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Sharīʿa translated? Persian documents in English courts

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Introduction: Language, Law and Empire

Variably between the ninth and the nineteenth centuries, Persian was the language of literary production and administrative record in a huge region that stretched from Bengal to Bosnia, encompassing India, Iran, Central Asia and the northern Indian Ocean, and all the major Islamic empires of the early modern world.[1] The Persian "cosmopolis," alternatively, the "Persianate" world, was identifiable by the supra-ethnic acceptance and use of the Persian language, along with its literary classics, conventions and values. [2] In the Indian subcontinent, Persian co-existed with several highly developed vernacular languages of more regional scope, which emerged roughly from around the beginning of the second millennium CE, that is, from around the same time that Persian entered the linguistic landscape of India.[3]

It would be easy to say that languages in the Persian cosmopolis, especially India, existed in a clearly defined hierarchy, with Persian, with its range and prestige, situated unambiguously above the regional vernaculars. The matter is complicated, however, because the Persian cosmopolis partially overlapped with the cultural zones claimed by two other high-status languages: Sanskrit and Arabic. The use of the term "cosmopolis" in relation to high-status languages of supra-ethnic and immense geographic scope was proposed by Sheldon Pollock, with his path-breaking work on the Sanskrit cosmopolis, which he described as flourishing between the third and thirteenth centuries CE from India to Southeast Asia, and then giving way to the vernacular millennium.[4] Pollock's silence about the other high-status languages that

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[1] Brian Spooner, William L. Hanaway (eds) *Literacy in the Persianate World: Writing and the Social Order* (University of Pennsylvania Press, 2012), especially Introduction. A very useful map is offered to show the geographical location of this cultural-linguistic sphere; another is offered in Phillip B. Wagoner and Richard Eaton, *Power, Memory, Architecture: Contested Sites on India's Deccan Plateau, 1300-1600* (Oxford University Press, 2014), pp. 22.

[2] The term 'Persianate' was coined by Marshall Hodgson, *The Venture of Islam: Conscience and History in a World Civilisation* (Chicago: Chicago University Press, 1974), Vol. I, p. 96.

[3] Sunil Sharma, *Persian Poetry at the Indian Frontier: Mas'ûd Sa'd Salmân of Lahore* (New Delhi: Permanent Black, 2000); Muzaffar Alam, "The Pursuit of Persian: Language in Mughal Politics," *Modern Asian Studies*, 32: 2 (1998), 317-49; Muzaffar Alam and Sanjay Subrahmanyam, "The Making of a Munshi," *Comparative Studies of South Asia, Africa and the Middle East*, 24: 2 (2004), 61-72; Rajeev Kinra, *Writing Self, Writing Empire: Chandar Bhan Brahman and the Cultural World of the Indo-Persian State Secretary* (Berkeley: University of California Press, 2015).

[4] Sheldon Pollock, "The Cosmopolitan and Vernacular in History," *Public Culture*, 12: 3 (2000), 591-625; Pollock, "India in the Vernacular Millenium: Literary Culture and Polity, 1000-1500," *Daedalus*, 127: 3 (1998),

clearly shared Sanskrit's locales was addressed by Ronit Ricci's work on what she called the Arabic cosmopolis, which, she showed as having overlaid Sanskrit's previous incursions in southern India and southeast Asia.[5] Tomáš Petrů further enriched this picture of Southeast Asia by investigating Persian lexical and literary presence in the Malay world, and its connection with commerce and kingship.[6] Very recently, two major works address (among other things) the dominant linguistic feature of South Asia in the first eight hundred years of the second millennium – the dominance of Persian. Two volumes of essays, both bearing *The Persianate World* in their titles, situate India alongside Iran at the core of Persian's vast linguistic-cultural spread between the ninth and nineteenth centuries.[7] These are major steps towards addressing a historical theme about which there was shared knowledge among South Asianists, but only fragmentary and scattered work until now.[8]

There is still much research to be done in order to produce an analytical approach sufficient for reconciling the empirical fact of co-existence of multiple cosmopolises, overlapping in particular in the Indian subcontinent. While it is clear that the Sanskrit and Persian cosmopolises (and perhaps the Arabic, too) may have found modes of co-existence in the Indian subcontinent,[9] it remains unclear how exactly the location and usage of these languages can be mapped, and what such patterns imply for people's access and attachment to the highly developed and distinctive normative visions that each of these languages bore. Research published thus far has been focused on literary production and circulation; law gives us access to a different historical archive for answering these questions.

This chapter makes a beginning, by examining the functions of Persian, especially with relation to law and legal documentation between the seventeenth and nineteenth centuries in South Asia. It does so, with a specific methodological and analytical approach to the study of *sharīʿa*. Here the aim is to discover what *sharīʿa* – a word regularly used in the Persian documents this chapter is based on – might have meant to the majority of legally untrained users of law and low-brow specialists, such as village scribes, most of whom could not speak Persian and were not Muslim. I propose here that, dry and formulaic though they were, these legal documents were familiar and ubiquitous, and hence, a better window to the South Asian legal imaginary than jurisprudential texts written in a language incomprehensible to the majority of protagonists (Arabic, or indeed, its counterpart, Sanskrit).

41-74; Pollock, *The Language of Gods in the World of Men: Sanskrit, Culture, and Power in Premodern India* (Berkeley: University of California Press, 2006).

[5] Ronit Ricci, *Islam Translated: Literature, Conversion and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2014).

[6] Tomáš Petrů, " 'Lands below the Winds' as Part of the Persian Cosmopolis: An Inquiry into Linguistic and Cultural Borrowings from the Persianate societies in the Malay World," *Moussons*, 27 (2016), 147-161.

[7] Abbas Amanat and Assef Ashraf (eds), *The Persianate World: Rethinking a Shared Sphere* (Leiden: Brill, 2018); Nile Green (ed.) *The Persianate World: The Frontiers of a Eurasian Lingua Franca* (Oakland: University of California Press, 2019).

[8] Wagoner and Eaton, *Power, Memory, Architecture*, pp. 19-27.

[9] Richard Eaton, "The Persian Cosmopolis (900-1900) and the Sanskrit Cosmopolis (400-1400)," in Amanat and Ashraf (eds), *The Persianate World*, pp. 63-83; also Audrey Truschke, *Culture of Encounters: Sanskrit at the Mughal Court* (New York: Columbia University Press, 2016).

Of the various languages through which one can access understandings and practices of law in general, and *sharīʿa* more specifically, in early modern India, Persian has a specific valence. To focus on legal materials in Persian implies a particular methodological and analytical approach. To begin with, it is an approach that deliberately casts aside the dominant imaginary of the "Islamic" world, with its predictable centre in the Arabian desert, and peripheries in the demographically dominant but analytically ignored regions of South and Southeast Asia. In this way, this chapter shares the aspirations expressed by the editors of this volume in the introduction. However, I join that collective effort from a linguistic and geographical angle that is distinct from the majority of essays in this collection, by forefronting Persian rather than Arabic as the bearer of law. This is also an approach whose geographical ambit is in the land-based Islamic empires of the early modern period – the Sultanate-Mughal; Safavid-Qajar; Ottoman – which complemented the Oceans of Law that cradled them. In doing so, I am encouraged by Nile Green's alert to the practitioners of Indian Ocean World studies, and suggestion to adopt a 'soft' definition of that zone. By way of demonstration, Green compared Bombay and Barcelona as port cities in the Indian Ocean and the Mediterranean, respectively, but did not accord those seas with full explanatory self-sufficiency for processes witnessed therein. Instead, he pointed to wider and more global networks, including those formed by empires.[10] In this paper too, the material expressions of law and legal understanding derived not only from the Islamic world of the Indian Ocean, however capaciously we might define that, but also from early modern trans-Asian empires (the Mughals and their peers), and from the practices of European imperialism.

