Law and History Review (2023), **41**, 387–404
doi:10.1017/S0738248023000068

ASLH AMERICAN SOCIETY FOR LEGAL HISTORY
CAMBRIDGE UNIVERSITY PRESS

ORIGINAL ARTICLE

Mergers and Legal Fictions: Coverture and Intermarried Women in India

Leilah Vevaina

Department of Anthropology, The Chinese University of Hong Kong, Hong Kong S.A.R.
E-mail: leilah.vevaina@cuhk.edu.hk

Abstract

Within India's system of plural personal laws, the rights of women in matters of marriage, divorce, and inheritance are solely based on their natal communal identity. While we see many examples of women appealing to courts to secure or improve their rights vis-à-vis personal laws, marriage outside the community has often occluded these rights completely. Marital property, inheritance, and even access to sacred space are in a gray zone of differentiated rights between natal and marital community customs. One intermarried woman, Goolrukh Gupta, sued the trust that managed the town's sacred space in the High Court to confirm her rights to enter sacred space. The Court ruled that she was removed from her natal community even though she had married under the Special Marriage Act of 1954, as she had "merged personality with her husband." While British women's property was held under coverture through the nineteenth century, these laws were never transferred over to the Indian colony. Through the legal appeals of intermarried women, this article explores the shifting and unstable rights of intermarried women in India.

India, along with many other former colonies of the British Empire, has retained plural personal laws for its incredibly diverse population. Within India's system of plural personal laws, the rights of women in matters of marriage, divorce, and inheritance are based on their natal communal identity. The framers of the Constitution after Independence in 1947 retained plural personal laws due to probable fears that minorities would otherwise feel threatened by the possible monopoly of civil law by Hindu-based statutes. One can see how such a stance was necessary, especially after the atrocities during Partition,[1] but this form of legal pluralism in the domain of civil law as well as its concomitant tendency to relegate the construction of such laws to

[1] Sanjay Ruparelia, "How the Politics of Recognition Enabled India's Democratic Exceptionalism," *International Journal of Politics, Culture, and Society* 21 (2008): 39–56.

communal authorities has very deep and sometimes dramatic implications for Indian women and their rights as citizens.

Archana Parashar claims that whenever national integration interests are at stake, the state "abandons its efforts to incorporate sex-equality in religious personal laws and, more often than not, argues that the religious nature of personal law prevents any intervention by the State."[2] This speaks to the ways in which the post-independence state chooses to value difference within pluralism and echoes a fundamental presumption in the liberal constitutional identity thesis that pluralism refers only to ethno-cultural difference and not to other forms of difference. It is blind to gender difference when it is nested within ethno-cultural difference and the unit of the community.[3]

Therefore, marital property, inheritance, and even access to sacred space are in a gray zone of differentiated rights between natal and marital community customs, and are the terrain of this article. Its focus is on a recent legal case still under appeal in the Indian Supreme Court. The case was brought by a Parsi Zoroastrian intermarried[4] woman who sued the charitable trust that managed the funerary grounds of her natal community in the High Court of Gujarat to confirm her rights to enter sacred space. She had married under the Special Marriages Act of 1954, which explicitly does not require any renunciation of natal religion. However, in 2012, the Gujarat High Court ruled that although she had married under the act, she was removed from her natal community of Parsi-Zoroastrians as she had "merged personality with her husband," a Hindu man. This merger of personality is an echo of the doctrine of coverture, wherein a married woman's legal status is subsumed by her husband's, which was a prominent feature of English common law until the 1870s. This article traces the journey of this doctrine with select Parsi legal cases. It will show how the merger of personality doctrine becomes important not just for what it means in terms of marriage rights but critically important in terms of what it does for forms of legal argument in cases of intermarriage.

I was able to attend the High Court proceedings during my ethnographic fieldwork from 2010 to 2012 in Mumbai. My research was mostly concerned with Parsi public charitable trusts and the relationships among trusts, trustees, beneficiaries, and urban space. Parsis Zoroastrians are a micro-minority community in India, who mostly settled along the west coast from the sixth to the eighth centuries from Iran. They rose to prominence in colonial times, as they had close merchant ties with the British colonial government.[5] The wealth gained during these times has also led to high degrees of education, prestige,

[2] Archana Parashar, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (New Delhi: Sage Publications, 1992), 21.

[3] Helen Irving, "Constitutional Identity Theory and Gender: The Missing Referent." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, 2017, p. 7.

[4] In common parlance in India, intermarriage refers to marriage between a man and woman of different castes or ethno-religious natal identities.

[5] John R. Hinnells and Alan Williams, eds., *Parsis in India and the Diaspora* (London and New York: Routledge, 2007).

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

and representation within the Indian judiciary.[6] Therefore, this tiny community has perhaps an outsized role in the making of law in India. Parsis hold extensive property in Mumbai and parts of southern Gujarat communally through the trust form. These properties are all reserved for Parsi Zoroastrians and include temples, funerary grounds, and vast landscapes of charitable housing in addition to other welfare funds. To receive these funds, one just has to be recognized as a Parsi. Yet it is this very status that has historically been at issue: who counts as a Parsi and can therefore avail themselves of these assets.[7]

While I approach these issues of law and religious space as an anthropologist working primarily in the contemporary, my research is deeply committed to a legal-historical approach. The larger subject of my work, the public charitable trust, is a legal device with its own historicity, as it binds the wishes of a donor to property that is gifted into the future. Thus while my ethnographic research is in the present, it is fully shaped by the wishes and instruments of the past. This temporal breadth allows context to the current situation but importantly stresses the impact of the past and the historicity of law on contemporary life. This article will show how the formation and contestations of a community's personal law in the mid-nineteenth century affects women today. It will probe the shifting boundaries of individual and communal rights and discuss how an instrument like the charitable trust further complicates this duality for women in India.

