

[Gagan D.S. Sood](#)

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# Sovereign Justice in Precolonial Maritime Asia

## The Case of the Mayor's Court of Bombay, 1726–1798

GAGAN D. S. SOOD\*

### Introduction

From the beginning of the nineteenth century, remarkable developments in the realm of law were witnessed throughout the world. They expressed and paved the way for a new type of dispensation. For those parts of Asia and the Middle East with a substantial European presence, the legitimate rules, principles, and procedures for resolving disputes were progressively assimilated into systems of state-sanctioned legal pluralism.<sup>1</sup> The process—at once gradual, charged, and punctuated—coincided with the initial consolidation of European imperial dominance and the emergence of Europe's modern global empires.<sup>2</sup>

Though these changes in the realm of law date from the nineteenth century, the European presence there had long preceded them. This was perhaps most notable in maritime Asia.<sup>3</sup> The Europeans in this region tended to cluster in their factories or in certain quarters of the towns and cities dotting the Indian Ocean rim. Notwithstanding differences between, say, a Mocha and an Aceh in size, location, and form of government, all these settlements had one quality in common: each was able to profit from the traffic conducted along the coast or across the high seas. As for the sovereign justice on offer, the dispensation that governed it in early modern times was far removed from its later analogue. This stemmed in large part from the rationale and basis for the European presence. In particular, Europeans could not dominate maritime Asia's provincial and imperial powers, especially those located inland, and the great majority of those arriving from western Europe intended to return as soon as possible; despite some involvement in racketeering and other forms of surplus extraction—famously in attempts to introduce and enforce a system of passports in maritime transport and travel—their interests were mainly commercial, oriented towards trade and shipping; the indigenous populations remained on the whole large and resilient; and many of the skills and techniques vested in livelihoods long associated with the region retained their primacy. As a result, the only realistic option for Europeans in maritime Asia was to reconcile themselves to the prevailing order. And this they did, with most of the region's fundamentals, not least in the realm of law, continuing to develop along what were essentially indigenous lines.<sup>4</sup>

The situation was to be transformed, however, from the turn of the nineteenth century. Changes were now occurring not just under a previously unknown dispensation, but also under one whose reach was truly global. In simple outline, a novel, broadly positivistic approach to the physical, biological, and human worlds was given impetus by sovereignty that was increasingly being recast as territorial statehood (to be reinforced later on in the century by emerging notions of the survival of the fittest and a civilising mission). These were elements in an altered way of being, of how man might—and should—relate to his surroundings, near and far.<sup>5</sup> In the judicial sphere, the new ontology revealed itself as moves towards what have been labelled standardisation, codification, universalisation, and centralisation.<sup>6</sup> These moves entailed a loss of diversity in, as well as greater rigidity of, the legitimate rules, principles, and procedures deployed in forums to resolve disputes. Europe itself was certainly not spared this process.<sup>7</sup> But the consequences were especially acute for those parts of Asia and the Middle East on the cusp of colonisation because of the differing provenances of their pre-existing ideas and practices. The resulting incommensurabilities meant that these could not be meshed with those emanating from Europe. Instead, traditions were “invented” and customs “discovered.”<sup>8</sup>

The argument is a familiar one; it is generally accepted that developments in the realm of law from the start of the nineteenth century were constitutive for the colonial polities in Asia and the Middle East in their later, more mature phases. This is above all because of their bearing on identity and, by extension, on relationships across ethnic, religious, class, gender, and racial boundaries. Familiar as this argument is—and we now have a wealth of scholarship on “colonial law”<sup>9</sup>—the nature of these developments as a whole still eludes us. One of the main reasons for this is the absence of sufficiently fine-grained knowledge of what prevailed immediately beforehand. The situation is not helped by the prevalence of a state-centric and modernist outlook in historical scholarship on law. Such an outlook can do little to check the tendency to project back into the past what appears “precolonial” or “non-colonial” in the nineteenth century (or after), when the process of colonisation was already well under way. The possibility of unwitting anachronisms thus rears its head, which is problematic to say the least.<sup>10</sup>

In this article, I hope to avoid such anachronisms. I do so by focusing on the Mayor’s Court of Bombay, a sovereign forum for resolving disputes in the eighteenth century. In giving a detailed description and analysis of this forum, my hope is that this article will contribute to establishing a baseline for determining what remained the same and what was transformed over the following century. It also stands to contribute to our understanding of the principal mechanisms responsible for the observed continuities and changes. These reasons are the principal justification for a comprehensive account of the constitution of the Mayor’s Court of Bombay, its jurisdiction, the logistics of prosecuting a suit in the forum, and the laws on the basis of which decisions were reached.

There are four distinct contexts in which this specific forum may be interpreted as having played a meaningful role in the eighteenth century, each characterised by its own historiographical concerns: the larger polity of which Bombay was part, extending along the coast and into western India; the general phenomenon of early modern European expansion, settlement, and colonisation; Europe’s overseas

empires and its great chartered trading companies; and maritime Asia. The Mayor's Court of Bombay lies at the intersection of these four contexts. While there is value in treating these contexts together, not least because of their historical bearing on one another, there is also value in treating them separately. In the present article, I adopt the latter approach, with maritime Asia being my main concern. This is reasonable in view of Bombay's growing importance to the Arabian Sea area and, more broadly, to the world of the Indian Ocean rim as the eighteenth century progressed.<sup>11</sup> By the middle of the eighteenth century, Bombay had eclipsed Surat as the Arabian Sea area's greatest entrepôt. Many of those engaged in regional-scale trade, finance, and shipping developed strong ties with the port city so as to take advantage of its resources and the new opportunities on offer. They invested in its most profitable sectors and availed themselves of its facilities, employing agents to oversee their interests or maintain partnerships with local residents. As increasing numbers from abroad were drawn into Bombay's orbit, a variety of communities and corporations adopted it as one of their principal seats of operations. By virtue of the port city's position as an important hub in a dense commercial and communications network, its residents as a group were conversant with—and arguably influential in shaping—many of the standards that framed maritime activities marked by large distances and long silences. This is why an account of the law applied in suits heard in Bombay's Mayor's Court, and of the forum's day-to-day functioning, provides us with insights into the rules, principles, and procedures for resolving disputes that were dispersed throughout maritime Asia.

But the Mayor's Court of Bombay was not the only one of its kind; there were others—and other kinds of forums, too—in which disputes were typically resolved. So we have the courts of the *shāhbandar* (or *syahbandar*) at Pegu in Burma, of the Parsi *panchāyats* in Gujarat, of the “traders” (*tujjār*) residing in Basra, and of the city quarters (*wijken*) of Dutch Batavia. This set of forums constituted what might be described as a self-regulating legal regime. By this I mean that, despite the absence of an authoritative centre, they interacted with one another in a fashion which was coherent and stable, analogous to law in the Islamic world<sup>12</sup> or to the *lex mercatoria* in Europe.<sup>13</sup> Disseminated and sustained by dense networks, there was shared knowledge among those active in maritime Asia about where and with whom lay the authority to resolve disputes. This was seldom determined in territorial terms or in terms of subjecthood, or even residence. Rather, the most pertinent attributes were the character of the transaction at hand and the ethnic or confessional background of the litigants. The latter was especially salient given the diversity endemic to the region. Due to the coercive and informational constraints on sovereign governance in the period, there was no real alternative to the great majority of disputes being resolved in forums located beyond the sovereign purview. Though the totality of the applicable law varied from forum to forum, there was nevertheless enough comity between them to enable mutual recognition and to sustain the expectation that a forum's decision would be upheld.

The picture described in this article is thus bottom-up and decentred (or, perhaps more accurately, polycentric). The introduction of sovereign forums does not fundamentally alter it. These embraced a law which, at a minimum and in practice, did not contradict that embraced by other forums, sovereign or otherwise. To this extent, sovereign forums were functionally interchangeable, and gave rise to the

possibility of “forum shopping.” Notwithstanding the fact that relatively few disputes were resolved in sovereign forums, they were integral to the legal regime and necessary for maintaining its potency. On the one hand, they were an institutional manifestation of sovereignty in maritime Asia. This accorded with the widely held conviction that the sovereign was the ultimate temporal guarantor of justice and the social order within his polity.<sup>14</sup> On the other hand, there was value in the knowledge that legitimate physical force, normally delegated to officials manning the forums that dispensed their sovereign’s justice, was potentially available to draw upon, even if mainly for exemplary purposes. Both these features of the legal regime of maritime Asia find expression in the Mayor’s Court of Bombay.

So an examination of this specific forum contributes to our understanding of the legal regime of maritime Asia in the eighteenth century. Perhaps less obviously, it also contributes to our understanding of the transformations that started to gather pace from the beginning of the nineteenth century. This is because sovereign forums such as the Mayor’s Court of Bombay furnished (in retrospect) a core mechanism through which these transformations were crystallised. The very existence of the Mayor’s Court of Bombay accustomed those indigenous to the region to the idea—and practice—of recourse to sovereign justice presided over by Europeans. Of course, down to the end of the eighteenth century at least, the fact that this justice was nominally dispensed by Europeans was of no practical relevance since their justice conformed to the norms embodied in sovereign forums throughout maritime Asia, European and non-European. But in view of what was to happen in the coming decades, the growing popularity of specifically European sovereign forums had profound unintended consequences.