In taking such a syncretic view of Islamic law in the Indian Ocean, this chapter accords with the poly-genetic approach expressed by editors in the introduction. It also follows the work of Fahad Bishara, whose exhilarating study of Indian Ocean commerce, based on deeds of debt – simply called *waraqa* or "paper" – resolutely takes law far beyond the pronouncements of jurists. In Bishara's oceanic bazaar, structured and facilitated by law, the 'law' itself is both Islamic and colonial: Hindu Gujarati merchants acting as colonial fiscal agents in East Africa are equal players with jurists in the Arabo-Persian Gulf and scribes all around the Indian Ocean.[11] Focusing, like Bishara, on the moment and artefacts of legal actuation, this paper pays close attention to the forms of the legal documents – their formulae, layout, seals and other material and graphic features. In doing so, this essay is encouraged by the vision of the archaeologist, art historian, legal scholar (and Indian Oceanist) Elizabeth Lambourn, who has proposed a capacious approach to "legal encounters", based on an idea that "it was not so much law itself than the *making* of law … that mattered most."[12] If indeed we can take such a bottom-up view of law, then we cannot only think of a colonial Islamic law, but also a colonial

[10] Nile Green, "Maritime Worlds and Global History: Comparing the Mediterranean and Indian Ocean through Barcelona and Bombay," *History Compass*, 11: 7 (2013)

[11] Fahad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780-1950* (Cambridge: Cambridge University Press, 2017).

[12] Elizabeth Lambourn and "Editors' Introduction," in *Legal Encounters in the Medieval Globe* (Kalamazoo and Bardford: Arc Humanities Press, 2017), pp. vii-xiv, at x.

Persianate. [13] We can examine another type of legal heteroglossia in the Indian Ocean,[14] becoming aware how deeply the European trading companies plying that sea were involved in the production, proliferation and circulation of Persian-language deeds with Islamic vocabulary.

A Persianate legal sphere

In the central to eastern parts of the Persianate world – in most of India, Iran and Central Asia – Persian (neither Arabic, nor Sanskrit) was preferred language for legal documentation from the twelfth century CE.[15] Moreover, while the forms used for such documentation are traceable to Arabic language formularies called *shurūṭ*, they are exactly modelled on Persian language manuals called *inshā'* that also contained other kinds of exemplary prose, such as diplomatic correspondence.[16] *Inshā'* was among the most popular genres of Persian literary production, and formed a key component in the Indo-Persian curricula. Thus legal forms and instruments recognizable throughout the Islamic world circulated in India through the medium of Persian, and were standardized with reference to manuals that could be used without specialist religio-legal training, indeed, without Islamic confession.

It is also this landscape awash with Persian-language legal documents that the European trading companies entered in the seventeenth century, pursuing their quest for high-value textiles, condiments and other profit-giving commodities. They sought orders of tax-exemption and other privileges from the Mughal emperors, Deccan sultans and their subordinate nobles; learning in the process to negotiate the world of Persian documentation, hiring European and non-European scribes for the purpose, and building up a significant Persian-language archive in each case. Eventually, when the English East India Company acquired political dominance over the subcontinent in the late eighteenth century, all such royal orders and charters, granting rights and privileges to all manners of recipients, came under the Company's purview – first through efforts to regulate tax-avoidance, and secondly, through the need to adjudicate disputed titles.

Well into the twentieth century, Persian documents continued to be produced and accepted as evidence in the courts of British-ruled India. By taking stock of this material, this paper proposes firstly, to access the understanding of law, and *sharīʿa* in particular, that people in India carried with them into the colonial period; and secondly, to examine the possibility that the British Empire in India was, to some extent a Persianate empire. In doing so, the paper is both in admiration of, and in disagreement with Gagan Sood's path-breaking work on Indian Ocean correspondence in the eighteenth century. Analysing a mailbag of letters and documents, mostly in Persian, but featuring various other languages, including Armenian, that was captured

[13] A possibility also suggested by Nile Green, "Introduction," in Green (ed.) *The Persianate World*.

[14] As Tom Hoogervorst does for Southeast Asia in "Legal Diglossia, Lexical Borrowing and Mixed Judicial Systems in Early Islamic Java and Sumatra", in this volume.

[15] Arabic and Turkish documentation was used in the western part, where Persian was used mainly for literary production.

[16] For a good introduction to *insha'*, see Riazul Islam, *A Calendar of Documents on Indo-Persian Relations* (2 vols., Tehran: Iranian Culture Foundation, 1979-1982), pp. 1-37; for a discussion on models of legal documents in *munshāts*, see Nandini Chatterjee, "*Mahzar-namas* in the Mughal and British Empires: The Uses of an Indo-Islamic Legal Form," *Comparative Studies in Society and History*, 58: 2 (2016), 379-406.

by the British navy on board a Spanish ship seized as war booty, and subsequently deposited in the British Library, Sood postulates 'a coherent, self-regulating arena of activities which spanned much of India and the Islamic heartlands in the period, and which existed mostly, if not entirely, beyond the sovereign purview.'[17] While I recognize the norms and conventions Sood identifies in these documents, and agree that in their wide sharing from Bengal to the Hijaz, they reveal a shared world of practice and communication, I do not see this world as pristine and immune to European intervention and participation. Instead, I turn to legal pluralism with its attendant "jurisdictional jockeying",[18] and turn these concepts interpretive tools on their heads, to explore how European actors jockeyed a legal landscape that preceded them. In doing so, I am interested in uncovering and using the non-European language source materials that remain under-used by scholars of colonialism, thereby obscuring the indigenous processes and understandings underpinning imperial formations. Attention to such processes and ideas may in fact alter our vision of empires and colonialism significantly. I propose that "legal translation" offers an interpretive angle that can allow us to utilise a vast body of source material, that moreover has the potential for enriching our idea of *sharīʿa* in practice, and of the British Empire on the ground.

Legal translation, as professional experts are fully aware, is not simply a matter of changing languages; it is the process of achieving certain desired legal effects within the host legal system. As we study the process, we quickly become aware of the ethical and technical dilemmas involved in attempting to achieve desirable effects that are faithful to the original intention of a legal document (or not); and of using system-specific technical phrases alien to natural language (or not).[19] By studying Persian documents in English courts in colonial India we gain entry into a historic process of multi-layered legal translation. We find Arabic legal terminology and forms accepted into Persian, supplemented by terminology and instruments from Persianate imperial governance, which was shot through with Indic vernacular terms and usage, and all of this circulated and familiarized through non-religious texts of model documentary forms. Thus we see *sharīʿa* vernacularized in early modern India, by which we mean that it is both Persianised and Indianised. A second major movement of translation then happens when European corporations-turned-regimes call upon and evaluate existing Persian documentation, and also produce Persian documents of their own, in familiar forms but novel intent, and/or in hybrid and new forms. We thus find *sharīʿa* translated several times, through its journey through Persianate empires, of which the British Empire in India may have been one.

The Early History of "British-Persian"

[17] Gagan Sood, *India and the Islamic Heartlands: An Eighteenth Century World of Circulation and Exchange* (Cambridge: Cambridge University Press, 2016), p. 12.
[18] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002) and several subsequent publications.
[19] Leon Wolff, "Legal Translation," in Kirsten Malmkjaer and Kevin Windle (eds) *The Oxford Handbook of Translation Studies* (Oxford: Oxford University Press, 2011),

From the beginning of the seventeenth century, when the English East India Company was granted a royal charter to trade in the East,[20] officials of the Company sought to negotiate the best conditions for trade with the Mughal emperors, who ruled most of northern and central India. Early English ambassadors, such as Sir Thomas Roe, who was dispatched by the English Crown, and paid for by the Company, attempted to secure various rights and privileges, recorded in certain kinds of Persian-language documents. Working with a model that may have been derived from the previous experiences of the Levant Company in the Ottoman Empire, Roe appears to have been seeking something like capitulations. The term capitulation, which implied the granting of specific legal privileges and exemptions, related to taxation and legal jurisdiction, among other things, was a European interpretation of a more directive and authoritative Ottoman form - the *ahdname*. From the Ottoman point of view, an *ahdname* was a unilateral promise granted at will by the emperor, not quite the bilateral treaty that 'capitulation' indicated, even if it may have worked as such.[21]

Extrapolating from that experience of successful mistranslation, Roe repeatedly requested a *farmān*, which was a document of order that only the emperor could issue. This was based on the reasonable surmise that an imperial order was likely to deliver the most secure privileges, which could not be overruled by a subordinate prince, noble or officer. By his own account, Roe directly asked emperor Jahangir for "justice", by which he meant protection against what he saw as unlawful meddling (which included inspection and tax-collection) by local officers in the port cities of Surat and Ahmadabad. Jahangir was apparently benevolently inclined and ordered the necessary *farmāns* to be issued. However, this positive beginning was marred by protracted negotiations with prince Khurram (the future emperor Shah Jahan) and his father-in-law and ally, Asaf Khan, two of the most powerful men in Jahangir's court.

