The Two Husbands of Vera Tiscenko: Apostasy, Conversion, and Divorce in Late Colonial India

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On June 27, 1940, Vera Tiscenko, a Polish actress formerly with the Moscow Arts Theatre, "of her own free will and after due deliberation" embraced the Islamic faith at the Nakoda Mosque at 19 Chowringee Road, Calcutta.[1] Vera Tiscenko's journey from Moscow to colonial Calcutta was a long and tortuous one. Fleeing the country after the revolution, Vera settled in Berlin where she married a Russian émigré, Eugene Tiscenko. Over the next few years they moved across Europe from Nazi Berlin to civil war Spain and finally settled in Mussolini's Rome, where Vera gave birth to a son, Oleg. In 1938, Eugene Tiscenko went to Edinburgh to qualify for a British medical degree, while Vera and her son left Rome for Calcutta after being invited by Professor Shahid Suhrawardy, her former director at the Moscow Arts Theatre.[2] The reason for the separation between the couple remains unclear. Chief Justice Derbyshire was to speculate that Eugene Tiscenko might have intended to settle somewhere in British India after qualifying, but Vera herself admitted that the marriage had been unhappy. Finding "relief and solace in the teachings of Islam," she cabled her husband the news of her

1. *Noor Jehan Begum v. Eugene Tiscenko*, 1942 A.I.R. (Cal) 325.

2. Huseyn Shaeed Shurawardy, *Memoirs of Huseyn Shaheed Suhrawardy* (Dhaka: University Press Limited, 1987), 7.

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conversion and requested that he accept the Islamic faith. Eugene Tiscenko replied that his religious convictions were unshakable and "refused absolutely" to change his faith.[3]

Vera Tiscenko, or Noorjehan Begum as she was now known, applied to the High Court of Calcutta for a suit declaring the dissolution of her marriage to Eugene Tiscenko. The leading authorities on Islamic law in British India all emphatically agreed that "when the wife becomes a convert to Islam and her husband remains an infidel, the Magistrate is to call upon the husband to embrace the faith also … if he refuses the Magistrate *must separate them*, and according to the Prophet and Abu Hanifa this separation constitutes a divorce."[4] The Calcutta High Court had repeatedly upheld this principle in the recent past.[5] Since her husband had agreed not to contest the decree, Vera could expect the court to promptly free her to marry again.[6] The fact that her intended fiancé was none other than Huseyn Suhrawardy, leading light of the Calcutta bar and finance minister of the Muslim League government in Bengal, was also expected to smooth the judicial processes.[7]

Justice Edgley of the Calcutta High Court thought otherwise. Feeling that the suit brought up "certain legal points of far reaching importance," he appointed three leading barristers to act as amici curiae and represent the husband so that the law relating to the case would be discussed in full. After a lengthy decision, the court reached the conclusion that "the rule of Mohammedan law on which she relies, must be regarded as obsolete and contrary to public policy."[8] As a Polish woman trying to dissolve her marriage to a Russian in Germany before a court in Calcutta, Vera's case was quite unique. Despite the uniqueness of her situation, the decision in her case came to affect the lives of women all over South Asia.

The rule laid down in the *Tiscenko* decision gained legal momentum after several Indian high courts in the next few years cited it as an authority

3. Telegram from Eugene Tiscenko 24, Montepelie Park, Edinburgh 10, dated July 2, 1940, as reproduced in *Noor Jehan Begum v. Eugene Tiscenko*.

4. *The Hedaya or the Guide: A Commentary on the Mussulman Laws*, 2nd ed., trans. Charles Hamilton (London: S. G. Grady, 1870) 64; Neil Baillie, *Digest of Moohummudan Law, Part I (Hanafi Law)* (Calcutta, 1875), 180–81.

5. *Mussmumat Ayesha Bibi v. Bireshwar Ghosh Mazumdar*, 33 C.W.N., clxxix.

6. Letter from Eugene Tiscenko to Vera Tiscenko, dated September 19, 1940, as reproduced in *Noor Jehan Begum v. Eugene Tiscenko*.

7. Begum Shaista Suhrawardy Ikramullah, *Huseyn Shaheed Suhrawardy: A Biography* (Karachi: Oxford University Press, 1991), 19. Huseyn Suhrawardy was the younger brother of Professor Shahid Suhrawardy, Vera's mentor. He later went on to become the premier of Bengal and the prime minister of Pakistan.

8. *Noor Jehan Begum v. Eugene Tiscenko*, 582.

to refuse to recognize that conversion to Islam by Hindu,[9] Jewish,[10] and Zoroastrian (Parsee)[11] women could dissolve their former marriages. The *Tiscenko* decision achieved the status of a constitutional precedent when it was deployed repeatedly by the Supreme Court of India in landmark decisions on the right to equality and the freedom of religion.[12]

This judgment marked a turning point in how the Indian judiciary viewed the relationship between marriage and religious affiliation. Prior to this, women who converted to Islam were held to have automatically dissolved their former marriages, but *Tiscenko* became the legal authority that would change the law in most provinces. As Chandra Mallampalli has suggested, court decisions are valuable not just to explain events but to explain patterns of regulation and "official perceptions."[13] Using the *Tiscenko* decision as a fulcrum, I examine a body of case law that deliberated the impact of a woman's conversion on the validity of the marriage in order to tease out the changing patterns of the public engagement with this question.

So why then did Vera Tiscenko, with law, precedent, wealth, and influence on her side lose her case? Her maneuvers across geographic and religious boundaries were not unusual in South Asia.[14] That indigenous actors were able to strategically exploit the jurisdictional plurality of the colonial legal order has been recognized.[15] However, the response to this strategic maneuvering by the colonial state and other indigenous actors and the consequent restructuring of the legal order still remains largely unmapped.[16] To understand why Justice Edgely decided to publicly hear a case that was not even being contested by the husband, one needs to map the

9. *Gul Mohammad v. Emperor*, 1947 A.I.R. (Nag.) 121; *Rakeya Bibi v. Anil Kumar* 52 CWN 142; *Andal Vaidyanathan v. Abdul Allam Vaidya*, 1947 M.L.J. 402.

10. *Sayeda Khatoon v. M Obadiah*, 49 C.W.N. 745.

11. *Robasa Khanum v. Khadadad Bomanji*, 1947 A.I.R. (Bom.) 272.

12. *Sarla Mudgal, President, Kalyani et al. v. Union of India et al.*, 1995 A.I.R. SC 1531; *Lily Thomas v. Union of India and Others*, 6 *Supreme Court Cases* 224 (2000).

13. Chandra Mallampalli, *Contending with Marginality: Christians and the Public Sphere in Colonial India, 1863–1937* (London: Routledge, 2004), 59.

14. Several forms of "jurisdictional jostling" to deal with matrimonial disputes had evolved in India. Perhaps the most visible was the case of moving to a geographically distinct jurisdiction. See the discussion on restitution of conjugal rights and Baroda divorce laws in this volume, Mitra Sharafi, "The Martial Patchwork in Colonial South Asia: Forum Shopping from Britain to Baroda," *Law and History Review* 28 (4) (2010): 979–1001.

15. Lauren Benton, "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State" *Comparative Studies in Society and History* 41 (3) (1999): 563–88.

16. Recent exceptions include, Mitra Sharafi, "Judging Conversion to Zoroastrianism: Behind the Scenes of the Parsi Panchayat Case (1908)," in *Parsis in India and the Diaspora*, ed. John R. Hinnells and Alan Williams (London, 2007).

ways in which the colonial state and other aspirants to the state sought to "fix" the gaps in the system.

This forum seeks to build on Lauren Benton's work and explore ways through which native litigants explored jurisdictional ambiguities in a colonial legal system.[17] Here I argue that the strategic maneuvering by women evoked particular responses from both the colonial state and the Indian publics. Women have a complex relationship to religious identities as important signifiers of difference between groups. The public nature of family laws emphasizes collective identities that are frequently figured through the iconographies of familial and domestic space.[18] The ability of women to breach patriarchal authority and community boundaries caused severe anxieties. India in the late 1930s witnessed a rise in communal violence and religion-based mobilization, which coupled with an increase of electoral politics at the provincial and national level transformed individual or local issues into questions of national public debate. I seek to map the role played by the newly elected legislatures, buoyed with greater Indian representation, and a rapidly Indianizing judiciary in recrafting the legal order in late colonial India.

Benton suggests that the state-centered legal system arose in part due to accumulation of multiple jurisdictional claims, and since the nineteenth century it was able to stabilize and reduce spaces of ambiguity. Litigants continued to find new spaces to maneuver while the system was being transformed to reduce their mobility.

I place cases of women converting to Islam—and those of women becoming apostates from Islam in order to dissolve their marriages—within the same discursive framework. The choice of Islamic law as the lens to study these cases is deliberate. The colonial judiciary conceptualized Anglo-Muhammadan law to be a more coherent code than Anglo-Hindu law and adjudicated disputes by referring to a narrower body of texts. I draw a connection between textual practices adopted by the colonial court, the opportunities for strategic maneuvering, and the responses that it evoked from Indian elites. Much of the existing literature on gender and conversion in India has focused on Christianity in South India, which gets complicated by the fact that Christianity is identified with the colonial state, and mass politics based on a Christian identity (as opposed to a Muslim one) is very limited.[19]

17. Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (New York: Cambridge University Press, 2002).

