

# THE PARSEE VOICE

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## THE MYTH ABOUT THE 'LAW OF THE LAND' Two Heavy-Weight Opinions on It!

In recent issues of "The Parsee Voice", attention of the readers was drawn to the convenient ploy resorted to by vested interests – that four-worded expression, "Law of the Land". In this regard, two totally independent observations, one from a retired judge and the other from a religious scholar-cum-top scientist bear repetition, if some of you have come across them before.

The retired judge of Pune, **Mr. Jamshed E. Sanjana's** opinions were published about ten years ago in the "Deen Parast" journal. The scholar-cum-scientist, the late **Ervad Dr. Minocher D. Karkhanawala's** opinion was given to the BPP trustees, in response to their Questionnaire, in 1964, alluded to in our issue, I. 11. Dr. Karkhanawala's opinion is being published here in extract form, for the first time.

This, alongwith the 20-odd replies of High Priests and scholars, should have been published in the last 40 years by the BPP. **It won't surprise us if the present-day trustees are blissfully unaware of these important opinions still lying with them.** Had these been made public in the last four decades, the community would have been saved a lot of hassles and headaches!

From the Constitution of India, to the Special Marriage Act, to the personal law of the Parsees, arguments have already been hurled at us that the ambiguous, amorphous "Law of the Land" rules the roost. Religious injunctions and doctrines always play second fiddle to it. But is it really so? Cannot faithful, devout Parsees take up the cudgels for their religious teachings and traditions?

According to both Justice Jamshed E. Sanjana and the late Ervad Dr. Karkhanawala, the answer is a resounding, **yes, they can!**

**Justice J.E. Sanjana:** "The so-called upholders of the 'Law of the Land', it appears are deliberately confusing the issue. **'Law of the Land' does not de-recognise the principles of religion by which a race and community is governed and exists.**

"On the contrary, while propagating secularism and freedom of religion, the 'Law of the Land' upholds the principles of religion and freedom in practising one's religion and following its tenets, mandates and customs coming down the ages.

"It lays down that no one can interfere in an individual's or community's practice of a religion. In my earlier opinions, while interpreting Article 26(b) of the Constitution, I have dealt with this aspect.

"Persons who defy long-established religious customs and practices are liable for penal action... and a communal case can be filed before the Metropolitan Magistrate."

Those who glibly talk of the Right to Freedom, granted under the Constitution, should remember that such rights are not unbridled and that they are circumscribed by responsibilities and obligations!

**Ervad Dr. M.D. Karkhanawala:** [In his 8+ page – dissertation to the BPP in 1964, the late Dr. Karkhanawala admirably covered the religious, legal and scientific aspects of the question of inter-married Parsees and their obligations to the society]. **Excerpts:** "In this matter, viz. the status of a woman born of Parsi parents but married to a non-Parsi, vis-a-vis the religion, and the rights and privileges, **it is my opinion that the religious law is more important**

**than the civil law.** Also in presenting the questionnaire some points have not been put forward in their right perspective... Thus, on page 1... it is stated, 'It was recognised prior to 1954 ... not entitled to the benefits of the Zoroastrian religious institutions including fire-temples and Dokhmas'. This is as much valid today as prior to 1954... However, the main point is this viz. that **according to the religious law a woman marrying a non-Parsi could not remain in the religious fold and such marriage has therefore to be solemnised either according to the religious law of her husband's faith or according to the civil laws of the land (country) where the marriage took place.**

**"It must, therefore, be borne in mind that such matters are governed by the religious laws and the civil laws are not paramount.**

**"The religion recognises neither civil marriage nor marriage according to the rites of other religions.** So far as the religion is concerned, the person ceases to be a Zoroastrian and voluntarily goes out of the fold under both the above conditions.

"Therefore, the point sought to be made on page 2, para 1, viz. that such females have continued to profess the Zoroastrian religion... is wrong, because such females have by their own acts voluntarily forgone the rights.