I return to this issue in the conclusion. For the time being, the point to note is that these transformations paralleled the dissolution of the legal regime of maritime Asia. To the degree that rupturing took place in the history of Asia and the Middle East from the turn of the nineteenth century, the dissolution of maritime Asia’s legal regime is part and parcel of this process. So to get to grips with the nature and scope of this rupturing requires us to get to grips with, among other things, the realities of the legal regime that preceded it. This article moves us towards that goal by recapturing the details of the Mayor’s Court of Bombay, which was integral to maritime Asia in the eighteenth century. It is the survival of the forum’s administrative and legal records—copies of which are today preserved in Mumbai and London—that make such an account possible.

### **The Mayor’s Court in Theory and Practice**

The start of Britain’s relationship with the Arabian Sea area may be dated from the early decades of the seventeenth century. This was the moment when the English East India Company founded its factory in Surat, western India’s gateway to the high seas. Not long after the transfer of control over Bombay in 1688 from the English crown to the Company, the island became the headquarters for its interests in the area. Alongside Calcutta and Madras, it was designated as one of the three “Presidency” settlements in India under Company rule. As a result, the Mayor’s Court was a fixture in Bombay from its establishment in 1728 until its abolition in 1798.

The law that the Mayor's Court administered, its jurisdiction, and its organisation were formally defined in a royal charter issued to the Company in 1726. This was amended in 1753 so as to correct perceived deficiencies. The two charters give us a reasonable sense of how officials in London expected the Mayor's Court to operate, and their perception of maritime Asia from a juristic standpoint.<sup>15</sup> The 1726 charter set up a municipal "corporation" in Bombay.<sup>16</sup> This consisted of a mayor and nine aldermen. They formed a court of record—the Mayor's Court—in which three were required for a quorum. The mayor and seven of the aldermen were to be native subjects of the English crown; the remaining two aldermen could be subjects of any other sovereign in friendly relations with England. A mayor's tenure was for one year and the aldermen's either for life or for as long as they were domiciled in Bombay. Each year, the mayor and aldermen currently in post elected a new mayor from among the existing aldermen. Vacancies among the aldermen were filled by those who qualified as local residents. Bombay's government could remove an alderman from his office on a complaint being made against him. The dismissed alderman had a right, however, to have this decision reviewed by the king-in-council in England.

The Mayor's Court was the court of first instance in all civil and testamentary suits involving European residents of Bombay and its subordinate factories, the most important of which was in Surat. Judgements handed down by it could be appealed to the court of the governor and council of Bombay. The latter's decision was final in cases worth less than 1,000 pagodas (approximately Rs. 3,000). For those whose value was 1,000 pagodas or more, litigants had a further right of appeal to the king-in-council in England. Criminal suits in Bombay did not fall within the Mayor's Court's jurisdiction. They were heard instead by the governor and the five senior members of his council. Each was simultaneously a justice of the peace, and together they formed a court of record that enjoyed powers equivalent to the English courts of "oyer and terminer" and "gaol delivery."

As for the law that the Mayor's Court was supposed to administer, this is not explicitly stated in the 1726 charter. It only required the court to "render its decisions according to justice and right."<sup>17</sup> But as the preceding charter had specified that the governor and council base their decisions on English law, we may assume that on the new charter being issued the Mayor's Court was expected to apply the common and statutory law of England as it stood in 1726. Thereafter, the forum was permitted to diverge from English law through mechanisms prescribed in the charter. The governor and council were empowered to make by-laws and decree rules for the better governance of Bombay, and to impose penalties on residents. These had to be "agreeable to reason" and not "contrary to the laws and statutes of England."<sup>18</sup> They also needed approval from the Company's directors in London before they could come into force. It was also expected that the procedures followed by the Mayor's Court would be modelled on those of the common law courts of metropolitan England. To this end, each presidency received from London a "Book of Instructions" and the "Method of Proceedings." These explained how a case ought to be prosecuted and provided copies of the forms required to undertake civil suits, sessions trials, and probate and administration work. The Company was given the task of ensuring that the Mayor's Court remained faithful to its charter. One check was the requirement

that the records of the forum's daily proceedings be scrutinised on an annual basis.

It quickly became apparent, however, that the 1726 charter was a triumph of hope over experience; it was a naive attempt to transplant from England to a very different setting a certain ideal of how such forums ought to be structured and operate. In one sense, the charter was an exercise in make-believe, whose intended audience was more in London than in Bombay. Throughout the Mayor's Court's existence, for example, no "Indian" was ever appointed to the bench, though the charter made provision for this possibility. In another sense, the forum's official provisions were simply inappropriate for the situation in maritime Asia before the end of the eighteenth century and the start of the consolidation of British rule. Its judges, attorneys, servants, and clients responded by disregarding the charter when it did not suit them. Of course, the egregious gap between practice and theory did not go unnoticed by the Company. And so another royal charter was issued in 1753 to bring the forum in line with official policy.

This new charter was a modified version of the 1726 charter. Each of its major amendments sought to resolve specific failings, as the Company saw it, in Bombay's judicial sphere. Three are of particular note. First, Bombay's government was given the final say in the appointment of the corporation's mayor and aldermen.<sup>19</sup> This was prompted by the debilitating tension that had come to characterise relations between the Mayor's Court and the governor and council. The 1726 charter had envisaged a forum largely free of interference by Bombay's government. Taking a literal interpretation, many of those who manned the forum sought to preserve their autonomy, even at the risk of acting counter to the decisions of the government and council. This was a frequent source of conflict, much to the Company's irritation. By strengthening the executive and curtailing the independence of the Mayor's Court, the Company hoped to legislate away what had become a chronic feature of dealings between the two sides.

Second, the 1726 charter removed from the Mayor's Court's jurisdiction all suits between those who were not European, unless the parties involved submitted themselves voluntarily to the forum's authority. This echoed the original intention that the Mayor's Court be for Europeans alone. The intention, however, had been widely flouted since its founding; it had regularly heard cases between litigants indigenous to the region, normally in accordance with their own notions of justice. By stating once again that the Mayor's Court was a court of English law in which only English law was applicable, it was hoped that non-Europeans would be dissuaded from seeking its protection, choosing instead to resolve disputes among themselves as they saw fit.

Third, the new charter set up a new forum, the court of requests. Its rationale was to dispense cheap justice efficiently to all of Bombay's residents in suits worth no more than 5 pagodas, or about Rs. 15. It was established in recognition of the fact that the Mayor's Court could no longer handle the growth in litigation experienced over the preceding years. To lighten its workload, petty disputes became the prerogative of this subsidiary forum.

### **Jurisdiction, Law, and the Legal Regime**

As with its 1726 predecessor, the hopes vested in the 1753 charter were not to be



realised. The disjuncture between theory and practice was impervious to such diktats from London; the Company's idealised aims, coupled with reluctance to acknowledge openly the traditions reigning in Bombay and maritime Asia, clashed, on the one hand, with the practicalities of governing a diverse, mobile population with reasonable fairness and efficiency, and, on the other, with the aspirations of the Company's merchant-officials and their indigenous associates to turn a profit of their own. In this struggle, there could only ever be one victor. It also determined the parameters of the ensuing debate: the jurisdiction of the Mayor's Court, the laws to which it adhered, its relationship to other forums, and the means of redress in Bombay's judicial sphere. This debate is of value for what it tells us about the realities on the ground. It also begs the question: what are the sources that might allow us to listen in on this debate? The answer clearly does not lie in the charters or the correspondence exchanged between British officials based in London. A much more promising source is the Diary of the Mayor's Court.<sup>20</sup> This is a record of the formal proceedings of the forum. But it also contains the verbatim copies—often complete—of the depositions entered by plaintiffs and defendants, and the transcripts of interrogations of the witnesses called by the parties to the suit. In keeping with the British practice—then and now—of motivating the judgement orally, only the forum's judgement is stated in the Diary; rarely do we find any indication of the rationale behind the bench's decisions. Even so, this Diary, augmented by personal and business correspondence and the published observations of local residents and visitors, permits us to see beyond the ideals expressed by the charters and capture something of the Mayor's Court's true status and role in maritime Asia's legal regime.

The actual jurisdiction of the Mayor's Court was delineated in different ways: one was in terms of the qualifications required of would-be litigants for their case to be heard by the forum; a second was in terms of its relationship to other forums capable of resolving disputes. By its charters, the Mayor's Court at Bombay had sole jurisdiction over all suits to which Europeans were party. No non-European could be compelled to submit himself to its authority; indeed, this was officially discouraged. But a glance at the names of the defendants and plaintiffs who appeared before the bench is enough to show that a wide spectrum of backgrounds was represented. It is true that the most numerous were British by origin. A significant proportion, however, hailed from religious and ethnic communities indigenous to the region. Prominent among them were Parsis, Gujarati *baniyās*, and Shī'īs; perhaps surprisingly, Armenians were relatively few in number.