As intermarriage is a growing trend amongst Parsi women (one out of three) in contemporary times, there are growing debates about their rights and even a local advocacy group to support their claims called the Association for Inter Married Zoroastrians (AIMZ). An ongoing case during my fieldwork was heavily discussed by my interlocutors. It involved a Parsi intermarried woman, Goolrukh Gupta née Contractor, who was suing her local Punchayet in Valsad, Gujarat after they imposed a ban on entry to all intermarried women to their sacred space, including the local tower of silence funerary ground. Although Gupta claimed to be a full beneficiary of the trust assets as she was born a Parsi and initiated into Zoroastrianism, the Valsad Punchayet argued that her intermarriage, although under the Special Marriage Act of 1954 (SMA), was a "deemed" conversion away from Zoroastrianism, and that she was no longer a Parsi. Hence her case was an example of her communal rights as a Parsi Zoroastrian clashing with her rights as an intermarried woman and citizen of India. Gupta's "deemed" merger of personality is an echo of the English doctrine of coverture that was prevalent until the 1870s in English law and remains implicit in Hindu marriage law.

To show the complex entanglement of intermarried women, community, and law, this article will trace the struggles of two intermarried women through the experiences of the Parsi community from the colonial period to the present, to discuss the reappearance of the quietly tenacious doctrine of

[6] Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947* (New York: Cambridge University Press, 2014).

[7] Ibid.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

coverture in contemporary India. Unlike *sati* or capital punishment, which mark a break with Independence in 1947, I will show that coverture's endurance is due to its very status as a legal fiction, which makes it more difficult to eradicate from law.[8]

Coverture: The Veiled Woman

The English doctrine of coverture is based on the principle of unity of man and wife upon marriage that permeated Anglo-American law until the nineteenth century.[9] It stems from the ancient Roman law wherein women were under the cover of their husbands.[10] Blackstone famously defined this unity as: "by marriage, the husband and wife are one person in law; that is, the very being or legal essence of a woman is suspended during marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and *cover,* she performs everything; and is therefore called... a *feme covert.*"[11]

A married woman was veiled or covered by her husband's legal personality and had no distinct rights to her own property in comparison with a *feme sole*, a single woman. Erickson writes of the intense importance of the institution of marriage for all actors involved as one of the most significant legal contracts of people's lives, making the very critical connection of marriage not only to kinship ties, but also to ways in which new families could accumulate or distribute assets and property. Before the formal removal of coverture doctrine in England in the 1870s, there was a vast difference between the rights of an unmarried and those of a married woman in terms of inheritance and other forms of capital accumulation.[12]

While many feminist historians are deeply critical of coverture as the veiling of women's personhoods by their husbands, and point to the reforms needed to uncover this enfolding,[13] others, like Erickson, have pointed to how women often harnessed their merged status to their advantage, for example to protect them from creditors, especially if they were living separately from their

[8] Saumya Saxena, "Policing Sati: Law, Order, and Spectacle in Postcolonial India," *Law and History Review*, this issue; Alastair McClure, "Killing in the Name Of? Capital Punishment in Colonial and Postcolonial India," *Law and History Review,* this issue.

[9] Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000).

[10] Olivia F. Robinson, "The Status of Women in Roman Private Law," *Juridical Review* (1987), 143–62.

[11] William Blackstone, *Commentaries on the Laws of England, Vol. 1* (London: Cavendish, 1825), 442. Tim Stretton and Krista J. Kesselring, *Married Women and the Law: Coverture in England and the Common Law World* (Montreal/Kingston: McGill-Queen's Press-MQUP, 2013). Indrani Chatterjee, "Women, Monastic Commerce, and Coverture in Eastern India circa 1600–1800 CE," *Modern Asian Studies* 50 (2016): 175–216.

[12] Amy Louise Erickson, "Coverture and Capitalism," *History Workshop Journal*, 59 (2005): 1–16, at 2.

[13] Linda K. Kerber, "The Paradox of Women's Citizenship in the Early Republic: The Case of Martin vs. Massachusetts, 1805," *The American Historical Review* 97 (1992): 349–78; and Elizabeth B. Clark, "Religion, Rights, and Difference in the Early Women's Rights Movement," *Wisconsin Women's Law Journal* 3 (1987): 29.

husbands.[14] Interestingly, Erickson claims that because of the suffocating effects of coverture, especially on elite women with natal property, English law produced and utilized more and more complex financial instruments to circumvent the forms of accumulation enforced by coverture. The settlement and trust were such instruments, and it is this perhaps implicit entanglement of kinship and property that emerged in much of my research with Parsis in Mumbai.[15]

English women's property was held under coverture through the nineteenth century, yet these laws were never transferred over to the Indian colony explicitly. Indian marriage laws were governed and amended through a variegated history of personal laws. Even though coverture doctrine was never adopted explicitly into Indian law, it remains in the taking of husband's surnames, embedded in domicile laws,[16] and in the endurance of legal norms that do not criminalize marital rape.[17] The re-emergence of this dormant doctrine came into explicit view with Gupta's 2012 High Court judgment dealing with her religious rights as a natal Parsi woman who had married out of her community. Refuting the authority of the Special Marriages Act, the 2012 judgment "deemed" Gupta converted to her husband's religious identity with the same discourse of merger of personality. "Coverture, then, was a difficult doctrine to dismantle. It was sticky because it was hidden; like the intertwining cross-border family ties… coverture was not a discrete doctrine that could be amended, repealed, or read down with the stroke of a judge's pen or a vote in Parliament. It was woven into the fabric of the law and thus it had to be dismantled, when it could be, in fits and starts."[18] Scholars of coverture have shown how difficult it is to eradicate this enfolding of women into their husbands' legal personality due to its very metaphorical quality.

As I will explore, Parsi law was explicit in rejecting the idea of merger of personality and coverture doctrine in cases of property and inheritance, as Sharafi has shown.[19] Yet this doctrine is as "sticky" as they come, and this has much to do with its status as a legal fiction.

Annelise Riles defines a legal fiction as "a statement that is consciously understood to be false, and hence is irrefutable."[20] A common example of a

[14] Karen Pearlston, "Married Women Bankrupts in the Age of Coverture," *Law & Social Inquiry* 34 (2009): 265–99; and Catherine Bishop, "When Your Money Is Not Your Own: Coverture and Married Women in Business in Colonial New South Wales," *Law and History Review* 33 (2015): 181–200.

[15] Leilah Vevaina, "She's Come Undone: Parsi Women's Property and Propriety under the Law," *PoLAR: Political and Legal Anthropology Review* 41 (2018): 44–59.

[16] Rebecca R. Grapevine, "Family Matters: Citizenship and Marriage in India, 1939-72" (PhD diss., University of Michigan, 2015).