18. Anne Mclintock, "Family Feuds: Gender, Nationalism and the Family," *Feminist Review* 44 (1993): 61.

19. See, for instance, Vishwanathan, *Outside the Fold: Conversion, Modernity, and Belief* (Princeton, 1998), Mallampalli, *Contending with Marginality*; Nandini Chatterjee,

I will demonstrate that the cases on conversion and apostasy, although dealing with different principles of law and provoking reactions among disparate groups of people, were inextricably tied together. The changing position of law on apostasy also influenced the cases on conversion. Through this interaction, I map the processes through which the boundaries between religious communities in British India were reworked.

Islamic Law and the Marital Patchwork in Colonial South Asia

Lauren Benton's contention that jurisdictional politics in colonial settings was irresistible to all parties would definitely seem to hold true in the case of family law in British India.[20] The applicability of matrimonial laws in colonial India was determined variously by domicile, nationality, and religion, leading to the creation of what Mitra Sharafi has described as the "marital patchwork in colonial South Asia."[21] Even though in a majority of cases matrimonial jurisdiction was determined by the personal-law system, each religious system contained space for maneuver. As Amrita Shodan's study of the Khoja community in Bombay shows, litigants took advantage of the ambiguity of the definitions of a Hindu and a Muslim while litigating questions of inheritance and community property.[22] Most strikingly, the Bombay High Court applied Hindu Mitakshara law and held that among Khoja Muhammadans, a son was entitled to obtain a partition in his father's property during his father's lifetime without his father's consent.[23] Similarly, Cutchi Menons, although Muhammadan, successfully argued that they were still bound by Hindu customs.[24] These maneuvers created anxieties for the state. Writing about law in colonial India, Radhika Singha has argued that the colonial administrators struggling to settle, tax, and police the populace were critical of political contexts and social norms that made it difficult to stabilize social hierarchies. The colonial state attempted to push back at situations

"Religious Change, Social Conflict and Legal Competition: The Emergence of Christian Personal Law in Colonial India," *Modern Asian Studies* (forthcoming).

20. Benton, "Colonial Law and Cultural Difference," 564.

21. Sharafi, "Marital Patchwork."

22. *Hirabai v. Sonabai, Perry's Oriental Cases* 110 (1845); *The Advocate General ex relatione, Daya Muhammad v. Muhammad Husen Huseni (otherwise called the Aga Khan)*, I.L.R. 12 (Bom.) 323 (1866). For a detailed discussion, see Amrita Shodan, *A Question of Community: Religious Groups and Colonial Law* (Calcutta: Samya, 2001).

23. *Cassumbhoy Ahmedbhoy v. Ahmedbhoy Hubibhoy and another*, I.L.R. 13 (Bom.) 534 (1885).

24. *Ashbai v. Tyeb Haji Rahimtulla*, I.L.R. (Bom.) 115 (1882); *Abdul Cadur Haji Mahomed v. Turner*, I.L.R. (Bom.) 158 (1881).

that allowed subjects to misrepresent what the state believed was their true identity and undermined administrative imperatives grounded in the idea of distinct collectivities with defining characteristics.[25] The role of the colonial state in converting fluid, localized legal systems into two overarching, textual bodies of law through a process of translation, codification, and adjudication has been well documented.[26] As both Sharafi and Mallampalli demonstrate in their essays in this forum, this process of maneuvering was made more difficult as litigants had to contend with the increasing formalization of rules by the colonial state.

Leaving Your Husband in Colonial India

Within this changing marital patchwork, escaping a bad marriage was becoming particularly hard for women. Classical Hindu law did not recognize divorce, holding the Hindu marriage to be a sacrament. The reliance the court placed on textual sources meant that customary practices of divorce were often not acknowledged. In *Budansa Rowther v. Fatma Bi* the Madras High Court held that a custom among Pallis and Vanniyans of allowing a woman to marry again during the lifetime of her first husband was contrary to public policy and to morality.[27] Thus, even though the Regulating Act and later the Government of India Act were to provide that the high courts should decide according to the personal law or custom of a community, this continued to be circumscribed by a "morality" of a wider population. Under the Indian Divorce Act, which was applicable to Christians, men had to prove only a single ground of divorce, but women had to prove the husband's adultery—plus one other ground.[28] Cruelty of the husband by itself was not a valid grounds for divorce. Muslim law recognized the possibility of a divorce initiated by the wife, but her options were limited. At the time of forming the marriage contract, the husband could delegate to his wife a conditional right to divorce. Upon the breach of those conditions, the wife could exercise the *talaq-e-tafwid* and pronounce divorce on herself.

25. Radhika Singha, "Settle, Mobilize, Verify: Identity Practices in British India," *Studies in History* 16 (2000): 152.

26. Michael Anderson, "Islamic Law and Colonial Encounter in British India," in *Institutions and Ideologies: A SOAS South Asia Reader*, ed. David Arnold and Peter Robb (Richmond: Curzon Press, 1993), 165–85; Scott Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia" *Modern Asian Studies* 35 (2) (2001): 257–313.

27. *Budansa Rowther and another v. Fatma Bi et al.*, 26 1914 M.L.J. 26 (260).

28. Section 10, Indian Divorce Act, 1869. Women could ask for a judicial separation on a single ground that legally gave her the right to reside separately but did not dissolve the marriage tie or give her the right to remarry.

Alternatively, she could ask for a *khula*, that is, ask her husband to release her in exchange for some consideration, usually the whole or part of her *mehr*. This was dependent on her husband's consent, and textbooks suggested that it had to be exercised within a very short time frame. For instance, if the wife wished to ask for *khula* upon her husband marrying another woman, she was supposed to exercise it as soon as she acquired the knowledge of the second marriage.[29] A woman who chose to physically separate herself from her husband did not find protection under law. The British interpretation of the notion of "restitution of conjugal rights" allowed one spouse to seek the intervention of the court in directing a spouse to return to the conjugal home. Refusal to return could be punished with fines, compounding of property, and even imprisonment.[30]

The only way many women could escape an unhappy marriage was to exit their system of personal law through apostasy or conversion.[31] The system of personal law as imagined by the British colonial state could not accommodate the idea of interreligious marriages. The Indian Christian Marriage Act of 1872 required that even if one party to a marriage was Christian, the marriage would have to solemnized according to the provisions of the act.[32] Mallampalli convincingly shows that judges in the Madras Presidency chose to understand Hindu-Christian marriages as either a Christian marriage under the Christian Marriage Act, or saw the marriage of a Christian woman to a Hindu by Hindu rites as a sign of her conversion to Hinduism.[33] Personal law was determined by the individual's status rather than her residence or nationality, thus her rights and obligations towards others were to be determined by her religion.

29. Asaf A. Fyzee, *Outlines of Muhammadan Law* (New Delhi: Oxford University Press, 1964), 163. For a detailed study of the same, see Lucy Carroll, "Tallaq-e-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of a South Asian Muslim Wife," *Modern Asian Studies* 16 (2) (1982): 277–309.

30. Perhaps the most famous case involving the restitution of conjugal rights and illustrating the public concerns that family matters evoked was that of Rukmabai in the nineteenth century. See Sudhir Chandra, *Colonialism, Law and Women's Rights* (London: Oxford University Press, 1996).

31. Since the 1860s there had been a campaign by Brahmo reformist groups to get legislation for the introduction of a civil marriage law for all Indians, irrespective of their religious faith. Public debate and a campaign led to the enactment of Act III of 1872, which permitted civil marriages for all non-Christians. The provisions of the Indian Divorce Act would be applicable to all marriages performed under this law. However, the Act contained a clause that in effect required the couple engaging in civil marriage to renounce their religious faith. For a history of civil marriage legislation in British India and an ethnography of its contemporary working, see Perveez Mody, *The Intimate State: Love Marriages and the Law in Delhi* (New Delhi: Routledge, 2008).

32. Section 4, Indian Christian Marriage Act, 1872.

33. Mallampalli, *Contending with Marginality*, 74.

The authorities were clear that a change in religion would lead to a material change in her other rights and obligations. The Native Convert's Marriage Dissolution Act of 1866 allowed converts to Christianity to dissolve their marriage with an unconverted spouse. This law was to protect converts to Christianity from social and familial disadvantages they might suffer as a result of their conversion.[34] Since classical Hindu law did not permit the annulment of marriage, a convert to Christianity could be prosecuted for bigamy if she took a Christian spouse. However, this act only applied to converts who had Hindu spouses, and it specifically *excluded converts married to Muslims, Christians or Jews* (emphasis mine).[35] Despite the available provisions in law, it has been argued that female conversion to Christianity was seen as less consequential in legal terms.[36] For instance, the Divorce Act made the conversion of the husband, but not of the wife, a grounds for divorce.[37] Gauri Viswanathan suggests that the colonial state recognized the transgressive nature of conversions and was concerned that conversions to Christianity might threaten native society with "cataclysmic religious change" and produce widespread violence and mayhem. This coupled with the anticlericalism of the colonial state and the conflation of its interests with that of Hindu patriarchy placed women converts to Christianity in an uncomfortable position.[38]

The Islamic Gateway for Divorce

My findings suggest that judicial attitudes towards the conversion of women to Islam and the apostasy of Muslim women were very different and were a result of how Islam and Islamic law were perceived by the colonial courts. The growth of the colonial state's power was matched by the

34. Ibid., 77.

35. Native Converts Marriage Dissolution Act, 1866, § 3. Interpretation-clause: "Husband." In this Act, "Husband," "Native husband" shall mean a married man domiciled in India who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew; "Wife," "Native wife" shall mean a married woman domiciled in India who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess; "Personal law" shall mean any law, or custom having the force of law, of any persons domiciled in India other than Christians, Muhammadans, and Jews.

