrival in India and over the centuries, the Parsis grew from an insular group to assimilated in to Indianized and then to a highly westernized community with a pluralistic outlook. From the nineteenth century, while maintaining an orthodox religious identity of their own community, the socially adaptive Parsis took advantage of the political reality of colonialism in India, forged economic and sociopolitical contacts with British interests and emerged as an affluent and influential community under British colonialism.¹⁰ With the approval of British government Parsis reconstituted their panchayat in 1787, gained official recognition which gave it authority to pass various *bundobasts* or regulations to define Parsi custom and strengthen Parsi identity in Bombay from 1818 to 1835.

The urban setting of Bombay offered attractive commercial opportunities to Parsis which set new threats to the collective identity as well as chances for shaping their cosmopolitan social culture. It was in this context that the Parsis were pioneers in the advancement of education in Bombay, adoption of caste punchayet model, the fostering of social and political ties with the British, the

creation of a Parsi press and the Parsi's entry into politics. From the later nineteenth century on, these early Parsi fortunes were invested in the industrial development of India. Like the opium trade, textile mills in western India brought huge profits to Parsi merchants.¹¹ Many of these tycoons built crucial parts of Bombay's infrastructure through philanthropic projects. Companies like Tata, Godrej and Jeejibhoy became leading producers of steel and manufacturers of safes, locks etc. Parsis also excelled in the professions, including law and medicine. They were key players in the world of Bombay journalism, too, running Gujarati-language newspapers like the *Bombay Samachar* and the *Jam-e-Jamshed*, producing bilingual Anglo-Gujarati publications like the *Kaiser-i-Hind* and *Hindi Punch*.¹²

A. Hamid, Urdu novelist and short story writer, wrote 'The Parsis of Lahore, were like an ornament that the city wore. Their disappearance has left it poorer in more ways than one.' A small migrant Parsi community which had its roots in Bombay, had been drawn to Lahore by the commercial opportunities in this growing colonial city.¹³ Their numbers fluctuated at around 200 during the colonial era. Most of the Parsi businesses, located in the Imperial center, the Civil Lines and the Cantonment of Lahore, flourished under the colonial patronage. As an affluent commercial group, they held a monopoly over the liquor business. Ardeshir Byramji Limboowalla Cooper was a thriving wine and provision merchant on Mall Road, owned Gandhi Wine Shop, Edulji, English Wine Shop in Regal, French Wine Shop next to the Shah Din Building, another on Temple Road and also in the Lahore Cantonment.¹⁴ Other wine merchants were Framji Khajurina and Peshotan Bhandara (d.1961), the father of the renowned author Bapsi Sidhwa.¹⁵ Dinshawji Challa, Machliwallas and Ghadiallis lived in cantonment and provided groceries and drinks in several outlets. Challa's store known as Jamsetjee and Sons in the heart of the Cantonment was a favorite haunt of the foreign military personnel stationed there during the British Raj.¹⁶ Besides the military, the majority of the customers were foreigners working in Lahore as heads of companies or banks. Jamsetjee and Sons were also suppliers to the British Military Hospital and the Indian Military Hospital in Lahore Cantonment. Apart from wine/provision business, another field ventured in by Parsis was auctioneering on behalf of the North-Western Railway from Karachi to Peshawar, and the Ministry of Defence for the entire Punjab. Ian Talbot maintains, at the end of the colonial rule, private auctions were conducted for those returning home to Britain.¹⁷

Along with a group of visionaries like Lala Lajpat Rai, Lala Harkishan Lal, Rai Mool Raj, Kali Prasono Roy, Dayal Singh Majithia, a well-known Parsi merchant E.C. Jessawala, founded the 'Punjab National Bank' in 1895, with an authorized total capital of two lakh rupees and working capital of Rs 20,000.¹⁸ Among other prominent individuals were, Dr Bharucha, a famous pediatrician who was known for his healing touch and the cheerful Parsi gatekeeper supervising entry to the second class at the Plaza Cinema which showed Hollywood movies. Dara Cooper owned the famous Ritz Cinema and a toy shop in the Mall, which was a popular residential area because of its schools, amenities and proximity to Parsi businesses.¹⁹ The Dajis and Rustomjis were

prominent lawyers lived on Queen's Road. Parsis also patronized art, owned theatre companies which visited the city and had their local patrons. The theatre companies were an important link with the later development of what became known as 'Lollywood'.²⁰

