Transcultural Intimacies in British Burma and the Straits Settlements: A History of Belonging, Difference, and Empire

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Introduction

Burma (Myanmar) has received a great deal of attention of late, not least for its ongoing sectarian violence. Since 2012, the country has witnessed constant persecution of its Kalâ ("brown" foreigner, mainly Indian) and Muslim populations, particularly the Rohingya, a minority Muslim ethnic group based in the western Rakhine state.\(^1\) The period has also seen the ascent of militant nationalist movements such as 969 and its successor Ma Ba Tha (an abbreviation of the Burmese “Association to Protect National Culture and Buddhism”), and the forcible displacement of an estimated 125,000 or more Rohingya and other so-called Kalâ men and women. Much of this violence has been incited by vitriolic attacks launched by the likes of the now-infamous monk Ashin Wirathu, who appeared on the cover of *Time* in July of 2013 with the header “Face of Buddhist Terror.” Such identification would seem justified given the rhetoric of an interview he had recently given to *The Guardian*:

In every city, we are being raped. In every city, we are being harassed and insulted. In every city we are being ganged up on and tyrannized. In every city, there are many barbaric Muslims ... in every sermon, we [Burmese Buddhist monks] mention stories about girls who, after getting together with Muslims, become ungrateful daughters and disobey and insult their parents; about girls who, after getting together with Muslims, are forced to follow Islam against their will and in misery; and about girls who are killed or, if not killed, are abused and brought to tears every day for refusing to accept Islam.\(^2\)

Through such interviews, sermons, and Facebook posts, Ashin Wirathu has campaigned against what he characterizes as an insidious Muslim plan in and beyond Burma to “devour the Burmese people, destroy Buddhism, and Islamicize Myanmar.” Wirathu was instrumental in drafting and mobilizing support for the controversial “national
race and religion protection bills,” the crowning achievement of Ma Ba Tha to date. Signed into law in September 2015, the laws outlaw polygamy and restrict interfaith marriages by requiring that non-Buddhist men first convert and obtain permission from the Buddhist woman’s parents and local authorities.4

What has gone largely unnoticed among even Burma scholars and observers is that this gendered, racialized, and sexualized nationalist discourse on the Kalâ Muslim overwhelming of Burma has a long genealogy dating back to at least the late colonial period, when intimate relations between Burmese women and foreign men were widely denounced as an assault on Burmese tradition and nation.5 Almost a century ago, prominent monks—including the Arakanese U Ottama (1879–1939), known as the “Gandhi of Burma”—similarly campaigned with the help of the country’s pioneering women’s organizations for legislative reforms that would “protect” Burmese women in interfaith marriages. Beginning in 1921, members of various patriotic women’s associations spoke publically against intermarriage between Burmese women and non-Buddhist men, leading to the drafting of the Buddhist Marriage and Divorce Bill (1927). The bill served as the basis for the Buddhist Women’s Special Marriage and Succession Act (1939).6 This was enacted at the end of a decade bookended by the anti-Indian riots of 1930 and 1938, the most intense and protracted outbursts of communal violence under British rule. In both cases, riots erupted in Rangoon before spreading throughout the country. Much like the communal violence that has unfolded since 2012, the Burmese were mostly on the offensive, and the casualties were mostly Indians.7 Incidentally, both riots were fuelled by alarmist discourses not only about “the Indian immigrant” but also about intermarriage between Burmese women and Indian men.8 The government’s interim report on the 1938 riot even asserted that the “mixed marriage problem” was one of the main causes, declaring that “It became evident to us that one of the major sources of anxiety in the minds of a great number of Burmans was the question of the marriage of their womenfolk with foreigners in general and with Indians in particular.”9

The following year, the newly established left-wing, nationalist Kyi pwa yei (Progress) press published what is probably the most extensive and elaborate diatribe against intermarriage and miscegenation. U Pu Galay’s 350-page Kâbyâ pyatthanâ (The Half-Caste Problem) claimed that marriages between Burmese women and Indian men, and the Kâbyâ (half-caste) children of such unions, threatened a spiraling destruction of the Burmese race and culture. The problem, as he saw it, was as follows:

It’s worse to be half-caste in mind than to be half-caste in body; even if a person happens to be half-caste in body, if he or she lives in Burma and will die in Burma, it would be fitting for him or her to think like a Burmese person. ... [E]very person who lives in Burma and dies in Burma ought to share one blood, one soul, with Burmese people; he or she should not stray from or get in the way of the struggle for Burma’s independence.10

While U Pu Galay conceded that “a person who is not mixed is truly rare” and that all human beings are half-caste in one way or another, he was most troubled that the Kâbyâ were not Burmese in blood or soul.
Then, as now, unions between Buddhist women and Kalâ/Muslim men were condemned in the name of religion and race. The image of the woman oppressed by “others” was put into the service of nationalist, masculinist discourse seeking to discipline women, family, and nation. Then, as now, Islam was seen as an infectious religion, pervading Burma’s national body through conversion and migration. Then, as now, the alarmist discourse about “foreign races” growing in number became a rallying cry for militant nationalist movements. Then, as now, nationalists sought to assert their dominance over internal “others” and demanded overt reassurance by Burmese women of their fidelity and obedience to their men, race, religion, and nation.

A global perspective reveals that Burma was hardly exceptional. At the turn of the twentieth century, anti-Asian race riots shook the western coast of North America. The transnational Orientalist discourse of “The Yellow Peril,” “The Dusky Peril,” and Asian exclusion found in North and South America, England, Australia, and New Zealand circulated not only among white settler societies but also among (non-settler) colonies in Asia. In the neighboring Straits Settlements of Penang and Singapore, for example, ideologues expressed concerns about the political, social, and economic marginalization of Malays by non-Malays and even “foreign” Muslims—namely the Jawi Peranakan (also known as Jawi Pekan), whose parentage was often Indo- or Arab-Malay.

