

JUSTICE DAVAR'S THREE-LIMBED DESCRIPTION OF THE PARSI COMMUNITY IS NOT THE LAW OF THE LAND.

Some High-aided Lawyers Misguide and Some Head Priests Get an Excuse for Volte-face.

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It is said-not very wrongly-that Parsis are law-abiding citizens. To be able to abide by the law, you are required to know the law. Many Parsis have therefore developed another companion quality of thinking that they know the law too well. This quality, however, is not a virtue but is almost a vice. Because law is not as easy as "common sense", as some people think. It often becomes too complicated, intricate and even intriguing. (One of the meanings of the word "intrigue" is "clandestine love affair"). The popular maxim: Law is an ass has some sense - common as also uncommon. But I am of the very learned view that if at all you want to compare law with an animal, call it a monkey rather than a donkey. Because you wont know where it will jump; its jumping posture may appear to be towards south and you may find the actual jump to north!

Coming back to Parsis, their law-abiding often takes up the monkey-shape of law meddling or even law dabbling. In the last half of the 20th century, this virus spread amongst newspaper writers, reporters, journalists, columnists and worst still, a class of some learned scholar Dasturjis. The latter class suddenly began to talk of "the Law of the Land" and that became a good excuse for them to justify their volte-face (which in Gujarati is aptly and idiomatically translated as "Gulant Marvi"- another monkey habit.)

Before I elaborate, let me declare solemnly but non pompously that I am in the legal field since more than half a century. This in not a delicious declaration, because Sindhis, Punjabis, and Americans pronounce the word "lawyer" as "liar", and Chennaists emphasise the last letter by saying "liar-a", as is their linguistic habit. Yet I declare this, so that some Parsis may not dismiss me as a non-lawyer or not qualified to speak law. God! I have spoken such tremendous amount of law that I myself am tired of it. But the habit has gone so deep-rooted that I start speaking law at the drop of a hat and very zealously so. Look here! I am even writing law for you, and have not yet come to the point. In law, unlike literature, writing is worse than speaking. And it is not for nothing that I have written my educational qualifications after my name for the first time in this magazine, after nine years.!

So to come to the point (at last) the hat was dropped in the first decade of the last (20th) century, when a question arose: "What is the legal definition of a Parsi?" Actually, the question did not arise by itself, but was made to arise unnecessarily, inexpediently, redundantly and clumsily (Like the famous Parsi lady journalist Bachi Karkaria, I keep Roget's Thesaurus handy). The question rather, not the question but the answer - had entered huge judgements of justices Davar and Beamon in a tremendously huge litigation, so huge that even the famous scholar Sir Jivanji Modi was severely cross examined and rather adversely commented upon by J. Beamon, and so curious that his Judgment said to the effect that the aforesaid question was not relevant to the litigation!

The Judgements were delivered by the two Justices (admittedly after many pangs of delivery) on 8-11-1908. The case was Dinsha Maneckji Petit Vs. Jamshetji Jijibhai - I. L. R.(1908) 33 Bom 509 = 11 Bom. L. R. 85 = 2 I. C. 701. (Don't bother about these figures, letters and equations. I am just showing of).

The facts leading to these Judgments were as follows. A French lady claimed that she was married to a Parsi gentleman; that before marriage she was converted to Zoroastrianism through a Navjot performed by a duly ordained Dasturji; that she was then married to the Parsi gentleman according to the Zoroastrian rites (of Ashirvad etc.); and that therefore she had got the right to enter Parsi Fire temples, and to have all the benefits in the Parsi Trusts holding such Fire temples, as also the Donkhma's and other Parsi Public Charities.

To a non-lawyer layman this leads to a series of questions, one following the other at a little distance.

1. Were (and are) such Parsi Trusts intended for the benefit of such ladies?
2. Can the lady be called a Parsi?
3. Can Navjot and Ashirvad ceremonies stated to have been performed on her make her a Parsi according to the Parsi Religion?
4. Does the Parsi Religion at all allow conversion of a non Parsi to a Parsi?
5. Who is a Parsi? What is the definition of a Parsi?

