

## **Project codification: legal legacies of the British Raj on the Indian mercantile credit institution *hundi***

Marina Martin<sup>\*a,b</sup>

<sup>a</sup>Centre for the Advancement of Scholarship, Human Economy Programme, University of Pretoria, Pretoria, South Africa;

<sup>b</sup>Asia Research Centre, London School of Economics, London, UK

### **Abstract**

This discussion contributes to the history of the colonial rule of law that governed market practice in India using the South Asian indigenous credit institution known as *hundi*. A centuries-old artery of credit for Indian merchant networks, and a living institution that has largely been driven underground by 21<sup>st</sup> century laws, *hundi* provides a window into the dynamics of colonial law from the commercial and financial legislation of the 1880s to the final attempt to codify *hundi* in the 1960s and 70s in a bid to bridge the growing disconnect between the Indian indigenous banking sector and modern banking. I chart the British colonial and post-independence history of *hundi* as means of understanding the wider political, legislative and economic dynamics of colonial state formation and the legacies of legislation.

Keywords: *hundi*; hawala; law; economic history; merchant credit

### **Introduction**

The history of *hundi*, a key Indian mercantile credit institution, provides a prism for understanding the interaction between institutions of the Indian economy and the legal framework for commercial activity designed by the British colonial and post-independence state. In this discussion, colonial and post-independence documents demonstrate both the complexities of incorporating *hundi* into commercial law, and the pragmatism with which the British, and later the post-independence Indian government approached this task. These documents shed light on the attitude of the national government after 1947, and how it was severely hampered in practice. As this analysis shows, it became virtually impossible to incorporate *hundi* into the legal system after independence from colonial rule. Attempts to codify the law with respect to *hundi*, and to bring its operations under a uniform system of rule and regulation, ultimately broke down on multiple conflicts of discrete interests and ended up being abandoned.

*Hundi*, a word of West Asian roots, otherwise known as hawala,<sup>1</sup> refers to a financial instrument and institution that has been in existence in South Asia for centuries.<sup>2</sup> Broadly described, *hundi* served as a bill of exchange and a method of remittance, i.e. used both to settle debts and to transfer funds. As remittance instrument or bill of exchange, *hundi* played a major role in the expanding coastal commerce of eighteenth century India, and helped the early East India Company run its fiscal operations. Indian bankers and traders made frequent use of *hundi* in forging links between coastal and interior trades, and between merchant settlements

abroad and those at home. The *hundi* was rather different to the European bill of exchange, because it was used to remit funds and to raise different forms of credit. There were in fact, many types of *hundis*; the diverse function of each *hundi* makes it difficult to squarely apply the usual labels of promissory note, bill of exchange or system of advancing loans. This was compounded by the Indian government's struggle to document *hundi* usage and enforcement amongst multiple mercantile communities. This complexity is reflected in the Provincial Banking Enquiry Committee reports of the 1930s, which covered regions as far afield as Bombay, Bengal, Madras, and Burma.

Despite some differences in name, and customs in banking, in essence North Indian merchant *hundi* systems appear to have roughly corresponded with that of South Indian merchants. All merchants had two broad categories of *hundi*: *demand* or *sight hundis* known as *Darshan* (1971) or *Dharsan* (1930b, Rudner 1994, 93), which were payable either straightaway or within a few days of presentation, and *usance* or fixed-term *hundis* known as *Muddati* or *Thavanai* (1971, 47), whose maturity period might be anywhere between thirty to one hundred and twenty days. Within these two broad categories, individual merchant communities had a number of other classes of *hundis*, which differed in terms of the type of bearer or drawee, or goods despatched. Understandably, the rate of interest charged would vary according to the type of bearer. Some merchant communities additionally had extensive *hundi* categories which served either a particular function, such as dowry, or were discharged purely for use within the specific merchant group (Rudner 1994, 93-94).

The full range of *hundis* within key merchant communities, such as the Marwari, Nattukottai Chettiar, Shikarpuri or Multani, and Gujarati shroffs (1971, 24-43), were so well articulated and implemented, that the 1971 report on indigenous bankers observed, "some of the usages of the *hundis* are said to give better facilities than corresponding provisions of the Negotiable Instruments Act (1971, 52)."

