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ORIGINAL ARTICLE

Legal Limbo and Caste Consternation: Determining Kayasthas' Varna Rank in Indian Law Courts, 1860–1930

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Abstract

This article explores how colonial law in India interacted with the construction of caste rank (*varna*) between 1860 and 1930. It specifically tracks contestations over Kayasthas' legal *varna* rank in northern and eastern India through various inheritance disputes, threading them together to shed light on how courts sought to anchor their interpretations of Hindu law around the Indian jurisprudential conceptions of *varna*. It examines the successes and failures of Kayasthas to have favorable legal rulings that would uphold their status as "twice-born"/*dvija*, demonstrating that colonial law was limited in its ability (and often indifferent) to construct caste ranks. Inconsistent ruling in provincial courts pushed Kayasthas to seek taxonomic recognition as "twice-born" in the colonial census, demonstrating how colonial law and taxonomy intersected in novel ways. This article argues that by taking a novel approach to Indian social history through the prism of law, we can enrich our understanding of how modern notions of caste and social rank were constructed in colonial India.

In 1889, the Kayastha Sabha, an umbrella organization in North India, issued a resolution declaring themselves to be of *Kshatriya* descent and, by extension, of "twice-born" (*dvija*) status.[1] Fifteen years later, Kumar Cheda Singh Varma, a

[1] *Calcutta Review*, 91, No. 181 (Calcutta: R.C. Lepage and Co., 1890), 56. In Indian social hierarchies, *varna* refers to the fourfold rank of society: *Brahmins* (priests, officiators), *Kshatriyas* (rulers/warriors), *Vaishyas* (merchants/traders), and *Shudras* (servants, manual laborers). *Dvija* is a term that literally means "twice-born," that is, specifically the top three castes in the *varna* ranking of Indian society: *Brahmans, Kshatriyas,* and *Vaihsyas. Jati* refers to "birth" or bloodline, and usually refer to lineages within the four *varnas*. The term "caste," by contrast, has its origins in the Iberian term *casta* ("lineage/breed") and is usually used as an all-encompassing term to capture Indian social hierarchies.

moderately well-known advocate at the Allahabad High Court, published the suggestively titled treatise *Kshatriyas and Would-Be Kshatriyas*. Intensely familiar with their predominance in the sinews of the city's municipal administration, he noted how Kayasthas regularly claimed a *Kshatriya* lineage dating back to Munshi Kali Prasad's *Kayastha Ethnology* (1877). Hoping for an inkling of sympathy given their sheer numbers in the administrative fabric of North India, Varma quickly disappointed: "in the eye of the law…Kayasthas are nothing more than Sudras."[2] Varma's judgment, while trite, was not an uncommon one among higher caste advocates and legal scholars at the beginning of the twentieth century. For despite being a well-placed service caste that shaped the middle-tier bureaucratic contours of the late Mughal Empire and the British colonial state, Kayasthas had been in a remarkably defensive position about their caste rank since the 1870s. By 1900, north Indian Kayasthas felt increasing competitive pressure from two fronts. First, Indian and European-authored colonial ethnography tended to assign Kayasthas a Shudra origin, knocking them down a notch from their reputation as a high-placed, literate scribal caste. Second, Kayasthas were losing ground in securing state employment and income from various Brahmin families. Madan Mohan Malaviya and more high caste critics argued that Kayasthas "overpopulated" the ranks of provincial administration.[3] And within the context of various emergent strands of high caste Hindu reform movements, these north Indian scribes' status within an increasingly *varna*-focused social hierarchy became the subject of increased contestation and legal argumentation across northern and eastern India. A palpable sense of anxiety gripped Kayastha advocates, public servants, and reformers over the last few generations of colonial rule.

Verma's quip, however, offers a window into the largely unexplored relationship between law and the construction of caste categories in colonial India. This article aims to show how a social group with a hitherto ambiguous caste standing interacted with colonial law in the construction of *varna* ranks. A series of rather unextraordinary local inheritance disputes offers fresh insight into how colonial law intersected with changing notions of caste and *varna* hierarchy, and whether laws shaped or reflected changes in Indian society. In doing so, this article engages with a variety of scholarship in legal and social history. Julia Stephens and Nandini Chatterjee, for example, have shed light on colonial law's role in the construction of religious communities and identities.[4] But less attention has been paid to law's role in the construction of social categories. Ritu Birla has nudged our literature in this direction, demonstrating how Marwari families navigated an intrusive legal-economic framework to fashion themselves as respectable, family-firm enterprises compatible with

[2] Kumar Varma, *Kshatriyas and Would-Be Kshatriyas* (Allahabad: Pioneer Press, 1904), 87.

[3] See Hayden Bellenoit, *The Formation of the Colonial State in India: Scribes, Paper and Taxes, 1760–1860* (Abingdon: Routledge, 2017), ch. 5.

[4] See Julia Stephens, *Governing Islam: Law, Empire and Secularism in South Asia* (Cambridge: Cambridge University Press, 2018); Nandini Chatterjee, "Muslim or Christian? Family Quarrels and Religious Diagnosis in a Colonial Court," *American Historical Review* 117 (2012): 1101–22; and Chandra Mallampalli, *Race, Religion and Law in Colonial India: Trials of an Interracial Family* (Cambridge: Cambridge University Press, 2011).

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modern, colonial workings of capital and markets.[5] This article, for its part, builds on Birla's works by shedding light on an unexplored aspect of Indian legal history: how north Indian Kayastha scribes sought to achieve a twice-born ranking within the colonial law courts between 1870 and 1930. This article aims to show how colonial legalism—which tended to favor high, dharmashastric[6] notions of Indian jurisprudence enforced by case law and precedent—constructed *varna* as a social category and how Kayasthas, in turn, shaped these constructions. In doing so, this article utilizes Mitra Sharafi's notion of the "traffic between law and identity"[7] by examining how contestations over what constituted twice-born rank intersected with Kayasthas' interactions with the colonial legal system.

This article will also engage with our literature on caste in colonial India. Nicholas Dirks has famously argued that the taxonomies of the colonial state, through the census and ethnographic scholarship, had a formative impact on modern caste practice and interpretations.[8] Susan Bayly, by contrast, has argued that modern notions of *varna* and Indian social hierarchies built on an era of "Brahman Raj" between 1700 and the 1830s, with the colonial era accelerating trends afoot since the eighteenth century.[9] This article aims to fill gaps in both Dirks's and Bayly's arguments by exploring how one arm of the colonial state—law—categorized and assigned Kayastha caste rank.

Methodologically, this article approaches law and caste by threading together multiple legal suits that involved Kayasthas and inheritance dispute that referenced "twice-born" as a category upon which cases would be adjudicated. A predominant feature of the scribal and secretarial classes in the late Mughal and early British colonial periods, Kayasthas historically possessed an ambiguous caste rank.[10] Next, by examining several regional inheritance disputes, this article aims to shed light on one way in which a caste category of "twice born" was constructed by colonial case law. It examines Indian jurisprudential and courtroom argumentation over what constituted twice-born/*dvija* rank: whether continuous ritual, contemporary occupation, inheritance practices, or lineage determined a Hindu's caste rank. This article also examines the types of varying evidence used in colonial courts: Sanskritic jurisprudence, colonial ethnography, pandits' legal opinions and personal witnesses. This article argues that courts in colonial India—with their emphasis upon a case law that tended to adjudicate inheritance disputes on a *dvija* or non-*dvija* basis—might have seemed powerful. But law's ability to construct caste rank was inconsistent, deeply provincial, and subject to molding by forces in

[5] Ritu Birla, *Stages of Capital: Law, Culture and Market Governance in Late Colonial India* (Durham: Duke University Press, 2009).

[6] The *dharmaśāstras* were a broader, accumulative literature of Sanskritic jurisprudence.

[7] Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947* (Cambridge: Cambridge University Press, 2014), 316.

[8] Nicholas Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton: Princeton University Press, 2000).

[9] Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (Cambridge: Cambridge University Press, 1999).

[10] Bellenoit, *Formation of the Colonial State,* ch. 2, 5.