Whatever the charters might decree, residency *per se* does *not* seem to have been a prime qualification for gaining access to the justice of the Mayor's Court. As noted in a memo received in the early 1760s from Madras' government, the Mayor's Court there was willing to entertain any dispute over agreements wherever they were originally contracted as long as the plaintiff was usually "resident within the jurisdiction."<sup>21</sup> But even "Indian natives" who were not considered residents could access the forum through the device of issuing "bona fide" bonds that transferred "the benefit of the debt to an English subject [which then] may be accepted and lawfully put in suit against an Indian native constantly resident within the limits of the jurisdiction."<sup>22</sup> Stripping away the rhetoric, the evidence suggests that what really counted in Madras was not residency—or subjecthood, ethnicity, or religion—but whether

any judgement concerning the matter in dispute could be acted upon.<sup>23</sup> And this was true of Bombay, too. Though in obvious breach of their charters, the general approach of both forums was to adapt themselves to the fact of their diverse and expanding polities. This was driven by a desire on the part of their governing merchant-officials to enrich their polities, for their own interests, if not the Company's. It is also why the same merchant-officials tried on occasion to limit the jurisdiction of their principal sovereign forums to territories firmly under government control. The consequences were predictable. The reluctance—or inability—of the Mayor's Court of Bombay to enforce judgements involving people or property located outside the Presidency encouraged litigants who feared its judgement would go against them to migrate to places where its writ did not run.<sup>24</sup> By the same token, plaintiffs would urge the forum to speed up the process, trying to make it more difficult for the defendant to abscond from Bombay with his property before the judgement was issued.

The forum's modest capacity to enforce its judgement in territories outside the Company's control did not, however, stem the growth in its popularity among the region's indigenous communities.<sup>25</sup> This popularity dates from its very inception. The records of the Mayor's Court's daily proceedings show that much of its work had always involved disputes between non-Europeans, many of whom were *not* Bombay residents. We may account for this by considering its reputation, and that of Bombay's government, within maritime Asia's legal regime. Reputation mattered because, for those in search of sovereign justice in the region, the Mayor's Court of Bombay was one of several possibilities. As transactions often involved people and property with ties to more than one settlement, there were other forums available in which sovereign justice was dispensed and which were potential substitutes for Bombay's Mayor's Court. In these circumstances, popularity and reputation were positively correlated to one another.

But even in Bombay itself, the Mayor's Court was not free of competition. While there was no alternative to it if one wanted justice in a *sovereign forum* specifically, there were, of course, other kinds of justice available. By far the most important of these in maritime Asia was offered in forums rooted in indigenous communities—among the most well known being the Parsis, Armenians, and Chettians—or in occupational associations of, say, wholesale traders (*tujjār*) residing locally or *mahājans*, a type of banker-creditor found throughout northern India. Whether through arbitration or mediation, it is in forums like these that the great majority of disputes were formally heard and resolved. Few of them, if any, were officially sanctioned by the English crown or the Company's Court of Directors; they existed largely beyond the purview of Bombay's European population. Nevertheless, they were not ignored by those who manned the Mayor's Court. On the contrary, the Mayor's Court was acknowledged in practice as belonging to a broader, self-regulating legal regime, dimly perceived though it might have been. This acknowledgement was at its most explicit in two commonplace situations: when the Mayor's Court would insist that an attempt be made to resolve the dispute through a mode of "private arbitration" acceptable to all parties before it would consider hearing the case; and when disputed facts at the heart of a case submitted to the Mayor's Court were referred to "private arbitration" before allowing it to progress any further.

Alongside this so-called private arbitration in communal or occupational forums,

another very different kind of justice—akin to a ruler’s personal justice—was also available. It was normally solicited through personal appeals to the governor of the port city. As he occupied the sole office in Bombay invested with the aura of a sovereign, his pronouncements could suffice to resolve disputes, among those living in Bombay for sure, but also among those living elsewhere in maritime Asia. And this might be done without reference to the Mayor’s Court (or indeed to any other forum in the legal regime). A case in point is that of Ḥajī Baqīl. A Muslim resident of Surat, he decided in 1739 to petition Stephen Law directly. Exhausted by his failed efforts to reach acceptable terms with a pair of shipping brokers over the price of a vessel, he wrote to Law in his capacity as the Governor of Bombay asking him to adjudicate their dispute.<sup>26</sup> In so doing, he simply bypassed the Mayor’s Court.

These possible alternatives to the Mayor’s Court suggest that there was a degree of competition within maritime Asia’s legal regime for the business of justice. Since self-regulation was the rule, such competition could make good sense; the constant negotiation of the boundaries between the component elements of the legal regime may plausibly have been a source of stability. But equally it could fuel local struggles for power. John Grose observed this at first hand in Bombay in 1750. “Several of the company’s servants,” he wrote, “named especially to fill the offices of the mayor and aldermen of the mayor’s court, even though their jurisdiction was subordinate to the court of appeals, assumed to themselves such an authority and independence as made the governor and council jealous of theirs being lessened, or at least checked by it. This bred such feuds and dissensions, that several of the members of the mayor’s court conceiving themselves aggrieved, quitted the service, and repaired home to the company with their complaints.” As Grose saw it, the cause for this was not the 1726 charter but failings in those who had been selected for these offices. “The want of knowledge, the inexperience and aim at independence in the appointed members of the several courts, rendered this accession of authority a dangerous tool, in the hands of persons so disqualified for the exercise of it: so that it is scarce a doubt, but the charter had been better not obtained, than no better a provision have been made for its administration and maintenance.”<sup>27</sup> He may well have hoped that the reforms promulgated by the 1753 charter would rectify these (in his view) grave problems. If so, then he was to be disappointed; the business of justice carried on much the same as before.

While decrying the officials who manned Bombay’s Mayor’s Court, Grose also admitted that the blame for their failures was not solely theirs.

The charter [of 1726], appointing the judges of Oyer and Terminer, the mayor’s court, and the court of appeals, this last to consist of purely the president and council, was only attended with a manuscript book of instructions; which, granting it was framed by the ablest lawyers in the kingdom, could be but a very imperfect guidance to the gentlemen nominated to the several judicial offices necessary to the execution thereof. These gentlemen being, generally speaking, such as came very young out of their country, bred up entirely in a mercantile way, and utterly unacquainted with the laws of England, were in course liable to make great mistakes, especially in cases of capital importance; and however their natural good sense and well-meaning might make a shift in purely commercial cases to decide with

tolerable equity, they could not but be greatly at a loss in those of a mixed nature, or where it was necessary to pay a regard to the particular laws of England.

Clearly, much of the blame for the current state of affairs in Bombay lay with the Court of Directors in London. It was because of them that “no person had been sent out with capacity or knowledge enough to put this new method of procedure into a proper course, and to ascertain the limits of the several jurisdictions: so that the charter was left in a manner to execute itself.”<sup>28</sup>

Grose was correct in his observation that no official working for the Mayor’s Court was, or ever had been, a professional lawyer or judge. The fact of the matter was that, throughout the forum’s seventy-year history, neither the mayor and aldermen who determined the decisions, nor the clerks and other servants who kept it running, nor the attorneys who argued their clients’ cases before the bench, had systematic training or experience in substantive law of any kind, let alone English law.<sup>29</sup> Without the requisite knowledge or skills, the notion that the Mayor’s Court applied English common and statute law was mere pretence.<sup>30</sup> John Lambton, a British attorney representing the Bengal-based merchant Mordecai Walker, was thus perfectly entitled to state in 1743 that the Mayor’s Court was a “Court of Equity.”<sup>31</sup> The statement was accepted without challenge both by the judges and Rupji Dhanji, the opponent in the suit. It stands to reason that, if those responsible for managing the forum were technically unqualified to administer the law *as defined in its charters*, then those who sought its justice had even less of an idea of English law and English common law courts. This was in practice as true of British litigants as of the Bohras, *baniyās*, Portuguese, Arabs, and Parsis who often figure among the plaintiffs and defendants.