As early as 1907, the Malay-language Utusan Melayu (Malay Messenger) depicted Chinese and Indian immigrants as the “enemies” of the Malays and pleaded with the colonial administration to protect them from being “removed from their own country by foreign races who possess great greed and a lack of manners, and are accustomed to seize people’s property by means of trickery.”11 Whereas some Jawi Peranakan—such as the editors of Singapore’s al-Imam—saw themselves as different from local Malays at that time, if allied to them by religion and deserving of respect and emulation, by 1923 Haji Abdul Latif, the Jawi Peranakan editor of the monthly English-language journal The Modern Light, would react to such distinctions and criticism with his article “An Argument in Favour of Accepting Jawi Peranakan and Arabs as Malays.”12 Abdul Latif begins by admitting that indeed there were new and “mercenary” immigrants who had no intention of adopting the “Malay nationality,” even if they had Malay wives:

It is remarkable that they avoid Malay society as much as possible and in business invariably engage men of their own kind as assistants and servants. If they have children by Malay women their children will be brought up according to their national custom and ideals, and more often than not will be sent back to their own country for education and cultural upbringing; while they themselves will return to their ancestral homeland the moment they make their fortune, to die and be buried among the bones of their forefathers.13

While granting that such men “have no rights whatever to claims to be Malays,” Abdul Latif also points out that “there are men today who are descendants of foreign settlers who in their time were accepted by their meritorious service to the Malay nation as Malays, men who speak with Malay language, practise [sic] the Malay adat [tradition] and religion and have the interests and welfare of the ‘Malay nation’ at heart.”14 He then
proceeds to give a detailed account of one such Arab-Malay man, the Hon. Sheikh Ahmad bin Sheikh Mustapha, and asks his readers to consider if it is fair to deprive a man such as Sheikh Ahmad or his children of Malay national rights and privileges. He concludes by emphasizing that:

a nation is constituted not by a collection of people with the same origin of "blood" but by a collection of people with the same ideals and ideas for their common interests and welfare; and this man (like many others of the same pedigree as he, whose merits we can quote if necessary) has proved beyond the shadow of a doubt that he is working for the interests and welfare of the Malays.15

Despite such efforts to identify with the Malay community, antagonism toward those not "truly Malay" (betul Melayu) continued to grow in the 1920s. In 1926, a group of English-educated Malays founded the Singapore Malay Union, the first Malay political organization, formed with an explicit membership policy restricted to those of "Malay stock." By the late 1930s, Chinese, as well as "Malays possessing Arab blood," "Malays possessing Indian blood," and others of mixed racial and ethnic origins, were frequently portrayed as intruders who defiled the "Malay race" (bangsa Melayu) by marrying Malay women.16

I begin with these acrimonious debates about Asian immigrants, intermarriage, and miscegenation not to make the obvious point that there is a long and often conveniently forgotten history of anti-Asian racism in Southeast Asia. Rather, I wish to draw attention to the curious fact that, despite the salience and resilience of discourses that pathologize intermarriage between "Indian," "Arab," and "Chinese" foreigners and native women, scholars have seldom felt compelled to explore the history of these transcultural intimacies. This is all the more surprising given the voluminous literature that has developed on the intimacies of empire. Since the pioneering work by Ann Stoler revealed that "matters of intimacy"—that is, sex, sentiment, domestic arrangements, and child rearing—were "matters of state," scholars have made significant progress in interrogating the interplay between the macroeconomics of colonialism and the micro-dynamics of the intimate.17 Yet, this scholarship, echoing the dominant black-white paradigm in the Americas, remains narrowly preoccupied with relations between Euro-American colonizers and native women, and has thus rendered some bodies and socialities more epistemologically relevant than others. In colonies such as British Burma and the Straits Settlements, though, unions between local women and Asian foreigners, whose mass migration was encouraged by the various European colonial administrations, were far more prevalent. They were also more relevant to emerging political and social imaginaries. Asian intimacies functioned as sites for confronting questions of national affiliation and who could be considered and counted as "Burmane" or "Malay." By and large, it was against Asian migrants and Asians of mixed heritage such as the Indo-Burmese and Jawi Peranakan that Burmese and Malay national identities were formulated.

These facts have perhaps eluded historians of colonial intimacies due to their emphasis on the archives and priorities of the colonial state. Eurasians represented a consistent source of anxiety for European colonial administrations throughout Southeast Asia.
Government efforts to identify, enumerate, and “protect” Eurasian populations—including the removal of Eurasian children from native mothers, families, and homes—have been abundantly documented. Yet colonial administrations demonstrated no such interest in tracing and tracking mixed Asian populations. The categories “Sino-Burmese” and “Sino-Malay” never entered the census in the British colonies of Burma, Malaya, and the Straits Settlements. And neither did Malay vernacular terms, such as anak awak, that referred to the children of Siamese or Burmese fathers and Chinese or Baba (Straits-born Chinese) mothers. The only classifications available for people of multiple or mixed racial identification were “Eurasian,” “Indo-Burman,” “Jawi Peranakan,” and “Zerbadee”—(the Burmese equivalent of Jawi Peranakan derived from the Farsi compound for “below the wind”).

The last term entered the census in British Burma in 1891 when only twenty-four individuals were recorded. By the same token, the fast-fading Jawi Peranakan would be omitted altogether from the census by the twentieth century. Interestingly, the British administration had only employed the terms Jawi Peranakan, Zerbadee, and “Indo-Burman” to refer to the descendants of Indian Muslim fathers and Malay Muslim or Burmese Buddhist mothers. This is peculiar, given both Jawi Peranakan and Zerbadee appear at times to have had a more capacious and ambiguous meaning. For instance, in their dictionary published in 1894, colonial officers Hugh Clifford and Frank Swettenham defined Jawi Peranakan as “the name given by Malays to the offspring of a Malay and a native of India.” In this instance, Islam was not an explicit part of the equation. Some thirty-six years later, though, C. A. Vlieiland, the author of the 1931 Census of British Malaya, remarked that while Europeans regarded the cognate Jawi Pekan as meaning “a mixture of Indian and Malay blood,” Malays “frequently applied [the term] to an Indian who has in fact no Malay blood in his veins, but is a Muhammadan who has settled and married in Malaya.” Further north, John Nisbet, who was the Conservator of Forests in British Burma from 1895 until 1900, had defined Zerbadee as “the children of Indian and Burmese unions.” Writing in 1920, R. Grant Brown, the longtime revenue officer in Burma, similarly described Zerbadee as “a person of mixed Indian and Burman descent.” Even so, neither Jawi Peranakan nor Zerbadee was ever used administratively to include the offspring of non-Muslim Indian men and local Burmese or Malay women, for whom the census provided no separate category.