This discussion touches on two large themes—discontinuity: marginalising *hundi*, and continuity: making *hundi* mainstream, over the period 1858-1978. The first 89 years from 1858-1947, represent the life-span of the British Raj, and thus a critical juncture in the status of indigenous institutions such as *hundi*. 1947-1978 delineates a time when the legacy of the colonial architecture motivates further inquiry into the operational and legal status of indigenous instruments. In this discussion, there is a particular focus on the 1978 Banking Laws Committee's report on *hundi* codification (Banking Laws Committee 1978), when the Indian government grappled with colonial legacies. Government reports and documents spanning 1958 to 1978 provide context for this report. I chose to stop my analysis at 1978 because the last official report on *hundi* would appear to be that of the Government of India's Banking Laws Committee in 1978, although, since the matter was never resolved it is not clear why no further reports on *hundi* were issued beyond this date.

This is important in two key ways. First the the problem of definition presented legal and financial authorities of the early and late twentieth century, with core issues which remain unresolved, and problematic for authorities in the 21<sup>st</sup> century. Second, since *hundi* is a living institution, this study also contributes to ongoing

policy discussions of the 21<sup>st</sup> century. For instance, at the Third International Conference on Hawala in Abu Dhabi, in April 2005 (jointly hosted by the Central Bank of the UAE, the International Monetary Fund (IMF) and the World Bank), opinions of what *hundi* was, and related policy prescriptions were highly divergent. This divergence is reflected in the post-1978 official literature by international law enforcement and development agencies, and also accounts for disparate policies and laws. Another key flaw in the post-1978 literature is that it dates back to the 1990s at the earliest. Even the scurrilous press reports only appear to commence from 1988.<sup>3</sup> It is worth noting that the first most comprehensive attempt at cutting through many of the myths surrounding *hundi/hawala*, was only published in 1999 (Passas 1999).

Questions about legitimacy and which rule of law should apply to *hundi*, still continue to dog the system. Yet modern technology has also changed the face of *hundi*, making custom and functional remit a more global phenomenon. Thus, in many ways, *hundi*, and other like indigenous systems, have moved from being an indigenous matter, to one which interacts with the modern banking environment across the globe, through all manner of remittance transactions. It is hoped that this historical study will serve contemporary observers and policy makers, in shedding some light on the ways in which such systems are affected by legislation. For 21<sup>st</sup> century policy makers, an understanding of *hundi*'s past must surely aid dialogue between *hundi* agents and law enforcement agencies.

### **Law and Economy in British India**

A key issue in the historical scholarship intersecting law and economy in India, is the question of how British colonial law regulated mercantile activity. One influential account argued that colonial law impeded economic activity and created aberrant colonial outcomes (Washbrook 1981). Recent post-colonial historical work has focused on the delineation made by colonial law on forms of capitalism in the public and private spheres. Such work has directed much greater attention to the effect of governance on indigenous capitalism, and the identity forged by its economic agents in their struggle to gain legitimacy (Birla 2009). This approach underscores the creation of capitalist subjects through the operation of colonial law, and argues the law did not constrain or deform.

The answer to this matter lies somewhere in-between the two stances because the intentions of colonial law were very different to its actual operations. Post-colonialists are right to point out that the colonial history of *hundi* presents a mixed legal trajectory of conciliation, mediation and exclusion. Drawing on Partha Chatterjee's notion of 'colonial difference',<sup>4</sup> Elizabeth Kolsky suggests that laws were created in India to emphasize this sense of difference. Indeed, she goes so far as to state that "a uniform rule of law would have profoundly threatened the power dynamic that distinguished colonizer from colonized". (Kolsky 2010, 637) Although Kolsky specifically goes on to discuss codification with reference to criminal jurisdiction, this perception of power dynamics must also be tempered with the important codicil that pragmatism had a role to play.