In so far as the population indigenous to maritime Asia had any awareness of English law, it was deemed of little or no relevance for prosecuting a case successfully in the Mayor’s Court. This is implied by litigants who sought retrials on the grounds of their *ignorance* of the forum’s laws and procedures. Sīkrān Hīrjī, a well-known Hindu *baniyā* from Gujarat with interests scattered throughout the Arabian Sea area, found himself mired in just this situation in 1771. Sīkrān petitioned the Mayor’s Court to reconsider his case against Thomas Mathewson, a British merchant and Company supercargo. He justified his request on two grounds. First, he claimed that new evidence had come to light that was of material relevance to the case and would alter its facts in his favour. Second, he argued that, as a result of bad counsel taken in good faith, he had unwittingly adopted a legal approach that ran counter to his interests. This is why, for example, he had not responded to a bill filed by Mathewson, “being such as he was persuaded and advised to, and not knowing how material[ly] he might be affected thereby, being a stranger from a foreign country, ignorant of the language, and greatly unacquainted with the manner of proceeding in this Hon[ourable] Court, being brought up under a Government entirely deferant from the English, and therefore ignorant of the laws of this country.”<sup>32</sup> Is it thus surprising that he had made such elemental mistakes? Was it fair for him to be held responsible for them? He pleaded for the Mayor’s Court and Bombay’s government to show him mercy, assuring them that in any retrial he would scrupulously observe the laws sanctioned by the forum. Sīkrān Hīrjī was

obviously engaging in a spot of rhetorical gamesmanship. Nevertheless, he had reason to be confident of a sympathetic hearing because, as he put it, the Mayor's Court is "notoriously fam'd for their mildness and equity in protecting the innocent, and securing the injured from oppression, which he humbly prays and doubts not he will experience in this cause and meet with all the indulgence these law may or can admit of."<sup>33</sup> He placed stress on its reputation. This was eminently sensible because of a reputation's bearing on a forum's broader influence in the region.

Though legal practice in the Mayor's Court of Bombay diverged greatly from both the common law courts of England and the spirit of its founding charters, this did not translate into a loss of authority and capricious judgements. The Mayor's Court administered a set of rules and principles and obeyed procedures with which its officials and clients were sufficiently conversant, and which were, more importantly, acceptable to them. These rules, principles, and procedures are what constituted its law. Key to their acceptability was that their source did *not* lie in England but in maritime Asia. So we see the forum support prevailing customs. And we also see it take pains to ensure its decisions were consonant with ambient notions of fairness. In these circumstances, the courts and laws of England were rendered moot. Because of the differences with the orders issued by the Company's Directors in London, many of the binding rules, principles, and procedures of the Mayor's Court were not written down but communicated orally and learnt through experience. They evolved through a process of trial and error, generating a stable but protean situation of which litigants and their attorneys were cognizant. Change could occur in a number of ways. Perhaps the most common was through suits in which one party advocated the establishment of a new precedent. The usual justification was that current notions of "equity" demanded it. Of course, the judges had to balance this principle against the authority of existing customs. The opposing party's stock response would be to remind the bench of the risks attending innovation. John Lambton, a British attorney, argued the point with the assuredness and finesse of a seasoned operator. "The defendant hath sufficiently confessed his contract," he deposed in 1743, "although he endeavours to evade it by reasons which this repliant humbly hopes will have no weight in this Hon[ourable] Court ... for if it is once allowed that merchants shall recede from their contracts with humble submission it would be introducing into this Hon[ourable] Court a precedent of the most dangerous consequences to trade and few merchants would escape feeling one time or other its bad effects for persons desirous of relinquishing their bargain would never want some seemingly plausible pretext to pursue that end."<sup>34</sup>

Lambton's sentiments echoed an earlier dispute that had pitted the Parsi Framji Rustomji against the Gujarati Hindus Narayandas Tuckidas and Nathu Madowji. The Hindu defendants begged

leave to observe that if five or six years after two Indian merchants have adjusted their books and settled their accounts together according to the customary method usually observed between them, one of them should take it into his head to sue and vex the other on some of the heads so formerly adjusted by them both[,] the Def[endant]s humbly submit whether allowing such a suit would not be introducing into this Hon[ourable] Court a precedent of every ill consequence[;] and few Indian merchants of credit

here according to the method (common to most of them) of settling their accounts together could escape feeling the bad effects of it[,] for litigious p[er]sons would never want plausible pretexts to call their correspondents or partners to account for transactions a long time before adjusted between them as in the instance of the present case.<sup>35</sup>

It is such evidence which buttresses the view that the law applied in the Mayor's Court had less to do with its charters or the instructions regularly dispatched from London than with pertinent customs and an approach imbued with pragmatism. This helps explain why litigants felt able to appeal to certain types of authorities over others when making their case. In 1773, Rupji Dhanji was involved in a dispute with a group of Bombay-based holders of respondentia bonds over the division of the proceeds from the sale of a ship's cargo on which both had a claim. Rupji Dhanji, the ship's owner, argued that his claim, arising from the credit he had extended for the hire of his ship, ought to have precedence over that of the respondentia bondholders. He referred to passages "in the law books and in the books of commerce" in which, he asserted, there were "innumerable" examples that supported his position.<sup>36</sup> In his deposition, he quoted part of the entry on "freight" in Malachy Postlethway's *Universal Dictionary of Trade and Commerce*.<sup>37</sup> Popular handbooks like this contained a distilled version of the *lex mercatoria*. By this period, however, these handbooks carried little weight in English common law courts. Rupji Dhanji's opponents in this dispute highlighted just this point in trying to undermine his position. They argued that Postlethway's *Universal Dictionary* had as much to do with the forum's substantive law as "the opinion of any lawyer on point of law can be of the same force and validity as an act of Parliament."<sup>38</sup> The Mayor's Court ultimately decided in favour of Rupji Dhanji.<sup>39</sup> Though far from proof—impossible where the rationale for the judgements is not stated explicitly—the suggestion is that the forum was sympathetically inclined towards the *lex mercatoria* and its associated principles.

Fairness was a leitmotiv among those indigenous to the region who were proponents of the justice dispensed by the Mayor's Court. Even after making allowance for formula and exaggeration, there is a ring of sincerity about Babu Lambatia, a Muslim plaintiff, when he noted in 1747 that he chose to air his grievances in the forum because of its "vaunted equity and justice."<sup>40</sup> Its purported "equity and justice" was frequently contrasted by non-European plaintiffs with the unpredictable and arbitrary conduct of other forums. In the 1740s, Narayandas Tuckidas and Nathu Madhuji sought to resolve their differences with Ḥājī Baqīl through arbitration in an occupational forum. But when the referees announced their judgement, they refused to abide by it, claiming that, unlike those of the Mayor's Court, theirs was "rash, irregular and unadvisedly given contrary to all justice and equity and in manifest wrong and oppression."<sup>41</sup>

### Internal Organisation

The available sources that touch on the Mayor's Court tend to gloss over its inner workings. There are, however, a few exceptions. One of these is the forum's "table of fees," which provides a detailed breakdown of the official costs incurred by par-

ties to a suit. Such tables were occasionally copied and entered into the daily proceedings. I have come across two such tables, dating from 1771 and 1775.<sup>42</sup> To the best of my knowledge, the Mayor's Court Diary does not contain any tables of fees prior to 1771. Thereafter, they appear irregularly at intervals of several years.

The tables of fees are invaluable documents for envisaging the Mayor's Court as it actually was. They provide information on the type and number of officials and servants employed by the forum, and the external institutions closely associated with it; the functional relationship between its posts and their status within the overall hierarchy; the principal duties attached to the individual posts; and the channels of communication through which instructions and information were transmitted and received. The tables have, at the same time, major limitations. They provide no biographical data on the individuals who occupied the forum's various posts and tell us almost nothing about the order in which tasks were performed. These tables of fees are best viewed as providing a snapshot of part of the inner machinery of the Mayor's Court.

The tables show that the most crucial, albeit unsung and practically invisible, employee in the forum was the "register" (that is, registrar). Hardly ever noted while a suit was in progress,<sup>43</sup> he was the administrative and informational linchpin of the Mayor's Court.<sup>44</sup> It was through him that all its documented business was initiated and monitored, from the official commencement of the litigation to the enforcement of its verdict. That his role was pivotal for the forum's operations may be demonstrated in two different ways. Every official act was accompanied by a written order that was either issued to or by the register. In this sense, the institution revolved around him, explaining why he had a stake in most of its everyday activities. From the perspective of the fees that he earned, the register's duties were by far the most wide-ranging and varied of all the Mayor's Court's staff. Whereas others had no more than six—two or three was the usual number—officially-sanctioned activities for which litigants could be charged, the register collected fees for twenty-one distinct functions, ranging from reading and filing bills of complaints, to precepts issued to the sheriff under the seal of the Mayor's Court, and displaying public notices in town.<sup>45</sup>

The other officers and servants of the forum may be distinguished by their relationship to the litigants and by their ethnic background. At one end of the spectrum, there were those who had no direct official contact with litigants while the case was in progress. This restriction appears to have been confined to the bench, on which sat Bombay's mayor and aldermen. Whatever the forum's charter might declare, these officials were invariably selected from among those of Bombay's residents who were British-born and -bred. As most had been in the Company's employ for many years, there often existed multiple personal and business ties between judges and the litigants appearing before them; they were embedded in a dense web of relationships that spanned maritime Asia. While this had an undoubted influence on the prosecution of a suit and the forum's final judgement, it was not officially noted or condoned. The main duties of a judge were to hear and deliberate on cases made on behalf of the litigants by their court-sanctioned attorneys; to study depositions, with any appended documents, entered by the litigants; and to issue orders that were recorded by the register and then communicated by him to the appropriate individuals or committees.