This chapter therefore explores these neglected and erased intimacies of empire, focusing on “inter-Asian” or “South-South” transcultural families and companionships that resulted from the immense human movements across the British-dominated Bay of Bengal. It draws on civil court cases dealing with marriage, adultery, divorce, and inheritance to illuminate the lives of men and women who seldom left behind personal documents such as autobiographies, memoirs, letters, or family portraits.

By turning our attention to intimate encounters among colonial bodies, my goal is to offer a microhistory of women and men who have been dematerialized and disembodied by the intimate turn in histories of empire. Moreover, I highlight important commonalities in the way that affective ties and family affairs were managed and confronted, and certain forms of belonging and estrangement were normalized
and legitimated. This analysis not only unravels the tangled threads of colonialism, migration, race, law, and intimacy; it underscores striking patterns and parallels in the way that transcultural/transracial/transnational alliances were limited in colonial Asia in the nineteenth and twentieth centuries.

Ties that (un)bind

Hailing from a Shia Muslim family in Calcutta, by the middle of the nineteenth century, the brothers Abdul Hadee and Hadjee Hoosain Bindaneem were merchants in Rangoon. Having had a less than prosperous career, though, Abdul Hadee returned to Calcutta a poor man sometime before his death in March 1886. Though he had no property to speak of, he apparently left a will in which he bequeathed everything to his (much wealthier) brother, noting that he had a child in Burma and wished that his brother should give them "something."25 Hadjee Hoosain, on the other hand, made quite a fortune in Rangoon, though he had no children prior to his own death there in February 1890. Having thus died without issue, a search began for Abdul Hadee's son in Burma in order to bequeath unto him a rather sizeable estate. Thanks to the efforts of "some enterprising gentlemen at Calcutta," it was soon discovered that Abdul Hadee had once married a Burmese woman by the name of Mah Thai and had indeed had a son, Abdool Razack a.k.a. "Moung Hpay."26

The story of Abdul Hadee, Mah Thai, and Abdool Razack comes to us by way of a published collection of case laws known as The Law Reports, Indian Appeals. Such cases had reached the Privy Council in London, which, given the extraordinary reach of the British Empire, at one time served as the final court of appeal for more than a quarter of the world's population.27 Through Mah Thai's testimony, we know that her marriage to Abdul Hadee, which took place sometime around 1854, was first proposed by her sister in Rangoon. Mah Thai had been married once before but was by now divorced and living with her parents in her native village of Mangi, about a half day's journey from Rangoon, where Abdul Hadee came to meet her. Recounting her first encounter, Mah Thai recalled that she asked him, "if he would look after her and cohabit with her for a long time," to which he replied that he would.28 Abdul Hadee then visited her several more times before their marriage. On the day of the marriage, Mah Thai was placed "in an inner room," and was asked by someone in the outer room if she loved him and consented to the marriage.29 Mah Thai's description of her marriage was recorded as follows:

My husband said something which I did not understand. Abdul Hadee said he would marry me according to Kala custom. I agreed... I said he would have to give dower according to custom among Kalas. I did not understand; but it was said it must be according to Kala custom, and so I said he must give dower according to Kala custom.30

Mah Thai then moved to Rangoon to live with Abdul Hadee after what must have been a Muslim marriage. She never met his brother Hadjee Hoosain or any of his relatives,
and did not know why they did not come to see her. She also recalled that she was not allowed to go to the mosque with her husband. As she explained:

I know nothing about the Mahomedan religion. I have all my life lived and worshipped as a Burman. While cohabiting with Abdul Hadee I worshipped as he did. As a long time has elapsed, I have forgotten. I could repeat after him; but have forgotten now. He repeated his prayers in some Kala language; I don’t know what language. I repeated in the language he used; I did not understand the meaning of a single word ... I know there is a Mahomedan mosque here. I wasn’t allowed to go to it; I had to stop at home. I know that wives of Moguls go to the mosque; I didn’t go, because Abdul Hadee would not allow me to go. I said I wanted to go; but he wouldn’t allow me.31

About a year and a half later, Mah Thai returned to her mother’s home to give birth. Upon their son’s birth, she sent a message to her husband who replied that he was too busy to come, but sent money for expenses and a message to her parents to look after her. Mah Thai remembers that he came to see her only twice thereafter: first, about six months after, when Abdul Hadee gave their son a Muslim name: Abdoool Razack. He wrote the name on a piece of paper, which Mah Thai had copied on a palm leaf for fear it might be lost. Abdul Hadee returned six months later, hoping to take his wife and son with him to Rangoon. Yet Mah Thai refused, explaining that “she was not well yet and that the child was not old enough.”32 She never heard from her husband again, although he continued to reside in Rangoon for the next twenty years or so. In the words of Lord Macnaghten, who delivered the judgment for the Privy Council:

He was at that time apparently in prosperous circumstances, but he made no provision for her or for the child ... Mah Thai was very badly off, but she never applied to her alleged husband for assistance, nor did she make any attempt to see him, though she knew where he lived, and he had, she said, been kind to her while they cohabited together, and she liked her life with him. At the end of two years, or four years as she says in one place, she married a Burman by whom she had seven children.33

Abdoool Razack was raised by Mah Thai’s parents, who gave him the Burmese name Moung Hpay, and lived the life of “an ordinary Burmese peasant,” that is, until he was “discovered” by the Calcutta gentlemen at the age of thirty-five.34

Such life stories were not uncommon in colonial Burma. After all, of the 28 million or so people who emigrated from the Indian subcontinent between 1840 and 1940, 12–15 million went to Burma, while another 4 million went to Malaya and the Straits Settlements.35 In fact, prior to the interventions of Sunil Amrith, it often went unnoticed that Southeast Asia was host to the largest Indian and Chinese migrant populations the world over for much of the late nineteenth and early twentieth centuries. Governed as outposts of Britain's Indian territories, Burma and the Straits Settlements—both treated as part of the British Raj and then under the sovereignty of the Bengal Presidency until
endowed with legislative authority in 1897 and 1867, respectively—promised security to bureaucrats, merchants, moneylenders, and laborers from various regions of British India and Ceylon.