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Indian society. In many cases, as this article illustrates, the legal arm of the colonial state was remarkably uncoordinated in its ability to adjudicate Kayasthas' *varna* rank during the heightened era of caste reform movements before 1930.

Early Cases: 1860s–70s

One of the earliest cases that raised the question of Kayasthas' caste rank can be gleaned from a local 1861 inheritance dispute in Ghazipur, *Musammat Radhe & Har Narayan v. Musammat Rukmin & Lakshmi Narayan.* A Kayastha named Sungam Lal died and left behind a concubine, Musammat Radhe, and his legally recognized wife, Musammat Rukmin. Both claimed Lal's estate. Lal's concubine, Radhe, filed suit claiming what she felt was her rightful (and equal) inheritance. During the proceedings, the question arose over which woman was entitled to the inheritance according to "Hindu law and usage of the country."[11] Radhe's son, Har Narayan (party to the case) also claimed a share of Lal's estate. Being denied this by Lal's surviving wife, the case was taken up by Ghazipur's *Sadr Amin* ("Chief Arbitrator/Commissioner"), Maulvi Muhammad Habibullah Khan, with the proceedings taking place between July and August. An otherwise unextraordinary inheritance dispute, the case was noticeable for being one of the first in north India that indirectly queried Kayasthas' caste rank. Habiubullah sought legal opinion from the Hindu *pandit*[12] assigned to the *Ṣadr Dīwānī 'Adālat* ("superior civil court"), holding up his judgment for a month. The translation of the pandit's *vyavasthā* ("legal opinion/reasoning") started with an unambiguous declaration: "Kayasthas are not Sudras."[13] The *vyavasthā* further outlined a more traditional narrative: that while Shudras were produced from the feet of Brahma, Kayasthas' progenitor—Chitragupta—was from Brahma's body (*kāya*). Kayasthas held, therefore, a corporeal purity.[14] This also squared with the traditional Kayastha narrative that they were the product of King Chitragupta and assigned to record the deeds of each individual in the *kali yuga* (dark times/present era). And the *pandit* reinforced his argument, noting that the avatar of *Viṣṇu—Paraśurāma—*directed *Kshatriyas* deprived of their traditional military occupations to become quill-donning Kayasthas. The *pandit* classified Kayasthas as *upa-Kshatriyas* ("sub-*Kshatriyas*," not full). Citing *Mitākṣarā*[15] treatises and the seventeenth century *Vīramitrodaya of Mitramiśra* (a comprehensive seventeenth-century commentary on the *Yājñavalkyasmṛti*),[16] he argued that only legitimate sons from "pure blood" could claim inheritance to their father's property.

[11] *Musammat Radhe & Har Narayan v. Musammat Rukmin & Lakshmi Narayan*, Ghazipur, 9 August 1861, No. 66; cited in Kali Prasad, *The Kayastha Ethnology* (Lucknow: American Mission Press, 1878), 26.

[12] Unfortunately, the *pandit*'s name is not mentioned in the summary of the proceedings.

[13] Ibid., 27.

[14] Ibid., 27–28.

[15] *Mitākṣarā* is a "school" of jurisprudence within *dharmaśāstra* that is predominant in northern, southern, and western India, with various "sub-branches."

[16] Yājñavalkya was a *c.* eighth century BC Indian scholar.

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Habibullah Khan observed that the custom of granting inheritance to a defined "illegitimate" child was a Shudra practice, not a Kayastha one. Clearly no expert in the *dharmaśāstras* (accumulative literature of Sanskritic jurisprudence), Habibullah Khan based his ruling primarily on the pandit's *vyavasthā*, which implied that Sungam Lal's legitimate son (Lakshmi Narayan) was entitled to the estate. Radhe and her son Har Narayan—legally now barred from non-*dvija* inheritance rights—could only claim maintenance.

Several significant questions were raised in this case, which would become amplified in later suits in Allahabad, Calcutta, and Patna over the next few generations. For one thing, the case raised the possibility of a Kayastha–Shudra connection. And while it did not mention the traditional term for non-Shudras (*dvija*), the case brought up novel questions about Kayasthas' *varna* rank. Habibullah Khan did not officially pronounce it, but the implication of his ruling was that Kayasthas were, at least for now, twice-born castes with all the affirmed ritualism that would come from this: being permitted to wear the sacred thread (*janeev/janoi*) and to partake in *homa* (fire) rites, in addition to shielding estates from adoptees' claims.[17]

This rather unremarkable 1861 case was followed up by an 1878 suit that further interrogated Kayastha' legal *varna* rank in an inheritance dispute at the *Dīwānī ʿAdālat* ("revenue/civil court") level, *Harakh & Jaimangal vs. Musammat Subdha and Alopa*. This suit revolved around the question of whether a technically illegitimate son could claim an equal share of his Kayastha father's estate. It involved a Srivastava Kayastha named Siva Charan Lal and his Rs. 3,479 estate. The plaintiffs—Harakh and Jai Mangal—were the adopted sons of a Koeri woman whom Lal had maintained as a concubine. With Lal's biological sons deceased, Harakh and Jai Mangal demanded equal shares from the estate. They claimed that Kayasthas were Shudras, which guaranteed equal shares for adopted sons; surviving widows could only claim maintenance. The subordinate judge of the Kara District, Maulvie Fariduddin Ahmad Khan, started from a different assumption than in 1861: that Kayasthas were Shudras. He specifically inquired whether there was a distinction between the rights of adopted and biological children among Srivastava Kayasthas. The proceedings started with passages from the district collector of Bulandshahr Kunwar Singh (*Memoirs of Bulandshahr*), passages from Henry Colebrooke,[18] and Elphinstone's *History of India*.[19] Singh's memoir was perhaps the most damaging, because he was skeptical of Kayasthas' claims to *Kshatriya* status. He cited the *Dharmaśāstras*, which enjoined Kayasthas to write in *Kaithi* not *Nagri*; Singh saw this as an affirmation of their non-*dvija* rank.[20] Khan then proceeded to oral testimony. The plaintiff's testimony was, admittedly, thin, and rested on playing down the ritualistic distinctions among the four *varna*

[17] Bindeshwari Sinha, *Kayasthas in making of Modern Bihar* (Delhi: Impression Publication, 2003).

[18] Colebrooke was once a judge in Mirzapur

[19] *Harakh & Jaimangal vs. Musammat Subdha and Alopa Mirzapur*, 1878; cited in Sriram Chandra Basu, *The Bengali Kayasthas* (Calcutta: Pashu Pati Ghose, 1911), 43; and *The Kayastha Samachar*, July, 1901, 65–98.

[20] Kuar Lachman Singh, *Historical and Statistical Memoir of Zila Bulandshahr* (Allahabad: North-Western Provinces' Government Press, 1874), 179.

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ranks. One witness, Pandit Ram Tewari, argued that while Kayasthas *could* be Kshatriyas, most considered them *mahiṣyas* ("mixed:" *Kshatriya* mother and Vaishya father). Tewari further noted that many saw Kayasthas as Shudras. Another witness, Becharam, downplayed the ritualistic distinctions in terms of adoption between twice-born and Shudra.[21] He argued that even in Brahmin families, illegitimate and legitimate children inherit equally. Becharam then turned to what he considered a questionable marker of twice-born rank: death mourning (*antyeṣṭi*). He noted that Bengali Kayasthas mourned for 30 days just like Shudras, but then curiously admitted that he had never witnessed Kayasthas' rituals.[22]