Little is today known or documented about the prominent personalities of the Parsi community settled in Rawalpindi. A few prominent were, Fakirji Dhunjibhouy, born in 1845, a famous trader and philanthropist of Rawalpindi, earned the title of Khan Bahadur, knighted for his loyalty to the British during the Afghan Wars, the Boer War in South Africa and the Boxer Rebellion in China.²¹ He ran a well-equipped tonga-based mail and carrying agency called Dhunjibhouy and Son Co. with his son Sohrab Dhunjibhouy. His entrepreneurial and innovative efforts made journey from Rawalpindi to Srinagar (the capital of Kashmir), considerably easier. He also built Dhunjibhouy Jain Public Library, the city's oldest and premier public library on Hathi (Elephant) Chowk, a commercial hub of the cantonment city that developed soon after when Raj extended their rule to the West of the Sutlej.²² Isphanyar Minocher Bhandara, former Member of the National Assembly and President of the Rawalpindi Parsi Anjuman, Khursheed Marker, the only Pakistani Parsi to be nominated a Federal minister of cabinet, and niece of the illustrious Jamsheed Marker, Pakistan's well-known diplomat.²³

Parsi legislation and desired model of family and community

Collaboration with British got them closer to British law. In India, where community boundaries were tightly sealed and adjudication by religious authorities or panchayats (caste or community councils) was well developed, Parsis, however, turned to colonial courts rather than to their own religious or community authorities with considerable repetition in disputes among themselves, particularly in religious strife.²⁴ They pursued to create Parsi community-specific personal law, governing marriage and inheritance to Hindus and Muslims, to whom Anglo-Hindu and Islamic law had applied since the early period of Company rule. Parsis resolved to reconfigure laws so as to make them a fusion of customary norms and the desire and vision of their community life. These reinvigorated laws confronted the conventional norms and perks of patriarchs and the dispensation of wealth and economic resources. It reflected a willingness to change and connecting law with Parsi social life.²⁵ Parsis believed, living within the restricted domains of Anglo legalism, it was possible to safeguard community interests significantly, by embracing the methods of colonial law and penetrating in its institutions.²⁶

Since the 1860s, the upper ranks of the legal profession had also been opening up to South Asians, and Parsis became top lawyers and judges in Bombay especially. They came to manage much of the litigation among Parsis and produced rulings that reflected their values and visions for the community.²⁷ Unlike many South Asian populations, Parsis found colonial courts as a robust alternative forum from where Parsis were able to shape the rules to reproduce their desired models of the family and community. Parsis organized themselves

into lobby groups in the 1830s to oppose the application of primogeniture in inheritance suits. By the 1850s–60s, Parsi lobbyists were drafting and campaigning for the passage of the matrimonial and inheritance legislation that would create Parsi personal law.²⁸ In the 1920s–30s, they revised these statutes because Parsi legislators had legal skills to shepherd the statutes through the legislative process.²⁹

Parsi legal culture gave special shape to the social institution of family. Through the formulation of Parsi personal law, lobbyists delineated the powers of male member as family patriarch to provide for his wife and children, but equally, for his parents, widows of his descendants, and a wide circle of other relatives.³⁰ The Parsi family as reinforced by law looked different from its Hindu, Muslim, or English counterparts. It lacked the joint family, the highly elaborated institution that structured property, inheritance, and tax law for many Hindu families. Parsi husbands, unlike their Muslim equivalents, could not take multiple wives or divorce extra-judicially.³¹