Marc Galanter's account of proposals for the restoration of *panchayats*: village councils (Galanter 1972), illustrates some of the collisions and ambiguities between the British Indian legal system and the indigenous. Just as with the *hundi* system, the panchayat system was officially sanctioned as a means of bridging the gap between the villager and the legal system. However, the Indian legal community was markedly reluctant to move away from the British legal system. As for the panchayat system, it was frowned upon and even disdained: "The reform of our Legal Profession and our Legal System does not lie in that way of "Village Panchayat Revival". It is a suicidal policy that will lead only to factions and anarchy".<sup>5</sup>

In speaking of the movement to revive panchayats, Galanter rationalizes that panchayats failed to assume their pre-British incarnation because of insufficient mobilization. Why was this so? A lack of will. Panchayats in their old guise were not seen as a viable alternative to the official legal system. The old order of elites who might at one time have been proponents of pre-British panchayats, had long since given way to actors, such as an influential body of legal professionals, who had a heavy vested stake in continuing with the existing legal system. The legal system was seen to be an essential arm of post-Independence goals such as secularism, equality, freedom, national uniformity and modernity, though Galanter argues that this erosion of the traditional "resulted not from the normative superiority of British law, but from its technical, organizational and ideological characteristics." (Galanter 1972, 64) In this respect, Galanter has also argued that Indian law showed both an attachment to Anglo-Indian law as well as to an American-style constitutional overlay (Galanter and Dhavan 1989); this in contrast to the perception in other quarters that British principles retained their primacy in the shaping of Indian law (Setalvad 1960).

Galanter's assessment of judicial panchayats led to an adoption of Paul Brass's model of dual modernization: modernization through the pursuit of traditional symbols and values, but with simultaneous engagement in technological and organizational modernization. The revival of the panchayat system effectively worked because of its many borrowings from the modern legal system, i.e.; "statutory rules, specified jurisdiction, fixed personnel, salaries, elections, written records, etc." Galanter concluded: "The movement to panchayats then is not restoration of traditional law, but its containment and absorption; not an abandonment of the modern legal system, but its extension in the guise of tradition." (Galanter 1972, 60) Brass's model of dual modernization, and Galanter's application of this model to the historical revival of panchayats, perhaps presents the most reasonable approach to understanding the issue of *hundi* codification.

Birla's work in particular has been an important step towards a nuanced understanding of the way in which colonial business legislation formed between c.1870 and 1920<sup>6</sup> sought to regulate indigenous mercantile activity. Her work also highlights how indigenous economic actors produced their own cultural categories in response to colonial law, often resulting in ambiguities and compromises.

This discussion builds on such work by examining how indigenous mercantile credit in the form of *hundi*, once a fluid entity prior to 1858, became the object of colonial governance, while simultaneously colouring its trajectory. Unlike Birla, it also straddles Washbrook's thesis that the colonial government sought to reduce the

power of the of the indigenous market economy (Washbrook 1981, 677), and Rudner's emphasis that traditionally, legal approaches to *hundi* have been blindsided by court sanctions and judgements, neglecting the substantial negotiability of this instrument (Rudner 1994).<sup>7</sup>

Using two pieces of legislation: the Indian Stamp Act (1879), and the Negotiable Instruments Act (1881),<sup>8</sup> legislative proceedings and reports from the 1930s, to frame the backdrop for *hundi*, it primarily focuses on extending the analysis of colonial law into the post-colonial period of 1969-1978. Here the Banking Laws Committee reports of the 1970s, and the Banking Commission Report on Indigenous Bankers published in 1969, provide the basis for assessing the legacy of colonial regulation and institution building. A key question that was debated in all of these reports was how *hundi* could be better integrated with modern institutions, and whether the Negotiable Instruments Act should be modified to facilitate this. The survival of *hundi* drove the impetus for re-engagement with the instrument, resulting in the Banking Laws Committee drawing up a draft *Hundi Code* bill in 1978.

### **The Backdrop to *Hundi***

Throughout the colonial period, *hundi's* status is shown to embody a tension between inclusion and exclusion from formal law. During this time, *hundi* was part of a dynamic in which legislation had broader aims and ideals. *Hundi's* status as an indigenous entity was, on the one hand, sharpened by colonial government legislation, but on the other, to some extent, assimilated and brought into the formal sphere. In the short-term accommodation characterized legislation, but in the long-term legislation was driven by the colonial impulse to assimilate. As *hundi* underwent its own process of change and resistance, the British Indian government was seen to variously marginalize, accommodate and standardize *hundi*. This simultaneous sharpening and blurring of lines between *hundi* as the indigenous, and *hundi* as a recognized instrument of credit, was directly proportionate to the exclusion and inclusion of *hundi* within government legislation. Confirming Washbrook's thesis of colonial law undermining the market economy, the Government of India had attempted to find ways of replacing the use of *hundi* within trade on several occasions, with no success (Martin 2012, 10-12).<sup>9</sup>