36. Mallampalli, *Contending with Marginality*, 75; Gauri Vishwanathan, "Coping with (Civil) Death: The Christian Converts Rights of Passage in Colonial India," in *After Colonialism: Imperial Histories and Postcolonial Displacements*, ed. Gyan Prakash (Princeton, N.J.: Princeton University Press, 1995), 183–210, 201–3 (Huchi's case).

37. Section 10, Indian Divorce Act, 1869.

38. Viswanathan, "Coping with (Civil) Death," 198.

removal of native agency in the courts of law. The position of the quazis who were attached to the colonial courts was finally abolished in 1864, and their role came to be steadily circumscribed since the early nineteenth century. The translation of law codes, the production of textbooks, and the building of a body of precedent through court reporters permitted colonial judges to circumvent the quazis. The pruning and simplification of Anglo-Muhammadan law through the nineteenth century is best illustrated through the career of al-Marghinani's *al Hedaya*, the primary legal authority for most courts. When the colonial courts began to administer Islamic law in the late eighteenth century, they chose to rely on the *Hedaya*, a medieval manual of Hanafi law. Compared to other medieval Hanafi fiqh texts, the *Hedaya* did not consistently provide the logic and reasoning behind the rules of the school. Instead of relying on the original Arabic text, the courts relied on Charles Hamilton's English translation of a Persian translation of the original. This four-volume text itself was pared down in the 1870 edition in the interests of cost and utility, and the portions "more interesting to the antiquarian . . . than useful to the practitioner" were expunged.[39]

The British did not recognize the changes they had wrought to Islamic law, but they assumed that Islamic law always existed in a formal code that needed to be discovered, in the process translating the "substantial rationality" of the Shari'a into a more "formal rationality."[40] Islam, unlike Hinduism or Buddhism, possessed for the British an established coherence. Metcalf argues that the long and intimate connection of Islam and Europe provided Europeans with the assured sense of knowing Islam and Muslims that did not exist when they attempted to understand Hinduism and Hindus.[41] The colonial state found legal spaces without textual authority unstable and sought to include them within the rubric of Hindu and Muslim law. However, that this process was easier for Muslim law as compared to Hindu law is evidenced by the fact that the accepted legal definition of a Muslim was put forward forty years before the legal definition of a Hindu. The Madras High Court in 1921 decided the legal status of members of the Ahmediya sect and rejected the opinion of ulamas in defining a Muslim as one who "accepted the kalma, the prophethood of Muhammad

39. Anver Emon, "Conceiving Islamic Law in a Pluralist Society: History, Politics and Multicultural Jurisprudence," *Singapore Journal of Legal Studies* (2006): 341. The choice of the Hedaya over Badr al-Din al-'Ayni's (d. 1451) *al-Binaya: Sharh al-Hidaya*, a multivolume commentary with greater jurisprudential insight, was an indicator of colonial attitudes to Islamic law.

40. Kugle, "Framed, Blamed and Renamed," 270.

41. Thomas Metcalf, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 1997), 132–48.

and the authority of the Quran."[42] Legal precedence for the recital of the *kalma* for determining one's identity as a Muslim went several decades back.[43] In contrast, the authoritative judicial definition of a Hindu was only made in independent India in 1961.[44]

The colonial judiciary was extremely resistant to judicial creativity in the administration of Islamic law. This came to be highlighted during the conflict over the recognition of family wakfs by the colonial state. Rejecting a decision by a Muslim judge of the Calcutta High Court who had drawn upon Arabic texts to make a case for the legality of family wakfs, the Privy Council held "that it was dangerous to "*rely upon ancient texts of the Mahomedan law, and even precepts of the Prophet himself, of taking them literally, and deducing from them new rules of law … That danger is equally great, whether reliance be placed upon fresh texts newly brought to light, or upon logical inferences newly drawn from old and undisputed texts. Their Lordships think it would be extremely dangerous to accept as a general principle that new rules of law are to be introduced because they seem to lawyers of the present day to follow logically from ancient texts, however authoritative.*"[45]

Therefore a judge in a court in colonial India, when called upon to administer Muhammadan law, would turn to a small corpus of "authoritative" texts, which included Charles Hamilton's translation of the *Hedaya*, Neil Baille's translation of the *Fatwa-e-Alamgiri* and the textbooks of William Macnaughten, Shurn Chand Sharma, Ronald Wilson, and Mahomed Yusoof.[46] The approved sources of Islamic law in British India took a clear stance on the effects of apostasy. Hamilton's *Hedaya* held "if either husband or wife apostatize from the faith, a separation between them takes place without divorce."[47] The *Fatwa-e-Alamgiri*, compiled in the court of the Mughal Emperor Aurangzeb and translated by Baillie, declared that "apostasy from Islam by one of the married pair is a cancellation of their marriage."[48] Sir Ronald Wilson argued that the

42. *Narantakath Avullah v. Parakkal Mammu*, I.L.R. 45 (Mad.) 986 (1922).

43. *Ata Ullah v. Azim Ullah*, I.L.R. 12 (All.) 494 (1890); *Maula Baksh v. Amiruddin*, I.L.R. 1 (Lah.) 317 (1920); *Queen Empress v. Ramzan*, I.L.R. 7 (All.) (1885).

44. *Sastri Yagnapurushdasji v. Muldas Bhurdas Vaishya and another*, 1966 A.I.R. (SC) 1119.

45. *Baker Ali Khan v. Anjuman Ara Begum*, 30 I.A. 94 (1903).

46. Apart from the their frequent mention in the cases discussed in the paper, they are all mentioned specifically by Syed Ameer Ali and Fyzee as leading authorities on Muhammadan law. See Syed Ameer Ali, *Mahommedan Law: Tagore Law Lectures*, vol. 1 (Calcutta: Thacker, Spink and Co., 1929), iv–vi; Fyzee, Appendix G (1964), 492.

47. *The Hedaya or the Guide*, 66.

48. Neil Baillie, *Digest of Moohummudan law, Part I (Hanafi Law)* (Calcutta, 1875), 180–81, 182.

"the effect of either or both parties to a Muhammadan marriage renouncing the Muhammadan religion is to dissolve the marriage so far as the British courts are concerned, leaving it open to the parties to solemnize a fresh marriage."[49]

Syed Ameer Ali, the first Indian member of the Privy Council, despite expressing discomfort with the apostasy provisions, agreed with the position of law. Ameer Ali explained that crime of apostasy in Islam was a result of the "peculiar and difficult circumstances under which the Church of Islam came into existence."[50] Since the abandonment of Islam was seen as a renunciation of allegiance to the "Islamic Commonwealth," it was also a political offence amounting to treason. Male apostates were to be punished by death, and women apostates were to be imprisoned till they returned to the fold. In both cases, they were placed outside the fold of the community, and all obligations owed them ceased, including those of marriage. It was the curious position of Islamic law in British India that allowed "apostasy," which was held to be a treasonable offence under traditional Islamic law, to become a device to dissolve an unhappy marriage. As Ameer Ali said, the British Indian courts in "their strict adherence to the letter of the ancient doctrine, have missed the spirit of its enunciation," and have treated in the case of a Muslim wife as a privilege what was intended to be a punishment. Since apostasy had ceased to be a state offence, it was contended to be absurd that the other effects of apostasy should be enforced.[51] However, such an argument was difficult to make within the reified and static conception of the Shariat held in colonial India. Under Islamic traditions, the Shariat is a flexible system that embraces contradictory juridical decisions and multiple juridical methods, as long as they rely on "certain authentic sources and reasoned deduction."[52] The processes of translation, codification, and adjudication mentioned earlier had greatly narrowed the number of acceptable sources and limited the permissible types of deductive reasoning.[53] Working within this structure, Ameer Ali sought for authority within the approved coda of authorities and relied on the opinions of the jurists of Samarkhand and Balkh, which held that since *kitabia* (women from a revealed scriptural religion like Christianity or Judaism) could validly marry a Muslim man, the adoption of such religions by a Muslim woman cannot affect the status of the marriage. This he believed should

49. Ronald K. Wilson, *Anglo-Muhammadan Law*, 6th ed. (London, 1930), 156.

50. Ameer Ali, *Mahommedan Law*, 388.

51. Ibid., 393.

52. Kugle, "Framed, Blamed and Renamed," 258.

53. For a broad overview of this process, see Anderson, "Islamic Law and Colonial Encounter," 165–85, and Emon, "Conceiving Islamic Law," 340–46.

be the guiding principle of Indian courts that have to act according to "justice, equity and good conscience."[54]

Colonial courts remained unsympathetic to arguments appealing to the spirit or context of the laws. For them it was simply a question of balancing the force of authorities, rather than attempting to contextualize them. In *Amin Beg v. Saman*, barrister Ishaq Khan relied on Syed Ameer Ali's argument to contend that conversion to Christianity by the wife did not repudiate the marriage. Faced with the combined authority *Hedaya*, Baillie's digest, Mcnaugten, Wilson, and previous decisions of the Punjab Court of Record, the Allahabad High Court found that the British Indian courts are by their constitution bound to follow "more reasonable enunciations than those taken by the jurists of Balkh and Samarkhand."[55] Justice Aga Haider of the Punjab High Court expressed his sympathy for the husband, but found for the wife holding that he did not feel strong enough to record his dissent against the "highly respectable and distinguished body of judicial opinion on the subject."[56] In all the decisions examined between 1911 and 1938, the legal effects of apostasy by a woman on her marriage seem to have never again been seriously challenged.