[17] Saptarshi Mandal, "The Impossibility of Marital Rape: Contestations around Marriage, Sex, Violence and the Law in Contemporary India," *Australian Feminist Studies* 29 (2014): 255–72.

[18] Grapevine, "Family Matters," 108.

[19] Sharafi, *Law and Identity in Colonial South Asia*.

[20] Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (Chicago: University of Chicago Press, 2011), 173. For a deeper discussion of the debates around legal fiction in law see ibid., and Lon L. Fuller, "Legal Fictions," *Illinois Law Review* 25 (1930): 369. See Geoffrey Samuel, "Epistemology and Comparative Law: Contributions from Sciences and Social Sciences," in *Epistemology and Methodology of Comparative Law*, ed. Mark van Hoecke (Oxford: Hart, 2004): 35–

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

legal fiction is corporate personhood, wherein corporations may be treated as legal persons by the law when clearly they are not living persons. Far from being meaningless, this technique has real effects: "[f]rom the point of view of those who deploy them, legal fictions are more like machines[21] than stories—they are practical interventions with concrete consequences."[22] By stipulating that a man and woman merge personality, legal practitioners are acutely aware that they do not in reality, but only within the frame of the law. This kind of legal fiction is "not really so much an epistemological claim as it is a special kind of pause, for the moment."[23] This pause can allow a legal practitioner with the ability to move further with a particular argument *as if* the woman and the man were united in one legal personality.[24] This device allows jurists to work around conceptual obstacles. According to Lon Fuller, a legal fiction is a statement "with a complete or partial consciousness of its falsity, or a false statement recognized as having utility."[25] Again, this understanding usually exists in legal discourse and argument. However, the temporality of a legal fiction like coverture may span the entire period of a woman's marriage, where legal writing even describes the period of marriage as "during her coverture." Regardless of their factuality, legal fictions have very actual effects, revealing law's sources of authority and its "agentive power."[26] Nomi Stolzenberg, in her work on paternity, shows that one key aspect of legal fictions is how they become a technique to deal with uncertainty by removing the possibility of factual inquiry due to their very status as fictions.

We will see this work of the legal fiction of merger of personality playing out in the following cases in which the anxiety over and ambiguity of women's legal subjecthood is contested between communal and civil authorities.[27] Through the legal appeals of intermarried women and the Parsi community, over the twentieth and twenty-first centuries, this article will move on to explore the shadowy perdurance of merger of personality and coverture as a legal fiction and the shifting and unstable rights of intermarried women in India.

77, for the status of fact in legal argument. For more on the epistemological basis of legal fictions see Hans Vaihinger, *The Philosophy of "as If": A System of the Theoretical, Practical and Religious Fictions of Mankind* (London: Routledge, 2001). Roy Wagner, in *Symbols that Stand for Themselves* (Chicago: University of Chicago Press, 1986), thinks through Vaihinger's claims in relation to ethnography and fiction.

[21] An echo of F.W. Maitland, "The Early History of Malice Aforethought," *Collected Papers* (Cambridge: Cambridge University Press, 1911), 1: 314.

[22] Riles, Collateral Knowledge, 173.

[23] Ibid.

[24] For more on the condition of the *as if* see Hans Vaihinger, *The Philosophy of "as If": A System of the Theoretical, Practical and Religious Fictions of Mankind* (London: Routledge, 2001).

[25] Lon L. Fuller, "Legal Fictions," *Illinois Law Review* 25, no. 4 (1930): 369.

[26] Annelise Riles, "Is the Law Hopeful?," in *The Economy of Hope*, ed. Hirokazu Miyaaki and Richard Swedberg (Philadelphia: University of Philadelphia Press, 2017), 129.

[27] Nomi Maya Stolzenberg, "Anti-Anxiety Law: Winnicott and the Legal Fiction of Paternity," *American Imago* 64, no. 3 (2007): 339–79.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

Unraveling the Threads of Coverture: Parsi Personal Law

Unlike the creation and commodification of Hindu and Muslim personal laws that were based on ancient legal scriptures and well-established bodies of religious laws, what is unique in Parsi personal law was its break from traditional custom in Persia and Gujarat and the creation of elite Bombay Parsis in the last century of colonial rule.[28] Before its creation in the 1830s, British legal principles were applied to Parsis, which slowly became a matter of contention.[29] The Succession to Parsees Immovable Property Act was established in 1837, and exempted Zoroastrians from English style primogeniture, which the Parsi community was vehemently against. The controversy over a primogeniture suit and the act led to the creation of the Parsi Law Association, which was instrumental in lobbying the colonial government for further statutes directly applying to Parsis. The 1865 Parsee Intestate Succession Act and the Parsee Marriage and Divorce Act[30] of the same year, were the first codifications of personal laws for any community in British India. With the latter act, Parsis were also able to secure legal recognition for their punchayet[31] system, through which a jury from the community would be able to adjudicate on marriage and divorce for this community fervently devoted to endogamy.[32]

As much as Parsi lobbyists wished for their own construction of personal laws, Perveez Mody notes that they also intervened in the development of other laws that they worried might adversely affect them, especially the Special Marriages Act of 1872.[33] Drafted by Henry Maine, the Act allowed for civil marriage only with the renunciation of one's native religion. This latter condition was the work of several religious lobbies and of Parsi lobbyists "who were animated by the orthodox desire to minimize intermarriage between Parsis and non-Parsis."[34] Those who married under the 1872 Act could not claim to be Parsi to maintain access to religious space or to be a beneficiary of a Parsi trust. With the renunciation clause, the colonial state had constructed legitimate "marriages only for those willing to structurally position themselves outside the bounds of their ethnoreligious group."[35] So while personal laws continued to nest an individual within their natal religious

[28] Mitra Sharafi, Michael Stausberg, and Yuhan Sohrab-Dinshaw Vevaina, "Law and Modern Zoroastrians," *The Wiley Blackwell Companion to Zoroastrianism* 68 (2015): 299, 300.

[29] Flavia Agnes, "Parsi Law," in *Oxford International Encyclopedia of Legal History*, ed. Stanley N. Katz (New York: Oxford University Press, 2009).