Roe's correspondence offers a fascinating glimpse of the political negotiations and back-office work preceding the issuance of a high-status document such as a *farmān*. Despite initial consent from the emperor, Roe discovered that the versions sent to him for checking by Khurram and Asaf Khan were "dishonourable,"[22] because they contained clauses that he did not wish to assent to. He did secure some *farmāns* quite easily; for example those addressed to provincial officials at Ahmadabad (possibly with generic instructions) to treat the Company officials better.[23] The *farmān* for Surat, on the other hand, took longer to negotiate, because the Mughals wanted Roe to commit to important matters such as non-aggression towards the Portuguese and (based on reports from the provincial governor) to restrain the drunken disorderliness of their own men or agree to trial by Mughal judges; Roe was compelled to agree to the latter.[24] But the problem really was that Roe was seeking a different kind of document altogether,

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[20] Charter, 43 Eliz I, 31 December [1600], in *Charters Granted to the East-India Company From 1601, Also The Treaties and Grants, Made with, or obtained from, the Princes and Powers in India, From the Year 1756 to 1772* (London, 1773), 5–6, cited in Philip Stern, *Corporate Sovereignty: The Company-State and the Early Modern Foundations of the British Government in India* (Oxford: Oxford University Press, 2011), p. 8.

[21] Maurice Boogert, *The capitulations and the Ottoman legal system : qadis, consuls, and beraths in the 18th century* (Leiden: Brill, 2006).

[22] E.M. Foster (ed.) *The Embassy of Thomas Roe to the Court of the Great Mogul, 1615-1619* (2 vols., London: Hakluyt Society, 1899), I, 115-117.

[23] *Ibid.*, p. 126.

[24] *Ibid.*, pp. 135-6; 140-1, 146-9; 162-4.

because, as he explained to the emperor, he needed "an agreement cleare in all poynts" because English trade required a "more formall and Authentique confirmation then it had by ordinary firmaens."[25] Roe preserved a draft of the document he proposed, which consisted of "Articles of Amytie" between "the great Mogol, King of India, and the King of Great Brittan, France and Ireland," a document with fourteen articles and five further clauses,[26] which predictably Asaf Khan dismissed as both too long and "unreasonable." After several months of negotiations, and efforts to win over Prince Khurram, Roe still found Asaf Khan scribbling many notes on the margins of the draft document he had submitted, and pronouncing that an order from the prince would be sufficient. Having by now learnt what *farmāns* were normally like, Roe now produced a much shorter document, which was directive rather than contractual, although it contained the same assurances, privileges and exemptions. [27] One could consider this draft an early instance of semi-successful British-Persian composition, because Roe did receive a formal version of this order, albeit one further reduced in scope, and only issued by prince Khurram, rather than the emperor.

Thus for the next two years, Roe continued to follow the peripatetic Mughal court around, pursuing his elusive ideal *farmān* that could also serve as a treaty, while also negotiating, via commercial arbitrators, the return of (imperially disavowed) taxes collected by a Gujarat official. Roe's failed embassy has been studied (and debated) as an instance of culture clash; we may consider whether it was in fact as a case of failed legal translation.[28] Clearly, regardless of court politics, the biggest stumbling point was that Roe was seeking a document that simply could not be produced. In the end, Roe famously declared the Mughal an overgrown elephant who would never bind himself to a treaty,[29] and retreated to the Mediterranean on another diplomatic mission.

The Company's Persian archive

Eventually, however, the East India Company acquired shelves full of Persian-language orders, all the way up to *farmāns* that it dictated to the Mughal emperor himself. In just over a hundred years after Roe's frustrating visit, that is, in the early eighteenth century, Mughal power was in decline and regional states arose all around the subcontinent. Some of these were created by Mughal provincial governors who became independent, and some by genuinely different social groups. All these new states, even those that based their legitimacy on opposition to the Mughals, formally deferred to the Mughals, maintaining what appears in retrospect to be an elaborate charade of subordination to the Mughal throne. The East India Company meddled in the politics of many of these states, in the hope of securing better tax deals from pliant rulers, and eventually ended up defeating in battle one such major ruler, that of the massive province

[25] *Ibid.*, pp. 146.
[26] *Ibid.*, pp. 152-156.
[27] *Ibid.*, p. 260-262.
[28] Bernard Cohn, *Colonialism and its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1999), 17-19; 112-115; William Pinch, "Same Difference in Europe and India," *History and Theory*, 38: 3 (1999), 389-419; Sanjay Subrahmanyam, "The Company and the Mughals between Sir Thomas Roe and Sir William Norris," in Subrahmanyam, *Explorations in Connected History: Mughals and Franks* (New Delhi: Oxford University Press, 2005).
[29] Subrahmanyam, "The Company and the Mughals," p. 145.

of Bengal, in 1757. After nearly a decade of attempting to tame the subsequent rulers, the East India Company did battle again, this time against a coalition, which included the Mughal emperor himself.[30]

Thus defeated and humiliated, in 1765, by a much-reproduced and represented *farmān*,[31] the by then powerless Mughal emperor appointed the East India Company his servant, with the task of collecting taxes of the enormous and richest province of Bengal. In effect, it was permission to pocket those tax revenues. Not only this, several other unsigned *farmāns* floated around, just in case the East India Company wanted the poor man to authorise some more.[32] These, and many other documents were eventually collated and translated in a variety of ways; some were organised into collections within the archives of the India Office. Such collections included a small number of original Persian documents, but mainly manuscript copies entered into registers (still in Persian), and their English translations.[33]

Towards the end of the nineteenth century, in what appears to have been a huge project of "mapping empire" through law, English translations of many such Persian documents were printed and published as part of very large official projects. One such series of "factory records", i.e. pertaining to the early career of the East India Company in India, was collated by William Foster, the official "historiographer" to the India Office. Foster also collated Sir Thomas Roe's journal and letters connected with his mission to the Mughal court.[34] Another comparable but much larger project was the fourteen-volume *Treaties, Sanads and Engagements* related to the numerous semi-controlled "princely" states of India and neighbouring countries, right up to the Persian Gulf, produced by another British Indian civil servant, Charles Aitchison. [35]

Looking through these collections,[36] one finds at least three things – first, that the difficulties with acquiring a Mughal *farmān* in the early seventeenth century did not deter the Company

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[30] Peter Marshall, *Bengal: The British Bridgehead* (Cambridge: Cambridge University Press, 1987), pp. 70-92.

[31] For the English translation of this *farmān*, see William Bolts, *Considerations in Indian Affairs* (London, 1772), Appendix XVIII.

[32] Kavita Datla, "The origins of Indirect Rule in India: Hyderabad and the British Imperial Order," *Law and History Review*, 33: 2 (2015), 321-50, at p. 341.

[33] One such set of (?) Persian manuscript copies of documents included the copies of documents relating to the East India Company's rights in the newly founded city of Calcutta. These documents have been studied by Farhat Hasan to write a story of colonial-indigenous cooperation in the creation of a new city. Farhat Hasan, "Indigenous Cooperation and the Birth of a Colonial City: Calcutta, c. 1698-1750," *Modern Asian Studies*, 26: 1 (1992), 65-82. Following an old and established tradition, Hasan treats the notebook with copies as the equivalent of the original documents. MSS Add. 24039, British Library.