The chief Acts which influenced the form and shape of *hundi* were the Indian Stamp Act (ISA) of 1879, and the Negotiable Instruments Act (NIA) of 1881. Though created with different purposes, these Acts made significant contributions towards formalising *hundi*. The ISA classed *hundi* as a bill of exchange, ruled on authenticity, and highlights the colonial government's functional approach to *hundi* as a source of revenue. The pragmatism of their approach stemmed from a desire to maintain Indian merchant trade and also to marshal revenue streams. Assimilation was not required overnight, and in the meantime *hundi* was lucrative, much like a prize ship: captured but not dismantled. The British Indian government did not wish to dilute the power of its transplanted laws by giving regard to *hundi's* context and its aims. Thus, by describing *hundi* as a bill of exchange, the government grouped *hundi* within the same category of taxable English instruments.

The NIA ruled on the particular elements which lent negotiability to an instrument. Issues of endorsement, presentment and liability were chief amongst these elements.

Conversely, the NIA did not include *hundi* within its remit, unless customary practices could not apply. It was excluded in this way from the NIA partly because the government simultaneously struggled to understand *hundi*. The British had no real depth of understanding in relation to indigenous institutions, and there was a keen consciousness of this in some quarters. When the government enquired of select officials whether the terms ‘bills of exchange’ and ‘*hundi*’ should be defined in the Indian Stamp Act of 1879, one response indicated that an embarrassing ignorance of this area was more likely to be uncovered than any real benefit for the law.

The Assistant Commissioner, Ajmere, thinks it undesirable to define the word “*hundi*,” as a complete definition of the word would, he conceives, be difficult to find and be more likely to embarrass than to assist Courts and Revenue officers. In his opinion the definition of “bill of exchange” proposed in section 3 (2) of the Resolution would appear to meet all requirements.

Finance and Commerce Department (April 1893, 1-2)

As an instrument, it represented credit, but the kind of credit it provided was not well delineated. It could function as different forms of credit depending on the context. Together with the way in which merchant reputation and type of trade were embedded in *hundi* transactions, this justifiably lent *hundi* its character as a system as well as an instrument. As a result of *hundi* cases that fell to the British Indian courts, the NIA was often referred to when the courts were grappling with articulating the nature and remit of *hundi*. The Act’s provisions were amended several times particularly with reference to *hundi*.

Although the exclusion of the NIA tended to marginalise *hundi*, it also paradoxically uncovered a dynamic of accommodation rather than mere exclusion in the government’s approach to indigenous practices such as *hundi*. This process of accommodation encapsulated a strategy to eventually assimilate Indian customary practices into European rules and conventions. Given that the courts often interpreted *hundi* custom according to their own English principles of equity and justice, the NIA, in common with the ISA, also paved the way towards a kind of formalization of *hundi*, albeit according to British benchmarks. Ultimately, court precedent and such Acts left a formal imprint on *hundi* affecting its negotiability and contractual integrity. The accretion of such litigiousness also signalled a change in the way merchants viewed the enforceability and logic of customary practice.

Of course, in both instances, there were practical problems in rigidly adhering to transplanted laws. For one thing, including *hundi* within the remit of the ISA practically guaranteed the regular occurrence of *hundi* stamp act disputes within the courts of law. Adjudicators were forced to focus on properties of *hundi* which fitted its English definition of ‘bill of exchange’. Conversely, although the NIA of 1881 and subsequent amendments chose not to include *hundi* within its remit unless customary practice did not apply, here too *hundi* cases found their way into the courts. As a result, the NIA was often referred to, or applied as a means of arbitrating on such disputes. In the process, a body of precedent constituent to *hundi* evolved in the British Indian, and later post-independence Indian courts.

In order for such precedent to evolve, the *hundi* disputes which reached the courts staged a common law versus civil law scenario in courts. On the one hand, a

borrowed legal system came into effect which sought to apply its rules with central governance at the forefront of its trajectory. On the other hand, since there was no precedent for *hundi* cases in English law, approximations from English precedent on negotiable instruments were applied.