[30] The Parsi Marriage and Divorce Act (PDMA) was revised in 1936, 1940, and then again in 1988. With each revision, Parsi women gained more parity with Parsi men in terms of divorce in particular. See Sharafi, "Law and Modern Zoroastrians," 302.

[31] I use the orthography of the Bombay Parsi Punchayet, the apex body and charitable trust of the Parsis in India.

[32] Parsis still retain a jury system for their matrimonial court, the last vestiges of this system in India.

[33] Perveez Mody, "Love and the Law: Love-Marriage in Delhi," *Modern Asian Studies* 36 (2002): 232–40. See Perveez Mody, *The Intimate State: Love-Marriage and the Law in Delhi* (London: Routledge, 2008), 91–92 for more.

[34] Sharafi, *Law and Identity in Colonial South Asia,* 97.

[35] Perveez Mody, "Love Jurisdiction," *The Cambridge Journal of Anthropology* 31 (2013): 51.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

laws, intermarriage in this period would push him or her out of bounds of this enclosure.

In terms of wealth distribution, the Parsis resisted the concentration of wealth under English principles.[36] Parsi lobbyists and other elites were very keen to have strong testamentary powers as well. In 1862, Nowrozjee Furdoonjee, a professor at Elphinstone College in Bombay, compiled a large compendium of stories about the distress that coverture had wrought to Parsis, with reports of husbands usurping the natal property of their wives.[37] Furdoonjee's letter persuaded many in the Law Commission and opened a debate about gender norms in the colonies versus those in England, where at times, Parsi norms benefited Parsi women earlier than English law benefited English women. In terms of property, Parsi custom held that women had a right to inherited property from their natal families and through bridal presents, especially jewellery.[38] In 1865, Parsi law with the Marriage and Divorce Act rejected coverture, whereas it was slowly rejected by English law only in 1870 and 1882.

While securing the natal assets of Parsi women marrying Parsi men was clearer after the 1865 Parsee Marriage and Divorce Act, ethno-religious identity and its concomitant claims to property remained occluded within cases of intermarriage. While being an extremely contentious social issue for Parsis, intermarriage in the community was further complicated by the degree to which communal assets, especially sacred spaces like funerary grounds, were managed by trusts, a legal technique of endowment that remains very popular with Parsis even today.[39] Access to these spaces, managed by trusts, have shifted to being fought over in courts of law rather than just within the realm of religious authorities. Hence, through battles with trusts, Parsis have utilized the law to tease out the tenuous boundaries between individual and communal rights. Within these battles are struggles over women's rights to property as individuals or their rights as communal subjects. The following will trace the cases of two Parsi intermarriages wherein the laws on special marriages of that respective period come to clash with prevailing communal customs.

Petit v. Jeejeebhoy: A Failed Merger

Ratanji Dadabhoy Tata, a famous and wealthy Parsi industrialist, married a French woman named Suzanne Briere in 1903. She had a *navjote* (Zoroastrian initiation ceremony) performed (not without controversy) by a high priest and took the name Sooni[40] Ratanji Dadabhoy Tata. Sooni Tata claimed that she was thereby granted the privileges of being a Parsi, including access to

[36] Sharafi, *Law and Identity in Colonial South Asia*, 128.

[37] Ibid., 153. See "Mr. Nowrozjee Furdoonjee's Letter," 11–12 in "r 862-3 Government of India Bill."

[38] Sharafi, *Law and Identity in Colonial South Asia*, 154.

[39] Leilah Vevaina, "Good Deeds: Parsi Trusts from 'the Womb to the Tomb,'" *Modern Asian Studies* 52 (2018): 238–65.

[40] Sooni denotes the color gold, referring to her hair.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

fire temples and placement in the Towers of Silence upon her death. Due to the unprecedented nature of such a conversion and the high profile of R.D. Tata himself, a very intense debate ensued along with the forming of a committee to discuss *juddin* (non-Parsi) initiations. The Bombay Parsi Punchayet (BPP) and its secretary Dr. Jivanji Modi sought legal counsel, which came to no resolution, and the case was brought to the Bombay High Court in 1906 as the Parsi Panchayat Case.[41] The plaintiffs were members of the Tata family and included other Parsis of note who held that initiated persons should be recognized as Parsi Zoroastrians and therefore entitled to trust benefits. They also pointed to an electoral discrepancy that would nullify the authority of the current standing BPP trustees, who were vehemently against Briere's initiation. The BPP was represented by Jamsetjee Jeejeebhoy, another titan of industry. The case dealt with many different aspects of trust law and the authority structure of the BPP and was followed avidly by the Parsi press.[42] The case involved issues of trustee succession, the acceptability of religious conversion, and of course Sooni Tata's access to trusts properties. While deciding against the Tatas and the rights of non-Parsi spouses, the judgment went beyond the case to establish a distinction between Parsi and Zoroastrian, and the rights of intermarried Parsi men to have their children counted as Parsi, but not Parsi women.

Following the court judgment in 1908, it was accepted by most in the community that as a traditionally patrilineal religion, Zoroastrianism and Parsi identity may be passed from a Parsi-Zoroastrian father to his children, whether or not his wife is a Zoroastrian as well. Sooni and R.D. Tata's children were all accepted as Parsi-Zoroastrians. The non-Parsi wife, however, would have no rights as a Parsi. Following the decision, and to this day, the children of a Zoroastrian father may be given a *navjote*, and as such, be accepted into the religion and enjoy rights of access as a beneficiary of any Parsi trust. The "Petit case" as it is now commonly referred to, reaffirmed the stance that even while the Tatas had conducted the proper rituals to initiate Sooni as a Zoroastrian, and had married under the 1872 law, her religious personality did not merge fully with her husband's when it came to availing herself as a beneficiary of Parsi trusts.[43] The 1872 law called for her to merge legal personality with her Parsi husband but this was negated by the trust and the Bombay High Court, which did not deem her a Parsi. The Parsi Marriage Act was further amended in 1932, giving even more favorable rights to inheritance and property to Parsi women marrying Parsi men. Yet marriage out of the community for a Parsi woman during this historical period remained very problematic, as she was still seen as renouncing her natal religious identity and she and her

[41] *Petit v. Jeejeebhoy,* 1908, Suit 689, Bombay High Court.

[42] 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: Routledge, 2007), 159–80.