The defendants—Mussamat Subdha and Alopa—took a different approach. They aimed to prove their twice-born rank (and to avoid paying out) based on Sanskritic legal and Puranic treatises. This seemed more convincing to Khan. The comprehensive roll call included the *Vīramitrodaya, Mitākṣarā*, the *Yājñavalkyasmṛti*, the *Bhaviṣyapurāṇa*, the *Skandapurāṇa*, the *Padmapurāṇa*, and "original Vyavashta of the Pundits of Kashmir."[23] Also cited, importantly, was Kali Prasad's *Kayastha Ethnology*, along with a laundry list of (Kayastha) district collectors and sub-inspectors. Subdha and Alopa also produced the testimony of two Benares pandits—Nityananda and Bast Ram Dube—both of whom argued that the Chitraguptavansi (north Indian) Kayasthas were *Kshatriyas*. Nityananda and Dube also claimed that they had seen "thousands of Kayasthas wearing the sacred thread",[24] affirming a ritualistic marker of *dvija* rank. The other twenty-three witnesses—ranging from Assistant Commissioners to *Sheristadars*—all stated that Kayasthas "were included among the *Kshatriyas* and are not Shudras and testified as to the correctness of the Vyavasthas."[25] And to boot, the defendant Musaamat Subdha brought Raja Ram Shastra, a professor from the Benares Sanskrit College who specialized in the *Dharmaśāstras*. Shastra had apparently "left notes in his handwriting [sic] showing that Kayasthas are Kshatrias."[26] Upon the case's conclusion on August 17, 1877, the officiating Subordinate Judge, Mirza Abid Ali Beg, dismissed the case, ruling that Harakh and Jai Mangal lacked standing to demand equal inheritance. In Beg's opinion, Mussamat Subdha was clearly twice-born, invalidating Jai Mangal's claim to equal share of the inheritance, effectively affirming the 1861 Ghazipur decision.

[21] Adoption in Indian/Hindu tradition has a rich history compared with Islamic and Common Law. The former was largely not permitted in Muslim personal law. In Common Law, adoption was only legally recognized in 1926. For twice-born/*dvija* families, adoption was jurisprudentially permissible for a practical reason: continuing the patrilineal line of the family. The son usually had to be from a comparable *varna* or of a comparable social standing, and the adoption normally had to come through male lineages. Varying opinions existed over how much of a share an adopted male heir could claim of an estate, hence the debates over the 1878 suit.

[22] *Harakh & Jaimangal vs. Musammat Subdha and Alopa Mirzapur*, cited in *Kayasthsa Samachar*, 96; *Kayastha Samachar*, July, 1901, 65–98.

[23] *Kayasthsa Samachar*, 96.

[24] Ibid.; *Kayasthsa Samachar*, 1908, 96; *Kayasthsa Samachar*, 1901, 65–68.

[25] *Kayastha Samachar*, July, 1901, 97.

[26] *Harakh*, in Basu, *Bengali Kayasthas,* 44; and *Kayastha Samachar*, July, 1901, 65–68.

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Relegated Rank: The 1884 Calcutta Ruling

In pre-1880 North India, a trickle of local run-of-the-mill inheritance cases affirmed an implicit legal opinion that Kayasthas were twice-born. Yet when we shift eastward toward Bengal, we see noticeable changes in both the legal opinions and the nature of evidence brought to bear in front of judges. One particular case brought before the Calcutta high court in 1884 significantly complicated Kayasthas' claim to twice-born status. Echoing the 1861 and 1878 cases, this was an inheritance dispute involving Bihari Kayasthas from the Chausa District.[27] It involved Raj Kumar Lal, four sons, and Bissessur Dyal in an adoption case (*Raj Coomar Lall v. Bissessur Dyal*).[28] This partition dispute had origins in the 1870s in the accusation that Chandal Lal (who shared a grand uncle with the plaintiffs) secretly adopted his sister's son, Bissessur Dyal.[29] The remaining male family members, caught off guard, filed suit claiming that such a concocted deed of adoption was invalid. They specifically argued that various texts from the *Mitākṣarā* "school" of *Dharmaśāstra* prevented adopted sons from equal shares to an estate.[30] The district level *munsif* (minor judge) had originally dismissed the suit in the 1870s based on limitation, arguing that the part of the property claimed was not only self-acquired, but that the family was not a twice-born, Joint Hindu Family: an implied Shudra rank. In initially dismissing the suit, the *munsif* argued that the adoption was legally valid. This worked in the defendant Bisseseur Dyal's favor. But the case was further complicated when it came to geography and regional ethnicity. The Calcutta High Court's jurisdiction was the Bengal Presidency, but the case involved Bihari Kayasthas.

In an interesting twist, Raj Kumar Lal appealed before a subordinate judge, who reversed the *munsif*'s decision under the argument that since Kayasthas were twice-born, the adoption was invalid. The plaintiffs (Raj Kumar Lal and his four brothers) then appealed to the Calcutta High Court in 1881, and it took up the (now) second appeal of the case. The suit was putatively concerned with two questions: (1) whether the property of Pahar Singh (in Jalwandohi) was acquired out of joint funds and (2) whether the adoption of Bissessur Dyal was valid. But it was the latter of these questions that transformed an otherwise uneventful inheritance suit into an interrogating microscope that aimed to define what *dvija*-appropriate rites were. The question of an adoption's validity and Lal's *varna* rank became intricately interwoven. Lal argued that the adoptive father of Dyal (a Kayastha) could not adopt a sister's son, since it was the prerogative of a twice-born husband's sister to adopt

[27] Bihar was under the jurisdiction of the Bengal Presidency (and by extension the Calcutta High Court) until the province's partition in 1905.

[28] *Raj Coomar Lall And Ors. vs Bissessur Dyal And Ors.*, March 4, 1884, *Indian Law Reports, Calcutta Series* (hereafter ILR [Cal]), 10 Cal 1884. The more common non-colonial spelling of the surname would be *Dayal*. For purposes of consistency with the legal recordings and sources, I will use *Dyal*.

[29] The "Hindu Joint Family" as a legal entity.

[30] The references to a "school" of *Mitākṣarā* was common in Anglo-Hindu law, but there are various disagreements among scholars as to whether it was a distinct "school." See Ludo Rocher, "Schools of Hindu Law," in *India Maior: Congratulatory Volume Presented to J. Gonda,* ed. Johannes Ensink, Jan Gonda, and Peter Gaeffke (Leiden: Brill, 1972), 167–76; and, recently, Christopher Fleming, *Ownership and Inheritance in Sanskrit Jurisprudence* (Oxford: Oxford University Press, 2021), ch. 2, 5.

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her brother's son.[31] It was here that Justices Jonathan Field and William McDonnell stated one major aim of the case: "to come to a proper decision of...whether the plaintiffs' family...admitted to be Kayasthas...do belong to either of the three higher castes."[32] Here, the court was making explicit what had previously been implicit. In terms of evidence, "a vast mass of authorities" were referenced. But in this case, the evidence tended to lean toward European authored colonial ethnography and high-caste Indian authored legal treatises:

- *Purāṇas* (loosely put)
- *Yājñavalkyasmṛti* (eighth–fifth century BC sage)
- Mitramiśra's *Vīramitrodaya* (seventeenth century)
- Horace Wilson, *A Glossary of Judicial and Revenue Terms* (1855)
- Matthew Sherring, *Hindu Tribes and Castes* (1872)
- Henry Elliot, *Memoirs on the History, Folklore & Distribution of the Races of the North-Western Provinces* (1869)
- *Gazetteers of N.W. Provinces and Oudh*
- Julius Jolly, *Institutes of Narada* (1876)
- Max Muller, *Sacred Books of the East* (1879)
- Arthur Steele, *The Law and Custom of Hindoo Castes* (1868)
- Vishwanath Narayan Mandlik, *Vyavahara Mayukha or Hindu-Law* (1880)
- Vivādacintāmaṇi, *A Succinct Commentary on the Hindoo Law Prevalent in Mithila* (1863)
- Sarvadhikari, *Principles of Hindu Law of Inheritance* (1882)
- Chandra, *Dattakamīmāṃsā* (1865)

While earlier cases farther upcountry drew heavily upon Puranic and Sanskritic sources, the 1884 Calcutta case largely privileged the legal scholarship of the Bengali Shyamcharan Sarkar's influential *Vyavasthādarpaṇa* (1867). The High Court was swayed by the prominence of ritual and custom as outlined in Sarkar's digest, in which Justice Field noted that:

> there is...a preponderance of authority to evince that the Kayasthas, whether of Bengal or of any other country, were Kshetrias. But since several centuries passed, the Kayasthas (at least those of Bengal) have been degenerated and degraded to Sudradom, not only by using after their proper names the surname 'Dasa' peculiar to the Sudras, and giving up their own, which is 'Barma', but principally by omitting to perform the regenerating ceremony 'upanayana' hallowed by the Gayatri.[33]

The Calcutta High Court also seems to have been guiding by *Dāyabhāga*[34] jurisprudence: that *sapiṇḍa* (closeness of blood relation) was determined by the

[31] *Raj Coomar Lall.*
[32] Ibid., 691.
[33] Ibid., 693–94.
[34] For further discussion about the *Dāyabhāga* "school" of jurisprudence within *dharmaśāstra* that has been predominant in Bengali-speaking regions of eastern India, see Fleming, *Ownership and Inheritance,* ch. 3, 5.