Parsi Marriage and Divorce Act 1865 and 1936

The Matrimonial Acts, follow the creation and revision of the Parsi Marriage and Divorce Acts of 1865 and 1936. The 1865 Parsi Act prohibited the taking of a second spouse during the lifetime of the first in the absence of divorce. Although the Penal Code became law several years before the Parsi Act, the Penal Code's prohibition of bigamy was not applicable to Parsis until the Parsi Act made it so.³² With the first wave of matrimonial legislation, Parsi husbands lost the right to take more than one wife (if such a right even existed before 1865). However, they retained the right to sexual diversity in another form. The 1865 Act explicitly protected the right of Parsi husbands to have sex with prostitutes. Specifically, a man's extramarital sexual relations constituted adultery, a partial ground for divorce, unless the other woman was a prostitute.³³ The Parsi Law Commission explained its thinking. 'Illicit intercourse with courtesans carried on casually and beyond the precincts of the conjugal residence' was not enough to dissolve a marriage. A clear hierarchy existed among the married man's female partners. There could be other women, namely prostitutes, but they could not be placed on an open and equal legal footing with one's wife.³⁴ The 1865 Act gave the Parsi wife a bundle of legal entitlements, but her husband's sexual fidelity was not one of them. The spheres of sexuality within the marriage or outside were linked with nationalist patriarchy's attempt to render the categories natural. The act acknowledged the inherent promiscuity of the male against the established notion of chastity and monogamous fidelity of women, construed as naturalized and common sense of middle class.³⁵ As a result woman's sexuality was firmly linked to her responsibilities to the family and kin group, i-e reproduction, while male sexuality was defined in terms of his inherent claim over personal individuality, autonomy and pleasure. Once this gender division was naturalized, it was legitimized through legislation.³⁶ The Parsi Marriage and Divorce Act (XV of 1865) was found defective. Parsi

community and press demanded amendment in the act in conformity with the present day needs of the community. So the act was repealed and Parsi Marriage and Divorce Act 1936 by Manockji Nadar Shaw Dalal, was passed on 23 April, 1936.³⁷ Among the changes introduced by the act of 1936, was a change in the law, that payment of permanent alimony to the wife, should continue only while she remained chaste and unmarried and be discontinued if she either did not remain chaste or if she remarried. It was demanded that the law relating to the grant of permanent alimony should be changed by section 40 of the act of 1936. Omission of condition of chastity from clause b, as it stands, operated harshly upon the husband, compelling him to continue payments to even an erring wife, similarly clause c of the amending bill may lead to the harassment of divorced wives because husbands, to escape the burden of recurring payment, would be tempted to bring frivolous charges of unchastity against them.³⁸ This new addition of clause was so worded as to justify the apprehension that discontinuance of maintenance would be entirely within the discretion of husband and that it will fall upon the wife to have recourse to a court of law to establish her chastity to ensure continuance of the payment to her. Even in section 488, Criminal Procedure Code, clause (5) provides that unchastity will disentitle a wife to the maintenance charges, but husband has to prove his allegation in the court of law.³⁹ The bureaucracy of Punjab supported the bill, called the proposed amendment is logical and salutary and maintained that the burden of proof is on husband and the provision should be made for the revocation of the order by the court.⁴⁰ Deputy Commissioners of Amritsar, Gurdaspur, Sialkot, Gujranwala, Sheikhpura said, if allegations of unchastity were denied by the wife, husband has to prove it in the court of law or before Parsi punchayat.⁴¹ Husband should not have the loophole to escape and refuse payment on frivolous assertion of the wife's unchastity. The court can revoke its own order if the husband can satisfy the courts of the wife's unchastity or remarriage. In case husband violated the legal order, it may be made applicable forcefully under the code of civil procedure, 1908, and further the husband may be sued by any person supplying the wife with alimony during the time of defiance for the price of such requirements.⁴²

If the divorced wife marries and she has children, the second husband may not support her children, in such condition to stop monthly allowance will be very hard for her and will lead her to worse actions and hardship. T. A Boga, a Parsi from Amritsar wrote 'Deputy Commissioner Amritsar. If monthly payments of wife are discontinued for not being chaste or remarried, how will she sustain herself, if she had children from previous husband. The financial stress will force her to make her earning by low means i.e. prostitution. It will also permit the husband to refuse payments on the frivolous assertion of wife's unchastity. Trinity of the Parsi religion, which was implanted in the minds of every Parsi, does not allow to think of adultery. Why law should step in and encourage a woman to indulge in unchastity'.⁴³ S.R. Jariwala, the honorary secretary Lahore Parsi Anjuman, proposed to A.V. Askwith, Home Secretary Punjab, that on proof of unchastity and remarriage, to the satisfaction of the court, the discretion of court must be exercised with a view to determine what