[43] They had five children, Sylla, Rodabeh, Darab, Jimmy, and Jehangir (J.R.D Tata), the latter becoming the chairman of the Tata Group, an enormous industrial and financial conglomerate. The descendants of Sooni and Ratanji are recognized as Parsi Zoroastrians by the community.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

children would no longer be recognized as Parsi beneficiaries and hence no longer have access to sacred space and trust funds.

The renunciation clause of the Special Marriages Act was progressively removed in the later versions. In 1923, an amendment allowed Hindus, Buddhists, Sikhs, or Jains to intermarry without renunciation, but it was only during the post-independence period that the renunciation clause was dropped. The post-Independence Special Marriages Act of 1954 allows for civil marriage without any renunciation of natal religion.[44] The aim was to secure "people's secular rights *as well* as their religious beliefs after (and despite) marriage."[45] Unlike the various personal laws that relegate a citizen's rights to their native community law in post-independence India, the Special Marriages Act of 1954 remains a singular civil law that aims toward a uniform civil code for all Indians.

Community under Law

But what does it mean to be a community under Indian law? The colonial state "which through the very fact of declaring a policy of religious 'neutrality' committed itself to the identification of religious 'rights' borne by entities known as religious communities."[46] The idea of community can be characterized by its "right to define a collective past," a right that often implies a homogenizing or privileging of preferred histories; "a consubstantiality between acts of violence and acts of moral authority"; and most importantly for the purposes of this article, "the right to regulate the body and sexuality by codification of custom."[47] Veena Das reminds us that "the community, in contemporary contexts, is defined as much by the structures of modernity, including bureaucratic law, as by a customary innate order," avoiding the misleading dichotomy of community/tradition versus modernity/law.[48] In certain circumstances, the community bifurcates the space between the individual and the state, the private and the public.[49] In India, "the community also colonizes the life-world of the individual in the same way as the state colonizes the life-world of the community."[50]

As per the Indian constitution, minority groups (religious or ethnic) retain their respective rights to preserve and develop their culture through institutional arrangements. Das claims that the subject who enjoys rights as a minority is a dual subject, at once an individual and not, at the same time, "because

[44] Mody, *The Intimate State*, 91–92.

[45] Mody, "Love Jurisdiction," 52.

[46] Nandini Chatterjee, "English Law, Brahmo Marriage, and the Problem of Religious Difference: Civil Marriage Laws in Britain and India," *Comparative Studies in Society and History* 52 (2010): 528.

[47] It is critical to note that Das confines her argument to ethnic or religious communities and does not deal with class or other types of social groupings, Veena Das, *Critical Events: An Anthropological Perspective on Contemporary India* (Oxford: Oxford University Press, 1995), 15.

[48] Ibid., 51.

[49] Partha Chatterjee claims that Western social theory has suppressed this narrative of community and instead emphasizes only the individual will on one hand and the nation on the other, as regulating all other aspects of life. Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton: Princeton University Press, 1993).

[50] Das, *Critical Events*, 16. See also, Amita Dhanda and Archana Parashar, *Decolonisation of Legal Knowledge* (New Delhi: Routledge, 2012).

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

in order for them to preserve and enjoy their culture, the collective survival of traditions becomes an important condition."[51] This objectification of "culture" forces the individual to navigate between his/her dual legal personality especially in the realm of the domestic and intimate spheres. While we see many examples of women, like Shah Bano, discussed subsequently, appealing to courts to secure or improve their rights vis a vis personal laws, marriage outside one's community has further occluded these rights.

In the post-independence period, Indian jurists were slowly and hesitantly attempting to bring religious laws in line with the aims and goals of the Constitution. B. R. Ambedkar had been instrumental in pushing toward more reforms for women and property in the Hindu Code Bill, with limited success. In 1985, the "Shah Bano case" exposed the dual personality of minority cultural rights in India.[52] The case involved a divorced Muslim woman who filed for maintenance under the Code of Criminal Procedure, bypassing her own communal authorities. The Supreme Court decided that Section 125 of the code did indeed apply to Muslims, who had their own civil law.[53] The head judge opened a pandora's box, however, by writing more generally in his ruling about religious law and the desirability of a uniform civil code. The Indian women's movement was forced to contend with how politically sensitive issues of gender equality were, as they touched upon fundamental disagreements on how minorities should be governed.[54] Many religious authorities see the Uniform Civil Code (UCC) as a direct affront to religious freedom, while others view it as necessary for achieving more equal rights and gender justice. Srimati Basu notes that this conflict over the aspiration for the UCC reveals the "contradictory impulses of [postcolonial law in India] reclaiming 'authentic' old traditions in the new nation and creating a 'modern' state based on principles of liberty and equality."[55] Seemingly contradictory alliances have been created through these debates with liberal Leftists and some feminist groups with the Hindu Right, in favor of a uniform civil code, and often with the more orthodox representatives of minority groups and secular communitarians, against.[56] If Indian citizens are not enveloped by their communal personal laws, then who and what should guide their civil laws?

[51] Das, Critical Events, 87.

[52] Srimati Basu, *She Comes to Take Her Rights: Indian Women, Property, and Propriety* (Albany: State University of New York Press, 1999); Das, *Critical Events*; A. Engineer, *The Shah Bano Controversy* (Hyderabad: Orient Longman, 1987).; and Gayatri Chakravorty Spivak, "Can the Subaltern Speak?" *Marxism and the Interpretation of Culture* (Urbana and Chicago: University of Illinois Press, 1988), 271–313.

[53] The courts had already begun to align religious tenets with constitutional rights with the earlier judgments of the *Bai Tahira* and *Fazlunbi Biwi* cases in 1978 and 1980. I thank Saumya Saxena for this reference.

[54] F. Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (New York: Oxford University Press, 1999); and Parashar, *Women and Family Law Reform in India*.

[55] S. Basu, "Shading the Secular: Law at Work in the Indian Higher Courts," *Cultural Dynamics* 15 (2003): 133.