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consistency and efficacy of ritual offerings, rather than by straightforward paternity.[35] This shifted the case's emphasis further toward *dvija-dharm* rituals and away from claims of lineage. This case, unlike previous ones, was far more focused on determining Kayasthas' "continuous proof of usage"[36] of twice-born rituals. The court specifically asked four questions:

1. Whether Kayasthas wore the sacred thread (*janoi/janeev*)
2. Whether they performed *homa* (fire ritual)
3. How long mourning ceremonies (*antyeṣṭi*) for impurity were maintained
4. Whether the court could determine if illegitimate Kayastha sons could succeed as heirs

Justices Field and McDonnell gave Puranic evidence far less weight, calling the Puranas "doubtful legends of Hindu mythology."[37] In deciding the case, the justices argued that because of the inconsistency in ritual and custom, Kayasthas cannot "upon the basis of these observances…rank among the three superior classes."[38] This underscored the greater weight that they afforded high-caste, Brahmin-authored jurisprudence, namely Sarkar's 1867 treatise. They ruled that the adoption of a sister's son (*Dyal*) was therefore valid. The Calcutta Court put a legal stamp upon what was—until the early 1880s—an understanding that Kayasthas held high rank. Bissessur Dyal might have secured his share of the estate, but in doing so, he unleashed significant reputational damage on the legal caste standing of north Indian Kayasthas. The impact of the 1884 ruling had a social life beyond Bengal. The Allahabad-based *Kayastha Samachar* noted that the court's decisions hurt Bihari Kayasthas and affected "the entire Hindustani Kayastha community."[39] Also noted were Bihari and north Indian *Vaishyas* who started to fashion themselves ritually superior to Kayasthas as a result of Calcutta High Court's ruling.[40] Over the next 50 years, it became the most referenced case in any debate over Kayasthas' caste rank and permeated the commentary of the *Kayastha Samachar* for the next generation.

"We Are *Kshatriyas*:" The 1889 Allahabad Case

The 1884 Calcutta ruling was the first explicit legal ruling on Kayasthas' *varna* rank. Farther up country, though, an 1889 suit in front of the Allahabad High Court pulled in different directions. Another local inheritance dispute (*Tulshi*

[35] *Sapiṇḍa* relationships were classified for both living/blood relationships and also funerary ones. This was a matter of dispute between the *Dāyabhāga* and *Mitākṣarā* "schools" of jurisprudence. See Fleming, *Ownership and Inheritance*, ch. 1–3.

[36] Ibid., 695–96.

[37] Ibid., 693–94.

[38] Ibid., 695.

[39] *Kayastha Samachar*, August, 1901, 173; Nabaparna Ghosh has recently worked on Bengali Kayasthas, fashioning a Bengali cultural nationalism; see Nabaparna Ghosh, "Inheriting Caste: The Judicial Construction of Bengali Kayastha Caste Identity in Inheritance Settlements in Colonial Calcutta," *South Asian History and Culture,* accessed July 5, 2022, https://doi.org/10.1086/679411.

[40] Herbert Risley, *People of India* (London: W. Thacker & Co., 1915), 116.

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Ram v. Behari Lal) made its way from Mainpuri to the full bench in Allahabad. At issue was the need to determine the caste status of a widowed Kayastha, Mussamat Lareti.[41] Mohan Lal (a Kayastha) died, and his widow Mussamat Lareti adopted a son, Tulshi Ram. Behari Lal filed suit accusing Larei of fraud and of conspiring with her first cousin (*Jhamman*) to exclude Tulshi from a share in inheritance. The issue at hand was whether the widowed Lareti—according to the *Mitākṣarā* norms—could adopt a male heir without her husband's expressed permission.[42] A member of the full bench, Justice Syed Mahmud, elaborated upon very specific points regarding Kayasthas' *varna* rank. In doing so, he challenged the 1884 Calcutta ruling. Mussamat Lareti had utilized the Hanafi custom of *wajib ul-arz* ("necessity/right of representation") in order to validate her adoption of Behari Lal.[43] Yet even before 1889 at the subordinate level (and with Islamic and Dharmaśāstric law operating simultaneously), the Mainpuri District Judge argued that *wajib ul-arz* could not abrogate the *Mitākṣarā* and that the latter superseded the former. This eliminated Lareti's ability to seek recourse to Hanafi jurisprudence. It also begged the question about what twice-born adoption customs actually were. When referring to the Calcutta 1884 decision, Mahmud was suspicious of the argument that Kayasthas were Shudras.[44] He suggested that the Calcutta Court's ruling was based on a misreading of various ethnographies, *vyavasthās*, and an over-reliance on Sarkar's *Darpaṇa*. Mahmud and the court proffered a resolution, by making a crucial regional distinction. It considered Bengali Kayasthas as *wholly distinct* from the twelve north Indian sub-branches up north.[45] This offered clarity to the Calcutta High Court's jurisdictional jumbo.

While Mahmud argued that Kayasthas' *varna* rank was irrelevant to the case, his legal reasoning bolstered their twice-born claims. Mahmud maintained that

[41] *Tulshi Ram and another vs. Behari Lal and another*, December 12. 1889, 12, *Indian Law Reports, Allahabad Series* (hereafter, ILR[A]), 328. The whole bench included Sir John Edge, and Justices Straight, Brodhurst, Tyrrell, and Mahmud.

[42] One reason that Bengali Kayasthas were treated separately seems to have been the application of different legal "schools" between north India (*Mitākṣarā*) and Bengal (*Dāyabhāga*). These "schools" were distinctive in their commentary on two different texts: the *Mitākṣarā* was a commentary on the *Yājñavalkyasmṛti*, while the *Dāyabhāga* was a Bengali monograph on inheritance by *Jīmūtavāhana* (twelfth century). As to debates over the distinction between the two "schools," Robert Lingat and Ludo Rocher interpreted Henry Colebrooke's classification of distinct Hindu legal "schools" as a foreign imposition, but more recent scholarship has argued that these schools of jurisprudence predated the British in some form. See Robert Lingat, *The Classical Law of India* (Berkeley: University of California Press, 1973); Rocher, "Schools of Hindu Law," 167–76; and recently, Fleming, *Ownership and Inheritance*.

[43] *Wajib ul-arz* ("necessity/right of representation") was an Islamic legal mechanism in the Hanafi tradition of jurisprudence (*fiqh*), which can refer to a record of admitted usages in terms of fishing, land use, or familiar transaction. It has also been used, in the colonial era, as a term describing sets of village records that deal with rights and customs. See Neeladri Bhattacharya, *Remaking Custom: The Discourse and Practice of Colonial Codification* (Oxford: Oxford University Press, 1996), 21.

[44] *Tulshi Ram*, 959.

[45] Ibid. This was a distinction that the Calcutta Court only intimated much later in the 1920s.