is proper to be done in the circumstances of each case. He said the proposed amendment is undesirable and harmful to the interests of the community. Court had no discretion to modify or alter the order for alimony. It can only order that the alimony should cease.⁴⁴ A.N. Bhandari, the district and session judge Delhi said in a letter to registrar High Court of Judicature, payment of alimony should be stopped only after the court is satisfied on the application of the husband that the wife has remarried or has not remained chaste.⁴⁵ Ram Chandra, Commissioner Lahore also supported the view that if the allegations of unchastity are denied by the wife, the husband should be required to prove them either in a court of law or before a recognized Parsi organization such as Parsi Panchayat.⁴⁶ However, it was also emphasized that the act did not safeguard the wife against false imputations, anxious to get rid of his obligations.⁴⁷

The proposed amendment is so desirable that it was hardly necessary for the council of state to circulate the bill, especially when the Parsi Panchayat is in favour of it. A Parsi divorced wife did not have the courage of opposing it. So if the first act abolished polygamy among Parsis. The second made the grounds of divorce identical for husbands and wives. The Times of India stated, that the statute of 1936 'makes the Parsis the first community in India to place men and women on an exactly equal footing so far as matrimonial causes are concerned; and that it makes the Parsi community the first in the East to put its divorce law on a more rational, humane and equitable basis.'⁴⁸ This does not mean the matrimonial statutes prioritize gender equality. Rather, they represented the simultaneous relinquishment of certain patriarchal privileges and retention of others. The promotion of women's rights offered maximum political value in Parsi-British relations, the emphasis placed on the ban on polygamy, especially, reflected this dynamic. However, what was ushered in under colonial rule in the name of modernity, was not empowering of women.

Colonial modernity re-defining morality

The purpose of 1936 act was redefining the sexuality, what is within the confines of conjugal family and what is beyond. The need for legislation to promote morality was beyond doubt and served to strengthen its appeal among the colonial authorities. The emergence of new forms of bureaucratized authority with the changing colonial economic order, defined the contours of 'respectable' and disrespectable sexuality more sharply which was meant to bring desired changes in the reproductive sexual economy of families.⁴⁹ The acceptable forms of female sexuality was confined to the inner quarters of domestic homes, within the sphere of family, as it was linked to rights to property. The bureaucratic authorities of colonial Punjab supported the legislation, however expressed certain reservations.⁵⁰

The argument that reinforced such gendered discrimination was the belief that adultery among women was a very serious threat to the patrilineal family, since it called in to question the paternity of the children and undermined claims to inheritance. Adultery among men did not risk the interests of the family. The act in definitive terms, created a division between chaste and loyal wife, and the

sexuality of the unchaste women. The notion of new nationalist patriarchy naturalized these binaries, while rendering the promiscuity of the male as also natural. Indian reformers and colonial authorities redefined the contours of the family. The patriarchal nuclear family was made a site of inviolable fidelity on the part of the women. Mathulakshmi Reddy said about marriage reform: ancient ideals of chastity, self control should be brought back to modern society.⁵¹

In the newly emerging concept of nuclear family, the question of nature of morality of woman acquired centrality, as she was a personified guarantor of morality. Nationalist imagination constructed the idea of 'companionate marriage' in a patriarchal nuclear family, as the most fascinating model.⁵² Political exigencies of maintaining power in an increasingly contested terrain often made the colonial authorities allies of nationalist sexual politics. Partha Chatterjee suggested, 'the new patriarchy which nationalist discourse setup as a hegemonic construct culturally distinguish itself not only from west but also from the masses of its own people.'⁵³ The matrimonial law, the patriarchal powers of Parsi husbands and fathers were restructured to delegate more control over their wives and children while diminishing legal opportunities for sex with multiple partners. According to the 1936 Act, Parsi husbands surrendered their access to sexual diversity (first their right to polygamy, later their right to have sex with prostitutes), but not their power to control their children (through the right to contract child marriages) and wives (through the right to physically discipline them).⁵⁴ The economic changes intersected with shifting ideologies of marriage and family and female sexuality. With the passage of the Parsi Marriage and Divorce Act 1865, Parsi panchayat's adjudicatory role shifted to a body that controlled charitable funds and properties.⁵⁵ Reformist minded Parsis contested the idea that Parsi panchayats would resolve marital disputes, as it had the potential to become 'an irresponsible tribunal' so its adjudicatory role was terminated and passed on to colonial courts through 1936 legislation and its role was restricted to a body that controlled charitable funds and properties.⁵⁶