[56] R. S Rajan, "Women between Community and State: Some Implications of the Uniform Civil Code Debates in India," *Social Text* 65 (2000): 55–82.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

One piece of family law legislation that might be seen as a model for the UCC is the Special Marriages Act, which provides for civil registered marriage as well as for marriage between people from different religious groups.[57] Perveez Mody deploys extensive analysis of the SMA and through her ethnography, the actual process of "love marriage" under its purview. She shows how SMA marriages are often seen as "necessarily illegitimate, unusual and the westernized practice of an urban deracinated elite" rather than as a secular ideal.[58] In my research on Gupta's case, these sentiments were often espoused by many Parsis, who felt that only elite Parsis, like the Tatas, had the privilege not only of bringing cases forward, but also of choosing intermarriage in the first place. Many non-elites had too much to lose if they married out of the community, including their charity flats and access to sacred spaces all managed by their communal trusts.

Chatterjee reminds us that the SMA "was an explicit effort to accommodate *collective* religious difference, rather than an expression of universalistic principles of individual liberty."[59] From quests against so-called "love-jihad" and the very real violence or threatened violence against couples who marry outside of their natal religion or caste, the practice of intermarriage in India today, while protected by law, is largely discouraged and elided, if not socially forbidden.[60] Once lauded as a way to transgress the stain of caste on Indian society, today intermarriages are often seen as political tools of communities rather than just threats to the honor or status of an individual family. While the SMA allowed for civil marriage without renunciation of natal religion, the Gupta case in the High Court of Gujarat showed how it too is being challenged by courts, which remain entrenched in "seeing" citizens as being composed by their natal communities.[61]

Goolrukh Gupta: A Successful Merger

While Sooni Tata was not accepted as a Parsi by the Bombay High Court in the Petit case, as she was born a Christian, the Goolrukh Gupta case shows the reanimation of the coverture doctrine. By suing to protect her rights as a married woman in post-Independence India, Gupta's claims to be part of her natal community were deemed to be severed as she had merged personality with her husband from another community. During my fieldwork, cases of intermarriage were hotly discussed by many of my interlocutors. I arranged to meet Gupta in 2011, who was very eager to discuss her pending case in the Gujarat High Court with me at her residence in Mumbai. She invited me in, and we sat in her bedroom as she unfurled papers pertaining to her case to show me. Gupta was raised in Valsad, a small village in southern Gujarat

[57] Mody, *The Intimate State;* and Chatterjee, "English Law, Brahmo Marriage, and the Problem of Religious Difference."

[58] Mody, *The Intimate State*, 1.

[59] Chatterjee, "English Law," 534.

[60] Mody, *The Intimate State*.

[61] Leilah Vevaina, "She's Come Undone: Parsi Women's Property and Propriety under the Law," *PoLAR: Political and Legal Anthropology Review* 41 (2018): 44–59.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

where her parents still live which has only about 600–700 Parsis left. About 500 of those, she estimated, lived on trust charity and abided by the rules of the governing Parsi trust in Valsad. Goolrukh married Mahipal Gupta, a Hindu, in the 1990s in a civil marriage under the SMA. She claimed that even after her marriage she has continued to practice Zoroastrianism and was shocked, in September 2009, when her local trust issued a resolution banning intermarried women from entering their trust properties, including the tower of silence in Valsad.

Gupta wrote letters in Gujarati and English to the trustees, relating that it was "inhuman to disallow someone from being at their parent's funeral. You can't stop Parsi girls, maybe her husband or kids, but not them."[62] The ban in Valsad would effectively disallow any intermarried woman from entering the tower of silence complex even for prayers for her deceased relatives. Gupta then called for a general *sabha* (meeting) to discuss the issue, but none took place. As her own father is a trustee of the Valsad Anjuman Trust, and her family seems to be of high standing in the community, Gupta admitted that she would probably not be stopped from entering, but after a Parsi close friend who was also intermarried was barred from entering, she began her campaign to petition for her rights. Like many other Parsis who go through the legal system, Gupta is someone who has a high degree of legal literacy, especially involving trusts. As was said, her father is a long-time trustee of the Anjuman, and both her mother and sister are lawyers, and have helped her prepare her cases.

Gupta's suit affirmed that she remained a beneficiary of the trust as she was born a Parsi and has continued to follow the Zoroastrian religion even after her marriage. She therefore had a right to enjoy privileges as a Parsi-Zoroastrian including the right to offer prayers in Zoroastrian sacred space. Gupta's petition claimed that she and other intermarried women were being discriminated against, violating Articles 14 and 25, equality before the law and freedom of religion, respectively, of the Indian Constitution, as male Parsis who intermarry are allowed access to these spaces after marriage, a custom set by the Petit case of 1908. Furthermore, she contended that this current view favoring males over females was one held only by orthodox community members, "ignoring the law of the land": the Indian Constitution. She contended that a loss of rights after marriage had no basis in scripture and was a contested notion even among the high priests of the religion. Thus, she was fighting for her "fundamental right to have free access for the purpose of worship and other ceremonies as available to all Parsi Zoroastrians."[63] Gupta effectively challenged the post-independence court to review the 1908 Petit judgment.

Although Gupta brought suit against the Valsad Parsi Anjuman Trustees, which included her own father, she had initially appealed to the Bombay Parsi Punchayet (BPP) and their precedents in allowing intermarried women to enter sacred spaces in Mumbai. The BPP is the umbrella organization for all the local and regional anjumans, or communities in India. Still frustrated,

[62] Interview with author, March 5, 2011.

[63] *Goolrukh Gupta v. Burjor Pardiwala*, Valsad Anjuman Trust, No. Special Civil Application No. 449 of 2010 (High Court of Gujarat at Ahmedabad March 23, 2012).

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

Gupta then filed public interest litigation with the Gujarat High Court to secure her own future right of entry and that of other women in her situation to the spaces managed by the Valsad Trust. The case began with one judge and was then, owing to its significance, referred to a two and then three-judge bench, represented by Justices Jayant Patel, R. M. Chhaya, and Akil Kureshi.

One of the "facts" of the case, noted by a judgment released in March 2012, was that the petitioner, Goolrukh Contractor, was born to two Zoroastrian parents and had her *navjote* ceremony performed when she was a child. Following this, it was accepted by all parties that she was born a Parsi Zoroastrian. But what became ambiguous was what happened to this status once she married Mahipal Gupta. Even under the SMA, which does not require a denouncement of natal religion, the Valsad trustees claimed that through marriage, she had converted to Hinduism. To them, Gupta was no longer a Zoroastrian or a Parsi, and she therefore had no entitlement to enter the trust property.