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Kayasthas should be judged according to *Mitākṣarā*—and by extension twice-born—interpretations of adoption.[46] He then proceeded to examine the minutiae of adoption practice. Citing an array of Shudra adoption and inheritance practices, he noted that the *Mitākṣarā* "school" (which colonial courts applied) prevented twice-born Hindu widows from exercising agency in adoption. Shudras, by contrast, gave widows agency. To Mahmud, this meant that twice-born offspring had to be, as he colorfully put it, of "virile seed and uterine blood."[47] He doubted that Kayasthas were Shudras and went into twenty pages of reasoning, citing various *pandits* to argue that Kayasthas were governed by the *Mitākṣarā* "school" of law. The court ultimately ruled that Lareti, a Kayastha, could not legally adopt an heir without her husband's living, explicitly stated permission. This was a *dvija* cultural practice. Therefore even though it was incidental to the case, the important effect of the court's ruling gave further legal succor to the claim that Kayasthas were twice-born, directly challenging the 1884 Calcutta ruling. The case also had a social impact. It garnered three pages worth of commentary in the main organ of north Indian Kayasthas: the Allahabad *Kayastha Samachar*. It specifically cited the case of *Tulsi Ram vs. Behari Lal* to argue that such cases were "largely followed not only in Behar but also in the courts of the United Provinces in determining questions [sic] relating to the Kayastha community."[48]

Reaffirming "Shudra-dom" in Bengal: The 1916 Calcutta Case

Within a generation of the 1889 Allahabad ruling, this "*varna* pendulum" had swung back in the other direction. A 1916 Calcutta High Court case, *Asita Mohan Ghosh v. Nirod Mohan Ghosh Maulik*, reaffirmed the very provincialized nature of colonial legalism. Originating in a 1903 inheritance dispute, the case began with the passing of a Bengali Kayastha, Radha Mohan Ghouse Moulik. An argument broke out between his biological (Asita, born 1882) and adopted (Sailendra, adopted 1876) sons. What complicated the case was the existence of two separate wills, one of which favored his biological son, the other giving the entire state to his adopted son. Being the biological heir, Asita filed suit to claim the whole estate. At issue here, again, was the unresolved question that had befuddled justices since the 1860s: what constituted twice-born adoption and inheritance practices? Central again was the question of whether Bengali Kayasthas ranked among the "twice-born." Justices Jogesh Chandra Chaudhury and Babington Bennett Newbold, who seemed to defer to Brahmanical norms of argumentation, emphasized the 1884 ruling, noting that Bengali Kayasthas "have been treated as Sudras in our Court for a long series of years and their status as such cannot now be questioned."[49] This seemingly slammed the door on revisiting their *varna* rank. And again, we see that Indian-authored legal scholarship and European colonial ethnography seemed

[46] Ibid., 960.

[47] Ibid., 967.

[48] *Kayastha Samachar*, August, 1901, 173.

[49] *Asita Mohan Ghose Moulik vs Nerode Mohan Ghose Moulik*, May 8, 1916, 35, *The Indian Cases* (hereafter Ind. Cas.), 127, 131.

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to sway the justices. Sarkar's *Vyavashtá Darpana* and Henry Mayne's *Digest of Hindu Law*,[50] both of which cast doubt on Kayastha high-caste claims, seemed persuasive to the justices. The court also noted that the cases impacted Kayasthas' social lives: "attempts may have recently been made by some members of the community [of Kayasthas] to trace their descent from *Kshatriyas*."[51] Far from their being abstract legal rulings, the justices recognized that these cases impacted Kayasthas' social life outside the courtrooms. In the end, Justices Chaudhury said "as Sudras, no religious ceremony is in their case necessary, but that the mere giving and taking of a son is sufficient to give validity to adoption amongst them."[52] The ruling upheld the High Court's 1884 provincialized decision: Bengali Kayasthas were explicitly Shudras, while north Indian Kayasthas were, implicitly, twice-born.[53]

The Swinging Pendulum: The 1926 Patna Ruling

By the late 1910s, an unstated juridical jockeying between the Calcutta High Court and its counterparts in northern India vexed Kayasthas' attempts to be legally recognized as twice-born. Now that Bihari Kayasthas were—since 1905—no longer subject to the jurisdiction of the Calcutta High Court, very different dynamics played out. This started in the 1926 case *Ishwari Prasad And Ors. v. Rai Hari Prasad Lal*.[54] Originating from a 1922 Gaya District suit, it worked its way up to the Patna High Court and involved, again, the question whether the adopted sons of twice-born Hindus could claim inheritance. At issue was the adoption of Nawazi Lal in 1805 by a Karan Kayastha, Hemnath Singh. A Hanafi *iqrarnama* ("deed of agreement") from November 14, 1811 was written by the three inheriting brothers: the adopted Newazi Lal and the two biological sons, Dharam Lal and Ridhnath. The *iqrarnama* stated that the adopted Newazi Lal would be the estate's custodian during his lifetime and that upon Newazi's passing, the property would pass to Ridhnath and his descendants. The heirs of Dharam Lal (Ishwari Prasad, Bhagavan Charan, Krishna Kumar, and Shyam Sundar Prasad), however, would only receive maintenance. Rai Hari Prasad, the remaining descendent of Ridhnath, was accused of failing to pay maintenance and leaving the estate in "heavy debts." Yet what blew the case open into a full-fledged debate over twice-born rank was Hari Prasad's accusation that Ridhnath acquired the property not through biological descendance, but through adoption of Newazi Lal.

Unlike the 1884 decision, Sarkar's *Vyavashtá Darpana* came under unprecedented scrutiny by Justices Field and Jwala Prasad. They made a clear

[50] Ibid., 130, 135.

[51] Ibid., 132.

[52] Ibid., 131.

[53] The case was later appealed on two separate occasions (1916 and 1918), which combined made their way to the Privy Council in London in March 1920. But the Privy Council dismissed the consolidate appeals, showing deference to the 1916 Calcutta High Court's ruling. See *Asita Mohan Ghose Moulik vs Nerode Mohan Ghose Moulik, Privy Council of the United Kingdom* (hereafter UKPC), March 3, 1920.

[54] *Ishwari Prasad And Ors. v. Rai Hari Prasad Lal, All India Reporter Allahabad* (hereafter AIR), 1927, Patna, 145–64.

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distinction between Bengali and Bihari Kayasthas, something that the Calcutta High Court did not. Justice Jwala Prasad (a Kayastha) was unsurprisingly skeptical of Sarkar's more "Brahmanical" reasoning. He argued that Sarkar failed to make the real geographical and cultural distinctions between Bengali and Bihari Kayasthas. Field and Prasad both noted that the latter rarely used the surname Das, which undermined Sarkar's etymological argument that "Das" was a corruption of "*Dyasa*" (slave), an implied Shudra origin. Prasad noted that Bihari Kayasthas such as Ishwari and Hari Prasad had "no concern with the Kayasthas of Bengal in matters, social or religious."[55] The justices also referenced colonial ethnographies that made clear distinctions between Bengali and Bihari Kayasthas: Herbert Risley's *Castes and Tribes of Bengal*,[56] William Crooke's *Tribes and Castes of the North-Western Provinces and Oudh*[57] and Jonathan Nesfield's 1885 ethnography.[58] Crooke's work in particular argued that Karan Kayasthas (the parties involved) had more in common with their counterparts farther northwest than Bengali Kayasthas.[59] Prasad entertained "considerable doubts…as to the view that…the literary caste of Kayasthas… fall under the category of *sudra*."[60] He pointed out that the 1884 judgment relied heavily upon the rituals and customs of *Bengali* and not *Bihari* Kayasthas. In closing, Prasad pointed out that no court in the United Provinces or Bihar had ruled that Kayasthas were Shudras, and that "it has been accepted without any controversy that the status of the Kayasthas as belonging to the twice-born caste has been accepted in those Provinces."[61]

Another significant thread revealed in the 1926 Patna case was how it downplayed continuous rituals as a marker of twice-born rank. It was, of course, Brahmanically anchored ritual and custom that put Kayasthas' claims on a much more defensive footing, as the 1884 case showed. Justice Prasad cited from some of the more well-known legal treatises in colonial India, including Rajkumar Sarvadhikari's "Tagore Law Lectures" (1880), which argued that while the *janeev/janoi* was "the well-known badge of the regenerate classes," it was not the sole adjudicator of varna rank.[62] Prasad conceded that Kayasthas might be "degraded *Kshatriyas*" for their relinquishment of the sword for the quill,[63] but that they remained twice-born. Prasad cited Manu's dictum that even a twice-born forsaking the sacred thread investiture

[55] Ibid., 147–48.