Lawyers representing the husband would instead seek to challenge the facts of the apostasy rather than its legal consequences. In *Mussamat Bakho v. Lal*, the husband's lawyers claimed that Mussamat Bakho was not a Christian because she had not been baptized by an authorized person or a member of the clergy. The court took seriously her declaration that she had renounced Islam and professed the Christian religion, and held her baptism by a layman valid on the grounds that under the Church of England rules any private person can perform baptism in an emergency.[57] The "emergency" in this case was not spelled out, though the judge noted the difficulties in the litigant's marital life.

Lawyers also took to alleging mala fide and questioning the genuineness of the conversion, and this tactic met with some degree of success in the district courts. They argued that the conversion was "nothing but a trick."[58] It was contended that it was not sufficient for the plaintiff to renounce Islam without following the observances of her new religion.[59] In order to prove the genuineness of her conversion, Lala Ghanshyam

54. Ameer Ali, *Mahommedan Law*, 392.

55. *Amin Beg v. Musammat Saman*, I.L.R 33 (All.) 90 (1910). The wife in this case was represented by an ulama, Maulvi M.Shahfi-uz-zaman, who also preferred the opinion of the approved authority.

56. *Sardar Mohammad v. Musammat Maryam*, 1936 A.I.R. (Lah.) 666.

57. *Mussamat Bakho v. Lal*, 1924 A.I.R. (Lah.) 397.

58. *Mussamat Rehmate v. Nikka et al.*, 1928 A.I.R. (Lah.) 954.

59. *Mussamat Sardaran v. Allah Baksh*, 1934 A.I.R. (Lah.) 976.

Das, the Hindu district judge of Lyallpur, asked the apostate woman to eat pork in court. On her refusal to consume the pork when it was brought to her, the district judge held that the older marriage subsisted, ruling that he was "quite convinced that the woman is simply telling lies in order to secure the annulment of her marriage under the influence of her love with some other man and has not really given up the Mohammadan religion."[60] The arguments and the rulings of the lower court reflected long- established practices of colonial courts in determining an individual's religion and what law could be made applicable. In the case of Hindu converts to Christianity, colonial courts had relied on extensive evidence of cultural characteristics, such as dress, manners. and table habits of the converts to decide what law could be applied to them.[61] There was also an older body of jurisprudence that warned against "colourable conversions." The Privy Council in 1871 ruled that Helen Skinner and John Thomas John's conversion to Islam was "pretended" and subsequent marriage was of doubtful validity since it was for the purpose of eluding the personal laws of the parties.[62] Colonial law textbooks also affirmed that the persons' conduct and evidence of the facts of conversion can challenge the presumption of conversion.[63]

The success of this strategy was limited. Arguments questioning the validity of the conversion began to be rebutted by the High Court during the 1920s and 30s and the rulings of the district courts were periodically reversed. In 1924, the court had ruled that the only evidence that was required for apostasy was the apostate's testimony to the same in court.[64] Justice Dalip Singh of the Lahore High Court ruled against a significant body of judicial practice and held that it was not within the province of the court to enquire into the genuineness or otherwise of the conversion. As long as the formal renunciation of Islam had been accompanied by a rite of baptism, it "was immaterial whether her motive was a genuine conversion or a mere device to get rid of her husband."[65] Justice Beckett reaffirmed this a few years later holding that as long as the plaintiff renounces Islam, it is immaterial whether she follows the

60. As recorded in *Mussamat Resham Bibi v. Khuda Baksh*, I.L.R. (Lah.) 277 (1937).

61. *Charlotte Abraham et al. v. Francis Abraham*, 9 Moore's I.A. 195 (1863). For an extensive discussion of the above case, see Chandra Mallampalli, "Meet the Abrahams: Colonial Law and Mixed Race Family from Bellary, South India, 1810–1860," *Modern Asian Studies* 42 (5) (2008): 929–70.

62. *Skinner v. Orde*, 14 Moore's I.A. 309 (1871).

63. Faiz Baddruddin Tyabji, *Muslim Law*, 4th ed. (Bombay: N. M. Tripathi, 1968), 8; Wilson, *Anglo-Muhammadan Law*, §11–12.

64. *Mussamat Bakho v. Lal*, 1924 A.I.R. (Lah.) 397.

65. *Mussamat Rehmate v. Nikka et al.*, 1928 A.I.R. (Lah.) 954.

observances of her new religion.[66] In 1936, Justice Agha Haider explicitly recognized the strategic value of the conversion and continued to uphold its validity. He observed that "a person may embrace a particular religion in order to benefit from a worldly point of view or in hope of entering the kingdom of heaven," but so long as the fact of the conversion was established, "his ulterior and even sordid motives would not affect the question." The court here accepted the husband's contention that Maryam Bibi had embraced Christianity to get rid of her husband, for whom she "apparently does not care," but that was not a matter of any consequence.[67]

In the decisions discussed above, the evidence of apostasy was determined by the fact that the wives had declared that they had converted to Christianity, but in Resham Bibi's case, the appellant merely stated that she had become an apostate from Islam and did not believe in God, the Koran, or the Prophet. There was no accompanying positive act of conversion that could establish her repudiation of Islam. Her failure to eat pork in the court was evidence enough for the district judge to hold her "apostasy" a fake. Justice Din Mohammad, speaking for the division bench of the Lahore High Court, attempted to determine through an examination of authorities whether the district judge could ignore the plaintiff's declaration of apostasy and institute an inquiry into its authenticity in order to determine the extent of her disbelief.[68] The court held that the test of "colourable conversion" was to establish whether the conversion or the renunciation had actually taken place and was not in reference to the sincerity or the insincerity of the conversion or the nobility of the motives. Believing that "a person's religious belief is not a tangible thing that can be seen or touched," he concluded that "to probe and to try to ascertain the true nature of one's disbelief is sheer intermeddling, not justifiable on any ground."[69] Since Resham Bibi had rejected the authority of God, Koran, and the Prophet, she was held to be an apostate and her marriage consequently dissolved.

Apart from the above body of decisions, the only authority that the Lahore High Court could find to support its position was Lord Macnaugten's observation that "no court can gauge the sincerity of religious belief."[70] On closer examination, the application of this Privy Council decision appears to be rather dubious. Despite making the above statement, the Council had come to the conclusion that the plaintiff's

66. *Mussamat Sardaran v. Allah Baksh*, 1934 A.I.R. (Lah.) 976.
67. *Sardar Mohammad v. Mussamat Maryam Bibi*, 1936 A.I.R. (Lah.) 666.
68. *Mussumat Resham Bibi v. Khuda Baksh*, I.L.R. (Lah.) 277 (1937).
69. Ibid., 285–86.
70. *Abdool Razack v. Aga Mahomed*, 21 I.A. 56 (1894).

mother was not a Muhammadan ignoring her marriage through an Islamic form, there was evidence of her following Islamic prayers, and there was her own assertion that she was a Muslim throughout her marriage. The court relied instead on her ignorance of the tenets of Muhammadan law, the fact that she was not allowed to go into the local mosque, that she lived as a Burmese, and that that she reverted to worshipping as a Buddhist after the death of her husband (in short, her cultural practices) as evidence that she had never been a Muhammadan and therefore had not been legally married.

How does one understand this judicial behavior? This could partially be explained through what Mitra Sharafi has termed "judicial chivalric imperialism." Sharafi suggests that colonial judges attempted to redress the inferior position of women by subtly using legal reasoning to disregard legislation and treatises when it suited them.[71] Given the class and racial composition of the judiciary, her suggestion that this chivalry was motivated by a combination of British paternalism, modernist Muslim reformism, and a strain of (Hindu) nationalism that emphasized Muslim backwardness and their oppression of women is relevant to our understanding.[72] However, it is important to note that unlike the cases of "dower" and delegated divorce that Sharafi examines, the judges in the apostasy cases did not have to deviate from treatises and legislation. Their intervention, if it may be called so, was to prefer a more textual reading of the position of law rather than attempting to work through a more substantive rationality. To have refused to recognize the dissolution of marriage on apostasy, the courts would have had to acknowledge "new" or at very least marginal authorities, such as the jurisprudence of "Samarkhand and Balkh" and "novel" ways of interpreting Islamic law. The claims made by the female petitioners tied in neatly with both the paternalistic urges of the judges and their preferred adjudicatory practices.

This ingrained textualism was not just limited to the colonial judiciary. In fact, Maulana Thanavi, who would later emerge as a proponent of reforming this legal principle, had himself issued a fatwa in 1913, holding that apostasy from Islam by the woman dissolved the marriage. It has been suggested that he revised his position later due to the increasing Christian missionary activity in Punjab, which targeted Muslim women, asking those who wanted to dissolve their marriage to declare themselves Christians.[73] Reverend Paul

71. Mitra J. Sharafi, "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism Meets Anglo-Islamic Dower and Divorce," *Indian Economic and Social History Review* 45 (1) (2009): 57–81.