[34] William Foster (ed.) *The Embassy of Sir Thomas Roe to the Court of the Great Mogul, 1615-1619* (2 vols., London: Hakluyt Society, 1899); William Foster (ed.) *The English Factories in India* (Oxford: Clarendon Press, several publication dates, for the several volumes)

[35] C. Aitchison, *A Collection of Treaties, Sanads and Engagements relating to India and Neighbouring Countries* (14 vols., Calcutta: Government Press, 1892).

[36] Persians documents are also constantly referred to in collections that are not focussed on these alone; Foster's series are of this nature, also see C.R. Wilson, *The Early Annals of the English in Bengal* (London: W. Thacker and Co., 1900), which repeatedly refers to *sanads*, *hasb al-hukms* and *dastaks* – all orders acquired from some authority or the other.

from seeking *farmāns* from other regimes, such as the Deccan sultanates,[37] or various dynasties in Iran. Nor did Company officials appear averse to accepting a range of lower level sub-imperial orders – called *nishāns, parwānas* and so on, which offered a range of rights related to trade, taxation and property-holding. Thus, not only was there a deluge of Persian legal documents in the East India Company's archive, moreover, the source never dried up, so all the petty and massive princes and principalities that the Company came across until the mid-nineteenth century, continued to issue Persian documents, familiar in appearance, to record their relationship with the Company.

Forms and types of Persian documents

Here it is worth pausing for a moment to offer a definition of "legal document" and discuss the types and forms of Indo-Persian legal documents. For purposes of this chapter, I consider legal and administrative documents as part of the same legal landscape, because extant collections related to specific individuals or institutions demonstrate how they were complementary in function. Royal and sub-royal orders created or affirmed entitlements, which were subsequently asserted and disputed by rights-holders, confirmed and rescinded through judicial and political processes, and built upon through transactions such as sale, gift, mortgage and inheritance. Each of these activities were seen to require specific forms of documents. Throughout the early modern Perso-Islamic world, the forms of such documents were strikingly regular; regional variations of form and usage being themselves standardised. As Roe discovered to his frustration, the conventions of appearance, content and formulaic phrases could not be ignored without risking either utter impasse or meaninglessness. In addition, Indo-Persian legal documents they were self-nominating, that is, they named their own documentary type, usually in the initial or final line of the document, using formulae such as "*In chand kalme ba-ṭariq-i tamassuk nawishte dādam*" (I wrote and gave these words in the manner of a *tamassuk*, a bond). The documentary types thus recorded could be transregional or extremely local in provenance.

Based on extant collections of Mughal-era documents in Indian archives, both published and unpublished, a preliminary formal-cum-functional typology could look like this[38]:

Orders	**Petitions**	**Tax contracts**	**Inter-Personal transactions**	**Documents related to adjudication**

[37] The Mughal Empire never covered all of the Indian subcontinent; major kingdoms arose and persisted, especially towards the south of the peninsula. The EIC naturally interacted with such regimes, too.

[38] Collections seen by the author thus far include the multiple sets encompassed in the Acquired Persian Documents series of the National Archives of India, New Delhi, which has around 6,000 documents; a similar number at the U.P. State Archives (Allahabad branch); samples from the *daftars* of various Maratha landholding families, calendared and transcribed by G.H. Khare, *Persian Sources of Indian History* (Pune: Bharat Itihas Samsodhak Mandal, 1934-73), Vols. 1-6; also the published B.N. Goswamy and J.S. Grewal (eds) *Mughals and the Jogis of Jakhbar* (Simla: Indian Institute of Advanced Study, 1967); J.S.Grewal (ed.) *In the By-Lanes of History: Persian Documents from a Punjab town* (Simla: Indian Institute of Advanced Study, 1975); Mehendale et al. *Adilshahi Farmanein* (Pune: Diamond Publications, 2007).

Farmān	*Iltimās*	*Qaul-qarār pattā-yi ijāra*	*Hiba-nāma* (gift deed)	*Sanad* recording *qāzi's decision*
Nishān	*ʿArzadāsht*	*Muchalka*	*Tamassuk* (deed acknowledging a debt or other obligation)	*Mahzar-nāma*
Parwāna		*Qabuliyat*	*Fārigh-khaṭṭī* (Deed of voiding of obligations)	
Dastak			*Iqrār* or *iqrār-nama* (Generic – binding declaration)	
Khaṭ/Khariṭa			*Nikāh-nāma* (deed of marriage – for Muslims)	
			Rāzi-nāma (Deed of agreement – of any kind)	

Some of these forms were Islamic, in the sense that they conformed to models provided in Islamic books of law, which often contained sections on formularies.[39] Others, however, derived from Persianate chancellery traditions, ranging from the royal to the fiscal. Each of these forms displayed extremely regular graphic and linguistic features; which were, however, specific to identifiable subregions, regime and the period.[40] These regular features consisted of

[39] *The Function of Documents in Islamic Law*: *The Chapters on Sales from Ṭaḥāwī's Kitāb al-shurūṭ al-kabī*r, ed. and trans. Jeanette Wakin (Albany: State University of New York Press, 1972); for the most obvious Indian example, see Sheikh Nizam and others, *Fatawa-yi 'Alamgiri*, Maulana Saiyid Amir Ali, trans. to Urdu (Lahore: Maktaba Rahmaniya, n.d.), vol. 10, pp. 9–124; the section on *shurūṭ* runs from pp. 125–298.

[40] There is only one classic and comprehensive study pertaining to the prolific Indo-Persian documents, Momin Mohiuddin, *The Chancellery and Persian Epistolography under the Mughals* (Calcutta: Iran Society, 1971), which, as its long sub-title suggests, assumes a single and uniform chancellery tradition stretching from Iran to India, and offers descriptive and classificatory information derived unsystematically from formularies and documents from a range of regimes. There is a much more advanced and current tradition of the study of Persian diplomatics with relation to Iran, see, for example, Kondo Nobuaki (ed.) *Persian Documents: Social History of Iran and Turan in the Fifteenth to the Nineteenth Centuries* (London: Routledge, 2003); Christoph Werner, *An Iranian Town in Transition: A Social and Economic History of the Elites of Tabriz, 1747-1848* (Wiesbaden: Harrassowitz Verlag, 2000).

highly formulaic language that marked the opening, closing and structuring of the contents of the document – set phrases were inevitably used, and were specific to the type of document in question. Other highly regular features consisted of the type and location (in the document) of the seals and the cipher (if any), the use of marginal space, and the use of the verso of the document.

For example, a classic Mughal *farmān*, especially after the mid-seventeenth century, generally opened with the line – "At this time, the lofty order (*farmān*), which must be obeyed, has been issued, that …" In addition, there were high-value "personal" *farmāns*, not bearing any seals, and often in the emperor's own handwriting, issued to the highest-ranking Rajput nobles, usually to give precise and immediate instructions.[41] In all cases, the writing occupied a block to the south west (left and bottom) of the paper; the first two lines were always indented to the left; there was only one seal – the circular genealogical seal of the Mughal dynasty – accompanied by the royal cipher or *tughra*.

Forms and functions of Persian documents were connected but they did not overlap entirely, which produces classificatory problems for the researcher. To take a *farmān* as example again, in India, this could only be issued by the emperor, and were necessarily orders. The name of this form of document itself derived from the Persian verb *farmudan*, which means "to order." *Farmāns* could be orders to perform (or desist from performing) certain activities, e.g. turning up in court, or they could be orders that created some kind of legal title, for example, through a grant of land. *Parwānas*, on the other hand, were yet another form for issuing orders, of a similar range, but they were issued by nobles who did not belong to the imperial family. *Parwānas* were linguistically and graphically different from *farmāns* – they had different formulaic openings, different usage of seals and margins, different use of space on the paper, and could, in some instances, be bi-lingual.[42]

To indigenous experts, these differences in form mattered a great deal. Indigenous scribal traditions used formularies for the drafting of such documents, which offered classificatory schemes based on the relative status of the writer of the document and its receiver, in addition to the function of the document.[43] Using the incorrect form in the wrong social context would be a breach of etiquette, which could in certain cases tantamount to rebellion. In any case, it would render the document ineffective. As we have already seen with Sir Thomas Roe and his failed efforts, the East India Company was fully awake to the distinctions between such documents, and aware of the differences that they could make to their rights in India. Even if it was premised on a purely functional basis (i.e., the Company was merely looking for the most effective document), intellectual, cultural and political participation in the world of Indo-Persian legal documents was inevitable.