**"The opinions of the legal experts which the Panchayet obtained, are in error, simply because they have considered the civil aspects only and principally because they have erred in making the fundamental assumption that a woman after her marriage to a non-Parsi can continue to profess the Zoroastrian religion.** In making this assumption, the legal experts have not considered the religious aspects at all... : **Just as even in the secular state, non-admission of non-Parsis to the places of worship is governed by the religious laws and not by the civil laws, so also in this matter it is from the religious point that one has to decide whether such a woman remains a Zoroastrian or not.**

**"Moreover, the secular state guarantees religious freedom and the civil laws cannot interfere with the religious laws. If these are found to interfere, these can be and should be challenged. We should not submit meekly.**

"...Also, it must be borne in mind that people who contracted such civil marriage **did** so knowingly and voluntarily in complete disregard of their obligations to their religion and their community.

**"Our erstwhile forefathers who were devout Zoroastrians and who led their lives strictly in conformity with religious tenets and who were willing to undergo and actually did undergo tremendous hardships for the preservation of their religion - always kept the religious point of view and the long term interest of the community. It is today the bounden duty of Panchayet and other Anjumans all over India to ensure that the same view point is upheld and further that the perpetuation of the religion and the existence of the community is in no way endangered.**

"Civil marriage contracted either under the Special Marriage Act of 1954, or the earlier act, are not and cannot be recognised as marriage from the religious standpoint. **The Act of 1954 has not made even an iota of a difference. As far as the religion is concerned, any civil marriage whether contracted under the Act of 1954 or earlier, or, for that matter, any similar act of any country, is not marriage and the persons are living together out-of-wedlock.**

"There are many countries where for the mere legal registration of the intention to cohabit, the religion of the parties was not considered. **In short, it was not the concern of the state whether they had any religion or not. India, in 1954, merely followed the example of such countries.** (This was merely an expression of the secular policy of the state, whereby the state, for its official and legal purposes is not concerned with the religion of an individual). But this certificate issued by the state legalised the cohabitation and by accepting as legal the progeny that may issue has no locus standi so far as the religion is concerned, and the state cannot enforce recognition of such marriages on the community.

**"From the viewpoint of the Zoroastrian religion, any cohabitation between a Mazdayasni and a non-Mazdayasni is sinful adultery, whether legally blessed by the state with a certificate or not.**

"In the matter of custom serving as unwritten law, it must be stated that only those customs can have the sanctity of law, which tend to conform to the religious laws and practices. The illegal entry of girls who once were Zoroastrians, but who after their civil marriage have gone out of the fold, into places of worship, cannot be considered to constitute any sort of custom. **It could be tantamount, by analogy, to 'legalise' crime, on the plea that crime has always been committed therefore, it has become a custom and hence should have the sanctity and justification of being an unwritten law and hence should be permitted without any let or hindrance.**"

{All emphases supplied by "The Parsee Voice". The above is a condensed version of what the late erudite Ervad Dr. Karkhanawala sent to the Bombay Parsi Punchayet, in response to their Questionnaire, 40 years ago.

The scriptural texts mentioned by the learned author, included, "the fragmentary Avesta *manthras* remaining from the 21 *Nasks*, together with the Pahlavi translations and commentaries thereon; their recitations composed by Dasturan Dastur Aderbad Marespand in Pazend; the Pahlavi writings and religious texts", like the *Vendidad* and *Dinkard*.

There are 22 other opinions of High Priests and Parsee scholars with the BPP. We earnestly urge the forward-looking Chairman of the BPP, Mr. Minoo Shroff, to publish them in a book form, so as to put an end to all the controversies in this regard. It will certainly be better than some latter-day self-styled "scholars" giving vent to their sentiments, fads and prejudices, and publishing them in a section of the Parsee press! Will Mr. Shroff please take up this venture in deadly earnest?