72. Sharafi, "The Semi-Autonomous Judge," 15.

73. Muhammad Khaled Masud, "Apostasy and Judicial Separation in British India," in *Islamic Legal Interpretations: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud,

of Lyallpur, whose activities were viewed with some suspicion by Deobandi scholars, appears as a witness in two of the nine cases to give evidence of the baptism.[74] However, it is more likely that the strategy adopted to get out of an intolerable marriage by temporarily renouncing Islam was suggested by a local ulama. Qasim Zaman argues that the use of specific formulaic words for apostasy and conversion suggests the involvement of at least some local persons who were familiar with Islamic legal texts.[75] The number of reported cases suggests that these practices were common if not necessarily proportional to the public anxieties they raised.[76]

Thus, it is not surprising that the moves to and away from Islam (depending on her original religion) were strategically sound moves for a woman who was attempting to leave her marriage. The frequency of this maneuver was evident not only from their frequent appearance in case reporters but also in the strength of opposition that grew against these provisions of law.

Sealing the Gateway: The Apostasy Clause in the Central Legislature

On April 17, 1936, Quazi Muhammad Ahmed Kazmi introduced a bill in the Central Legislative Assembly that sought to reform Muslim law and grant Muslim women several grounds on which they could sue for divorce before Indian courts. Quazi Kazmi was an unusual advocate for women's rights and radical social legislation. His previous legislative forays included a bill that aimed to remove Muslims from the purview of the Child Marriage Restraint Act of 1929.[77] The bill was introduced with

Brinkley Messick, and David Powers (Cambridge, Mass.: Harvard University Press, 1996), 193–203.

74. *Musummat Saidan v. Sharaf*, 1937 A.I.R. (Lah.) 759; *Sardar Mohammad v. Mussummat Maryam Bibi*, 1936 A.I.R. (Lah.) 666.

75. Muhammad Qasim Zaman, *Ashraf Ali Thanawi: Islam in Modern South Asia* (Princeton, N.J.: Princeton University Press, 2008).

76. There are nine reported decisions by the Lahore High Court between 1924 and 1937 where a Muslim woman dissolved her marriage through apostasy. Although the number was nowhere close to the thousands that Maulana Thanvi believed, it is more significant than one might think. Only a fraction of cases involving domestic disputes would go to court and even fewer would reach the High Court on appeal. Finally, only those decisions deemed by the editors of law journals to be of significance would actually be published in the reporters. For a complete list of cases, see Comment by the Government Pleader of Lahore on the Dissolution of Muslim Marriages Bill, Opinions on Muslim Dissolution of Marriages Bill, Home Judicial, File No 36/30/35, NAI.

77. Quazi Mohammad Kazmi's Bill to Amend the Child Marriage Restraint Act to exempt Muslims from its operation (lapsed), Home Judicial, File 36/VIII/35, 1935, NAI.

the dual aims of bringing relief to the distressed Muslim woman who faced "unspeakable misery" (because there was no proviso in the Hanafi Code of Muslim law that enabled her to dissolve her marriage) and of "removing doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie."[78] Although the bill promised to give Muslim women greater rights on divorce than those available to Hindu and Christian women in India and in Britain, the major reason for the support the legislation garnered across the political spectrum was the apostasy clause.[79] Clause 5 of the bill held that "conversion of a married Muslim woman to a faith other than Islam shall not by itself operate to dissolve her marriage," implying that even if a Muslim woman converted to another faith, she shall remain bound to Islam.

Muhammad Khaled Masud has charted the involvement of ulamas, particularly Maulana Ashraf Ali Thanvi of Deoband, in the enactment of the Dissolution of Muslim Marriages Act (Hereinafter the DMMA).[80] In 1931, in consultation with leading ulamas from India and the Hejaz they issued a revised fatwa, *Al-Hilat un-Najiza li'l-Halitat al-'Ajiza* ("A Successful Legal Device for the Helpless Wife"), which declared that apostasy would no longer annul a Muslim marriage, but it recommended borrowing from Maliki law to give the Muslim woman other grounds for divorce. Maliki law was a school of Muslim jurisprudence that prevailed largely in the Maghreb and had not been recognized by the Indian courts yet.

The fatwa and the bill both represented attempts by traditional ulamas and the new Muslim politicians to change the existing position of law. The DMMA was one of the rare bills to receive the support of more orthodox clergy and the government benches—not only did Maulana Thanvi's treatise receive over sixty endorsements from various ulama, but also Sir Zafrullah Khan, the leader of the Government Benches, became one of the main sponsors of the bill.[81] There were many reasons for the formation of this coalition, but the fear of Muslim women leaving the fold and the discomfort with the fragmented nature of the authority over Islamic law was predominant.[82] Indeed, it was the question of the apostasy clause,

78. Statement of Objects and Reasons, Dissolution of Muslim Marriages Act, 1939.

79. For a discussion on the social coalition that forged the legislation and the many meanings of this act, see Rohit De, "Mumtaz Bibi's Broken Heart: The Many Lives of the Dissolution of Muslim Marriages Act, 1939," *Indian Economic and Social History Review* 46 (1) (2009): 105–30.

80. Masud, "Apostasy and Judicial Separation in British India," (1996), 193–203.

81. Zaman, *Ashraf Ali Thanawi*, 62; Extract from Legislative Assembly Debates, vol. 5, no. 11, Home Judicial, File No 36/30/35, 1939, NAI.

82. For an exploration of the multiple narratives behind the legislation, see De, "Mumtaz Bibi's Broken Heart."

rather than the radical nature of the grounds of divorce, that met with most opposition.

By holding that a marriage could continue to subsist between a Muslim man and an apostate woman, the legislation attempted to radically change the understanding of a Muslim marriage. Although this provoked opposition from several Muslim lawyers and judges who were consulted about the legislation, this was not brought up by any Muslim member of the assembly.[83] The strongest opposition within the Assembly came from Hindu orthodox members who were troubled by the fact that a Muslim woman who had converted to another religion would still be bound to her Muslim husband. Sir Manmatha Nath Mukherjee, the Law Member on the government benches, expressed concern that the clause that specifically provided that "conversion of a married Muslim woman to a faith other than Islam" would not dissolve her existing marriage would prejudice the position of Hindu girls who were abducted, forcibly converted, and married to Muslims. If the law were to be passed in its present form, even after the "crime of abduction" was detected and the girl rescued and brought back to the Hindu fold, she would remain the wife of a Muslim husband.[84] Others stated quite plainly that the clause would prevent the "reclamation of Muslim women by other folds" and "encroach the personal laws of Hindus who will be deprived of the exercise of their right of shuddhi and sangathan."[85] The dominant role played by gender in defining and contributing to divisions between Hindus and Muslims in the context of the shuddhi and sangathan movements of the 1920s and 30s has been noted by several scholars.[86] Even though documented cases of the conversion of Muslim women to Hinduism are few, the idea caused

83. See, for instance, the submissions by Bar Association of Mercara, the Madras Presidency, Muslim League, Messrs. Haji Hassan Bava Sahib Muthavalli and F.M Bahaduddin Sahib, Hon Magistrate Tirupur, in Opinions on Muslim Dissolution of Marriages Bill, Home Judicial, File No 36/30/35, NAI. It is to be noted that almost all the objections on this ground came from Muslims from South India.

84. Demi Official letter by Sir Manmatha Nath Mukherji (Law Member) to R. F. Mudie, Home Member, Government of India, dated September 2, 1938, Home Judicial 39/12, 1936, National Archives of India, New Delhi (NAI).

85. Comment by the Secretary, Shri Bharat Dharma Mahamandal, Benares on the Dissolution of Muslim Marriages Bill, Opinions on Muslim Dissolution of Marriages Bill, Home Judicial, File No 36/30/35, NAI.

86. Charu Gupta, *Sexuality, Obscenity and Community: Women, Muslims and the Hindu Public in Colonial India* (New Delhi: Permanent Black, 2001), 22–259; Paola Bachetta, "Communal Property/Sexual Property: On Representations of Muslim Women in a Hindu Nationalist Discourse," in *Forging Identities: Gender, Communities and State*, ed. Zoya Hasan (New Delhi: Kali for Women, 1994), 192; Kumkum Sangari, "Gender Lines: Personal Laws, Uniform Laws, Conversions," *Social Scientist* (27) (5/6) (1999): 17–61, 45; Gail Minault, "Women, Legal Reform and Muslim Identity in South Asia," *Jura*

elation and endorsed images of control, subjugation, and victory of Muslims.[87] Stories of rape and abduction of Hindu women by Muslim men were frequently deployed to mobilize Hindus and justify violence against Muslims. Syed Ghulam Bhik Naraing, deputy president of the Muslim League, was forced to answer this charge in the course of the debate over the bill, and he attempted to pacify his opponents by stating that "forcible marriages" were not recognized under Islamic law.[88]

In order to ensure the passage of the bill, a Select Committee was formed to redraft Kazmi's draft legislation, which included reformist members of the Muslim League and the Congress, the leader of the government, and Hindu orthodox opponents of the apostasy clause, including Bhai Parmanand and Sir Nripendra Sircar. In order to accommodate orthodox Hindu opinion, the final legislation held that the renunciation of Islam or conversion of a married Muslim woman shall not by itself operate to dissolve her marriage, but the clause would not be applicable to "a woman converted to Islam from some other faith who re-embraces her former faith."[89] Bhai Parmanand, who had published hostile tracts stating that Muslims were a greater threat to Hindus than the British, was effusively thanked by Kazmi for his support of the final legislation.[90] The community leaders by cooperating were thus assured that their women would have little incentive to leave the embrace of their faith.