You will please observe that the five questions form a chain; they do not constitute one single question asked in different words. One leads to the other, and has an additional element in it.

Question 1 refers to the actual provisions contained in the Deeds or Documents or Instruments of the Trusts. Any Trust has such Instrument (musical or non-musical, as the case be), which lays down the objects of the Trust and the intention of the Settlor or Donor of the Trust. The Settlor or the Donor creates the trust by the Trust-Deed setting out the aims and objects of the Trust and transferring, by virtue of the Deed, the Trust property, which he donates, to the Trustees. The Trustees are in law the owners of the Trust property, but their ownership is not absolute; it is strictly subject to the aims, objects and intentions declared by the Donor in the Trust Deed. Trustees cannot use or deal with the Trust property contrary to or in variance with the donor's intention expressed in the Deed. If they do so, they commit a breach of trust for which they are liable at law; their liability can in some cases be criminal also.

Hence, the answer to the question no.1 above is strictly confined to the provisions of the Trust Deed, its aims and objects and the intention of the donor. The question by itself has nothing to do with the religious aspect of the matter. That means questions no.2 to 5 are not relevant, once the aims, objects and Donor's intentions are clear. Whether you can call the good lady a Parsi; whether Navjot and Ashirvad make her a Parsi according to Parsi Religion; whether Parsi Religion, permits or allows or orders or enjoins conversion, irrespective of your naming it Parsi or Zoroastrian or Parsi Zoroastrian; and what is the definition of a Parsi according to that Religion - all these were beyond the scope and ambit of the Court in this case of Dinshah Vs. Jamsheji. And if the judges have gone into these questions and tried to answer them, the answers are not binding at law.

Look at what Justice Beaman said:

"And this clearly invites a precise statement of the real question we have to answer. That question is NOT whether the Zoroastrian Religion permits conversion, but when these trusts were founded, the Founders contemplated and intended that converts should be admitted to participate in them. (Page 150 of 11 Bom L. R. 85)

Both the Judges - Davar and Beaman held in no uncertain terms that the Donors never intended that converts would be the beneficiaries of these Parsi Trusts. I shall deal with the reasoning of the Judges as set out in their Judgements, later. Suffice to say here that the Judges even went to the extent of saying to the effect that the converts were not only NOT in the minds of the donors of all these Parsi Trusts, but also NOT in the mind of the whole of the Parsi Community. Justice Davar said to the effect that not a single case of conversion is brought before the court, since the Parsis' arrival in India 1200 years back. Both the Judges went through the various Trust Deeds in charge of Bombay Parsi Panchyat and at other places and held that those Trusts should be construed as confined to persons who were **of the Zoroastrian Religion and Racial Parsis.**

Thus when question no.1 is answered as above, the remaining questions 2 to 5 did not arise at all, and the judges could have avoided going into them. Mark J. Beaman's words: whether Parsi Religion permits

conversion, was not the question before the court; the real question was the intention of the founders of the Trust.

Then why this Mesh?

There is no doubt that J. Davar did go into those extraneous questions. In effect there are three such questions he dealt with:

- (i) Who is a Parsi?
 - (ii) Does Zoroastrianism permit conversion?
- and
- (iii) What are the ceremonies, if any, for conversion, if permitted?

This was not quite necessary. It seems that the case was so heavily fought out and such large bulk of evidence was led, that J. Davar perhaps thought it fit to deal with the questions. However that made the judgment **"travel over much unnecessary ground"; Lord phillimore of Privy Council said so in Saklat V. Bella** AIR 1925 Privy Council 298, before whom the Judgment was relied on in a Rangoon case. He pronounced:

"The Judgment in the Bombay case" (J. Davar's) "travelled over much ground - indeed in their Lordship's opinion, much unnecessary ground but both Judges came to the conclusion that the various trusts in that case must be construed as being confined to persons **who were of the Zoroastrian Religion and racial Parsis.**"

Now one of the three questions constituting "the unnecessary ground" in J. Davar's Judgment is: Who is a Parsi, and how is the Parsi community constituted.