The History of Mature "British-Persian"

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[41] Mahendra Khadgawat and Suhujauddin Khan Naqshbandi (eds) *Phārsī Pharmanoṇ ke Prakāsh meṇ Mughalkālīn Bhārat evam Rājput Shāsak* (4 vols., Bikaner: Rajasthan State Archives, 2010-2018)

[42] Of which the best known examples are the *parwānas* issued by the Kacchwaha Rajput noble house, preserved in connection with the temple complex in Mathura-Vrindavan, and later, Jaipur. Monica Horstmann, *In Favour of Govinddevaji* (New Delhi: IGNCA, 1999)

[43] For a discussion of legal formularies, both Arabic and Persian, see Chatterjee, "*Mahzar-namas*"

Historically, the production and receipt of Persian documents did not remain a one-way process; the Company itself produced a huge volume of Persian legal documents, in forms both familiar and innovative. The earliest Persian documents produced by the Company and its employees were, naturally, *arzadāshts*, or petitions, to a range of authorities, seeking specific privileges relating to its trading operations.[44] It must have also produced documents of contracts – especially since we know that it advanced money, through brokers, to weavers who produced the prime merchandise that it exported to Europe from India – fine cloth.

By the early eighteenth century, however, the Company and its officials had already started producing Persian documents of order of their own. This began with documents relatively low down in the hierarchy of documents; Company servants infamously produced illegitimate *dastaks* or orders for allowing customs-exempt transit of merchandise, which their Indian brokers re-forged multiple times. We see one such case in May 1711, when the Company's council in Calcutta examined a certain Jagat Das for selling several "Dusticks" to "natives" for five rupees each. It turned out, somewhat embarrassingly, that a previous English governor of Calcutta, Weltden, had handed an armful (158) *dastaks* to Jagat Das.[45]

By the mid-eighteenth century, the Company's creativity as well as political standing had reached further up the scale. The Company was now first among equals in the political landscape of India, and the leading competitor among all the regimes that sought to replace the Mughals. It was also in a position to produce higher-status documents of order of its own, especially when participating in the internal and mutual squabbles of the various regional states.

In Aitchison's *Treaties, Engagements and Sanads*, we see one such set of documents, pertaining to the substantial *rāja* or king of Banaras.[46] This arriviste royal family came from a dynasty of revenue-farmers, who worked for the provincial governor turned king, the Nawabs of Awadh.[47] Wriggling their way up through the conflicts between a substantial successor state (Awadh) and the Company, this family secured autonomy from the Nawab of Awadh, on the one hand, and assurance of their title from the Company, on the other. Thus, in 1776, a *sanad* (generic term for Persian document) was issued to Raja Chait Singh of the Banaras family, confirming his title to the *zamindārī* or superior landholding rights in Ghazipur, a district in the Banaras region.

Even in translation, the document is clearly identifiable as a *parwāna*, that is, a superior form of order that non-imperial nobles could issue. It opens with the standard formula, "Be it known to the mutsuddies (sic., Persian for officials) in office, present and to come, canongoes, mukudums, ryots, cultivators, to all the inhabitants resident and belonging to Circar Benares … that whereas, by virtue of a Treaty with Nabob Ausuf ud-dowlah…" It is an odd, stilted English,

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[44] For an early example of such an *arzadāsht*, apparently read out in Jahangir's court by a British traveller, see *Mr Coryatt to his Friends in England* (London: I. Beale, 1618). I am grateful to Ayesha Mukherjee for pointing out this text to me.

[45] C.R. Wilson, *The Early Annals*, p. 10

[46] Aitchison, *Treaties, Engagements and Sanads*, Vol. II, pp. 41-54, especially 45-467.

[47] Bernard Cohn, "The Initial British Impact on India: A Case Study of the Benares Region," *Journal of Asian Studies*, 19: 4 (1960), 418-431.

peppered with transliterated Persian words, a usage that came to be known as the impenetrable jargon of 'Indostan',[48] but the document is actually perfect in Persian! It is signed by the Governor-General in Council, that is, Warren Hastings himself.

Persian documents, such as the *farmān* issued by the cowed Mughal emperor in 1765 are generally treated by historians as hollowed out old forms that demonstrated the vacuity of Mughal power, while providing the EIC with a shield against British parliamentary intervention. However, the *parwāna* we have just seen was not vacuous in the least; it created very real rights for some parties, and undermined others. And it was produced, not procured by the Company itself. Once one grapples with the scale and persistence of the phenomenon – we are not talking about one crucial early treaty dressed up as an imperial order, but hundreds of thousands of Persian documents, constantly acquired, produced and circulated well into the twentieth century – it does appear that we may need to think afresh about Persian documents in the British imperial archive.

A British-Persian document from a Punjabi village

Let us now assess the phenomenon of British-Persian from a different point on the social scale. In the year 1859, some Punjabi Muslim landowners sold some cultivable land in a village called Pindori to the head of a major Hindu Vaishnava monastic institution which was located there. The institution of Pindori was richly endowed; it had received royal grants of land and its produce (there is a difference, which I will explain later in the chapter) from at least the late seventeenth century, first from the Mughal emperors and their subordinates, and then from the various Sikh warlords or *misldārs* who flourished in the region from the mid-eighteenth century, until Punjab was conquered by the East India Company in 1849.[49]

This document, then derives from ten years after the conquest of Punjab. As such, it shows material and formal signs of regime change – for the first time in this collection which spans two centuries, we have a document scribed on the East India Company's stamp paper. The document is multi-lingual and multi-scribal, as many of the documents in the rest of the collection are, but this one offers specific new combinations – the main text is still written in Persian, but the notes on the reverse are in Urdu and English. How does one situate a document such as this one and interpret its significance? To ask a simple descriptive question – is it a colonial legal document, or an Islamic legal document?

The document records a sale transaction in the form of an *iqrār*; beginning with the formula "*Iqrār kard wa iʿtirāf saḥīḥ sharīʿaī namud…*" *Iqrār* is a classical Islamic legal form, found in

[48] Javed Majeed, '"The Jargon of Indostan": An Exploration of Jargon in Urdu and East India Company English', in Peter Burke and Roy Porter (eds.), *Languages and Jargons: Towards a Social History of Language* (Oxford: Polity Press, 1995), 182–205.

[49] B.N. Goswamy and J.S. Grewal, *The Mughal and Sikh Rulers and the Vaishnavas of Pindori* (Simla: Indian Institute of Advanced Study, 1968), Document LII, transcription, translation and notes, pp. 345-55, image in unnumbered section. For the history of the Sikh kingdoms of the Punjab, see J.S. Grewal, *The Sikhs* (Cambridge: Cambridge University Press, 1991).

collections from all over the Islamic world.[50] As the record of a legally binding declaration, it was a capacious form, which could be used to acknowledge a variety of things, and hence used for a huge range of transactions. In India, they had been used (among other things) for recording sales definitely from the sixteenth century, and possibly from earlier.[51] The Indo-Islamic variation of this form admitted of attestations by parties as well as witnesses on the margins of the document, and we see that practice continuing. Authorisation, where it once used to be with the seal of the *qāẓī*, or Islamic judge, is now with the East India Company's stamp, on standardised stamp paper, clearly produced across the country, in Bengal. Again in conformity with Indo-Persian legal documents, there are summary notes on the verso; unlike earlier documents, however, the notes on this document are in Urdu and in English, rather than Persian. The Urdu note called the document a "*waṣiqa-yi baiʿ-nāma*," following the Indo-Persian convention of specifying the particular and immediate function that the legal form was being put to. It also notes that the lands had been previously measured according to the 'English' system, and that the deed of sale was "registered" into a book (of land titles).