Again, even though Goolrukh and Mahipal had married under the SMA, Justices Patel and Chhaya agreed in their majority opinion that marriage in general implies a "merger of personality" of wife with her husband, which supposedly is entailed in all but Muslim marriage law.[64] Through their majority opinion, Gupta was deemed to be in her period of coverture, to be veiled by her husband's religious personality; a *feme-covert*, without a fully autonomous legal personality.

Therefore, in 2012, we have an explicit emergence of coverture and merger of personality doctrine. Although the term coverture does not appear, the judgement has two sections devoted to the notion of merger of personality in English common law. These sections of the 2012 judgment then pivot to the parallel of merger of personality within Hindu law (the wife being an *ardhangini* [complementary half] of her husband) although it states this "may not know more than unity in a spiritual sense."[65] Then, the judgment notes the absence of this concept for Muslims, who have contractual marriage. The next sentence differentiates between a woman's "individual capacity" and "her personality known by the religion." It then continues: "In all religion, be it Christian, be it Parsi, be it Jews, the religious identity of a woman unless specifically law is made by the Parliament or the legislature ... shall merge into that of the husband."[66]

This is very surprising in 2012, because the SMA is a law made by Parliament that explicitly rejects the doctrine of merger of personality in terms of religion. The justices continue that it hardly required stating that this "principle [of merger of personality] is generally accepted throughout the world." I was witness to a similar proclamation by Justice Chhaya during one session of the proceedings in the Gujarat High Court in December 2011. While shuffling papers at his bench, the Justice noted that "everyone knows" that a woman joins her husband's family upon marriage. This overgeneralized and unevidenced statement

[64] Muslim marriage is understood as a covenant between two parties who must freely consent. The groom also must "gift" the bride a *Mahr*, which becomes her property after the marriage.

[65] *Goolrukh Gupta v. Burjor Pardiwala*, Valsad Anjuman Trust. Section 1, para. 26.

[66] Ibid.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

caused many in the audience to whisper their disbelief, yet this sentiment of a woman being encompassed by her husband's status was repeated explicitly in the judgment.

In the majority opinion of the judgment, the default position of a woman's legal autonomy in marriage was to merge religious personality with her husband. Chhaya and Patel reason that this prevents any "ambiguity" of the religious identity of children born out of intermarriage and how "such in our view would not be in larger interest of the society."[67] The justices then cited case law involving wives taking on their husband's caste identity and the loss of caste identity resulting from religious conversion.[68] This ambiguity or anxiety about resulting ambiguity that might result from the children of intermarriage is exactly the space in which a legal fiction like merger of personality comes to have utility. It is not simply what the merger means, but what it does within the legal argument. By deeming Gupta as no longer Parsi, her children have a clear and unambiguous status as Hindus.

The judgment then goes on to claim that Gutpa's merger would apply in "normal circumstance" unless it is established by "undertaking a full-fledged fact-finding inquiry that even after marriage, the woman has continued with her own religion." This is clearly another fictive proposition without any possibility of being undertaken. It negates Gupta's own insistence, in her affidavit of her continuous belief and practice of Zoroastrianism. But since no such "inquiry" was conducted, the court assumed that she had merged personality with her husband. Gupta's own assertion of her continued religious identity and practice was perhaps necessarily ignored, as she was not considered an autonomous legal subject during her coverture. She did not have the capacity to speak to her own religious identity.

As to her rights as a beneficiary of a Parsi trust, the majority opinion of Chhaya and Patel concluded:

> A born Parsi woman by contracting civil marriage with a non-Parsi under the Special Marriage Act would cease to be Parsi and she would be deemed and presumed to have acquired the religious status of her husband unless declaration is made by the competent court for continuation of her status of Parsi Zoroastrian after her marriage. After the declaration is made by the competent court after undertaking full fledge fact finding inquiry on the aspects as to whether after marriage, she has totally abjured Hinduism, the community to which her husband belongs and she has continued to remain as Parsi Zoroastrian and whether she has adopted/continued the religion of Parsi Zoroastrian to gain any benefit or whether the community, viz., Parsi Zoroastrian, has treated her as a member of Parsi Zoroastrian for all purposes or not.[69]

[67] *Goolrukh Gupta v. Burjor Pardiwala*, Valsad Anjuman Trust. Section 1, para. 27.

[68] The judgment cites *Valsama Paul v. Cochin University* (1996(3) SCC 645); *Lallu Bhoy v. Cassibai* (1979-80, 7 IA 212); and *Principle, Guntur Medical College v. Y. Mohan Rao* (1976 AIR 1904). These related issues of caste identity lost or gained through marriage make the verdict of the Gupta case relevant much beyond the Parsis.

[69] *Goolrukh Gupta v. Burjor Pardiwala*, Valsad Anjuman Trust. Section 1, paragraph 32.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

Instead of adjudicating her claim of gender discrimination, the judgment further removes her from her natal ethno-religious identity, through her intermarriage. This conclusion completely negates the entire mandate and context of civil marriage in India since the SMA and the Indian Constitution. The 1954 version of the Act was clear in allowing for marriage between parties of different religions with the very intent of protecting their natal religious identity, and not forcing them to convert nor renounce their natal religion. The SMA is mentioned several times in the judgment, even as the majority opinion still insists on the merger of personality. Again, this is the power of the legal fiction of merger of personality: it has effects. The doctrine works to remove the ambiguity of religious status of any children born from intermarriage. But for Gupta, and other intermarried women, the effects are much starker. Under her deemed merger, Gupta has not only lost her rights to *practice* her religion by entering ritual space but has also "ceased to be" a Parsi, her natal ethnicity. The two judges ruled that her legal and religious merger with her husband was complete.