Unsurprisingly, the disproportionately high male population among these new migrants led to a rapid growth in relations with local women.36 Some, such as the marriage between Mah Thai and Abdul Hadee, were short-lived. As often as not, they were cases of desertion or divorce by the wife, rather than the husband. Take, for example, the story of Ma Saing and Kader Moideen. Ma Saing, a Burmese Buddhist, was fifteen when she married Kader in 1896 “according to Mahomedan rites.”37 In 1901, she sued for divorce on the grounds of cruelty—a charge she subsequently dropped—and apostasy. Kader, for his part, testified to the Chief Court of Lower Burma that Ma Saing had eloped with one Cheeper Meera Moideen and, upon his initiating court proceedings against her, she notified him through her lawyer of her renunciation of Islam and “re-conversion” to Buddhism. The court discounted his allegation that she apostasized only for the purpose of annulling her marriage to be with her new lover, and determined that the marriage had, indeed, been effectively dissolved by her act of notifying Kader that she had “re-converted.”38

Another marriage between a Burmese Buddhist woman and a Muslim man shared a similar trajectory, though it was far more fleeting. Ali Asghar and Mi Kra Hla U only lived together for seven days in 1916 before the latter abandoned her husband. Ali then sued for the restitution of conjugal rights on the basis that Mi Kra Hla U had converted to Islam in order to be married to him according to Muslim rites. Like Kader, Ali Asghar lost the case due to his wife’s reconversion to Buddhism being deemed cause for the termination of the marriage.39

Few intermarriages were cut short by willful acts of severance. When Soolong had married an “Arab Muslim” by the name of Shaik Allie bin Awal Thalap in Singapore, little did she know that she would be widowed with three young daughters within the decade. In her affidavit, filed with the Supreme Court of the Straits Settlements in 1878, Soolong described their marriage as follows:

I the said Soolong for myself say, I am a Malay, and was married about twenty years ago to one Shaik Allie bin Awal Thalap, by whom I had three daughters, born during the first three years subsequent to my marriage, namely Zannah, who is since dead, and Salmah and Fatimah, the plaintiffs above named. My husband, the said Shaik Allie, died about three years after the birth of my youngest daughter, the above-named Fatimah, leaving me in such a state of penury, that I was obliged to apply to relations and friends for assistance to enable me to defray the expenses of his funeral.40

Soolong worked as a nursemaid to provide for her daughters for about four years after the death of Shaik Allie, when she, like Mah Thai, turned to her family for help. Salmah and Fatimah were taken in and raised by her sister Mandak and her husband Mohamed Mustan, until his death in 1877, and solely by Mandak thereafter. According to Soolong, neither she nor her daughters received support from her late husband’s family after his death, although she admitted that his brother Shaik Omar bin Sahlaf
had given Salmah and Fatimah “a present of a Sarong and twenty-five cents apiece,” and proposed to take them with him to Batavia to look after them.\footnote{41}

While it is impossible to develop a clear picture of the relationship between Shaik Omar and Salmah and Fatimah, the fact that he later represented Fatimah (then age seventeen) against her mother Soolong is telling. The dispute arose from Fatimah’s decision to marry Ismail, described as “a Mohamedan Kling”\footnote{42} Soolong apparently objected to the marriage, arguing that Ismail, not being Arab, was unworthy of her daughter, and sued successfully for an injunction restraining the consummation of the marriage. Seeking to dissolve the injunction, Fatimah had apparently found an ally in Shaik Omar. It thus seems that Fatimah’s ties with her uncle may not have been as tenuous as Soolong insisted, and even fleeting intermarriages created wide and lasting kinship networks.

Other intermarriages certainly endured. When Karim Khan died in 1907, he had been joined to Ma Kye for over twenty-seven years. They had married “according to Mussalman rites” and had four children.\footnote{43} Together they had built a lucrative paddy-trading and money-lending business, managed largely by Ma Kye, which more than supplemented Karim’s modest income as a hospital assistant on the Burma Railways and from his private medical practice. This income allowed the couple to finance the expensive medical training of Abdul Rahman Khan Laudie, Karim’s son from another marriage, first in Rangoon and eventually England, as a result of which he attained the position of Captain in the Indian Medical Service.\footnote{44} Thanks to the business, too, Karim and Ma Kye had also acquired sizable land holdings, considerable enough in 1914 to induce Abdul Rahman, by then a civil surgeon in Punjab, to sue Ma Kye for possession of the land in the Chief Court of Lower Burma.

Also tucked away in the documents of the Chief Court of Lower Burma is the marriage of Ma Me, a Buddhist Burmese woman, and Seniyappa Anamalay, a Tamil migrant. Ma Me had predeceased Seniyappa and, in 1905, the widower applied for letters of administration to her estate. Ma Me’s brother, Po Lan, objected, claiming that Seniyappa was not Ma Me’s legal husband. Seniyappa’s testimony, in which he described his marriage, was recorded as follows:

The appellant [Seniyappa] when asked his description said that he was born in Madras, and that he was by race Sudra. Later on in his evidence he said he was from birth a pariah. He asserted that Ma Me was his wife, and that he and she had married 16 or 17 years previously. There was no ceremony but they agreed to live together, and did so until she died. They had no children. She used to cook food for him, and he used to eat with her. All along he used to go to the Hindu Temple, and he used to go with her to the Pagoda and to Pongyi Kyaung [monastery]. He professed to know some Burmese prayers. There was some evidence that the two were regarded as man and wife.\footnote{45}

The chief justice, who decided the case in the widower’s favor, acknowledged that “a Hindu of one of the castes recognized by the Hindu faith cannot lawfully marry anyone who does not belong to the caste to which he or she belongs.”\footnote{46} Yet, he found in Seniyappa’s account of his life with Ma Me—which stressed that they lived, ate, and worshipped together—sufficient proof of “permanent alliance.”\footnote{47}
To be sure, Seniyappa’s assertion that Ma Me used to cook for him must not have been lost on the judge, who would have had some knowledge of caste-based prescriptions about food sharing, and the way that mundane activities of cooking and eating establish social distance among Hindus. Accordingly, he concluded that “Tamils of the lower orders,” such as Seniyappa, evidently did not “consider themselves bound by a rule of Hindu law which Hindus of the recognized castes regard as one of the essentials of their religion and system.”