At the other end of the spectrum, we have servants or officials whose primary function was to mediate between the Mayor's Court, on the one hand, and litigants and other outsiders, on the other; or to put into effect the forum's orders concerning the litigants. Attorneys were the most prominent among such intermediaries. Almost without fail British natives, they had to be officially appointed before they were allowed to style themselves attorneys. Though it is not clear whether they had to fulfil any formal requirements, residence in Bombay was in practice a necessary condition. All litigants were obliged to appoint and retain an attorney so as to prosecute their complaint or to defend themselves against accusations that had been lodged with the Mayor's Court. The chief role of the attorney was to represent his client in court, and to provide him with information and advice on the substantive and procedural laws then currently prevailing. This role manifested itself in several ways. The attorney drew up petitions and rejoinders in the correct form and manner, and deposed them on behalf of his client. This was always done through the register. The attorney was expected to attend court and plead his client's case before the bench on the day "the parties join issue," the client being barred from doing so in person. Finally, clients looked to their attorneys to guide them on the best strategy to follow to achieve a successful outcome. Even if their knowledge of the forum's substantive law was precarious, they were normally well-versed in handling the procedural aspects of a suit, which could be of far greater significance in the final reckoning.<sup>46</sup>

The duties vested in several of the posts in the Mayor's Court required their incumbents to work closely with litigants and other outsiders. Notable in this regard were the examiners. They could be permanently retained by the forum or commissioned for specific tasks. They were usually British, but if the nature of the suit necessitated linguistic or technical skills not found among the local European community, the individual's religion or ethnicity did not seem to matter as long as he was equal to the task. Examiners were employed to question and take down the responses of witnesses "agreeable to the list delivered by the attorney."<sup>47</sup> Procedure required the list of questions and witnesses to be authorised by the forum and recorded by the register before official consent for the interrogation was granted.<sup>48</sup> The interrogation proper could only start once the witness had sworn upon the oath appropriate to his religion. If the witness were sick, the examiner would question him at his home.<sup>49</sup>

Examiners were regularly accompanied by interpreters. Given the diversity characteristic of maritime Asia, they were critical to the smooth running of the forum in the frequent situations where its employees and others involved in the case did not have a language in common. The languages most often used as a lingua franca in Bombay were Portuguese and Gujarati.<sup>50</sup> Despite their obvious significance, the details that we have about interpreters is scanty. It is probable that, like examiners, they were commissioned by the register. The chances are that they belonged to local communities known for their linguistic—and scribal—skills, and were often tapped for these by those from abroad. From the Mayor's Court's standpoint, their main task was to translate into English papers deposed by the plaintiffs and defendants. These were then written up at the register's behest and later perused by the judges on the bench. It is unlikely that the forum assumed official responsibility for finding and hiring interpreters to mediate between clients and their attorneys.



Where language was an issue, it was up to the individuals concerned to find for themselves an interpreter. Most likely, he would be drawn from the same pool on which the Mayor's Court itself depended.<sup>51</sup>

Finally, the Mayor's Court needed an assortment of individuals to execute and enforce its orders and judgements in situations where there might be need for recourse to physical force. The most important of these were the sheriff, the gaol keeper of the prison, the sheriff's sergeant and the marshall of the court. The latter two seem to have been permanent employees of the forum and were answerable to it alone. Delivered their orders by the register, the sergeant and marshall were responsible for serving precepts or warrants of summons, arrest, and sequestration.<sup>52</sup> The forum does not appear to have exercised full authority over the sheriff and gaol keeper, though for obvious reasons they worked in tandem. In return for a payment, the sheriff would accept the commissions from the Mayor's Court, drawn up and issued by the register. The register would typically instruct him to enforce the sale of goods and the recovery of sums decreed by the bench; to execute precepts of summons or arrest, of sequestration or attachment; and to make inventories or appraisements. Together with the gaol keeper, he also received fees for holding in prison those found in breach of the forum's will.<sup>53</sup>

Alongside revealing something of the Mayor's Court's organisation, its tables of fees give insights into the costs incurred by litigants whose disputes were adjudicated by it. "In every suit or action brought before them [the judges] and whereupon they come to an actual judgement or decree," the Mayor's Court earned a commission of 5 per cent "on the amount of sum or value of the property decreed upon."<sup>54</sup> As part of its final decree, the bench would specify who was to be held liable for the fees, whether to be shared in some fashion, in equal proportion or otherwise, or to be paid wholly by one of the parties. The full legal costs could be quite large, amounting to Rs. 100 or more. For this reason, much of the forum's business dealt with litigation where the capital at the heart of the dispute was worth at least several hundred rupees. The Diary indicates that frequently several thousand rupees were at stake, astronomical sums for the period. Of course, these tables of fees only tell us about the official costs imposed on litigants. We may presume that there were an array of other costs, euphemistically termed "presents" or "gifts," given in cash or in kind.<sup>55</sup> These would have been levied by key figures in the forum, without which it is unlikely a case could have been prosecuted effectively. While we cannot specify their value with certainty, it is probable that they formed a significant fraction of the total expense borne by litigants. At the same time, they were not so great as to deter maritime Asia's shipowners, merchants, and bankers from seeking the forum's justice.

## **Procedural Matters**

As already noted, the applicable procedures could be crucial in determining the outcome of a suit. There existed numerous scholarly treatises and reams of official pronouncements in which so-called correct procedure was detailed. But these were generally ignored by the Mayor's Court. For this reason, a more telling method for recapturing the procedures actually employed by the forum is to study the actions of its officials and servants, and of the parties to the case and their attorneys. In the

disputes that I have examined, three procedural aspects dominate all others: the tendency for boundaries between distinct transactions to be blurred; the inquiry to determine the facts underlying the dispute; and the use of attachments and physical force to compel litigants to abide by the forum's decrees.

### **Interlinked Transactions**

It was commonplace for disputes rooted in one transaction to engulf others that were technically separate from it.<sup>56</sup> This was especially true of situations where there was overlap between parties to different transactions and where transactions immediately followed upon each other. The fact that the Mayor's Court did not take decisive steps to prevent this blurring is evidence for its tacit acquiescence in the practice. It also suggests that it tended to interpret a dispute in the context of the overall relationship between the litigants; it did not confine itself to just the specific venture that was its proximate cause. If one of the parties was adjudged to have broken his moral duties towards the other, even where the terms of their agreement had been formally observed, the aggrieved party might seek compensation by laying a claim on the proceeds from another transaction in which both had a stake. Such instances throw into relief the challenges faced by the Mayor's Court in striking a suitable balance between the sanctity of a contract and the often unstated moral obligations of individuals towards one another. This gave rise to a situation in which, notwithstanding prior agreements and the motivations of those involved, the fates of distinct ventures could not be fully disentangled from each other. Contemporaries would have been well aware of this reality before sealing their agreement; it influenced their negotiating strategy and their general approach to future transactions.

The Mayor's Court possessed several mechanisms for signalling its views on the relative weight it gave to formal agreements and moral responsibilities in reaching its decision. These were necessary in order to inject predictability into the process of dispute resolution. The most effective mechanism was rooted in the notion that certain kinds of debts were "superior" or "inferior" to others. This established a hierarchy of debts, helping judges to determine which of the competing claims had priority in complex suits. A typical inferior debt was "due by simple contract." This was trumped by superior debts resulting from, say, "bonds or covenant."<sup>57</sup> Though it seems reasonable to claim that the hierarchy was well-known in view of the density of the networks to which those concerned belonged and their propensity to circulate and exchange useful information, this does not mean that it was static; on the contrary, there were continuous pressures for change. The hierarchy was ultimately sanctioned by the "judgements and decrees" issued by the Mayor's Court, which also formed a channel through which modifications were publicised. An example of this was the elevation of certain kinds of debt, sometimes up to "the highest rank," so that they would be paid off sooner than would have expected beforehand.<sup>58</sup>

This shows that the Mayor's Court could in principle try to alter, or even overturn, widely-held customs. During the decades of its existence, however, it seldom exercised this power. And when it did so, it was done with considerable reluctance. This could have been one of the reasons underlying its reputation for consistency. But litigants were not deterred. If it could further own personal interests, they would

persist in urging the forum to modify prevailing customs. This was one of the tactics deployed by Rupji Dhanji in the late 1760s in a dispute between him and a group of a Bombay-based creditors over a ship leased for a commercial voyage to Basra.<sup>59</sup>

### **Determining the Facts of the Case**

Central to the prosecution of a suit in the Mayor's Court was the investigation of the claims made by the litigants and the discovery of the facts underlying the dispute. This was carried out over several stages. As in English common law and equity courts, the responsibility for making the inquiry was not the forum's. Rather, it lay with the plaintiff and defendant, and their attorneys. It was they who had to find the evidence to support their respective claims and present it to the forum. The main role of the judges was to evaluate the conflicting evidence and ensure correct procedures were obeyed.