- Editor }

## The FED Newsletter Sings A New Tune!

For years, the Hon. Secretary of the Federation of the Parsi Zoroastrian Anjumans of India (FPZAI), Mr. Keki J. Gandhi, has been sending his FED Newsletter *gratis* to all who wanted it. For years, we have wondered why this monthly never featured a word about the working of the FPZAI itself, the goings-on at its bi-annual meetings, the problems of different Punchayets and Anjumans, which are its members etc. Instead, in issue after issue, one found, the various achievements of youth in different parts of the world, or some quotes and a couple of jokes. We wondered why different sponsors spent Rs.7 to Rs.8 thousand per issue, which kept quiet on all matters relating to the Federation itself!

Now, this seems to have changed. The latest (January 2004) number, sponsored by the BPP has Mr. Gandhi (of "I'm ashamed to be a Zoroastrian" fame) – see "The Parsee Voice", I.9 – hold forth on the Davar-Beaman judgment, about which "The Parsee Voice" has said enough.

But since Mr. Gandhi is relatively new to this kind of journalism, he perpetrates a *volte face* towards the end, when he writes: "We, the members of the Parsi community, have no right, whatsoever, to prevent

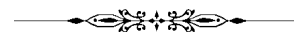
anyone from preaching or professing the religion of Zarathushtra whether they be children of Parsi mothers and non-Parsi fathers, adopted children of unknown parentage, Tajiks, Germans, Russians, Kurds or anyone else!

"AND THAT TOO On the false ground that the religion of Zarathushtra forbids initiation into his religion those who are not of Parsi Parentage.

"AND FINALLY THE QUESTION: Why sacrifice the religion of Zarathushtra at the alter of PARSI PANU?"

Our heartfelt sympathies to Mr. Gandhi for having wasted this whole incarnation, since he is hopelessly myopic in not seeing the complete and total synthesis between the Zoroastrian religion and **Parsi panu** Mr. Gandhi! From a junior confrerè, a suggestion: Quit the FPZAI, while the going is good. Your Federation (FPZAI) is made up of **Parsi Zoroastrian** Anjumans. So, where's the point in sticking to it?

You are "ashamed to be a Zoroastrian" and at the same time you are allergic to "Parsi Panu"! We hear, a special post is being created for you in the Association of Inter-Married Zoroastrians (AIMZ). Grab it!



## Grafting Philly on Billy!

Imagine this scenario, however silly or apocryphal you may find it. Take the torso of Philly and graft it on Billy! No scientist in the world has done it, so far. But, some of our **Bawas** think they can! They feel that they can take Philly and merge him with Billy – **two separate, living entities!!**

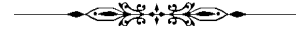
You may substitute any two **Adarans** for Billy and Philly! Surprised? This is exactly what is being very foolishly suggested by some, who have never bothered to know what an **Atash Adaran** is; **how it is a living, throbbing entity, with its 'body', its Khoreh (aura), its Personal Atmosphere and its Consitution, like any human being's.**

Those who talk of rational and enlightened thinking, themselves babble like ignoramuses, when they write about "merging" or "integrating" *Agiaries*, because, there may be one too many!

One must concede that our ancestors did set up more *Agiaries* than necessary at a given place. The solution lies not in sacrilegious mergers, but, at the most, in occasionally shifting an **Adaran** Fire, with all necessary spiritual disciplines involved, to another place in Mumbai itself where there is a dire need for an *Agiary*, and where there are sufficient devout Parsees living in the vicinity.

But, in no circumstances can two existing **Adarans** be amalgamated! A word to the wise is enough!

[*The Parsee Voice* will be shortly publishing a series of articles on the atrocities being perpetrated on our *Adarans* and *Atash Behrams*, in which both the trustees and the priests are guilty, beginning with the "**Lalbaug Leviathan.**"]