As this case suggests, the legitimacy of what appear to have been long and committed marriages only became an issue when the surviving wife, husband, and/or children tried to secure property and inheritance rights. The aforementioned Ma Kye was similarly sued by her stepson Abdul Rahman for possession of paddy holdings on the basis that she was not in fact his father’s wife. At around the same time, R. Kristnasawmy Mudulliar, alias Maung Maung, had his right to his father’s estate contested by his cousin, W. R. Vanoogopaul. Maung Maung was the son of W. V. Ramasawmy Mudulliar, “an orthodox Hindu,” and Ma Gun, the daughter of one Narainsawmy Naidoo and Ma Thu Za.

According to Vanoogopaul, the marriage between Narainsawmy and Ma Thu Za had not been lawful as the latter was Burmese Buddhist, not Hindu, and Ma Gun was therefore an illegitimate child. As such, Ma Gun was herself not Hindu and unable to lawfully marry Ramasawmy. If taken as fact, this claim would have rendered Maung Maung an illegitimate child, disinheriting him. The case thus turned upon the question of the legality of the marriage between Maung Maung’s maternal grandparents, Narainsawmy and Ma Thu Za, and the latter’s religious status.

There was no dispute that Narainsawmy and Ma Thu Za had lived together for many years, until the former’s death in 1857, and had had several children. Fortunately, for Maung Maung, both presiding judges were convinced that Ma Thu Za, though perhaps Buddhist by birth, was regarded as a Hindu, and that the couple had brought up their children as Hindus and married them to Hindus “according to Hindu rites.” Maung Maung was thus declared the rightful heir to his father’s estate.

The Supreme Court of the Straits Settlements heard many a similar tale. For example, in 1902, a Straits-born Chinese Buddhist widow, Tim Kim, was taken to court by her brother-in-law, Carolis De Silva, who alleged that she was not his late brother’s lawful wife, but merely a “kept woman.” Tim Kim testified that she and her husband, Cornelis De Silva, a Sinhalese Buddhist, had performed a marriage ceremony in the presence of friends at the Chinese Buddhist Sya Meow Temple in Kuala Lumpur where they lit joss papers and candles, together worshipped the joss, and declared themselves man and wife. After the ceremony, Tim Kim and Cornelis lived together until the latter’s death and had a child who was registered by Cornelis as his.

Beyond accusing Tim Kim of being a concubine, Carolis challenged the validity of the marriage on two grounds: that the marriage ceremony was “imperfect” as “there can be no Chinese marriage without worship by the bride of the bridegroom’s ancestors,” and that Cornelis could not be married unless the contract of marriage was registered in Ceylon. While acknowledging that “Ceylon priests would not consider this marriage with a Chinese woman celebrated in a Chinese temple in Kuala Lumpur as a marriage sanctioned by their religion,” the presiding judge affirmed its validity, arguing that there was overwhelming evidence that the couple cohabited as man and wife, and that Cornelis
was a Buddhist and certainly after his cohabitation with the respondent and probably at its inception he adopted Chinese forms and worship, or at least much of them.\footnote{53}

Unruly alliances: The case of the “Hindu-Buddhist” Ohn Ghine

Whether fleeting or lasting, or yet Muslim-Buddhist, Tamil-Burmese, or Sinhalese-Chinese, such transcultural matrimonial alliances invariably raised the problem of identification, belonging, and classification for the judges, jurists, lawyers, and litigants. What kind of individuals, unions, and families were they? How were they to be identified and categorized? What law was to be applied to them? These were intertwined questions because of plural legal jurisdiction—a legal system extended to Burma and the Straits Settlements upon their piecemeal incorporation into the British Raj from 1826. In a plural legal order, cases related to family relations and religion were exempted from the civil law of the state and made subject to the religious “personal law” of the individuals involved in the dispute.\footnote{54}

In India, the British had, over the course of the nineteenth century, identified the indigenous religious systems that would form the basis for laws of the family as either Hindu or Muslim and worked to codify them accordingly, even extending the latter codes to the Straits Settlements without regard to the difference in jurisprudence.\footnote{55} In Burma, meanwhile, they identified Buddhism as the indigenous religious system that would form the basis for laws of the family.\footnote{56} The indigenous dhama\-masat texts—extant in thousands of palm-leaf and paper manuscript versions—were thus recognized as the legal and ethical treatises that outlined appropriate social practices and methods of dispute settlement and the foundational sources of “Burmese Buddhist law.”

Accordingly, in cases concerning marriage, divorce, inheritance, and succession, British courts administered the “Burmese Buddhist law” in cases where the parties were Buddhists, “Muhammadan law” in cases where the parties were Muslims, “Hindu law” where the parties were Hindus, and “Chinese customary law” where the parties were Chinese.

Determining which religious law pertained to a particular individual or family was no straightforward matter. In theory, the “personal law” of an individual was determined by his/her professed religious affiliation. In practice, however, colonial jurists viewed professed faith as a requisite yet inadequate indication of one’s “true” religious identity. This was no doubt due, in part, to the frequency with which judges discovered that men and women in the colonies converted nominally for the purpose of marriage.\footnote{57} Thus in order to establish a person’s religious affiliation, her professed faith had to be corroborated by her habits and practices. The story of U Ohn Ghine (1858–1911), a wealthy Indo-Burmese merchant and highly respected member of Rangoon’s elite circles, serves as an illustrative example.

In August 1921, the Privy Council heard two consolidated appeal cases from the Chief Court of Lower Burma concerning the estate of Ohn Ghine.\footnote{58} He had led an illustrious life, not least as an elected member of the Rangoon Municipality, an Honorary Magistrate, recipient of the Companion of the Order of the Indian Empire, and the title of Ahmudan gaung tazeik ya min (Recipient of the Medal of Honour for
Good Service). He had even represented the Province of Burma at the Coronations of King Edward VII and Queen Alexandra in 1902. Ohn Ghine had also been an active member of and contributor to the Maha Bodhi Society, founded by the Sinhalese reformer and preacher Anagarika Dharmapala; the Rangoon-based International Buddhist Society, founded by Britain’s first Buddhist monk Ananda Metteyya (a.k.a. Allan Bennett, 1872–1923); the Royal Asiatic Society; and the Society of Arts. Notable among his philanthropic activities was the endowment of two scholarships tenable at the Government School of Engineering in Insein, Burma.59

Ohn Ghine had died in 1911 during a visit to England, leaving behind a will appointing his wife Ma Yait and daughter Ma Noo as trustees. His son Chit Maung disputed this provision, contesting the validity of the will on the basis that his father was Hindu. Had Hindu law been applied to Ohn Ghine’s estate, as Chit Maung requested, then Ma Yait and Ma Noo would only have been entitled only to maintenance—and only until their (re)marriage with the estate passing to his sons for administration. The issue to be decided therefore concerned the religious status of Ohn Ghine.