Perhaps the greatest challenge faced by the judges was to determine the authenticity and reliability of the evidence presented to them by the litigants. Of course, this evidence had to be comprehensible to them, and so it was a formally required that all depositions, statements and other documents handed over to the register be in English or, if originally in another language, be accompanied by their English translations. A partial exception was made for documents in Portuguese, which were sometimes accepted as exhibited.<sup>60</sup> Once the linguistic barriers had been overcome, the importance given to documentary evidence by the judges depended crucially on whether they believed they had been composed by the purported author. This is why witnesses "acquainted with the proper character & hand-writing" of that individual would be asked to confirm that the documents exhibited had actually been written by him.<sup>61</sup> Of course, the witnesses themselves had to be credible. Care was taken to ensure that those selected had close ties to the author and knew the language in which the original documents were written. In practice, this meant that they often belonged to the same community as the author himself. Armenian merchants, for example, would be preferred as witnesses in a dispute that involved documents in Armenian.<sup>62</sup> Curiously, even in cases where this was not possible, and witnesses openly admitted their ignorance of the language of the documents, they could still be asked to identify their authorship.<sup>63</sup>

Once the Mayor's Court had agreed to hear a suit, the inquiry to determine the facts was conducted over two stages. In the first, the plaintiff or petitioner deposed a relatively brief statement. This normally set out the complaint, providing some details on the context that gave rise to it. The defendant was then invited to respond. He invariably used the opportunity to refute the allegations made against him. This could be done by offering an alternative version of the events and rebutting the specific details in the complaint. Frequently, he would also make counter-allegations that contradicted key aspects of the plaintiff's case. There followed an ordered exchange of depositions between the two sides, in the form of statement-and-response. The forum acted as an intermediary, receiving the depositions and passing them on to the other party, with a request for an answer and further comments, if any. Documents noted in the depositions, such as accounts, contracts, bonds, and correspondence, would usually be appended as exhibits. This exchange was generally allowed to continue until no more new facts, claims, or arguments

were forthcoming. With this, the end of the first stage of the inquiry was reached.

The litigation now proceeded to the second stage, the discovery stage. This was intended to unearth new details about the case that might help the judges decide which of the contending views was closer to the truth. The disputes that I have examined suggests this occurred in one of two ways. The more common was for statements to be entered by witnesses and for witnesses to be interrogated by the forum's examiner in accordance with a list of predefined questions. This was subject to the condition that plaintiffs and defendants could not be called as witnesses. Of course, for the interrogations to take place, the witnesses had to be present in a place where the forum exercised authority. The second way required the Mayor's Court to issue a writ, variously termed a "bill of enquiry"<sup>64</sup> or "bill of discovery,"<sup>65</sup> at the instigation of one of the parties. The litigant making this petition would typically argue he "cannot prove and make the several truths,"<sup>66</sup> "with that clearness and certainty he could wish and define,"<sup>67</sup> except through direct questioning of the other parties to the suit. He hoped to elicit "ample testimony or make out the truth of the premises so fully and clearly as by [their] confession."<sup>68</sup> This option was particularly useful in situations where one side was unable to call in its support witnesses who had, say, "gone beyond seas or to places far remote and unknown" to them.<sup>69</sup> As before, the writ specified the names of those that the litigant wanted to be interrogated and the questions he wished them to answer.

The procedure embodied in this writ was "commonly" found in the forums that constituted maritime Asia's legal regime. This helps accounts for its popularity among litigants. Babu Lambatia, a Muslim defendant, claimed in 1747 that the writ would allow one of the co-defendants in his case, Muḥammad Ismā'īl, to be interrogated. Otherwise, being formally barred from answering questions by virtue of the condition just noted, he would be prevented from giving evidence even though he was "the greatest if not the sole actor in the affair."<sup>70</sup> If the Mayor's Court did not issue this writ, then Babu Lambatia "must undoubtedly be deprived of his just right."<sup>71</sup> But perhaps the most compelling argument in favour of Babu Lambatia's request was the possibility that the plaintiff had named Muḥammad Ismā'īl as a party to the suit in order to prevent him from giving "regular evidence at the examination of witnesses."<sup>72</sup> "If the bills of enquiry would not be against such persons after having been made parties by a complainant," he continued, "it would always be in the power of any person who had arrived to complain to deprive a defend[an]t of any or all his witnesses, which he knew, were material by making them partys to the suit. Which if admitted would be an infallible way of vanquishing demands to the great detriment of others."<sup>73</sup>

A signal feature of official interrogations was the oath. The answers given were not deemed valid by the forum without previously have been "sworn to upon oath."<sup>74</sup> Given the diversity that marked those active in the trading world of the Indian Ocean rim, the Mayor's Court displayed a flexible attitude towards oaths; witnesses were allowed to choose one from among "several...corporal oaths."<sup>75</sup> By allowing witnesses a choice, the Mayor Court sought to accommodate differing religious traditions. But the choice was not entirely free of constraints, and this occasionally caused difficulties. The issue cropped up in the 1747 dispute mentioned above. The oath became a bone of contention when the Muslim defendants, Babu Lambatia and Muḥammad Ismā'īl, petitioned the court for a "Bill of Discovery."

Their Hindu opponent, Ram Bhawani Shankar, complained this was merely a ruse on their part; the defendants, far from being interested in establishing the truth of the matter, were trying to take advantage of the fact that his religious tradition prevented him from answering “upon the oath then required in order to confound and distress this complainant and prevent his pursuing his just right.”<sup>76</sup> Because of this constraint imposed by his tradition, Ram Bhawani Shankar was not able to respond to the questions stated in the writ and so could not make his case. As the other individual named in the writ, a Muslim opponent of the Hindu plaintiff, laboured under no such constraint, he argued that Babu Lambatia’s petition was manifestly unjust.

### **Enforcing the Judges’ Will**

The mechanisms available to the Mayor’s Court to compel litigants to behave in a certain fashion were few in number, and those that were available were crude and inflexible. There was an obvious need for such mechanisms because of the reluctance expressed by some litigants to conform to the judges’ will. Alongside incentives to encourage compliance, punitive measures were essential for the forum to maintain its credibility among those who fell under its potential jurisdiction. The chief goal was to make the costs of non-compliance so prohibitive that all parties would abide by its procedures and its decisions. They were intended to dissuade litigants from fleeing the territory over which the forum had sway or, for those who resided elsewhere, to compel them to submit themselves to its authority. They ensured that litigants remained committed to its proceedings once the case had been taken up by the forum. And they acted as a guarantee that the parties would obey the terms of the final judgement.

Of the mechanisms that forum could call upon, the most extreme was imprisonment of the recalcitrant individual. The Mayor’s Court would deploy bailiffs, a sheriff, or armed peons when force was deemed appropriate. Recourse to such brute force, however, was usually a last resort. Much more commonplace was the use of writs or precepts of attachment against the property of the named individual. These could be issued at any stage of the suit prior to the final judgement, and could specify any form of property to be attached as long as it had liquid value. It seems that an order for an attachment could only be given after one of the parties had officially requested it. The usual justification proffered was the high likelihood of a litigant escaping Bombay and leaving behind insufficient assets to cover any decision that went against him. If he were already beyond the forum’s reach but had property in Bombay, it was normally argued that the chances of the property being spirited away were sufficiently high that it ought to be attached forthwith. Such was Sundar Varanasi’s concern. In 1767, he asked the Mayor’s Court “to lay an attachment on the house of said Mooty Amersung [Moti Amar Singh] in order to discharge your petitioners just debt, as your petitioner is informed...Mooty Amersung is going to mortgage it to another person to the great hurt and detriment of your petitioner.”<sup>77</sup>

More rarely, attachments were used to compel defendants to return to the forum’s jurisdiction and face the plaintiff’s allegations. This was the strategy adopted by a group of Bombay-based freighters who wanted compensation from their insurers for their cargo, which had been seized by pirates in the late 1730s from the

vessel (a shybar) carrying it while sailing off the west coast of India. The dispute was first submitted to arbitration by an occupational forum headed by the “principal merchants.” They “unanimously agreed that the said shybar should be included in the remaining part of the cargo as salvage towards the whole cargo.” But the owners of the vessel, on being informed of the arbitrators’ decision, refused to come to Bombay. In order to encourage them to do so and “justify, if they can, why their shybar should not be included in the salvage,” the freighters petitioned the Mayor’s Court to attach their vessel, which was currently anchored in Bombay’s harbour. The court acceded to their demand and issued a precept of attachment.<sup>78</sup>

Attachments could be on fixed or moveable property. On a writ being served, the property in question could not be sold or, if applicable, transported without the Mayor’s Court’s express consent. Despite its popularity as a means of enforcing its will, the procedures for announcing and enacting attachments were haphazard. In particular, the ordering of claims was not always properly defined or publicised in an effective manner. The result could be confusion, with disputes being further complicated and prolonged. This was the experience of Boya Miah ‘Abd al-Raḥman. He was sent to Bombay in 1738 by his employer, Ḥājī Baqīl, to purchase a vessel. The journey had been preceded by extensive discussions with the brokers acting on behalf of its present owner. The deal had been effectively agreed, or so Ḥājī Baqīl thought, when Boya Miah ‘Abd al-Raḥman set off for Bombay to inspect the vessel and sign the contract. Imagine Boya Miah ‘Abd al-Raḥman’s dismay when on arrival he discovered that the vessel had been attached because of a prior claim on it and thus could not be sold until that dispute was settled.<sup>79</sup>