[56] Risley, *People of India*.

[57] William Crooke, *The Tribes and Castes of the North-Western Provinces and Oudh* (Calcutta: Office of the Superintendent of Government Printing, 1896).

[58] *Ishwari Prasad*, 157–58; and Jonathan Nesfield, *Brief View of the Caste System of the North-Western Provinces & Oudh* (Allahabad: North-Western Provinces and Oudh Government Press, 1885), 101.

[59] *Brief View of the Caste System*, 148.

[60] Ibid., 145.

[61] Ibid., 159.

[62] Rajkumar Sarvadhikari, *Principles of Hindu Law of Inheritance* (Calcutta: Thacker, Spink & Co.,1923), 830; and *Ishwari Prasad,* 149. Sarvadhikari qualified this, arguing that Shudras were uniquely distinctive in giving equal rights to both blood-related ("legitimate") and adopted ("illegitimate") sons.

[63] *Ishwari Prasad*, 149.

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(*upanayana*) would merely be *vrātya* (broken) and not *aśuddha* (impure).[64] Prasad and Field both also cited evidence that correlated caste rank with occupational heritage; namely the Jogendra Chandra Ghosh's *The Principles of Hindu Law* (1917). A Bengali Kayastha, Ghosh argued that Kayasthas were highly placed revenue and judicial officers who administered the "the laws of the Rishis and could not be regarded as Sudras."[65] Citing Ghosh, Prasad argued that caste was distinctive because *varna* correlated with occupation.[66] This echoed the same "occupation-as-*varna*" argument that Kali Prasad pushed so powerfully in his 1877 *Kayastha Ethnology*.[67] The justices also cited Gopal Chandra Sarkar's *Adoption and Hindu Law* (1891) to demonstrate that "[through] nonobservance of ceremonies no regenerate class has been degraded. If that were so, there will be no caste among the Hindus now except the Sudra."[68] It begged the question, posed by Prasad, of all the twice-born castes: why should only Kayasthas "be degraded into the category of Sudras for want of orthodoxy?"[69] The whole case demonstrated just how problematic the test of ritual continuity was in assigning *varna* rank. Occupational continuity, the court argued, was a far more enduring barometer. In the end, the case was resolved through an amicable settlement: Rai Hari Prasad relented, agreeing to give property to Ishwari Prasad worth Rs. 1,000 annually. While it was not an official adjudication of Kayasthas' *varna* rank, Justice Prasad's opinion was unambiguously clear that Kayasthas were twice-born.

The Census: Intersection of Law and Colonial Taxonomy

As we have seen, the very provincialized nature of law in colonial India prevented it from achieving any consensus regarding Kayasthas' *varna* rank. Perhaps ironically, Kayastha litigation to be recognized as twice-born had the effect of undermining their efforts. For some Kayastha parties, it was in their interests to be ruled as Shudra; for others it was the opposite. The wildly inconsistent rulings among Patna, Calcutta, and Allahabad demonstrated such. And these rulings, importantly, had a real effect farther upcountry on Kayasthas' social lives. This is why the court case attracted so much Kayastha publicity and rippled through the social fabric of north India: the 1884 ruling was called a "shock to the community."[70] The editors of *The Hindustan Review* attached significant importance to these legal matters. Sachchinananda Sinha noted: "...question of caste status is one essentially for

[64] Ibid., 155.

[65] Ibid., 149–50.

[66] Ibid.

[67] Prasad, *Ethnology*; for other Kayasthas who stressed the "occupational argument," see Gopinath Sinha Verma, *A Peep into the Origin, Status and History of the Kayasthas* (Bareli: Verman Co., 1929) and Kamta Prasad Shrivastava, *The Hindu Sociology: Being a Treatise on the Social Position of the Kayastha Community* (Benares: American Methodist Mission Press, 1913).

[68] *Ishwari Prasad*, 149–150; Gopal Chandra Sarkar, *Hindu Law of Adoption* (Calcutta: Thacker, Spink & Co., 1891), 161–162.

[69] *Ishwari Prasad*, 149.

[70] *Hindustan Review,* January 1906, 426.

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determination by a Civil Court and the point will not be conclusively set at rest until the Kayasthas have succeeded in securing a ruling from the privy Council, or at any rate of one of the High Courts, to the effect that they are legally entitled to the privileges and responsibilities, *as we are the descendants* [*sic*] *of the Kshatriyas.*"[71]

Since litigation ironically made it harder for Kayasthas to close ranks and achieve the ruling they sought, the Indian census therefore emerged as an alternative space where some form of official recognition could be secured. This was an important shift from litigation to lobbying. Since the census was not subject to similar litigation, Kayasthas could take a more manageable and controlled approach, and they put a great deal of energy into efforts to get listed as twice-born in the provincial and all-India colonial census. Here we see legalism and the colonial state's tendency to taxonomize intersect in hitherto unexplored ways. The first efforts we see toward gaining recognition as twice-born were seen in the deliberations behind the run up to the 1901 Indian Census. Kayasthas actively sought to shape the narrative among colonial ethnographers and census officials. The secretary of the Kayastha Sadar Sabha, Ram Chandra, wrote to the Superintendent of Census Operations, Richard Burn, about Kayasthas' *varna* rank. Citing rumors that they would be listed as Shudra, Chandra wrote a remarkably forceful letter. Citing numerous English and Urdu language newspapers, Chandra argued that Kayasthas could not be considered anything but twice-born. He noted that the debates over *dvija dharm* rituals were pointless, since "in marriage, death, inheritance, occupation and, in fact, in all the important [aspects] of life, there is not the slightest dissimilarity between Kayasthas and the twice born in observance of rules and laws prescribed by the shastras."[72] Here, we see that legal debates bled into the taxonomy of the colonial census.

Upon close examination, the 1901 volume for the Northwestern Provinces greatly mirrored the judicial outcomes of 1861, 1878, 1888, and 1926. Here we see a close connection between law and the colonial census. Cognizant of the ongoing debates over Kayasthas' twice-born status, the 1901 Census noted that there was great diversity in opinion: according to the Chitraguptian legend, Kayasthas were twice-born through Chitragupta's Brahmin and *Kshatriya* wives.[73] The volume also noted that certain *pandits* ruled that Kayasthas were *Kshatriyas*. The 1884 Calcutta High Court ruling and "several judgments of subordinate courts" were, however, only fleetingly noted.[74] It observed that while Kayasthas' donning of the sacred thread was "comparatively recent,"[75] the 1901 Census admitted to the ambiguity of applying legal-taxonomical categories to caste rank. In private, many regarded

[71] Ibid., 428. Emphasis is author's own.

[72] Letter from Rama Chandra to Richard Burn, in *Kayastha Samachar*, April, 1901 (Allahabad), 253. Chandra, somewhat unoriginally, cited the very same 669 Pandits' *vyvasthas* that Kali Prasad noted in 1877. See Prasad, *Ethnology*, 19–26.

[73] *Census of India, 1901 Vol. 16, Part I, NW Provinces & Oudh* (Allahabad: Superintendent of Government Press, 1901), 223.

[74] Ibid.

[75] Ibid.