The response of Women Associations

Colonial administrators and Indian nationalists apparently undertook reforms intended to transform the status of women in India in the name of modernity. What was ushered in under colonial rule in the name of modernity was strengthening of patriarchal hold over women. Anshu Malhotra also argued the educated and nationalist elite of Punjab emphasized women reforms in order to give a progressive image of themselves. It was in fact meant to strengthen the claim of domination and contesting the orthodoxy.⁵⁷ Members of the All India Women's Conference, the Women's India Association, or the National Association of Women in India continued to put pressure on the Government and on the Congress leadership in a consistent manner. National planning Committee set up under Jawahar Lal Nehru, on 'women's role in a planned economy' in which Sirojini Naido, Hansa Mehta, Begums Shahnawaz and Hamid Ali were members and recommended changes in the Hindu Women's

Right to Property Act of 1937, a uniform code to guarantee equal rights to women in keeping with the modernizing trends in Indian society.⁵⁸ There were also suggestions for an absolute estate for women and the prohibition of polygamy. In 1941 B.N Rau committee was appointed to make changes in the Hindu Women's right to property Act 1937 and then Hindu Law Committee was reappointed in 1944, composed of members like Hansa Mehta, Amrit Kaur and Lakshmi Menon.⁵⁹ The members asserted for guaranteed equal rights for women, a widow should get a share of her husband's property equal to a son's share, a daughter would get half of the son's share, intercaste marriage should be legalized and ground should be established to dissolve a marriage. Hansa Mehta drafted a 'Charter of Rights' with the assistance of Kaur and Menon, who were also members of Constituent Assembly Committee for fundamental rights, therefore forcefully demanded, the equality of sexes should be the basis of citizenship in India and women's status in education, health and property rights should be improved.⁶⁰ There was no disagreement on political and economic rights, however personal law reforms came under severe opposition by orthodox men. Nothing has been documented, how Parsi women or their associations responded to legislation against Parsi women. Mysore Ladies Conference asserted that 'social laws of country should not enter the household', so that the domain of family could be protected from state intervention.⁶¹ However, it was imperative to note that Parsi elite men enjoyed colonial patronage being close to the power structure and hence they supported the notion of colonial nationalist patriarchy which precluded all options to legally contest those laws, as the laws had protection by the colonial courts. The legal justice was constructed, interpreted, and administered by men to protect patriarchal privilege. Power was enshrined in law through the efforts of lobbyists, one that accrued only to elite Parsi patriarchs. The Bombay patriarchs who built Parsi legal infrastructure drew on their own aspirational visions of community life. Under colonial setup, Parsis emerged as minority population that constructed its collective sense of self not by avoiding the state, but by engaging so closely with state institutions as to become almost a part of them.

Conclusion

During the last century of colonial rule, a series of politically charged reform movements tried to reform the practices affecting South Asian women such as criminalizing *sati* (burning of Hindu widows on their dead husbands' funeral pyres), destigmatizing the remarriage of Hindu widows by introducing (Hindu) Widow Remarriage Act 1856. Debates about gender the political mileage gained by Parsi elites by passing legislation on marriage and divorce, rejection of polygamy (1865) and extra-marital relationship with prostitutes a basis for divorce (1936) was a direct product of the social movements swirling around gender in the late colonial period. The history of matrimonial legislation is notably thin on the female perspective. The legal justice in India was constructed, interpreted and administered by men to protect patriarchal privilege. This period was marked by the persistent efforts of both colonial