## Conclusion

In a narrow sense, this article has been about the Mayor’s Court of Bombay, a forum in which sovereign justice was dispensed between 1728 and 1798. The foregoing pages give a detailed account of those aspects concerned with the resolution of disputes: the forum’s founding charters; its jurisdiction in practice and the substantive laws that were actually invoked; its relationship to other forums; the status and roles of its officials and employees; and the procedural matters that shaped the outcome of a suit. Occupying as it did centre stage in Bombay’s governing apparatus in the eighteenth century, the Mayor’s Court is a noteworthy thread in the fabric of the pre-colonial history of the port city and its surrounding polity, an element in the story of European expansion in early modern times, and part of the loosely defined system that was global in reach and nominally managed by Europe’s chartered trading companies. The forum may be usefully articulated within each of these frameworks and in so doing has the potential to make a meaningful contribution to the pertinent fields. But there is one other framework within which the Mayor’s Court of Bombay may be articulated. And that is the one which has been stressed in the present article. As the port city became a prominent regional hub for trade, finance, intelligence, transport and insurance in the course of the eighteenth century, its Mayor’s Court gained significance as a sovereign forum in the legal regime spanning much of the interconnected world of the Indian Ocean rim. It follows that recapturing the realities of litigation within it is relevant for our understanding of the character and function of sovereign justice in precolonial maritime Asia.

One of the main points I have sought to highlight in this article is that there remain considerable areas of ignorance in our knowledge of the Mayor's Court of Bombay and, more generally, of maritime Asia's legal regime. This is certainly true of the many communal and occupational forums in which the great majority of disputes would have been heard and resolved. But this ignorance extends as well to other sovereign forums akin to the Mayor's Court of Bombay—the courts of the ruler of Aceh and the *Relação de Goa* under the Portuguese come to mind—and which presumably are relatively well documented in the surviving historical record. Such basic limitations in the current state of our knowledge constrain what sense we can make of the past of Asia and the Middle East. As formal means for the resolution of disputes were essential for the existence of maritime Asia, our ignorance of its legal regime vitiates our ability to perceive it. Moreover, because the decentred quality of maritime Asia made it particularly sensitive to the consolidation of Europe's modern global empires in the nineteenth century,<sup>80</sup> our ignorance also impedes our ability to elucidate the continuities and changes ushered in under the press of these empires in Asia and the Middle East. Thus, sharpening our sense of the realities of the legal regime that prevailed in maritime Asia in what was in retrospect the last moment before the process of colonisation became unstoppable contributes to the establishment of a baseline. Though this baseline remains very much a work-in-progress, we need to keep at it because it holds out the promise of a firmer purchase on the impact of later European dominance and imperialism.<sup>81</sup>

But that is not all. Detailed knowledge of maritime Asia's legal regime and, in particular, of its sovereign forums under European control may also help us gain a firmer purchase on the specific mechanisms by which this impact was realised. I posit that some of the seeds which would later grow into and buttress state-sponsored colonial law were laid with the Mayor's Court of Bombay. Though this forum was abolished in 1798, it familiarised those residing in Bombay, as well as those in settlements in western India, the Arabian Sea area and beyond, to sovereign justice dispensed under British auspices. In effect, those who belonged to communities indigenous to the region became habituated to this and similar forums manned by Europeans.

This development would have profound and unintended consequences. Many of those who acknowledged the forum's justice and treated it as a useful resource continued to do so even as the legal regime of which the Mayor's Court of Bombay had been part in the eighteenth century was transformed out of all recognition. Most salient in this transformation was, on the one hand, the diminished status, or disappearance, of previously comparable sovereign forums that had *not* been under European control, like the court of the *nā'ib* of Ottoman Basra and the *'Adālat* court in Nawabi Surat, and, on the other hand, the increasing monopolisation of sovereign justice by a state-centred colonial polity. In parallel with this, the fundamental nature of this justice was being changed; without disavowing the importance of personal attributes, it became increasingly territorial and confined to its subjects under the aegis of a framework in which legal pluralism was not just acknowledged but embraced. Forums were now situated in a partial hierarchy and applied a law—often purportedly traditional or customary—that was codified after having been “discovered” or “invented.” From the perspective of the nineteenth century, then, the Mayor's Court of Bombay may be interpreted as a channel for

facilitating the later absorption and institutionalisation of novel, frequently alien, imports. By this interpretation, the Mayor's Court, along with other sovereign forums presided over by Europeans in the eighteenth century, served to direct the history of Asia and the Middle East onto a new trajectory.



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BL = British Library, London.  
 HAG = Historical Archives of Goa, Panaji, Goa.  
 HCR = High Court Records.  
 IOR = India Office Records, British Library, London.  
 Misc = Miscellaneous Records.  
 MRC = Mayor's and Recorder's Court Records.  
 MSA = Maharashtra State Archives, Mumbai.

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## Notes

\* Gagan D. S. Sood is a Lecturer in Early Modern International History in the Department of International History at the London School of Economics and Political Science. His current research interests focus on recapturing the ties that spanned India and the Islamic world in early modern times.

This article has benefitted greatly from conversations with Scott A. Boorman on the finer points of common law and the United States legal system, and with Christian Burset on the field of legal history, especially in relation to the British empire. I thank them both for their encouragement, time and knowledge. I also thank the journal's editor and anonymous readers for their insightful and highly constructive engagement with this article in its earlier incarnations.

- 1 These developments have been approached from a range of perspectives and variously interpreted. See, for example, Hooker, *Legal Pluralism*; Benton, *Law and Colonial Cultures*; Sartori and Shahar, "Legal pluralism in Muslim-majority colonies: Mapping the terrain."
- 2 A recent and influential synthesis is Bayly, *The Birth of the Modern World*.
- 3 By maritime Asia, I refers to those parts of the Indian Ocean rim that were linked together by a dense array of flows and interactions. Good surveys of the history of maritime Asia in the period include Chaudhuri, *Trading World of Asia and the English East India Company*; and Das Gupta and Pearson, *India and the Indian Ocean 1500–1800*.
- 4 This is currently a mainstream interpretation. The modern historical scholarship on maritime Asia is discussed in Arasaratnam, "Recent Trends in the Historiography of the Indian Ocean, 1500 to 1800"; and Wills, "Maritime Asia, 1500–1800: The Interactive Emergence of European Domination."
- 5 Michael Geyer and Charles Bright have described this altered way of being as a "condition of globality." See Geyer and Bright, "World History in a Global Age."
- 6 In relation to modern international law and its immediate predecessors, see Alexandrowicz, *Introduction to the History of the Law of Nations in the East Indies*; and Anghie, *Imperialism, Sovereignty, and the Making of International Law*.
- 7 The matter is discussed in Sheehan, "The Problem of Sovereignty in European History."
- 8 The classic work is, of course, Ranger and Hobsbawm, *The Invention of Tradition*.
- 9 For recent surveys, see Comaroff, "Symposium Introduction: Colonialism, Culture and the Law"; and Merry, "Colonial and Post-colonial law."
- 10 For a forthright statement of this position, see Pollock, "Forms of Knowledge in Early Modern South Asia," 19–21.
- 11 Among the most important studies that examine Bombay in this broader perspective, and give due regard to the role played by indigenous communities and local powers, are Das Gupta, *Malabar in Asian Trade*; Nightingale, *Trade and Empire*; and Subramanian, *Indigenous Capital and Imperial Expansion*.
- 12 See Udovitch, "The 'Law Merchant' of the Medieval Islamic World," and, situated in a larger framework, Sood, "Circulation and Exchange in Islamicate Eurasia: A Regional Approach to the Early Modern World."
- 13 There is a useful summary of what passes for the standard interpretation at present in Robinson, et al., *European Legal History: Sources and Institutions*.
- 14 Arguably, this conviction holds true for most Eurasian polities in premodern times. It is nicely summed up in Crone, *Pre-Industrial Societies*.
- 15 The following account of the Mayor's Court's as an ideal is based on Morley, *Administration of Justice in British India*; Cowell, *History and Constitutions of the Courts and Legislative Authorities in India*; Malabari, *Bombay in the Making*; Fawcett, *First Century of British Justice in India*; Jain, *Outlines of Indian Legal History*; and Misra, *Judicial Administration of the East India Company in Bengal*.
- 16 By this charter, a Mayor's Court was founded at the same time in each of the Company's Presidency settlements of Bombay, Calcutta, and Madras. The intention, as embodied in their charters, was that they be structured in the same way, apply the same law and have the same jurisdiction. But the circumstances and pressures in Bombay, Madras, and Calcutta differed to such an extent that, from the moment of their establishment, the three Mayor's Courts began to evolve along diverging lines. Their formal similarities, rooted in their identical charters, can obscure major differences. This is why I treat the Mayor's Court in Bombay separately rather than as a variation on a shared theme.
- 17 Jain, *Outlines of Indian Legal History*, 39.