So we can summarise that, in a major province of British-ruled India, in the mid-nineteenth century, while new institutions like standardised stamp paper and land registers had been created, legal documents continued to be produced in Persian, in recognisably Islamic legal forms, using recognisable formal vocabulary that derived from the overlapping Islamic and Persianate traditions of documentation for which we have copious evidence from Mughal times.

This particular transaction was not subject to dispute or litigation, as far as we know, and so this document did not enter the court system. However, hundreds of thousands of very similar documents were presented in British courts in India from the late eighteenth century, right up until India and Pakistan's independence from British rule in 1947. In order to interpret the implications of such a document, it is necessary to form a sense of the scale of the phenomenon (the presence, production and circulation of Persian legal documents in British-ruled India).

Scale: Persian Documents in the Colonial Indian Courts

The survey and assessment of the "British-Persian" documents that have survived is a highly time-consuming task, never attempted before, and only begun by the present author. For now, I can only point to the tip of the iceberg, the appeals to the Judicial Committee of the Privy Council (JCPC), which was once the final court of appeal for the British Empire.[52]

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[50] See for example, the study of Arabic script documents from the Cairo Genizah, Geoffrey Khan, *Arabic legal and administrative documents in the Cambridge Genizah collections* (Cambridge, 1993).

[51] *Iqrār* actually means a legally binding declaration (often translated by scholars of Islamic studies as "confession", which can be confusing unless the archaic meaning of the term is taken into consideration). An *iqrār* does not have to be written down, in fact, in classical Islamic jurisprudence, verbal declarations as well as testimony (*shahāda*) is always superior to documentary evidence. However, we find prolific use of *iqrār* documents from across the Islamic world, especially (but not exclusively) for commercial and property-related transactions. Such documents are usually sealed by the *qāḍī* (*qāzī* in the Persianate world) and witnessed, according to local conventions, which vary widely.

[52] P. A. Howell, *The Judicial Committee of the Privy Council, 1833-1876* (Cambridge: Cambridge University Press, 1979); David B. Swinfen, *Imperial Appeal: The Debate on the Appeal to the Privy Council, 1833-1986*

The JCPC, which arose as an ad hoc court out of the King's Privy Council, was utterly a creature of empire. It was an extension of the Crown's prerogative powers to hear appeals from the colonies, its judgments were not binding within the English legal system, and (this is what many fail to notice adequately) it applied laws from other legal systems to somewhere between a fifth and a quarter of all appeals it heard.

For between 1792 and 1998, we have the case papers for 9,368 appeals heard by the JCPC. The JCPC's procedures required parties to produce two sets of printed papers comprising of the case for appeal for both sides, the record of proceedings from all subordinate courts, and copies (or record) of any admitted evidence.[53] The JCPC may indeed have heard further appeals for which the papers have not survived, but of these 9,368 appeals, 3,833 (or just over 40%) of the appeals are from India, including what are now Pakistan and Bangladesh. The vast majority of these appeals were about civil disputes, because the JCPC remained reluctant to take criminal appeals. And again, the vast majority of these appeals were about property, because as per the rules of appeal to the JCPC, only disputes involving very valuable property, or involving a substantive point of law, were eligible.[54]

A very large proportion of those 3833 appeals from India involved the use of Persian-language legal documents as evidence, either directly, or through translation to English. Quite like the land-sale document from Punjab, these were frequently in recognizably classical Islamic and/or Persianate legal forms. But this does not mean that they were necessarily old documents merely being dredged out of family stores and translated for the court; quite like the document from Pindori, they were frequently freshly produced, with the participation of parties as well as novel state institutions – such as the land registry. And while British courts in India applied religion-based personal status laws, the use of Persian documents as evidence was not limited only to cases about marriage, divorce, custody and inheritance. Such documents could be produced in connection with a much wider range of property disputes, which were decided by the courts on the basis of colonial statutes and regulations.

If one considers that the JCPC took appeals from twelve tribunals situated within the Indian subcontinent, and from several indirectly governed Indian princely states, too; and also consider that each of those courts would have two to three subordinate levels of courts, one begins to form a sense of the scale of Persian documents being received and translated within the British court system related to India. But what roles exactly, did these Persian legal documents play in those court-rooms?

(Manchester: Manchester University Press, 1987); for the earlier period: Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, Mass.: Harvard University Press, 2004).

[53] These bound volumes of case papers used to be housed at the JCPC's old home at 10 Downing Street until recently, when the JCPC moved to the newly formed UK Supreme Court. Subsequently, these papers were acquired by the National Archives (of UK) but unfortunately not made available for research. Fortunately, a full list of all these papers was created by a staff member, and an incomplete set of these papers is held by the British Library.

[54] William Macpherson, *The practice of the Judicial Committee of Her Majesty's most honourable Privy Council* (2nd edition, London; Henry Sweet, 1873); and Thomas Preston, *Privy Council Appeals: a manual showing the practice and procedure in colonial and Indian appeals* (London: Eyre & Spottiswoode, 1900).

A very large portion of these disputes were about inheritance of property, specifically, landed property held under the title of *zamīndārī*. The precise implication of the term *zamīndār* was the cause célèbre of colonial India in the late eighteenth century; with policy and scholarly discussions rumbling on well into the twentieth. This synthetic Persian word specific to India, and very commonly used by the Mughals to refer to entrenched rural elites, literally means "land-holder," and was conceived of in Mughal administrative manuals as co-opted powerful villagers, tasked to collect land revenue, in exchange for a cut in the proceeds. When the East India Company acquired the right to collect taxes in Bengal in 1765, this started off three decades of debates and policy changes about the nature of land ownership in India, until it was finally decided by legislation, in 1793, that the *zamīndārs* were exclusive proprietors of their land, secure in their title as long as they paid a fixed revenue to the state.[55] Scholarship has discussed the transformative effects of this legislation, usually referred to as the "Permanent Settlement" – in denying *zamīndārs* their kingly roles, and those with subordinate titles, any legal standing whatsoever.[56]

The matter hardly ended there, however. Not only did the other provinces in British-ruled India refuse to extend this law to themselves,[57] even in Bengal, there were hundreds of disputes over the mode of verifying the title of *zamīndārs*, which did not attract metropolitan attention. These disputes, during the period of Company rule, that is until the mid-nineteenth century, were heard in Company courts called the *diwāni adālats*, so named because they were essentially courts for hearing revenue disputes, that assumed, by extension, jurisdiction over civil disputes.[58] A cursory skim through the first ten years of the reports of the *sadr diwani adalat*[59] of Calcutta shows that nearly every single case was replete with terms derived from the vocabulary of Persian legal documents and titles dependent on the interpretation of those terms.

Let us consider one case in slightly more detail. In *Nunda Singh v. Mir Jafier Shah* (1794), the *sadr diwani adalat* of Calcutta heard an appeal from the lower *diwani adalat*. While the dispute was principally over title to certain lands, it encompassed legal matters related to gift and compensation for killing, both important concerns for Islamic law. Specifically, the plaintiff Nunda Singh asserted his right to 1000 "bighas" of "malguzary" lands in the "mouzah" of Allahdadpore, based on three Persian legal documents. The first of these was a "sannudi khun beha" or a document recording a blood-money payment in lieu of the murder of Nunda Singh's grandfather, for which the defendant's ancestor had paid 100 bighas of "malikana" land. This

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[55] Ranajit Guha, *A Rule of Property for Bengal* (Paris: Mouton, 1963); Robert Travers, *Ideology and Empire in Eighteenth Century India: The British in Bengal* (Cambridge: Cambridge University Press, 2007).

[56] R.E. Frykenberg (ed.) *Land Control and Social Structure in Indian History* (Madison: University of Wisconsin Press, 1969)

[57] The classic colonial scholarship on Indian land tenures is H. Baden Powell, *The Land Systems of British India* (Oxford: Clarendon Press, 1892).