It is worth noting that when questioned in 1907, and in his capacity as a municipal commissioner of Rangoon by the Royal Commission upon Decentralization in India, Ohn Ghine had self-identified as a “Hindu-Buddhist” native of Burma.60 Yet, this hybrid category did not exist in the colonial rule of law, even as all parties involved agreed that Ohn Ghine was “as much Burmese as Indian by blood, and in dress, manner, and language of life he was more Burmese than Indian.”61 He came from an Indo-Burmese family whose members professed to be Hindus and yet also “worshipped at the pagoda, fed the pongysis [monks] and observed Buddhist fasts and festivals.”62 As Viscount Haldane remarked, Judge Robinson, who first tried the case, had been “right in thinking that Ohn Ghine observed to a certain extent the rites and ceremonies of the Hindu religion, but that he also observed and followed the Buddhist religion to a great extent and was far from being an orthodox Hindu.”63

No one denied that he could not be considered “an orthodox Hindu.” But was he even Hindu enough to warrant the application of Hindu law to his estate? If not, could he be considered a Buddhist instead? As in the forgoing cases, rites and ceremonies mattered greatly in establishing the “true,” and inherently religious, identity of the deceased. The lawyer for Ma Yait, who portrayed Ohn Ghine as primarily Buddhist, emphasized that he had sent his sons to a monastic school for instruction, arranged the marriage of Chit Maung to a Burmese Buddhist woman according to Burmese custom, and took a leading role in supporting a number of notable Buddhist projects. For example, in 1900, Ohn Ghine sent a letter to the governor of Madras on behalf of his “Buddhist Co-religionists,” requesting the return of certain Buddhist relics held at the Madras Museum to be placed in a shrine that he was building in Rangoon. The following year, he gave an address on behalf of the Buddhist community in Rangoon to the viceroy, Lord Curzon, and traveled with fellow Burmese pilgrims to the temple of the Sacred Tooth Relic in Kandy, Ceylon. Viscount Haldane took notice of other evidence confirming his Buddhist leanings: Ohn Ghine had sent a card to one of his sons in England admonishing him to “daily think of the Buddha,” and when Ohn Ghine’s daughter Ma Mya died in 1910, he did not send her ashes to the Ganges.64
At the same time, though, evidence presented by Chit Maung suggested that his father’s “liberality to Buddhist monks and his liking for Buddhist prayers and practices” did not amount to a “clear renunciation” of the Hindu faith. Ohn Ghine had continued to support the Hindu temple in Rangoon, serving as one of its trustees. It was also noteworthy that he had not sponsored the temporary ordination (shin byu) of his sons as monks, a crucial rite of passage considered as the noblest of the meritorious acts that anyone can perform in Buddhist Southeast Asia. When his body was returned to Rangoon, Ma Yait had chosen to observe Hindu rites at his cremation—though she had also invited Buddhist monks—and sent his ashes to Benares.

In the end, the Privy Council could only determine who Ohn Ghine was not. His Hindu-ness was apparently so divergent from “pure” Hinduism as to render him non-Hindu. Still, the Council stopped short of declaring the late Ohn Ghine a Buddhist, and decided that the Indian Succession Act—the so-called rule of justice, equity, and good conscience—should apply to his estate.

Domesticating disobedient ties

The trialed life and legacy of Ohn Ghine highlight the unruly character of transcultural intimate relations that defied fixed juridical notions of identity. Hardly “unassimilable,” immigrant men and their locally born children—men such as Seniyappa Anamalay, Cornelis De Silva, and Ohn Ghine—led transculturated lives, producing an assortment of conjoined Muslim, Hindu, and Buddhist, and Indian, Burmese, and Chinese practices and institutions. Transcultural couples and families opportunistically and adaptively reconfigured cultural elements to fashion new and distinct configurations of habits, rituals, and hierarchies. They developed their own customs, however loosely defined and arranged, that diverged from colonially determined notions of religious, racial, and cultural difference.

Confronted with disobedient kinships and belongings, jurists nevertheless sought to circumscribe subjects and affiliations that flouted the gaze of the colonial state. For their part, the litigants, who often knew and calibrated the attendant prerogatives and penalties of each law, opportunistically and purposefully appealed to such notions of difference as “Arab Muslim,” “Hindu,” or “Chinese Buddhist” to privilege understandings of marriage and family that most suited their needs. They attempted aggressively to shape the meaning and materiality of their lives, and influence colonial categories of rule, inserting themselves into broader debates about communal identity and its definition and boundaries.

Ultimately, no amount of investigation could yield clear, bounded identities that lent themselves to unambiguous classification. Rather the protracted and intricate process of argumentation and adjudication threw into sharp relief the disorderliness of life and the orderly unreality of the law. Litigants and judicial authorities alike were compelled to acknowledge the messy complexities and contradictions of transcultural intimacies and family ties, even while nominally employing determinate and exclusive classifications.

This is not to suggest that the attitude and approach of transcultural couples and families toward communal identity and domestic affairs were laissez-faire. The well-to-do classes of transcultural families were most adept at developing techniques to
manage and discipline mixed offspring. The preclusion of their own sons from shin byu appears to have been a common practice, as were endogamous marriages, especially for sons but even for daughters who were encouraged to take India-born husbands. Perhaps such practices stemmed from a concern for sociocultural status and repute. Indo-Burmese/Malay families may indeed have shared with Eurasian communities anxieties about the cultural incompetence of their mixed families. Not only status was at stake, however. The cases discussed above, as well as the dozens of precedent cases relating to succession or inheritance of Indo-Burmese families reviewed during the process of adjudication, strongly indicate that debates about which law was to be applied in intestate succession were not about religious traditions or communal identities but rather a gendered negotiation over the power and authority to define familial bonds and control who had access to property and privilege.