He wrote something about the components of the Parsi Community and the vested interests have harped upon it as "the Law of the Land", which it is manifestly not. J. Davar wrote:

The Parsi Community consists of:

the descendants of the original emigrants into India from Persia who profess the Zoroastrian religion.

the descendants of the Zoroastrians in Persia who were not amongst the original emigrants, but who are of the same stock and have since that date, from time to time, come to India and have settled here, either permanently or temporarily, and who profess the Zoroastrian religion.

the children of a Parsi father by an alien mother, if such children are admitted into the religion of their fathers and profess the Zoroastrian religion".

The records show that the above words were taken by J. Davar ad verbatim from the Written Statement of the Bombay Parsi Panchayat, whose trustees were the defendants in the suit. The original authors of these words were the then English Solicitors, Craigie Blunt and Cairo, who drafted the written statement for Parsi Panchayat. No evidence was led before the Court which could have prompted the Judge to arrive at this three-limbed composition. No Irani was before the court who claimed to be a Parsi or non-Parsi; there was no controversy on the point. Similarly, there was no Parsi father who claimed that his child by his non-Parsi wife was a Parsi; there was no controversy on that issue either. The records and newspaper writings of those years show that Panchayat Trustees were embarrassed at this "statement" imported by the learned Justice from their own written statement. Only a few years before, the Parsi Community had, at a public meeting held on 16-4-1905, resolved not to admit the children of Parsi fathers by alien mothers. J. Davar himself has recorded this in his Judgment as under:

"That the Parsi Community of Bombay at a meeting held on 16th April 1905, expressed its disapproval of any conversion being allowed, and are strongly opposed to any such conversion in the present times, and resolved henceforth not to admit even the children of Parsi fathers, by alien mothers. (Page 110, ibid B. L. R).

The three limbed "definition" of a Parsi is therefore not a definition at-all, much less legal definition and still much less the law of the land. **It is not binding at law; and the Bombay High Court had in two cases refused to accept the "definition," holding that it was "obiter dictum".** This means that the alleged definition was just an opinion expressed by the Judge without any trial on the issues involved and was not a binding definition if at all it was one. **In Sarwar Vs. Merwan (1950) 52 B. L. R. 876, the Division Bench consisting of Chief Justice Chagla and Justice Gajendragadkar held so. And in Jamshed Irani Vs. Banu Irani (1966) 68 B. L. R 794, Justice Modi held so.**

In the next Issue, I'll take you, my reader, in those two cases wherein the Bombay High Court refused to follow J. Davar's alleged definition of a Parsi. A definition of a word sets boundaries to its meaning; it draws an orbit around the word; anything going beyond the orbit does not fall within the definition of the word. The most telling illustrations are the definitions of various criminal offences set out in the Indian Penal Code. They declare certain acts as an offence. The acts, which are the elements constituting the offence are laid down in a boundary or orbit; all the elements should be present to establish the offence. If a single element is absent, the definition does not apply and the accused has to be acquitted.

[The word "definition" comes from Latin "definire" "to limit, to set bounds to"; figurative: "to mark out to determine"; also from de-& finire, "to enclose within boundaries, to set a limit to." "Definition" therefore means "a clear statement about a thing; account of its exact limits or nature; a brief and precise meaning of a word". (Webster Universal Dictionary).]

You will observe that even J. Davar himself does not say that this is a "definition" of a Parsi. All he says is a kind of information without Judicial scrutiny; the words, "Parsi Community consists of" show that he was not laying down a legal definition after due legal inquiry.

So Davar J. is not the law of the Land as to who a Parsi is or was or can be or would be. Some say, a Parsi is Paa (quarter of) Rishi (Saint) and some define a Parsi as one who has a hair-line fracture in his brain.

(To be continued)

(Parsi Pukar Jan.-Feb.-Mar. 2004 - Vol. 9; No. 3)