Making Muslim Women: Conversions to Islam and Dissolution of Marriages

The DMMA satisfied concerns about Muslim women leaving the fold of Islam, but it left open the question of women from other communities. The debate over the apostasy clause laid bare the concern over Hindu women converting to Islam and accessing Muslim personal law. The law member Sir Nripendra Narayan Sircar argued that the bill would cause inequity. Indian courts had repeatedly held that when a Hindu wife becomes a Muslim, Muslim law would apply to her, and the DMMA proposed to

Gentium: Journal of Philosophy of International Law and Global Politics, http://www.jur-agentium.unifi.it/en/surveys/rol/minault.htm.

87. Gupta, *Sexuality, Obscenity and Community*, 241.

88. Speech of Sir Syed Ghulam Bhik Naraiang, Extract from Legislative Assembly Debates, vol. 5, no. 11, Home Judicial, 1939, File No 36/30/35, NAI.

89. §4, Dissolution of Muslim Marriages Act (1939).

90. Speech of Quazi Muhammad Ahmed Kazmi, Extract from Legislative Assembly Debates, vol. 6, no. 8, September 20, 1938, Home Judicial, File No 36/30/35 1935, NAI. For more on Bhai Parmanand, see Gupta, *Sexuality, Obscenity and Community*, 257–58.

apply Muslim law to Muslim women even after they converted to another religion. Since neither the courts nor the legislation took into account whether the conversion was genuine or strategic, to enact the law in its given form, Sarkar argued, would allow Muslims to profit "both ways."[91] The Rajputana Provincial Hindu Sabha, referring to position of law and the decisions of the Calcutta High Court, stated the apostasy clause was detrimental to the interests of Hindu women and Hindu law.[92]

Conversion was almost the only way through which a wife could exit a Hindu marriage. Unlike conversion to Christianity, which required evidence of baptism and other documents, conversion to Islam merely required the recitation of the *kalma* before witnesses. Conversion and her husband's refusal to embrace Islam would lead to the dissolution of marriage after three months, since a Muslim woman could not have a valid marriage with a non-Muslim.[93] The courts were conscious of the difficult position of married Hindu women. In 1929 the Calcutta High Court explained that Padmasana Sinha had converted to Islam because her "married life was bitterly unhappy and she was driven by such unhappiness and lack of social sympathy to seek for relief in a different social system."[94] The motives behind the conversion were to have no effect on the status of the marriage. In *Haripada's case*, the Hindu wife first converted to Islam and applied for a declaration to dissolve her marriage when her husband refused to convert, and she reembraced Hinduism through the Arya Samaj within a month and married another Hindu man. The court rejected both the questions of her motives and the suggestion that the "dissolution" would cease to operate if she reverted back to Hinduism.[95]

These decisions were the subject of much controversy. I. B. Sen, Padmasana Sinha's lawyer, was forced to defend the decision publicly because of the "criticism, friendly and unfriendly" that had targeted the judge and the lawyers concerned. Sen attributed the attacks to the influence of the Hindu Sangathan movement in Bengal and the riots of 1926, since similar decisions by the High Court in the early 1920s had not been subjects of controversy.[96] The controversy, to him, was particularly surprising,

91. Speech by Sir Nripendra Sircar, Extract from Legislative Assembly Debates, vol. 1, no. 9, February 14, 1939, Home Judicial, 1939, File No 36/30/35, NAI.

92. Comment by the Rajputana Provincial Hindu Sabha on the Dissolution of Muslim Marriages Bill, Opinions on Muslim Dissolution of Marriages Bill, Home Judicial, File No 36/30/35, NAI.

93. *The Hedaya or the Guide*, vol. 1, bk. 2, chap. 5, 177, and Ameer Ali, *Mahommedan Law*, 384.

94. *Mussamat Ayesha Bibi v. Bireshwar Ghosh*, 33 C.W.N. clxxix.

95. *Haripada Roy v. Krishna Benode Roy and others*, 1939 A.I.R. (Cal.) 430.

96. I. B. Sen, "A Much Debated Ex Parte Decision" 33 C.W.N. clxxxvii.

as Mrs. Sinha's husband, the only other interested party, had put no objections to his wife's suit for the dissolution of marriage. Neither were their questions of inheritance or custody of children involved. Naresh Chandra Sengupta, who engaged Sen in a public debate over the judgment, submitted that there should be a large scope for the dissolution of unhappy marriages, but it remained a matter of public policy that the marriage tie cannot be violated at the "caprice of the party." Acknowledging the anachronistic nature of the indissoluble Hindu marriage, he nevertheless argued that it cannot be public policy that "a Hindu wife can just at her sweet will break up a marriage by turning a Mussulman."[97] The legal debate between Sen and Sengupta was over the ability of a married woman to change her personal law by exercising free choice. In England, the applicability of law was determined by territorial "domicile," and a wife's domicile was determined by her husband's. Thus a Scottish woman who had separated from her husband when he left for Australia and had continued to live in Scotland with no thought of migrating would still acquire Australian domicile because of her husband's residence.[98] The question remained whether the personal law system of India that operated on the basis of religion and not territory could operate in the same fashion.[99]

The DMMA had answered the question partially—a married Muslim woman making an exercise of free will to change her religion would still be bound by the strictures of Muslim personal law. However, the law still permitted Hindu and Christian women to leave their religious systems and their husbands behind. This began to be contested, and the courts sought to interpret the DMMA as a sign for the times. In Vera Tiscenko's case, the Calcutta High Court refused to dissolve her marriage, partly on the grounds of her Russian domicile. She could not be allowed to dissolve a *foreign* Christian marriage by observing the procedure prescribed for this purpose by Muslim law. But, significantly, it went on to hold that even if she had an Indian domicile and was entitled to follow the procedure, the Islamic law relating to female converts to Islam was opposed to public policy and should be regarded as obsolete.[100]

Justice Edgely questioned the idea that a woman who had been converted to Islam had the right to obtain the dissolution of the marriage with her unconverted spouse. Since it was undeniable that such a principle

97. Naresh Chandra Sengutpa, "Dissolution of a Hindu Marriage by Mahomedan Law," *Calcutta Law Journal* 50 (1929): 40n, 43n.

98. *Lord Advocate v. Jeffrey*, 1 A.C. 146 (1921).

99. Letter from Mr. I. B. Sen, *Calcutta Law Journal* 50 (1929): 53n; response by Mr. N. C. Sengupta, *Calcutta Law Journal* 50 (1929): 58n.

100. *Noor Jehan Begum v. Eugene Tiscenko*, 1941 A.I.R. (Cal.) 582, para. 50.

was ensconced in Islamic legal authorities, he argued that the enactment of the DMMA had transformed the old legal regime. He pointed out that prior to the passing of the DMMA any Muslim woman had the right to petition a district judge to dissolve her marriage on any ground recognized by Muslim law, but the grounds of dissolution of marriage under the DMMA were only applicable to women married under Muslim law.[101] Therefore, it contained no provision that could make the personal law of Muslims applicable to marriages between Muslims and non-Muslims. The DMMA was enacted to meet very particular concerns, namely, the question of female apostasy from Islam. However, in Justice Edgely's reading, by codifying certain provisions of law the DMMA had implicitly eclipsed other rules and rights of Islamic law. His final and perhaps most cited contention was that the law could not permit that a convert to another faith should be placed in a position to impose his newly acquired personal religious law on a person who prefers to retain their own faith.

Not only did Edgely dismiss the precedents in *Ayesha Bibi* and *Chelimutnessa Bibi* on the rather dubious ground of the parties in those cases being Hindu as opposed to Vera, he also rejected the prevailing judicial dictum that argued that a change in religion, like a change in domicile, could change the status of the parties.[102] Indeed, the only precedent he found of the courts refusing to recognize a conversion in dissolving a previous marriage was misapplied. In *Ram Koomari's* case, the defendant was convicted for bigamy because it was discovered that she had remarried without giving any notice to her former husband, or asking him to convert to Islam and waiting for the three-month*iddat* period. The court recognized that the rule on dissolution favored conversion to Islam but prosecuted Ram Koomari for failing to follow the procedure laid down by law by not giving notice to her nonconverted husband.[103]

Vera's appeal was rejected by a three-judge bench of the Calcutta High Court on the ground of domicile. However, the two Indian Muslim judges entered into a debate over the secondary questions raised in the appeal. Was the Islamic law relating to converts opposed to public policy and now be regarded obsolete? Had the domicile question been settled, would Vera Tiscenko have been successful in her suit? Justice Nasim Ali warned that Justice Edgely's comments should not be read to apply to converts domiciled in India.[104] Justice Ameer Ali vigorously dissented

101. Ibid.

102. *Muncherji Kursetji Khambatta v. Jessie Grant Khambatta*, 1935 A.I.R. (Bom.) 5.

103. *In the matter of Ram Kumari*, I.L.R. 18 (Cal.) 264 (1819).