As Alhwa Ong has shown for the Chinese diaspora in Southeast Asia, instrumentalist family norms, practices, and attitudes that emphasize pragmatism, gender and age hierarchies, and other ethnic-specific modes of social production and reproduction do not represent some essentialized, traditional Chineseness. They are the strategies and effects of diasporic subjects who seek to both circumvent and benefit from different colonial and nation-state regimes, and negotiate the diverse rules or “governmentality” of host societies where they may be valued as homo economicus but devalued in terms of ethnicity. Such “habits” of diasporic subjects have ensured that the emigrant family survives for generations, accumulating wealth and security while evading the discipline of the colonial, and later the postcolonial, state. Building on Ong's analysis, I would argue that in transcultural marriages and families under colonial rule and law, the issue of men's access to and control over women's land, labor, and resources was intertwined with the issue of foreigners' access to the very same things.

This raises questions about the coloniality of Asian settlers and immigrants and their intimate relations with “local” subjects. Did Asian intermarriages serve to extend foreign men's control over the affective and economic resources of local women? If we are to understand colonialism as not only the conquest of land, labor, and resources but also the colonization of existing forms of knowledge, socialities, and subjectivities, then in what ways did Asian transcultural marriages and domesticities aid and abet colonial relations of power, even as they were produced by it?

The scholarly literature on the Indian and Chinese diaspora in Southeast Asia and beyond has shown that these migrant and diasporic subjects often served as the middlemen between colonial governments and the native populations. Neither group has been described as colonials, as no centralized body organized Indian or Chinese overseas efforts and affairs. Scholars have rightly emphasized the precarious position of these compradors whose political loyalties were questioned due to their economic domination and extensive overseas connections. They were often blamed for the humiliation and dislocation experienced by Burmese and Malay people under colonial rule, as a cartoon published one month before the 1938 riots shows (Figure 6.1). It depicts what appears to be four foreign men—Arab, Indian, Chinese, and British—sitting side by side comfortably on a bench called Burma, while a much smaller Burmese man sits uncomfortably on its edge. As stateless subjects and “outsiders within” at the mercy of host governments and societies, Indian and Chinese immigrants in Southeast Asia as elsewhere were at once marginal and privileged.
Even so, the family and kinship regimes that these subjects developed in order to safeguard themselves against the adversities—dispossession, displacement, and pogroms—that periodically befell them also served to reconstitute antecedent familial and conjugal, and gender and sexual relations in Southeast Asia, sometimes to the detriment of local women and communities. Perhaps the most telling evidence of this comes from the Burmese legal cases that mention the preclusion of sons from shin byu.

I have already mentioned the importance of shin byu in Buddhist society, but let me elaborate on the significance of this practice specifically to the mother. When a son enters the monastery as a novice, merit accrues to his mother, who cannot herself be ordained because she is a woman. Before his ordination, chants proclaim the debt the son owes his mother, extolling her selflessness and mettā (pure, selfless, loving kindness) in enduring the pain of childbirth, nurturing him thereafter, and offering him to the Sangha (Pali: sangha, monastic community). In reminding both the lay and monastic communities that the Sangha’s gain means a mother’s deprivation, shin byu rites render the maternal relationship and the debts it encodes integral to the practice of Buddhism.69 It is not hard to imagine that Burmese Buddhist women might have felt profoundly disenfranchised by the denial of this meritorious deed. No wonder then that the performance of other Buddhist rites and ceremonies such as funerals, shin byu of male kinsmen, and donations to the Sangha became important for these women, as the court records show.

Conclusion

Case laws are documents produced under highly regulated circumstances of the courtroom that give us only a fragmentary picture of the lives of the litigants and
witnesses, even when the individual testimonies are registered. Seen through the lens of juridical records, past lives and individuals are always mediated by the language of the law and the interpretations of lawyers and judges. Only a selection of especially important civil cases in the high court were compiled and published by the British colonial administrations. The preponderance of urban and comparatively wealthy people among civil cases recorded for posterity reflects the selective nature of the colonial legal system.

Yet, and as I hope to have shown, court records provide a rare window into the inner workings of South-South transcultural intimacies. As with civil cases in colonial India, those examined here underscore the creativity and resourcefulness of the plaintiffs and defendants who knowingly staged versions of their selves and families that they calculated were most likely to result in a favorable outcome under plural legal jurisdiction. They all reinforce the familiar argument that the British policy of noninterference toward its colonial subjects in religious and familial matters and its recognition of personal laws actually ossified religious and ethnic identities and eroded heterogeneous customs and cultures. Time and again, the courts insisted on imposing and codifying essentialist understandings of difference. The litigants, too, found that an effective legal strategy for winning the contest over who has the authority to govern the family and its fortunes was to invoke difference. Colonizer and colonized unevenly coauthored a fiction of discrete religious, racial, and cultural—and, hence, legal—communities that belied the interactions and connections that cut across the allegedly hard-and-fast boundaries that estranged them. In other words, in Burma and the Straits Settlements, family law served as a commanding force in the production of difference. It furthermore played an undeniably important role in reconstituting family and dis-incentivizing Asian alliances.

Nonetheless, I don’t wish to overemphasize the efficacy of law as a technology of colonial governance. Even when colonial subjects availed themselves of the services of the colonial courts, it is doubtful that their lives and subjectivities were fundamentally remolded or refashioned. As they crafted narratives of kinship and belonging, Asian colonial subjects both threw into question and, simultaneously, concretized colonial categories of rule. Here, we see an important commonality between South-South intimacies and their Eurasian counterparts: they both served as microsites of governance that confounded and confirmed the strictures of colonial rule. Indeed, transcultural intimacies in British Burma and the Straits Settlements shared much in common. They faced comparable difficulties as well as opportunities as forms of attachment that defied easy categorization, endured similarly gendered struggles over status and resources, and adopted overlapping strategies to these challenges.