More than halfway through the judgment, we find Justice Kureshi, the sole Muslim judge on this case, and his dissenting minority opinion. In opposition to the majority's conclusion to the conversion issue, he observed that a provision in the SMA allows for civil marriage without the renunciation of religion, in line with the "Constitutional ethos, which envisages a secular State with liberal society."[70] He then quoted an entire section from the Constituent Assembly Debates regarding the very form or nature of secularism in India whose goal was to remove or lessen the role of religious life as all-encompassing, and confirm that some issues do come under the purview of secular legislation. Directly after this passage Justice Kureshi stated: "To my mind, therefore, the petitioner was well within her right to retain her religious identity, continue to follow the Parsi Zoroastrian religion and to be recognised as Parsi Zoroastrian even after the marriage with Mahipal Gupta."[71]

Contesting the argument that there had been a "deemed conversion," he insisted that there must be a prior intent to change one's religion and some kind of ritual or ceremonial process to relinquish one religion and embrace another.[72] He went on to ask: could a non-Parsi woman be seen to convert to Zoroastrianism if her husband were Parsi? He then answered, no, because the religion does not accept conversion, citing the Petit case. He concluded, "a woman who is born Parsi Zoroastrian does not cease to be so merely by virtue of solemnizing the marriage under the Act of 1954 with a man belonging to another religion."[73] Yet, as a dissenting minority opinion, the judgment against Gupta's petition stood.

If the court insisted that Gupta became a Hindu even after a civil marriage, through a "deemed conversion," (another fiction), as through the coverture doctrine she had merged personality with her husband, how might we

[70] Ibid. Section 2, paragraph 18.
[71] Ibid, Section 2, paragraph 19.
[72] Ibid, Section 2, paragraph 21.
[73] Ibid, Section 2, paragraph 29.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

interpret this? First by saying that it was a "deemed" act; the judges acknowledged that the act was somewhat unintentional or at least that there was a "legal conversion" even if not held to be true by Gupta herself. While Gupta's petition claimed that she is being discriminated against under the laws of the Constitution, the judgment shifted the issue into the sphere of property rights. Her Parsi-ness could be lost or removed, even without her intention and even post-facto; many years after her civil marriage was conducted. I argued in 2018 that the judgment effectively treated Gupta's "religious personality" as property, easily transferred by the anjuman to another religion because of Gupta's "merger."[74] So while the SMA kept her natal assets intact, the judgment allowed for the merger of her religious personality, repudiating the very mandate of the 1954 act. In her analysis of the Gupta judgement, Mody notes that here "Indian women are, in the Dumontian sense, hierarchically encompassed by their husbands and subsumed within them."[75] Gupta's subsequent appeal to the Indian Supreme Court in a Special Leave Petition filed in June of 2012 insisted on the validity of civil marriage under the SMA as specifically maintaining each spouse's natal religious identity, and refuted that the anjuman or her marriage could divest her of her native ethnicity, she has refused this encompassment.

Conclusion

Through the cases of two intermarriages and two potential mergers of legal personality, one failed, one successful, this article has attempted to trace some of the entanglements and ambiguities of plural personal laws in a diverse liberal democracy, especially when religious difference and gender difference collide. In the Petit case, the Bombay High Court negated the merger of personality doctrine that lay implicit in the 1872 Marriage Act by not recognizing Sooni Tata as a Parsi. She did not merge religious personality with her husband, and as such could not avail herself of Parsi communal assets. In 2012, we have the seeming reversal. Even while marrying under the SMA, which does not require renunciation of natal religion, Goolrukh Gupta was deemed to have converted to Hinduism, and she too was denied the access to Parsi assets. While the SMA was seen as a progressive move toward a uniform civil code from the colonial period to the present, we can see with Sooni Tata and Goolrukh Gupta, respectively, that few advances have been made, as communal rights to property still supersede the individual rights of these married women.

Helen Irving points to what she calls the central dilemma of liberalism, that it values both human universalism and human diversity. Pluralism, she holds, can be celebrated by a majority if it is not often seen as a danger to it.[76] Constitutional Identity Theory offers responses to reconciling this diversity, and as such tends to discount difference that is not explicitly disruptive to

[74] Vevaina, "She's Come Undone."
[75] Mody, "Love Jurisdiction," 55.
[76] Irving, Constitutional Identity Theory, 7.

https://doi.org/10.1017/S0738248023000068 Published online by Cambridge University Press

the majority. Subsequently, she claims, gender issues are assimilated into issues like the more disruptive issues of ethno-cultural diversity. She writes, "[w]omen, historically, are not a 'disruptive' class. They are not (or rarely conceived of as) threatening, and thus—in the logic of constitutional identity theory—need no constitutional accommodation or recognition" especially after they have received formal political equality through voting rights.[77] As more and more women like Shah Bano and Goolrukh Gupta become increasingly "disruptive," we must acknowledge that this remains the privilege of women with the financial and the legal means to push against the shadowy doctrine of coverture and its respective fictions.

What the analysis of the abovementioned cases shows is the coverture doctrine, while never formally accepted into Indian family law, has lingered in its "sticky" attachment to marriage. It is the status of coverture as a legal fiction that allows for its durability, and perhaps its shadowy absence and reanimation in Indian law. As many scholars note, the merger of personality doctrine is deeply embedded in many aspects of Indian law, perhaps most explicitly in Hindu marriage law. Stretton and Kesselring remind us that coverture's "flexibility and malleability did not constitute signs of its weakness but are sources of strength that people used to ensure its persistence for centuries."[78] While we may agree that this has to do with the existing patriarchy of both Indian law and society, I argue that we can also understand its perdurance because it is a legal fiction. It allows for jurists to work around ambiguities. Justices Chhaya and Patel expressed their concern about the potential ambiguous religious status of children born from intermarriages. However, I think that the intricacies of these cases show an anxiety about a larger ambiguous status that is more often revealed by women who marry outside their personal laws. It reveals deep uncertainty about whether people are their individual or their communal selves in front of the law.

Acknowledgments. The author thanks Alastair McClure and Saumya Saxena for inviting her to participate in the wonderful workshop from which this article was drawn, as well as the other participants for their insightful feedback and suggestions. The author also thanks her interlocutors in Mumbai, as well as Mitra Sharafi, for the support and encouragement of her work. The author is very grateful for the insightful comments of the anonymous reviewer and the diligent attention of Gautham Rao.

Leilah Vevaina is an assistant professor in the Department of Anthropology at the The Chinese University of Hong Kong. <leilah.vevaina@cuhk.edu.hk>

[77] Ibid., 14.

[78] Stretton and Kesselring, *Married Women and the Law*, 15.

Cite this article: Leilah Vevaina, "Mergers and Legal Fictions: Coverture and Intermarried Women in India," *Law and History Review* 41 (2023): 387–404. https://doi.org/10.1017/S0738248023000068