[58] These courts were the products of Warren Hastings efforts to reorganize and streamline the judicial administration of Bengal by creating a dual hierarchy of courts: revenue-cum-civil courts called *diwāni adālats* and criminal courts called *faujdāri adālats*, with appellate (*sadr*) courts for both branches in Calcutta, and with ultimate appeal to the Privy Council. In addition, there were purely "English" courts, with limited jurisdiction, situated in the capital cities.

[59] *Indian Decisions, Old Series* (Madras: T.A.V. Row, 1912), Vol VI (Sadr Diwani Adalat, Calcutta) cases from 1791-1801.

document was dated in the "Faslee" year of 1149 (1739 CE).[60] The second was an "ikrar-namah" by Mir Jafier Shah confirming the above, dated "Faslee" year of 1188 (1778 CE). The third was a "hiba-namah" or deed of gift made in the "Faslee" year 1191 (1781 CE), whereby Mir Jafier Shah apparently gifted the rest of Allahdadpore, which he owned, to Nunda Singh, constituting him "malika" and "mokuddin."

As it happens, this was a dispute over a *zamīndārī* title. But how could anybody tell? How did the British judges, in this case the Governor General John Shore[61] and Council, who not only lacked knowledge of all relevant Indian legal systems, but any legal training at all, make any sense of these terms? We do see in the report Muhammadan law officers attached to the court[62] were consulted on a doctrinal matter related to the validity of the gift-deed, but who supplied the translations and extended glosses necessary to understand terms such as *mouza*,[63] *malguzary*,[64] *malikana*,[65] *mokuddin (muqaddam)*[66]? The answer is not forthcoming from existing scholarship because scholars have so far concentrated mostly on the translation of high texts of Islamic and Hindu jurisprudence; they have paid no attention to the much more capacious, substantive and persistent project of translation of legal documents and terminology. That unseen and unsung project of legal translation, I argue, is the process by which *sharīʿa* was translated a second time in the Indian subcontinent.

Tax, Glossaries, and the Hidden History of Legal Translation

Based on my current research, I propose that this highly functional knowledge of specialist legal terms was created through the enterprise of tax collection and the intellectual projects that were corollary to that most mundane activity. As mentioned above, the first forays by Company officials into the world of Persian documents was made in connection with securing exemption from Mughal taxation. Once granted the right to collect taxes themselves, however, the scale of things was completely revolutionized, for it implied the necessity of entering into the vaults of Indo-Persian record-keeping. This, once again, is generally treated by historians as a frustrating interlude in which Company officials floundered in the mysteries of cryptic numbers, embodied knowledge and illegible scripts, finally rejecting it all in order to create stream-lined, and it is assumed, English language, or modern vernacular record-keeping that

[60] The Fasli year, traditionally used for tax-related documentation, and culturally universalised in Bengal, was an innovation of emperor Akbar; it was the Islamic calendar turned solar; the Gregorian year can be derived from it by adding 590.

[61] On John Shore's career, see Jon Wilson, *The Domination of Strangers: Modern Governance in Easter India, 1780-1835* (Basingstoke: Palgrave, 2008), p. 59.

[62] J.D.M. Derrett, "The Administration of Hindu Law by the British," *Comparative Studies in Society and History*, 4: 1 (1961), 10-52; Michael Anderson, "Islamic Law and the Colonial Encounter in British India," in David Arnold and Peter Robb (eds) *Institutions and Ideologies* (Richmond: Curzon, 1993); Michael Dodson, *Orientalism, Empire and National Culture: India, 1770-1880* (Basingstoke: Palgrave, 2007) and several others.

[63] Mughal administrative unit for taxation purposes, roughly corresponding to a village.

[64] Literally, payment of land revenue, indicates a higher order of title to land – those whose title entails making land revenue payments to the state.

[65] Literally, ownership, but indicates a relatively superior and entrenched rights in land – usually refers to a *zamindar*.

[66] Village headman, could be a *zamindar*.

merely copied the English forms.[67] This change in policy is assumed to have gone hand in hand with the removal of Persian from the Indian education system.[68] The reality could not be further than this.

When the Company first acquired the right to manage and benefit from the collection of taxes in Bengal, its officials were content to let the indigenous system of revenue administration continue, hoping to merely siphon of the results. Indian officials manning these posts maintained records in Persian, using accounting conventions and numerals that were generally inscrutable to the uninitiated. Very soon, however, such officials came under a cloud – it was suspected that, protected by linguistic inscrutability, they were exploiting the peasantry and pocketing the loot, leaving the countryside damaged and the Company with an empty treasury. And so a post was created in 1786 called the *sarishtadār* or record keeper, and the first person to hold that post was James Grant, who had picked up his Persian during service in the Company army.[69] Grant proved to be an avid Persianist but a highly pragmatic one, so he collated entire series of Persian language records tabulating, district by district, the revenues ordinarily due from various categories of lands, together with the terms used for the various categories of exemptions or reductions and the names of those that held titles affording such exemptions. In some cases, Grant recorded, in the formulaic language of Persian documents, the specific documentary basis (i.e. previously granted *parwānas* etc.) for such exemptions.[70] This then, was something of a proto-land registry for Bengal.

Parallel to such work of surveying and contracting for revenue, which in British-Indian terminology came to be called "settlement", there was the (relatively more) intellectual work of producing manuals, glossaries and dictionaries. One of the earliest works of this kind, which combined the features of a manual and a glossary, was the *Amini* report, produced in 1786 by order of government, which described how tax collection took place in Bengal, and defined a number of key terms.[71] Later works offered more and more fine-grained information, not only about the variety of titles in land, but about the range of documents recording such titles, and indeed the social process of producing them, came to be studied and reported on.[72]

"Pure" glossaries, with alphabetically arranged lists of technical terms with pared down definitions appeared around the mid-nineteenth century. These key tools for the everyday work of legal translation, arose out of at least three distinct (but not entirely separable) routes, the first, out of settlement operations, the second, out of manuals of governance copied for, or

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[67] This is the implication of Bhavani Raman, *Document Raj*, although she sees the effort as a failure, in terms of achieving transparency; and Wilson, *The Domination of Strangers*, especially chapter 5. Wilson suggests that such collection of information eventually led to frustration, confusion, and a government disengaged from Indian social reality.

[68] Katherine Prior, "Bad Language: The Role of English, Persian and other Esoteric Tongues in the Dismissal of Sir Edward Colebrooke as Resident of Delhi in 1829," *Modern Asian Studies*, 35: 1 (2001), 75-112.

[69] P. J. Marshall, "Indian Officials under the East India Company in Eighteenth- Century Bengal," *Bengal Past and Present* 84, Part II, Serial no. 158 (1965), pp. 95-120.

[70] For example, IO Islamic 4445, British Library.

[71] R.B. Ramsbotham, *Studies in the Land Revenue History of Bengal, 1769-1787* (Bombay: Humphrey Milford, 1926), which reproduced the report.

[72] D. Carmichael Smyth, *Original Bengalese Zumeendaree Accounts, accompanied with a translation* (Calcutta, 1829)

produced afresh for Company officials by Indian experts, and the third, a rising trend within Indian society for self-reflexive linguistic studies among those adept in Persian and the north Indian vernacular, Urdu.[73] Two mutually connected examples of such lexicographic scholarship sponsored by the Company government were the *Supplement to the Glossary of Indian Terms*,[74] ironically produced before the completion of *A Glossary of Revenue and Judicial Terms.*[75] The *Glossary* was a government-sponsored project, led by the eminent Sanskritist H.H. Wilson, to collect information about technical terms from civil servants in the field. In 1842, Wilson generated and circulated a basic list of terms to civil servants in districts, asking them to note corresponding local terms and meanings. The project was an utter failure, most officers returning the list blank or filled with useless notes. One officer, however, produced such a good list, that it was published separately in 1845 as the *Supplement.* It was the work of a civil servant, called H.M. Elliot, better known to South Asianists as the editor and translator of several Persian-language historical works. Here, Elliot explicitly concerned himself only with terms related to "the tribes, the customs, the fiscal and agricultural terms of this Presidency," i.e., the province in which he worked. His *Supplement*, however, borrowed very heavily from the *Nawāẓir al-Alfāz* – a lexicon produced by one of the leading poets and linguists of eighteenth-century India, Sirajuddin Khan "Arzu."[76]