Some of the stories we have encountered in this chapter bear out the 1920s–1930s attacks on “unassimilable foreigners” that denounced intermarriage as a strategy of colonization. The enactment of a plural legal order did place many women in intermarriages in precarious positions, as we have seen. Though the precariousness of the plural legal system was experienced by both husband and wife, and the “foreign” as well as the native party, as the brief marriages of Ma Saing and Kader Moideen, and Ali Asghar and Mi Kra Hla U remind us.
Besides, it would be a mistake to focus singularly on South-South transcultural intimacies. Many couples and families, not just transcultural ones, fought embittered battles over marriage, fidelity, and inheritance. Deception, cruelty, and revenge: these are the stuff of marital scandals and family dramas. Stories of wayward wives, oppressive husbands, ungrateful children, and conniving relatives were common across the board, as even a cursory survey of case laws from British Burma and the Straits Settlements reveals. Civil court cases are by nature overwhelmingly about marital discord and family dispute. I would suggest that historians resist the legal archival impulse to keep our analytical eye fixed on the transcript of tense and tenuous—rather than tender and abiding—matrimonial and familial bonds. By so doing, we uncover a history of empire plotted around the complex and charged everyday efforts at transcultural relations of belonging, inequality, and contestation, and their achievements as well as failures.

Notes

1 Historically, Kalā functioned as a generic category for “foreigners from the west of Burma.” In the twentieth century, it took on a pejorative, racialized sense, meaning “dark” or “brown races” of the Indian subcontinent, and was differentiated from boù, which appeared as the common word for “Caucasian.” The etymology of the more recent Rohingya remains uncertain, though it probably derives from the Indianized form of Rakhine: Rakhanga. See Jacques P. Leider, “Rohingya: The Name, the Movement and the Quest for Identity,” in Nation Building in Myanmar (Yangon: Myanmar Egress/Myanmar Peace Center, 2013), 204–55.


4 The four laws, collectively and euphemistically known as “Race and Religion Protection Laws,” are the Population Control Law No. 28/2015, the Conversion Law No. 48/2015, the Buddhist Women’s Special Marriage Law No. 50/2015, and the Monogamy Law No. 54/2015.


6 Ibid., 129–30. The Buddhist Special Women’s Marriage and Inheritance Act of 1954, the successor to the Buddhist Women’s Special Marriage and Succession Act of 1939, remains in force.

7 The first riot occurred in Rangoon in May 1930, following a brawl between striking Indian dockworkers and Burmese laborers who had been hired as their replacements.


U Pu Galay, Ka brā: prassanā (Yangon: Kyi pwa yay, 1939), 11–12. The word Kābyā, in its most basic meaning, refers to people of mixed ancestry, though its etymology is uncertain.


Fujimoto, South Indian Muslim Community, 190.

Ibid.

Ibid., 193.


The descriptive “Straits-born” or “Straits Chinese” were used to differentiate Chinese who were born in the Straits Settlements from the so-called sinkeh (“new guest”).


26 Ibid., 63.


29 Ibid., 57.

30 Ibid.

31 Ibid., 57.

32 Ibid., 66.

33 Ibid., 66–67.

34 Ibid., 67.


36 For example, in Penang in 1901, approximately 71 percent of Indians and 75 percent of Chinese were male (*Fujimoto, South Indian Muslim Community*, 194). In Burma, in 1931, approximately 72 percent of Indians and 66 percent of Chinese were male. Of the immigrant population from India, which constituted roughly 80 percent of the total immigrant population, females represented only 18 and 16 percent in 1921 and 1931, respectively. See Government of India, *Census of India, 1921*, Vol. 10, *Burma* (Rangoon: Superintendent Government Printing, 1923), 90–91; and *Census of India, 1931*, 60–63.


38 Ibid., 18.


41 Ibid.

42 Ibid.

43 *Captain Abdul Rahman Khan Laudie, by his agent, Fazal Rahman Khan vs. Ma Kye* (1914) 8 BLT, 87, 88.

44 Abdul Rahman's medical training was estimated to have cost at least Rs. 20,000, which would have been worth between 1,300 and 2,000 pounds sterling in 1900, the equivalent of 75,400–116,000 pounds sterling in the year 2000.

45 S. Anamalay Pillay v. Po La (1906) 3 LBR, 228.

46 Ibid.

47 Chief Justice C. E. Fox, in Ibid.

48 Ibid., 229.

49 *Captain Abdul Rahman Khan Laudie, by his agent, Fazal Rahman Khan vs. Ma Kye*, 87.

50 WR Vanoogopa Paul by his guardian and next friend PA Murugasa Mudaliar v. *R Krishnasawmy Mudaliar alias Maung Maung, administrator to the estate of WV Ramasawmy Mudaliar* (1905) 3 LBR, 25.
51  Ibid.
52  Carolis De Silva v. Tim Kim (1905) SSLR 8, 11–14, 12.
53  Ibid.
54  In Burma as elsewhere, the implementation of colonial law was not straightforward, as the Indian Civil Service officer and scholar John S. Furnivall (1878–1960) showed in his Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India (New York: New York University Press, 1956).
57  In Malaya, there was a similar pattern of Chinese men becoming Muslims in order to marry Malay women. See J.E. Nathan, The Census of British Malaya (the Straits Settlements, Federated Malay States and Protected States of Johore, Kedah, Perlis, Kelantan, Trengganu, and Brunei), 1921 (London: Waterloo, 1922), 103–4; Tan Chee Beng, The Baba of Melaka: Culture and Identity of a Chinese Peranakan Community in Malaysia (Selangor: Pelanduk, 1988).
58  Ma Yait v. Maung Chit Maung, and Maung Chit Maung v. Ma Yait and Another (1921) 11 LBR, 155.
60  Great Britain, Minutes of Evidence Taken Before the Royal Commission Upon Decentralization in Burma, Presented to Both Houses Parliament by Command of His Majesty, Vol. III (London: His Majesty’s Stationery Office, Darling & Son, 1908), 50.
61  Ma Yait v. Maung Chit Maung, and Maung Chit Maung v. Ma Yait and Another, 158.
62  Chit Maung v. Ma Yait and Ma Noo (1913) 7 LBR, 362, 363.
63  Ma Yait v. Maung Chit Maung, and Maung Chit Maung v. Ma Yait and Another, 160.
64  Ibid., 159.
65  Ibid., 158, 160.
66  Ibid., 157–59, 162.
68  See Furnivall, Colonial Policy and Practice.