administrators and Indian nationalists to undertake reforms intended to transform the status of women in India. The notions of women, gender, honour, patriarchy and sexuality were redefined as hegemonic construct. The 1936 Act made uniform the grounds for divorce between husbands and wives, however it did not mean to give gender equality. As the colonial period progressed, legislative processes were increasingly controlled by elite Parsi men. The Parsi Marriage and Divorce Acts represented the reshaping of patriarchal power in Parsi life, but it was more a reconfiguration than a steady curtailing of male privilege. Across the two major waves of legislating activity, senior Parsi males redefined their own patriarchal powers and entitlements. They gave up the legal right to enjoy multiple sexual partners while married, renouncing the power to take more than one wife (1865) and to have sex with prostitutes (1936). But they were careful to retain other privileges, especially particular types of control over wives and children. For Parsi lawmakers, control over immediate family members was more precious than a formalized right to sexual diversity. Archival documents show that colonial authorities were aligned, rather than opposed to nationalist patriarchy. This was a preferred mode of governance for colonial officials. Colonial laws underscored the desired form of Parsi social and community life. The passage of the Parsi Acts said more about the way Parsi men conceptualized their own role in the nuclear family than about Parsi women's views. It gave the elite Parsi men who served as delegates, an unusual form of intragroup control.

Notes

¹ Partha Chatterjee, *The Nationalist Resolution of the Womens Question; Recasting Women: Essays in Colonial History*; Sangari, Kumkum and Sudesh Vaid, (New Delhi; Kali for Women, 1989, 225-33).

² Ivermee, Robert. 'Shariat and Muslim community in colonial Punjab'. In Tahir Kamran and Hussain Ahmad Khan (Eds) *Perspectives in social history of colonial Punjab*. Lahore: Khaldunia Centre of Historical Research, 2021, Pp (117-119); Gilmartin, David 'Customary law and Shariat in British Punjab'. In Katherine Pratt Ewing (Eds), *Shariat and Ambiguity in South Asian Islam*. (Delhi: Oxford University Press, 1988), pp. 45; Gilmartin, *Empire and Islam: Punjab and the Making of Pakistan*. (London: I.B. Tauris & Co, 1989).

³ Home (Judicial) Department Proceedings, 1924 & 27; B. K. Mukherjea, on the Hindu Law of Religious and Charitable Trusts, Eastern Law House, 1983. Tupper, C.L. (1881) Punjab Customary Law. Calcutta: Government printing. also see Powell, B.H. Baden. (1892) Land System of British India. (London: Oxford University Press) pp. 2-6.

⁴ Janaki Nair, *Women and Law in colonial India: A social History* (New Delhi, Raj Press, 1996) pp 4-7; Jesse S. Palsetia, *Jamsetjee Jejeebhoy of Bombay: Partnership and Public Culture in Empire*, (New Delhi: Oxford University Press, 2015).

⁵ Sumanta Banerjee, *Women's popular Culture in Nineteenth Century Bengal Recasting Women*, p.134; Kozłowski, Gregory C. *Muslim Endowments and Society in British India*. (Cambridge: Cambridge University Press, 1985).

⁶ Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947*, (Cambridge University Press, 2014). Also see Werner Menski, 'Jaina Law as an Unofficial Legal System', in *Studies in Jaina History and Culture: Disputes and Dialogues*, ed. Peter Flügel (London: Routledge, 2006), pp. 428–31; Rankin, George (1939) 'Custom and the Muslim Law in British India', *Problems of Peace and War*, vol. no. 25, pp. 89-118; Nelson, Matthew J. *In the Shadow of Shari'ah: Islam, Islamic Law, and Democracy in Pakistan* (Columbia: Columbia University Press, 2011); Ivermsee, *Shariat and Muslim community in colonial Punjab*.

⁷ Kozłowski, *Muslim Endowments and Society in British India*; Ivermsee, *Shariat and Muslim community in colonial Punjab*; Asad, Ahmad 'Adjudicating Muslims: Law, religion and the state in colonial India and post-colonial Pakistan', PhD dissertation, Department of Anthropology, University of Chicago, 2006.

⁸ Minoti Chakravarty Kaul, 'Commons, Community and Customary Law: A Rule of Law', conference paper, participatory Development Forum, 1992. URI: <https://hdl.handle.net/10535/763>; Kaur, Jatinder (1984) 'Customary Laws of the Upper Bari and Bist Jalandhar Doab (1849-1947)', M.Phil. Dissertation, (History), Guru Nanak Dev University, Amritsar; Harish C. Sharma 'Custom, Law and the women in the colonial Punjab' (2001), Proceedings of the Indian History Congress, vol. no. 62: 685-692; Gurmit Kaur, 'Customary law and widow remarriage: its implications and effects on colonial Punjabi women', Proceedings of the Indian History Congress, vol. no. 72, 2011, part-1: 828-835.

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