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Kayasthas as a mixed caste with origins from either pure *Kshatriya* or mixed Vaishya-*Kshatriya* parentage. But their twice-born rank was still questionable. Richard Burn noted that "not a single Hindu who was not a Kayastha of the many I have personally asked about the matter would admit privately that the Kayasthas are twice-born, and the same opinion was expressed by Muhammadans who were in a position to gauge the ordinary ideas held by Hindus, and are entirely free from prejudice in the matter."[76]

Since no legal consensus was achieved between the 1916 and 1926 rulings, the 1931 iteration of the tricennial census therefore became the most important (and final version before independence in 1947) forum in which Kayasthas sought a form of official government adjudication of their *varna* rank. They became increasingly active in using a more definitive census classification to resolve the very provincialized legal ambiguities over the past few generations. Victory in the realm of the census was certainly aspirational, but it also importantly embodied a set of new struggles and categories with which Kayasthas had to reckon. In 1930, the chairman of the Meerut Kayastha Sabha, Chamanda Parshad. wrote a fairly telling letter to the Census Department. Parshad painted an ecumenical notion of Kayastha identity that covered Kayasthas who lived in the United Provinces, Punjab, Central India, Rajputana, and Bihar, generously grouping them under the "*Chitraguptavanshi*" umbrella.[77] But a closer look demonstrates that the census closely mirrored the dynamics of legal adjudication since the 1861. References to the 1889 and 1926 cases were noted. And while there was a charitable nod to Kayastha ecumenicalism, Parshad specifically excluded Bengali Kayasthas. The Calcutta rulings of 1884 and 1916 severed North Indian Kayasthas' concerns with *varna* rank from the legal fate of their Bengali counterparts. Parshad then went on to draw attention to the census plan to register the sub-castes of Brahmins, *Kshatriyas*, and Vaishyas, underscoring *dvija jati* endogamy. He wrote to the Census Department demanding that "the Chitragupta Vanshi Kayastha cannot but insist on their sub-caste details being similarly recorded."[78] Parshad was also attentive to jockeying pressure from below, citing attempts by *mochis* (shoemakers), *bharbhujas* (gram roasters), and *darzis* (tailors) to attach "Kayastha" to their names to bolster their standing in the census returns. Parshad argued that more inquiry was needed to ensure that they could not pass as Kayasthas, because it would "affect [sic] the census statistics and dignity of Chitragupta Vanshi Kayasthas *who are Kshatriyas*."[79] Perfectly reflecting how colonial legalism and colonial taxonomy cross-pollinated each other, Parshad referenced the 1926 Patna High Court case to vindicate Kayastha claims to twice-born status.

A close reading of the 1931 provincial and all-India Census volumes sheds light on how colonial taxonomy reflected the vagaries in Indian legal history among Calcutta, Patna, and Allahabad. Here, colonial taxonomy reflected not

[76] Ibid., 222–23.

[77] Home Dept/No. 45/30/Public, "Sub-Castes of Kayasthas in the Forthcoming Census," December 21, 1931, National Archives of India, New Delhi (hereafter NAI).

[78] Ibid.

[79] Ibid. Emphasis is author's own.

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so much Dirks's "ethnographic state," but rather mirrored shifting, contested, and sometimes frustratingly complex legal dynamics. The all-India volume did not offer full closure, but rather gave a charitably ambiguous recognition that Kayasthas achieved the *varna* rank that they sought. The "Imperial Tables" under Section XI (Professional – Administrative and Ministerial) listed them with Prabhus and Karan Kayasthas.[80] It also seems that the occupational debate—that Kayasthas made so forcefully and was upheld by the Punjab ethnologist Denzil Ibbetson—greatly colored the census. But perhaps most crucially, Kayasthas were listed as an "interior caste."[81] This implied their twice-born rank without actually specifically stating it. This reflected the pock-marked legal landscape when it came to assigning legal caste standing, and was perhaps the best that Kayasthas could hope for at the all-India level.

When it came to the northern Gangetic regions, though, the victory was less ambiguous. In its enumeration of literate castes, the census referred to the "twice born and literate castes, such as Kayasthas."[82] This was as clear as it got. The North-Western Provinces and Oudh (NWP & O) Census was punctuated with ancillary references that cast little doubt about Kayasthas' *varna* rank: they were referred to as "high castes."[83] And in the volume's analysis of dowry they were listed with the very groups with whom they had sought association for so long: Brahmins and Rajputs.[84] In neighboring Bihar, the 1931 Census did not explicitly group Kayasthas into a *varna*, but rather associated them with Brahmins in terms of clerical work and occupational rank.[85] Combined, these two volumes reflected the legal adjudications that implied Kayasthas' twice-born rank in Allahabad (1889) and Patna (1926).

The 1931 volume for Bengal, though, more clearly mirrored very regional ambiguity in adjudicating Kayasthas' *varna* rank. It outlined how court rulings brought benefits to identifiable caste groups who sought to bolster their social standing. It further noted that recognition as "twice-born" was something highly sought after by marginal groups who sought upward mobility, such as Jats and Kayasthas.[86] But for Bengali Kayasthas, the volume was disturbingly ambiguous. While it associated Kayasthas the with "upper classes" of Brahmins and Vaishyas, it also observed that the label "Kayastha" pulled their rank in Bengali society downward. Significant numbers of Shudras over the past 30 years had entered "Kayastha" on their census returns, which hinted at the very "ritual equaled *varna*" argument that the Calcutta justices made in 1884 and 1916, who in turn cited Sarkar's *Darpana*. And those Calcutta High Court rulings were inescapable. The volume admitted that while the various provincial and Privy Council

[80] *Census of India, 1931, Vol. II – Imperial Tables* (Delhi: Manager of Publications, 1933), 529.

[81] Ibid., 606.

[82] *Census of India, 1931, Vol. XVIII, Part I - United Provinces of Agra and Oudh* (Allahabad: Superintendent of Government Press, 1933), 310.

[83] Ibid., 612.

[84] Ibid., 104.

[85] *Census of India, 1931, Vol. VII, Part I – Bihar & Orissa* (Patna: Superintendent, Government Printing, 1933), 192.

[86] *Census of India, 1931, Vol. V, Part I – Bengal & Sikkim* (Calcutta: Central Publication Branch, 1933), 426.

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rulings were contradictory ("the legal position is at least obscure") it clearly noted that in Bengal, "Kayasthas have *invariably* been held to be Sudras."[87] But perhaps most tellingly, the census articulated the limits of the law's ability to adjudicate caste standing: "authoritative decisions in the Privy Council and the high courts as regards the varna specific castes in Bengal appear to be very rare indeed and I am not aware of any instances except in the case of Vaidyas, Kayasthas and Shahas in which an issue has been raised in Bengal and a decision given up on it that a caste belongs to the twice born class or [sic] the Sudras."[88]

Conclusion

This article has examined the novel ways in which caste was constructed through colonial law. It has argued that focusing on a particular social group—in this case Kayasthas—sheds fresh light on how caste identities were fashioned in the intersection of inheritance disputes, court proceedings, and Indian authored legal scholarship. It has argued that by threading together different property disputes between courts in Allahabad, Patna, and Calcutta, we gain fresh insight into the role colonial law played in the construction of caste categories. Kayasthas had to prove to judges that their customs, occupations, and lineages were decidedly *dvija*. But a close reading of the various cases indicates that there was no consensus as to what constituted twice-born rank, both in Indian society and among judges. Courts had great interest in assigning *varna* as a tool of social stability and to expedite legal adjudication. But colonial courts, if anything, produced an inconsistent body of case law that was ultimately unable to affix Kayasthas' *varna* rank. Bernard Cohn once emphasized law's ability as an "instrumentality [sic] of rule"[89] in creating more rigid caste categories. Yet when we look more closely at the legal evidence, colonial law looks far less powerful. And while Dirks and Bayly have argued that colonialism shaped modern conceptions of caste, both have largely overlooked the role of law in these processes. By shedding light on caste's "legal archive," this article has sought to make a novel contribution to our historical literature. And while debates over what constituted twice-born rituals and purities raged by 1900, case law did little to settle the matter for Kayasthas. Nandini Chatterjee has recently argued that law in Indian history has largely been used to evaluate the power of the state.[90] This article has (perhaps inevitably) done precisely that. But in doing so, it has also sought to draw attention to the novel ways in which colonial law intersected with the construction of caste/*varna* identities in Indian society.

There were various reasons why colonial law was tepid in assigning fixed *varna* ranks. First, it was limited by its own codes. Act XII (1887) Section 18, which applied to civil courts in Bengal, NWP, and Assam, extended Section 11 of the

[87] Ibid., 471. Emphasis is author's own.

[88] Ibid., 426.

[89] Bernard Cohn, "Law and the Colonial State," in *History of Power in the Study of Law: New Directions in Legal Anthropology*, ed. June Starr and Jane Collier (Ithaca: Cornell University Press, 1989).

[90] Nandini Chatterjee, *Negotiating Mughal Law: A Family of Landlords Across Three Indian Empires* (Cambridge: Cambridge University Press, 2020).