## જ્યારે ઘેરનાં ગોઢાઓજ આંખ ફોડવા નીકળ્યા છે!

હજારો વર્ષો જુની માઝદયસ્ની જરથોશ્તી દીન અને તેની સંસ્કૃતિ, કલા-કૌશલ્ય વિ. ને ઇતિહાસમાં જે ક્યારે પણ વિધ્નો આવતાં હતા તો તે બીજા ધર્મનાં ઝનુની દીન-દુશ્મનોથીજ હતાં. બે એવા ખાસ દુશ્મનો થઈ ગયા જે તવારીખમાં નોંધાઈ ગયા - સિકંદર અને આરબો. પરંતુ આરબો સાથની લડાઈઓ વખતે, સૌથી અગ્રગણ્ય ભાવ જે ભજવ્યો હતો, તે વટખેલ જરથોશ્તીઓ હતા, જેઓએ સાસાની શહેનશાહતની પડતી આણી હતી! તે છતાં આપણે કહી શકીએ કે ઈરાનની મહાન જરથોશ્તી શહેનશાહતોનું જુદી જુદી વખતે પડવાનું મૂળ કારણ બહારનાં દીન-દુશ્મનો હતા.

ત્યાર પછી જરથોશ્તીઓએ હિંદુસ્તાનની ભૂમીનો આશરો લીધો અને ત્યાં, આજ સુધી, આને ૧૨૦૦-૧૩૦૦ વર્ષો થયાં પોતાના ધર્મ, તેની સંસ્થાઓ અને પોતાનાં બુનની બને એટલી સાચવણી કરી. પરંતુ, વખતનાં વહેવા સાથે આ પક્કડ ઢીલી પડતી ગઈ. તે એટલે હદ સુધી કે છેલ્લાં ૧૦૦ વર્ષમાં, પશ્ચિમી જડવાદી પવન, કે જેમાં ત્યાંની સંસ્કૃતિ અને ત્યાંનું વિજ્ઞાન સમાઈ જતું હતું, તેને પારસી જરથોશ્તી કોમ અને તેનાં હજારો વર્ષો જુના ધર્મનું નિકંદન કરી નાખ્યું છે!

આ ટુંકા લેખમાં ફક્ત તેના થોડાક દાખલા આપી વાંચકોનું ધ્યાન સાચી દિશામાં કેન્દ્રીત કરીશું. સૌ પ્રથમ તો ગઈ સદીની શરૂઆતમાંજ

જુદીન લગ્નો નો સડો લાગવાનો શરૂ થયો. બસ, પછી તો પેલા બરફનાં દડાની જેમ દીન-દુશ્મની ની ગોચા એક “રફતારજ” શરૂ થઈ!! જુદીન લગ્નો નાં પરિણામે, કોમમાં ભાંગફોડ અને તોડફોડની મનોવૃત્તિ એટલે હદ સુધી વણસી ગઈ, કે આજે, ૧૦૦ વર્ષ પછી પણ વનથંભી ચાલુજ છે!

જ્યાં જુઓ ત્યાં ઘેરનાંજ ગોઢાઓ આંખ ફોડી રહ્યા છે: વર્લ્ડ ઝોરોઆસ્ટ્રિયન ઑરગનાઈઝેશન જે વી સંસ્થા, અગીયારી આતશબહેરામો અને દખખાઓ ઉપર હુમલાઓ, વિ., બહારનાં, બીજા ધર્મોવાળા કોઈજ નથી કરતા, પણ આપણાંજ માણસો, જેમાં આપણને વડવાઓ તરફથી ટ્રસ્ટમાં મળેલા કિંમતી વારસાઓનાં ટ્રસ્ટીઓ, વકીલો, અથોરનાનો અને કેટલાક બેહદીનો સમાઈ જાય, તેઓજ દીન અને કોમની ઘોર ખોદી રહ્યા છે!!

આ દરેક બાબતમાં લખવાનું તો ઘણું છે. પણ તે જેમ જગ્યા હશે તેમ અમો તેની છણાવત કરતા રહીશું. અત્યારે તો એટલુંજ કહીશું કે, દરેક દીનદાર જરથોશ્તીની ફરજ એટલીજ છે કે, અંગત તારી-મારી છોડી કોમને વારસામાં મળેલી અસ્કયામતોને બચાવવાની છે! આને માટે જોઈએ છે ફક્ત ચૂસ્ત એતેકાદ! છે તે આપણાંજ?