104. *Noor Jehan Begum v. Eugene Tiscenko*, 1942 A.I.R. (Cal.) 325, (J. Nasim Ali), para. 10–13.

from the suggestion that a rule of Islamic law could contravene public policy. Instead, he argued that since there was "no one personal law or law of domicile or territorial law, there can be no one public policy or good conscience."[105]

Despite the remarks made by the appellate judges, the fact that Vera Tiscenko's case finally turned on her husband's foreign domicile, and the fact that their marriage was performed abroad, the Calcutta High Court had no hesitation in applying this rather dubious precedent in cases involving Hindus married and settled in Calcutta.[106] Justice Lodge of the Calcutta High Court also cited the *Tiscenko* decision and rejected a similar petition by a Jewish convert to Islam in arguing that even if the conversion clause was recognized by Muhammadan law, "India was not a Mahomedan country and Mahomedan law was not the law of the land."[107]

The old rules also came to be challenged by a "modern conception of marriage." Justice Chagla, rejecting the petition of a Zoroastrian woman convert to Islam, complained that it was difficult to see why the conversion of one party should be grounds for dissolution. Since the bond that kept a man and a woman happy was not exclusively that of religion if interfaith marriage were to cause problems, the ground for divorce would be disharmony and not the fact of the conversion itself.[108] Moreover, he flagged the DMMA's radical provision that apostasy by a Muslim woman would not dissolve her marriage as a "clear and emphatic indication that the Indian legislature has departed from the rigor of the ancient Muslim law and has taken a more modern view that there is nothing to prevent a happy marriage … between persons of different faiths." Chagla also cited the *Tiscenko* decision concurring with Justice Edgely's contention that rule of Muslim law cannot apply when only one of the parties to a suit is Muslim.[109]

Atreyee Devi's case is the only reported decision that does not follow the pattern of the *Tiscenko* decision. Atreyee Devi was the daughter of an "educated and cultured" Brahmin who was previously manager in the office of the Court of Wards. She was also the niece of D. L. Roy, the

105. Ibid., para 9.

106. *Rakeya Bibi v. Anil Kumar*, 52 C.W.N. 142.

107. *Sayeda Khatoon v. M Obadiah*, 49 C.W.N. 745.

108. *Robasa Khanum v. Khadadad Bomanji*, 1947 A.I.R. (Bom.) 272.

109. Justice Chagla, who delivered the judgment in Robasa Khanum, was a "nationalist Muslim" and a fierce critic of Jinnah and the Muslim League. After retiring he was to join the Congress Party and serve as a member in Nehru's cabinet. See Mahomedali Currim Chagla, *Roses in December: An Autobiography* (Bombay: Bharatiya Vidya Bhavan, 1974).

noted Bengali author.[110] She had been married at fifteen to an impoverished Brahmin, who was described by the judge as "domesticated son-in-law" who lived with his wife in his father-in-law's house. The husband had no means of his own, and the couple was supported by Atreyee Devi's father. Despite this, the husband harassed her for more money and frequently beat her. Finally, on turning eighteen, and with the support of her father, Atreyee Devi converted to Islam, taking the name of Ayesha Bibi. Subsequently, she sent three notices to her husband calling upon him to embrace Islam, stating that "if I fail to get your opinion in this matter within three days from this date I shall conclude you are incapable of embracing Islam."[111] On the failure of her husband to respond, she petitioned the court for a decree of dissolution of marriage. After reviewing the authorities, the courts finally concluded that Atreyee Devi had made a valid conversion to Islam and that her marriage stood dissolved.

Atreyee Devi's case mirrors Vera Tiscenko's in many ways. Both were converted at Nakoda Mosque at Calcutta, both petitions were undefended, both cases were heard by single European judges who decided that the case raised complex questions of law and appointed the advocate general of Bengal, Mr. S. M. Bose, as amicus curiae. Despite the similarities there are several factors that could explain the divergent judgment. As opposed to a Russian actress with a child, the petitioner here was an eighteen-year-old girl from a respectable family. Atreyee Devi was clearly leaving her dependent husband after facing violence, but Vera's motives for asking for the dissolution were more ambiguous. The court was unable to ignore the violence that had been perpetrated on Atreyee Devi. She had faced physical and mental torture, her ornaments had been taken away, and her father had discovered her beaten senseless. The judge observed that under any other system of law she could have received a divorce on the grounds of cruelty and desertion since her husband had made no move to claim her custody.

What is significant is that even though the court reached a different decision, it continued to be motivated by similar concerns as expressed in the others. The case was uncontested by her husband, but Justice Ormond held that it raised questions of "far reaching importance" that required the appointment of the advocate general as amicus curiae. Thus the court's decision was to be guided by the legal representative of the elected government of Bengal. That the conversion caused anxiety is demonstrated by the considerable amount of space devoted to analyzing Atreyee Devi's state of mind and motives for conversion. Atreyee Devi

110. *Ayesha Bibi v. Subodh Ch. Chakravarty*, 1949 A.I.R. (Cal.) 436.
111. Ibid., para. 28.

had stated that the lack of sympathy from Hindu society during her ill treatment combined with conversations with Muslim school friends led to her conclude that "in Muslim faith and society the position of unfortunate girls like herself was not so low."[112] Muslim society gave sufficient freedom to girls to act independently. The fact that she reached her decision after discussion with her friends, her father's friends, and her parents was highlighted by the court. Justice Ormond was particularly impressed by the evidence of her father, Birendralal Roy, who said that at first he had hesitated and objected and finally, on being persuaded himself, took her from Krishnagar to the Nakoda Mosque, helped her make arrangements for the conversion, and was present at the conversion. In order to decide upon the implications of her conversion, Justice Ormond believed that the "real enquiry must now be centered on the position under the Hindu law of the husband as to his rights and duties towards the plaintiff." Ormond goes through a systematic review of what he believes a Hindu wife's obligations towards her husband are and finds that, as a Muslim, Atreeyee Devi cannot meet them. As a Brahmin, Justice Ormond holds Subodh Chaudhary cannot cohabit with a non-Hindu, he cannot be accompanied by his wife for the performance of the sacraments of married of life, he cannot ask her to cook food for him, and he is not required to maintain her. Finally, he argued that there was nothing that prevented Subodh Chaudhary from remarrying, so his rights were in no way prejudiced.

That Justice Ormond was pushing against the momentum of the *Tiscenko* case comes through in his lengthy judgment. His opinion remained in a minority. Justice Lodge in the *Sayeeda Khatoon* case dissented from Ormond soon after, but Justice Chagla in pointing out that Ormond's opinion was an outlier held that he entirely disagreed with his conclusion that justice and right demand that conversion from Hinduism to Islam should put an end to the marriage.[113]

This shift in judicial sympathy from the woman trying to escape a difficult marriage towards the husband being placed at an unfavorable position due to the woman's "capricious" decision to convert needs to be placed in the context of the increasingly communalized polity of the 1940s and the idea of uniform citizenship that was put forward by Indian nationalists. The question of Hindu and Sikh women's conversion to Islam is framed in the recorded discussion of the DMMA around the permission of reconversion of female converts to Islam. Hindu hardliners pushed for a clause that would allow Hindu and Sikh converts to Islam to leave behind their Muslim husbands when they were reconverted to their original faiths.

112. Ibid., para. 14.

113. *Robasa Khanum v. Khadadad Bomanji*, 1947 A.I.R. (Bom.) 272, para. 11.

The question of voluntary female conversions to Islam was not expressly addressed in the legislature, yet one cannot help but speculate if Justice Edgley's decision would have found favor with the more ardent Hindu nationalists. The judgment in the *Tiscenko* case eliminated a major incentive for Hindu women to convert without requiring, as the DMMA did, the provision of an alternative Hindu law of divorce. As the committee on the Hindu Code Bill discovered, on the subject of marriage reform a considerable majority of both reformists and conservative witnesses were opposed to divorce provisions as compared to other proposed changes, such as monogamy.[114] Therefore, from the decision in *Tiscenko* to the enactment of the Hindu Marriage Act in 1955, Hindu women had no recourse to divorce.

Conclusion

Women in colonial India were adept at exploiting the possibilities offered by the marital patchwork of laws to secure their ends. However, as Lauren Benton argues, the instability of jurisdictional boundaries made it the subject of revision by the colonial state.[115] As Sharafi and Mallampalli point out in this forum, by the late nineteenth century the colonial state had moved from a "dialogic to a more hegemonic deployment of personal laws," preferring text-based knowledge to the actual practices of communities. This shift would ordinarily imply a weakening of the position of the litigant. However, as the cases above suggest, it was this rigid interpretation of law by the colonial state that provided opportunities for women to leave unhappy marriages. The preference of text over practice ironically provided a level playing field for women against conservative community leaders who would otherwise claim authority to speak for the community. They were also encouraged by the sympathetic attitude taken by the colonial judiciary, influenced in no small part by paternalism.

The recognition of a woman's right to leave her religious community, even for instrumental reasons, became a cause of tension affecting communal identity. The growth of electoral politics and the growing anxieties about community size in the 1920s and 30s, led to the fear of losing women and their reproductive capacity to the other community.[116] These fears became sharply defined in the public debate over the court cases. By its very nature, divorce is the subject of private law and relates to the

114. *Report of the Hindu Law Committee* (New Delhi: Government of India Press, 1955), 19.

115. Benton, "Colonial Law and Cultural Difference," 564.

116. Gupta, *Sexuality, Obscenity and Community*, 307–20.

rights of two individuals. However, in several of the cases where the husband was the only affected party, and had chosen not to contest the petition, the judges, lawyers, and legislators decided that the private matter required a public debate. The incorporation of several grounds for divorce within the DMMA and the drive by the Arya Samaj to set up homes for Hindu widows were both driven among other impulses by a need to reduce the incentive for women to convert. This was coupled with a simultaneous attempt to close the loopholes in the law as seen by the enactment of the apostasy clause in the DMMA and the protests against judicial decisions. The anxiety over boundaries forced the proponents of the DMMA to engage with the question of the position of female converts to Islam and resulted in an exception for recent converts who were being reconverted.