- 18 Ibid., 41–2.
- 19 Under the new charter, the current mayor and aldermen proposed two candidates for the post of mayor for the following year, from among whom the Governor and Council selected one. Furthermore, the Governor and Council were given sole responsibility for appointing aldermen.
- 20 The original Diary is preserved in multiple volumes in Misc/HCR/MRC. Copies may be found in IOR/P/416 and IOR/P/417.
- 21 MSA/Misc/HCR/MRC/20, 8.
- 22 MSA/Misc/HCR/MRC/20, 9.
- 23 There has been sustained interest in the Mayor’s Court of Madras over the past generation. See, in particular, Arasaratnam, *Merchants, Companies and Commerce on the Coromandel Coast*, chap. 7; Mines, “Courts of Law and Styles of Self in Eighteenth-Century Madras: From Hybrid to Colonial Self”; and Brimnes, “Beyond Colonial Law: Indigenous Litigation and the Contestation of Property in the Mayor’s Court in Late Eighteenth-Century Madras.”
- 24 IOR/P/416/115, 155–156. For examples of similar difficulties faced by other governments, see HAG/Persian Documents/28 and HAG/Persian Documents/29. These show how Goa’s Portuguese government in the mid-eighteenth century tried to enforce—with limited success—judgements in neighbouring territories.
- 25 The various interpretations of this popularity in modern scholarship are discussed in Price, “The ‘Popularity’ of the Imperial Courts of Law: Three Views of the Anglo-Indian Legal Encounter.”
- 26 IOR/P/416/115, 327.
- 27 Grose, *Voyage to the East Indies*, vol. 1, 36–8.
- 28 Ibid.
- 29 Modern scholarship has long recognised this situation by referring to those who sat in judgement in the Mayor’s Court not as judges but as ‘merchant-judges.’ This expression was apparently popularised by Fawcett, *First Century of British Justice in India*.
- 30 At the same time, it ought to be borne in mind that, even if earnestly desired, to implement common law required a comprehensive library on the subject. Such libraries were seldom available outside London, and certainly not in maritime Asia. On merely this basis, common law was hardly practicable in the region.
- 31 IOR/P/416/118, 31–2. My contention is that “equity” here is being used in the general sense associated with fair play and good faith. It should be noted, however, that the term has a quite distinct technical meaning in the European legal tradition. For a useful account of the latter, see Yntema, “Equity in the Civil Law and the Common Law.”
- 32 MSA/Misc/HCR/MRC/27, 51–2.
- 33 MSA/Misc/HCR/MRC/27, 52.
- 34 IOR/P/416/118, 31–2.
- 35 IOR/P/416/117, 61.
- 36 MSA/Misc/HCR/MRC/31, 503.
- 37 MSA/Misc/HCR/MRC/31, 503–4. This quotation, which the author claims is taken from the source he cites, is two sentences in length. I have been able to confirm this source for the first sentence, but not for the second. See Postlethwayt, *Universal Dictionary of Trade and Commerce*, vol. 1, 877b.
- 38 MSA/Misc/HCR/MRC/31, 504.
- 39 For the judgement, see MSA/Misc/HCR/MRC/31, 509.
- 40 IOR/P/417/2, 397.
- 41 IOR/P/416/115, 334.
- 42 MSA/Misc/HCR/MRC/27, 642–5; MSA/Misc/HCR/MRC/38, 4–6.
- 43 A rare exception to this rule is found in MSA/Misc/HCR/MRC/24, 187.
- 44 He had, however, little direct official interaction with litigants or other outsiders associated with the case. Attorneys normally acted as the intermediaries between the register and these individuals.
- 45 The complete list of activities for which the register charged fees are as follows: reading and filing bills of complaint “or any other necessary exhibit”; drawing up and issuing orders pertaining to the lawsuit; drawing up and issuing precepts under the Mayor’s Court’s Seal directed to the sheriff; drawing up and issuing formal decrees of the Mayor’s Court; withdrawal of actions or suits; taking bail, and drawing up and discharging bail bonds; registering deeds, bonds, obligations, or “any other necessary paper”; taking delivery of affidavits or certificates; examining the Mayor’s Court’s records of its daily proceedings; administering oaths in court; taxing bills of costs; displaying public notices in the town; drawing up letters of attorney; protesting and registering bills of exchange; drawing up general releases, arbitrators’ bonds, deeds of sales, mortgages, respondentia bonds, or “other obligatory paper”; attesting every paper under the Mayor’s Court’s Seal; keeping accounts for deposited estates and money paid through the court into the

- Treasury; examination of parties and witnesses "in any of the subordinate settlements" commissioned by the Mayor's Court. MSA/Misc/HCR/MRC/27, 642-645; MSA/Misc/HCR/MRC/38, 4-6.
- 46 MSA/Misc/HCR/MRC/27, 645; MSA/Misc/HCR/MRC/38, 6.
- 47 MSA/Misc/HCR/MRC/27, 644.
- 48 MSA/Misc/HCR/MRC/27, 643-4; MSA/Misc/HCR/MRC/38, 5-6.
- 49 MSA/Misc/HCR/MRC/27, 644; MSA/Misc/HCR/MRC/38, 6.
- 50 These are the only two languages noted in these sources for such purposes. MSA/Misc/HCR/MRC/27, 645; MSA/Misc/HCR/MRC/38, 6.
- 51 For further details on the practicalities of communicating across languages, see Sood, "Correspondence is Equal to Half a Meeting: The Composition and Comprehension of Letters in Eighteenth-Century Islamic Eurasia."
- 52 MSA/Misc/HCR/MRC/27, 644-645; MSA/Misc/HCR/MRC/38, 6.
- 53 MSA/Misc/HCR/MRC/27, 644; MSA/Misc/HCR/MRC/38, 5-6.
- 54 MSA/Misc/HCR/MRC/27, 642; MSA/Misc/HCR/MRC/38, 4.
- 55 Because of its illicit character, the official record of the Mayor's Court contains no direct evidence for this practice of giving presents or gifts. For such evidence, we need to look elsewhere. One promising source is travel accounts by outsiders such as John Grose, quoted earlier in the article, who alludes to its existence in Bombay. Another is reports commissioned by a higher authority seeking information on the current state of affairs, usually in response to allegations of impropriety. Typical examples may be found in IOR/G/36/76, 784-93 and IOR/G/36/77, 61-8. In detailing the legal forums in Surat that were under the Nawab's control in the latter half of the eighteenth century, these reports touch on the prevalence of giving presents and gifts in order to facilitate access to sovereign justice.
- 56 See, for example, the disputes entered in MSA/Misc/HCR/MRC/12, 53-7; MSA/Misc/HCR/MRC/23, 234-60; MSA/Misc/HCR/MRC/35, 1812-1931; and IOR/P/417/4, 133-60.
- 57 MSA/Misc/HCR/MRC/20, 9-10.
- 58 MSA/Misc/HCR/MRC/20, 10.
- 59 MSA/Misc/HCR/MRC/31, 497-509.
- 60 Presumably, the reason for this was the language's popularity as the lingua franca of choice. Many of the forum's judges and officials would have been conversant with Portuguese, obviating the need for translation into English.
- 61 This is noted frequently in the Bombay Mayor's Court records. Examples include: IOR/P/416/115, 81-2, 86-8, 91, 92-3; IOR/P/417/2, 412.
- 62 IOR/P/416/115, 92-3.
- 63 In one such instance, witnesses were given specimens of writing in Persian allegedly composed by Mawlānā Fakhr al-Dīn and asked to identify their author on the basis of the signature and hand-writing. Most, however, demurred, claiming that they did not know Persian. MSA/Misc/HCR/MRC/38, 536-40.
- 64 IOR/P/417/2, 397.
- 65 IOR/P/417/2, 406.
- 66 IOR/P/417/2, 406.
- 67 IOR/P/417/2, 406.
- 68 IOR/P/417/2, 398.
- 69 IOR/P/417/2, 397-8.
- 70 IOR/P/417/2, 411.
- 71 IOR/P/417/2, 411.
- 72 IOR/P/417/2, 411.
- 73 IOR/P/417/2, 411.
- 74 IOR/P/417/2, 397.
- 75 IOR/P/417/2, 398.
- 76 IOR/P/417/2, 406.
- 77 MSA/Misc/HCR/MRC/24, 169-70.
- 78 IOR/P/416/118, 201-2.
- 79 IOR/P/416/115, 323-35.
- 80 For an account of the situation in the nineteenth century, see Bose, *A Hundred Horizons: The Indian Ocean in the Age of Global Empire*.
- 81 Over the past decade, Sheldon Pollock has been one of the most prominent voices arguing for more research on early modern and precolonial Asia if we truly wish to apprehend the nature and scope of what occurred in the nineteenth century and after. He has restated the case recently in the introduction to Pollock, *Forms of Knowledge in Early Modern Asia*.