As for the *Glossary* itself, despite the frustrations expressed by Wilson, this was a huge work, which continues to be used by scholars until today, and is distinctive for including terms and meanings from various provinces of the country. While much more research is needed, there is already some direct evidence available to show that judges contacted scholar-officials, such as the first Surveyor-General of India,[77] in order to understand the meanings of specific titles in land.[78]

A Tribunal for Translating Titles: Inam Commissions

Legal definitions, however, were not simply matters of discovery; meanings could very well be made. As we have seen, debates over the meaning of the term *zamindār* was finally resolved by legislation. The matter hardly ended there, though. Other provinces, which did not embrace this legislation, experimented with other kinds of titles in land, and subordinate titles gradually gained legal attention. In Bengal itself, there were many other superior titles in land, including those which, their owners asserted, entitled them to exemption from the payment of revenue. As the government of the Company grew concerned about the "leakage" of revenue due to the

[73] The best work on Persian and Urdu dictionaries produced in India since the eighteenth century is Walter Hakala, *Negotiating Languages: Urdu, Hindi and the Definition of Modern South Asia* (New York: Columbia University Press, 2016). Hakala notes but does not engage with the contexts of taxation and law that clearly sponsored the production of some of the key works.

[74] H.M. Elliot, *Supplement to the Glossary of Indian Terms* (1st edition, Agra, 1845; 2nd edition, Roorkee, 1860).

[75] H.H. Wilson, *A Glossary of Revenue and Judicial Terms, and of Useful Words Occurring in Official Documents relating to the Administration of the Government of British India* (London, 1855).

[76] Hakala, *Negotiating Languages*, pp. 64-65.

[77] Nicholas Dirks, "Colonial Histories and Native Informants: The Biography of an Archive," in Peter Van der Veer and Carol Breckenridge (eds) *Orientalism and the Postcolonial Predicament: Perspectives on South Asia* (Philadelphia: University of Pennsylvania Press, 1993), pp. 279-313.

[78] MACK GEN 1, pp. 327-40, British Library. The letter Mackenzie wrote in 1808 to Sir B. Sullivan, Judge of the Supreme Court of Madras, glossing the *kaniyatci* (or *mirasi*) right.

many types of titles, there arose new departments, especially the Bazi Zamin Daftar, created in 1782,[79] specifically tasked examining such titles based on existing deeds (usually in Persian) and either issuing documents (also in Persian), securing such titles, or revoking them.[80] This obscure department appears to have had a short life, its functions of examining titles and issuing deeds being transferred to the (revenue) Collector of each district by legislation passed in 1793.[81] It had, however, even in its short life, produced a cache of Persian documents, which now had their own legal validity.[82]

In some of the other provinces, this enterprise turned into the gargantuan project of "Inam Commissions." The Inam Commissions, which were explicitly conceived of as tribunals,[83] deserve to be studied as vast projects of legal translation. The standard procedure of these commissions consisted of examining a range of evidence with regards to the titles of tax-free land, and either endorsing them through the issue of fresh documents (by the late nineteenth century, in English or vernacular languages), or revoking them – outright, or through conversion into salaries for specific offices. Despite the resentment they clearly caused, and metropolitan concern that such resentment may have fed into the great mutiny of soldiers and civil rebellion of 1857, the process continued. The Madras Inam Commission was in fact instituted after the Mutiny, and functioned from 1857 until 1862.[84] Thanks to an Endangered Archive Project sponsored by the British Library, we have direct access to some of the title deeds issued by the Madras Inam Commission.[85] In other cases, especially where titles were disputed, commissioners issued novel forms of (Persian, later Urdu) documents known as *rubekaris* (literally, facing, or with regards to (the) business). These documents then entered into circulation, could be produced as evidence in disputes, and thus became part of the growing family of Persian legal documents in the British Indian courts.

We can see all these processes come together in a (perfectly routine) dispute over land titles, (some of them tax-exempt), which was appealed to the Privy Council and decided in 1922. Syed Ameer Ali, the first Indian and first Muslim judge in the Privy Council, also one of the leading experts on some of the laws relevant to the case (e.g. the Bengal Tenancy Act), delivered the judgment. The judgment surveyed a range of documents on which the claims were based and their validity judged – original Mughal grants, documents received by Settlement operations, draft and final land registry documents; it also mentioned terms such as

[79] Bazi Zamin Daftar roughly translates as "The Department of Miscellaneous Lands."

[80] B.B. Misra, *The Central Administration of the East India Company, 1773-1834* (Bombay: OUP, 1959), p. 126.

[81] The Bengal Revenue-Free Lands (Badshahi Grants) Regulation 37 of 1793, Article 19.

[82] The Bengal Revenue-Free Lands (Non-Badshahi Grants), Regulation 19 of 1793, Article 48: "No part of this Regulation is to be considered to annul any grants for holding land exempt from the payment of revenue, made or confirmed by the late Superintendents of the bazi-zamin daftar … in virtue of the powers vested in them."

[83] Alfred Thomas Etheridge, *Narrative of the Bombay Inam Commission and Supplementary Settlements* (Poona, 1873).

[84] W. T. Blair, *A brief report on the entire operations of the Inam Commission from its commencement* (Madras, 1869.

[85] Rescuing Tamil Customary Law EAP project at British Library.

malikana, *mouza*, *theka*, *khasra*, *thakbast* and so on. There appeared to be no difficulty in comprehension.[86]

Conclusion: Why "Legal translation?"

Today, legal professionals as well as academic scholars of law take "legal translation," to mean principally the translation of legal documents. An ideal legal translation, experts tell us, is one that not just offers an idiomatic translation of the text of a legal document, but ensures the same effect in the host legal system as was intended in the legal system of its production. Such translation might require the use of not modern idiomatic language but arcane formulae from the host system in order to convey the real sense of the document.[87]

I suggest, without entering into the matter of success or failure, that the persistent presence of Persian legal documents in the courts of British ruled India is symptomatic of a phenomenon best understood as legal translation. This analytical framework allows us to incorporate into meaningful analysis a vast and curious body of textual artefacts – the documents of "British-Persian." It has the benefit of returning attention to the concrete intellectual and physical processes inherent in the production and use of such documents, both the bare act of translating – from one language to another – and the history of the institutions, individuals and tools that enabled this to happen. In this sense, I could think of legal translation as *translatio*: the moving of Persian and Persianate legal documents from one legal system into another, and space being made for them in the host system through functional technologies of interpretation – less jurisprudence, and more lexicography.

Persian legal documents and the concept of legal translation also allow me to conceive of law, *sharīʿa* in particular, as morphing through successive imperial contexts – first the Mughals and then the British. Already with the Mughals, legal documentation in Persian was well established in India, and presented a hybrid vocabulary and ethos, which derived from the recommendation of classical Islamic jurists writing in Arabic, but also from the chancellery traditions of Persianate empires. Documentary clusters thus presented an apparently eclectic collection of documentary forms, which includes royal orders and tax contracts in distinctly Indo-Persian forms, together with documents recording transactions, in more pan-Islamic forms. I have argued in this chapter that early modern Indian notions of law have to be derived from the totality of these documentary clusters, in which empire is inseparable from Islam. I have also argued that the European trading companies were early entrants into this Persianate legal landscape, and compelled to partake of it in order to seek and record necessary privileges. Eventually, when one such corporation, the East India Company, achieved political dominance in the region, it inherited multiple archives of rights-bearing Persian documents, but also the documentation momentum, whereby it continued to produce fresh Persian documents through its own institutions and personnel. All these documents continued to surface in colonial Indian courts well into the twentieth century, pushing us to consider whether the British Empire was another Persianate empire into which *sharīʿa* had been translated, yet again.

[86] Jagdeo Narain Singh and others v. Baldeo Narain Singh and others, JCPC 64 of 1922.

[87] Leon Wolff, "Legal Translation," *Oxford Handbook of Translation Studies*