Mirroring this, the decision in *Tiscenko* and subsequent cases interpreted the DMMA as a sign of crystallizing boundaries, and courts largely refused to recognize that a conversion to Islam would dissolve the woman's previous marriage.

The ways in which women could maneuver within the colonial legal order was determined by ways in which courts interpreted legal authorities. As Mitra Sharafi has shown, the only way courts could deviate from old interpretations and create new principles was under the guise of public policy. Initially, in the apostasy cases, public policy—colonial judicial paternalism—tied in neatly with judicial practice. However, with the opening up of spaces in the new legislatures and in the legal public sphere, the colonial states' definition of public policy began to be contested. The enactment of the DMMA has had an impact beyond the specific rights it gives to women. With the *Tiscenko* decision the courts begin to view the enactment of the legislation as an indication of public policy. This would require us to reevaluate the role played by the Indian representatives in the colonial legislatures in the decades before independence. Even though the powers of the legislature were limited, they did provide space to define issues of "public concern."

The initiatives to limit movement of Hindu and Muslim women highlight the differences between legislative and judicial restructuring. An elected legislature could only remove the apostasy doctrine by providing an alternative—a comprehensive law of divorce that placed Indian Muslim women at a more advantageous position than their counterparts. Whereas Hindu women were left with no possibility of divorce, Christian, Jewish, and Parsee women were faced with significantly more impediments to getting a divorce. During the debates over the Hindu Code Bill, several conservative leaders expressed a concern that compulsory monogamy might lead Hindu men to convert to Islam, but no similar fears were expressed about Hindu women converting to avoid a marriage.

The symbolic importance of women to communal identity is underscored by the fact that conversions by men to take more wives while avoiding the charge of bigamy did not result in any legislative or judicial action.[117] It was not until 1995 that the Supreme Court would hold that the second marriage of a married Hindu man after his conversion to Islam is void.[118]

Building on Benton, both Sharafi and Mallampalli suggest that forum shopping by Indian litigants strengthened the grip of colonial law and the hegemony of the state over the subjects. This comes out most clearly through the decontextualization of the Shariat. Although it has been attributed to colonial governmentality, it is important to remember that the process of decontextualization is integral to the system of law itself. This is best illustrated by the process in which Justice Edgely's decision in Vera Tiscenko's case comes to occupy the central place in the changing jurisprudence over conversions. Justice Edgely had rejected Vera's petition on the grounds of lack of domicile, and his contention that even if she had met the domiciliary requirements, the rule that she depended upon was obsolete and was qualified as *obiter* by the appellate bench. However, when faced with similar situations, judges from the Bombay, Madras, and Calcutta High Courts cited Vera Tiscenko's case as precedent to justify their changes to the legal order. The contingent statements made by Justice Edgely were decontextualized and given the force of law in successive judgments.

However, did such decontextualiztion necessarily increase the grip of state law over people? To seek put it more bluntly, did indigenous legal actors become inadvertent collaborators in affirming the hegemony of the state?

To answer this, we have to understand why women chose to go to court. The vast majority of women in colonial India, as in contemporary India, continued to reside with their husbands, even in difficult marriages. Those who had the means and the ability to do so would separate. For a woman to move the court to dissolve her marriage there had to be a *significant gain* from the legal recognition granted by the state. Not surprisingly, several of the women litigants, such as Maryam Bibi, Vera Tiscenko, and Krishna Roy, wanted to be free to marry other men. Others, such as Resham Bibi and Atreyee Devi, wanted to remove themselves from a violent domestic situation. Divorce, particularly through conversion, was not a respectable strategy and raised strong emotions, often forcing the women into the glare of public debate. The nature of the sources makes it difficult

117. *John Jiban Chandra Datta v. Abinash Chandra Sen*, I.L.R. (Cal.) 12 (1939).

118. *Sarla Mudgal, President, Kalyani et al. v. Union of India et al.*, 1995 A.I.R. (Cal.) 1531.

to recover the voices of the women themselves, for even their petitions are mediated by the language of lawyers. The few snatches of women's voices that appear in the court records are suggestive of the battles they had to wage to even get their petitions to court. The court records that Birendra Lal Roy was uncomfortable with his daughter's, Atreyee, decision to convert, but he changed his mind when she "straightaway" said "you have spoilt my life once, you have no right to spoil my life any longer, you should allow me in all fairness to act according to my determination."

The twenty or so cases discussed in this paper are indicative of a much larger number of actual petitions that would have existed but that would not have reached the appellate courts. There would also have been several decisions like the one in Chelimutnessa Bibi's case that would have gone unreported. Further, these cases are suggestive of several more that never came before the courts.

It is difficult to attribute singular agency when studying court cases since there are many factors that can bring and sustain a petition. As we had noted, the colonial construction of personal laws had reduced room to maneuver and marginalized customary practices. Yet faced with a legal system that did not recognize or greatly limited the possibilities of divorce, local communities were able to create their own solutions to deal with the problem. Muslim women apostatizing to leave their husbands used the same formulaic words, suggesting that this could be a widely accepted local strategy. Robert Crew in his work on Tsarist Russia has shown how village clerics were more receptive to local disputes and engaged with family law more creatively.[119] That several of the women had the support of their family and local communities suggests that there was some degree of local consensus on this strategy. Similarly, the Nakoda Mosque at Calcutta is the site for the conversion of both Vera Tiscenko and Atreyee Devi. Atreyee Devi and her father traveled from Krishnanagar to Calcutta specifically go to the Nakoda Mosque. The lawyers for both Vera Tiscenko and Atreyee Devi submitted nearly identical certificates signed by the Imam of the Nakoda Mosque evidencing their conversion.[120]

119. Robert D. Crews, *For Prophet and Tsar: Islam and Empire in Russia and Central Asia* (Cambridge, Mass.: Harvard University Press, 2006), 185–86.

120. "No. 657, 1944. Present residence, Krishnagar. In the name of God the merciful the compassionate. I declare to this effect that Atreyee Devi daughter of Birendra Lal Boy, age 18 years of Krishnagar, without any force or compulsion, of her own will and accord having expressed her disgust at the Brahmanic religion, renounced the same, and recited the Kalma Shahadat (the Moslem confession of faith) and embraced the Islamic religion. The Islamic name of Ayesha Bibee has been given to her. Musulmans should henceforth behave towards her as a Mussulman, and teach her the injunctions of the Islamic religion (precepts like prayer and fasting etc). I have granted this sanad (certificate) that it may be of use in

It is no coincidence that all the above cases arise in the North (mostly Punjab and the NWFP) and Bengal. Both provinces had Muslim majorities but significant Hindu and Sikh minorities, and they were sites of competing discourses of communalism and syncretism. The movement for the DMMA and its apostasy provision was again led by the ulama from Punjab and the United Provinces. The Hindu opposition came from men from the North and Bengal. Almost all the objections to the apostasy clause in the DMMA came from South Indian Muslims. Perhaps in South India, as a judge from Madras perceptively noted, "Kazis had habitually granted Muslim women *khulas* and they did not have to resort to apostasy to escape a marriage."[121] Apostasy was a problem in the Northern Provinces, where local politics had not accommodated other solutions unlike the South.[122]

Benton notes that Bourdieu has argued that it is commonplace for actors to participate in routines about which they have simultaneously contrasting understandings. It is "possible simultaneously to use imposed law (thereby reaffirming it) and to seek to undermine its authority."[123] Courts and formal legal systems grant only a certain form of legitimacy for most Indians on questions of matrimony. When faced with competing local sources of legitimacy, the dictate of the courts and the legislatures can be disregarded. This is particularly true in the above cases that dealt only with questions of matrimony and did not involve questions of property or custody of children. This is true not just of the colonial period. Fifteen years after the Supreme Court of India prohibited bigamy by men through conversion to Islam, the Law Commission of India discovered that the problem continues to be widely prevalent.[124]

To return to Vera Tiscenko, her legal battles ended in defeat. However, despite the Calcutta High Court declaring that her marriage to Eugene Tiscenko still persisted, Vera married Huseyn Suhrawardy in 1940. She gave birth to a son, but their marriage was a difficult one and ended in a

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time. May the God Almighty keep her firm (in the path of religion), (Signed by the Iman-Jamai Musjit). Nakoda Mosque, Calcutta, dated the 11th of the month of Ramazan year 1362 of the Hejira 12th September 1942 (*sic*)" (cited from *Ayesha Bibi* v. *Sutodh Ch. Chakravarty*, 1949 A.I.R. (Cal.) 436, para. 16.

121. Comment by District Judge of Cuddupah, Madras Presidency on the Dissolution of Muslim Marriages Bill, Opinions on Muslim Dissolution of Marriages Bill, Home Judicial, File No 36/30/35, NAI.

122. Slyvia Vatuk, "Divorce at the Wife's Initiative in Muslim Personal Law: What Are the Options and What Are Their Implications for Women's Welfare?" in *Redefining Family Law in India: Essays in Honour of B. Sivaramayya*, ed. Archana Parashar and Amita Dhanda (London: Routledge, 2008), 200–235.

123. Benton, *Law and Colonial Cultures*, 258.

124. 227th Report of the Law Commission of India, 2009.

divorce in 1951, a few years before Suhrawardy became the prime minister of Pakistan.[125] Thus, Vera's story not only underscores the role of the courts in aiding a community's management of its women but it ultimately also exposes the limited relevance of formal legal institutions in ordering the lives of most Indians.

125. Ikramullah, *Huseyn Shaheed Suhrawardy*, 19.