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Code of Criminal Procedure (CCP) to civil courts: "in all such cases, the determination of the caste question is *merely incidental* to the decision of the principal question of a civil nature."[91] Moreover, the colonial state lacked a central judiciary to resolve differing bodies of case law. The varying rulings and rationales from courts in Calcutta, Allahabad, and Patna underscored the provincialized legal landscape of colonial India. Therefore, the closest colonial law came to caste adjudication was the tricennial census. This is why Kayasthas shifted their efforts from litigation to lobbying census officials. The implicit legal recognition of Kayasthas as twice-born in Allahabad and Patna, as we have seen, shaped Kayasthas' entries in the Bengal and NWP census volumes. The other factor was legal argumentation: whether continuous ritual, contemporary occupation, inheritance practices, or lineage constituted *varna* rank. Different justices and arguments were made between northern and eastern India. Ascertaining caste identities to adjudicate inheritance disputes proved a vexing undertaking for a colonial state that prided itself on its statistical mastery and taxonomy. Here, Dirks' "ethnographic state"[92] looks far less powerful when we consider how one arm of the state —law—was inconsistent in its ordering of Indian society. In most cases, the courts' rulings reflected dynamics in Indian society rather than actively molding them through immovable legal categories. When viewed from this angle, law was not so much the "state's emissary"[93] as it was a platform upon which debates over what constituted "twice-born purity" could be played out.

This article has also outlined the connections between legal history and caste taxonomy. Our existing literature has demonstrated that British legalism privileged a high-caste, almost Brahmanical jurisprudence in colonial India.[94] We see flickers of this privileging here. The continual referencing of the categories *varna* and *dvija* had the effect of making them more permanent fixtures of the juridical-lexical landscape. Kayasthas themselves never discounted the category, but anxiously advocated to be included within its fold: whether through litigation or lobbying. Shyamcharan Sarkar's 1867 *Vyavashtá Darpana* perhaps had the most significant impact in setting the tenor of *varna* debate, greatly shaping the 1884 and 1916 rulings. His was the most commonly cited source of *Mitākṣarā* legal authority in most cases, in both affirmation (1884 and 1916) and refutation (1889 and 1926). For what do we make of the very category "twice-born?" The various cases examined here strongly suggest that while *dvija* was a long-standing *concept* in Sanskritic jurisprudence, colonial law further entrenched it by making it the *fulcrum* upon which these inheritance cases were decided. But this did not equal legal consensus, as the disagreements among judges over two generations demonstrated. These cases' Brahmanical-normed caste disputes, also, open up interesting comparisons with the Kayasthas of the Deccan. Karen Leonard has argued that Hyderabadi Kayasthas' caste identity was mostly shaped through

[91] Dinshah Fardunji Mulla, *Jurisdiction of Courts in Matters Relating to the Rights and Powers of Castes* (Bombay: Caxton Printing Works, 1901), 6–8. Emphasis is author's own.

[92] Dirks, *Castes of Mind*.

[93] Upinder Baxi, "'The State's Emissary:' The Place of Law in Subaltern Studies," in *Subaltern Studies,* VII, ed. Ranajit Guha (Delhi: Oxford University Press, 1992), 247–64.

[94] Jonathan Duncan Derrett, *Religion, Law and the State in India* (London: Faber & Faber, 1968); and Cohn, "Law and the Colonial State."

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kin relationships and marriages, far more than through Brahmanical conceptions of *varna* and caste rank.[95] Compared with their southern counterparts, northern and eastern Kayasthas were almost *forced* to fashion their caste/*varna* ranking through Brahmanical terms of debate. (Were Kayasthas *dvija*? What was their *varna*? Were they Shudra or *Kshatriya*?). These questions and their Sanskritic jurisprudential scaffolding punctuated the various cases that played out in Allahabad, Patna, and Calcutta.

Since the High Courts of Allahabad, Patna, and Calcutta offered no consistent adjudication of the matter, the census became Kayasthas' the best hope for official recognition. Richard Samurez Smith once hinted at a connection between caste as a governing category ("ruled-by-record") and the census, seeing the utility of caste for administrators once it became regularly documented in the census.[96] This article has shed light on this very transition and its connecting sinews. It has argued that the census reports at the all-India and provincial level reflected the law's uncoordinated inability to assign *varna* rank. This structural and jurisdictional inconsistency greatly informed the taxonomy of caste, particularly in the tricennial censuses after 1901. The Bengal volumes bore the imprint of the 1884 Calcutta ruling, while the NWP & Bihar volumes reflected the more successful rulings in Allahabad (1879) and Patna (1926). Here we see less of a "legal despotism"[97] and more of a chaste legal culture that was unable to assign the very literate and highly placed Kayasthas a definitive *varna* rank. This largely reflected the pulse of debates in Indian society over what constituted *varna*. Colonial law undoubtedly created new legal norms and categories over which Indians had little control. But in the case of caste, legal opinions on *varna* were inconsistent when it came to ranking a supposedly "essential" quality of Indian society: caste. The courts' rulings were contradictory, contested, and above all, deeply provincialized. Kayasthas' arguments, coupled with barristers' and judges' opinions, complicated it further.

This brings us back to the broader interplay between caste and colonial law in India. Ritu Birla has demonstrated how Marwari families successfully positioned themselves within colonial law as "legitimate" economic actors and bearers of capital.[98] There were some parallels here, albeit in a different context. Unlike Marwaris, Kayasthas' *varna* rank was historically far more ambiguous, which is why it was subject to such (roundabout) litigation and contestation. Moreover, Kayasthas were somewhat less "successful" in engaging the colonial legal system. The provincialized nature of colonial case law (Calcutta, 1884, 1916 vis-à-vis Allahabad 1889, Patna 1926) rendered a definitive *dvija* rank elusive. Ironically, Kayasthas achieved more "success" not through the courts, but through the census. This raises interesting questions for future research about the ability of social groups to utilize colonial law for social and caste advantages. This article has also

[95] Karen Leonard, *Social History of an Indian Caste: The Kayasths of Hyderabad* (Berkeley: University of California Press, 1978), 3, 294.

[96] Richard Samurez Smith, "Rule-by-Records and Rule-by-Reports: Complementary Aspects of the British Imperial Rule of Law," *Contributions to Indian Sociology* 19 (1985): 172–73.

[97] Radikha Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 1998).

[98] Birla, *Stages of Capital.*

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found parallels with Rosalind O'Hanlon's examination of seventeenth-century Brahmin critiques of western Prabhu Kayasthas' social rank.[99] Kumar Cheda Singh Varma's polemical *Kshatriyas and Would-Be Kshatriyas* and Shyamcharan Sarkar's *Vyavashtá Darpana* were more recent manifestations of high-caste dismissal of Kayasthas' *Kshatriya* claims: and by extension *dvija* rank. North Indian Kayasthas' residual attachment to an Indo-Islamic cultural past and culture made them doubly suspicious in Brahmanical and Rajput eyes. And while the question was effectively similar ("what *varna* are Kayasthas?"), in colonial north India the context, argumentation, and stakes were significantly different. In colonial north India it was more about enforceable law and codification rather than pure jurisprudence. In colonial courts, the debates were not centered on Brahmin authored Sanskrit treatises and Kayastha histories but rather drew upon a more diverse body of evidence: colonial ethnography, personal witnesses, district memoirs, and Sanskritic jurisprudence (mainly casual interpretations of it). The aperture of evidence and shadow of state power were, therefore, distinguishing factors from pre-colonial debates. And the limits of provincial jurisdiction complicated it further. This "legal limbo" certainly assisted independent India's Nehruvian-socialist decision in 1951 to cease the collection of caste census data, save that of *adviasis* and untouchables. All told, this article has attempted to not only shed light on the value of legal sources for our historical understandings of caste, but also to raise important questions about the ability of colonial law to shape Indian society and its supposedly "timeless" social categories.

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[99] Rosalind O'Hanlon, "The Social Worth of Scribes: Brahmins, Kāyasthas and the Social Order in Early Modern India," *Indian Economic and Social History Review* 47 (2010): 563–69.

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