This created challenges, for it was not the case that English law by itself could apply. Legislators were faced with the recurring question of how much to borrow from English cultural contexts as against those from Indian indigenous customs. Dissenting voices over how to best treat indigenous practices with the NIA also illustrate the ambivalence of *hundi*'s relationship with the Act. Some government administrators felt that accommodation ought not to be effected for Indian practices because it would merely impose stress on the fabric of the Act.

And then comes the question whether this process of assimilation ought to be carried further. If we go on amending the Indian Act in detail after detail it will become an almost intolerable patch-work.

Legislative Department, Public and Judicial Branch (3rd July, 1884, 2)

Over time, legislators did see some indigenous banking practices discarded in favour of corresponding English practices, but the evidence does not suggest that Indian customary *hundi* practices became obsolete. On the other hand, the government did not wish to take the NIA away from its English roots by absorbing legal practices. Legislators hoped that Indians would gradually discard indigenous customs in favour of English practices.

Admitting with the Chief Justice that the one main principle of Indian codification is to reconcile and assimilate, as far as possible, the Native and European law on each subject, we would point out that this principle must be applied so as to produce as little friction as possible, and we feel assured that any sudden abolition of the numerous local usages (there is no general custom) as to *hundis*, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction amongst Native bankers and merchants in certain parts of the country.

Gazette of India 1879 (as quoted in Bhashyam, Adiga, and India. 1935, 18-19)

In unveiling the dynamics of the legacy years, the Indian government adopted a pragmatic approach that was similar to the colonial government, albeit for different reasons. Rather than marginalise *hundi*, the Indian government vested greater interest in the value of indigenous banking, and in particular *hundi*. However, there was an undercurrent of conflict. In the years following India's independence, the legal system continued to leave its imprint on *hundi*, and this epitomized a further gradual assimilation of the system. Nevertheless, the customary usage of *hundi* was troublesome to the legal architecture laid down by the British; this formed the impetus for the attempt to codify *hundi* and revise the law which had both shaped and marginalised *hundi*: the Negotiable Instruments Act. During these years, *Hundi* reflected the way in which the British Indian legal system was entrenched in the post-independence government architecture, and was also at odds with customary practices.

Several customary practices were institutionalized through the various shroff associations.<sup>10</sup> Recourse to the Indian courts appears to have been either a last resort,

or a means of resolving disputes in which conflicting customs, from competing shroff associations, made the courts an indispensable third party intermediary.

Much to the confusion of legislators, customary *hundi* practices continued to co-exist with English practices. These practices were mutable, some of them fused with English law, making their point of departure indistinguishable (Martin 2012, Chapter 5). Precisely because of a common law framework, the transplant of laws did involve some transformation through levels of accommodation. And even when specific transplanted rules or provisions were not altered, their impact in Indian society obtained a very different flavour.<sup>11</sup>

This latter trend confirms the thought that legal transplants are in no sense straightforward. At what point did transplanted law become custom? And to what extent was custom also influenced by an external legal system? It is an error to conceive of *hundi* custom as having been set in stone. Certainly by the time of the planned codification bill in 1978, it was evident that some forms of customary law could not present equitable resolution, or were simply insufficiently provable. In such instances, customs were discarded in favour of borrowed legal principles. Gradually, as precedent evolved, such borrowed rules of law would become recognized as customary law, particularly when applied to multiple times (Watson 1993, 114).

The resultant cocktail of *hundi* rules derived from English and Indian indigenous banking custom was not something that squared easily with legislators. A wider international legal context also stimulated the renewed interest in *hundis*. The Law Commission's 1958 report on Negotiable Instruments Law observed that English and Indian law exhibited a lack of uniformity in its principles relative to those followed in other countries. This was regarded as "regrettable, particularly in view of the fact that the negotiable instruments have become the usual medium of the ever expanding international trade and commerce" (Law Commission of India September 26, 1958).

### ***Hundi* Codification Revisited**

Twenty years after Indian independence was attained, and eighty seven years after the creation of the original NIA of 1881, the status of indigenous negotiable instruments was freshly debated within government circles. *Hundi* once again became the subject of scrutiny for the Indian government, and symbolised both the status of indigenous bankers and the legal culture surrounding the issue. There was a growing disconnect between the Indian indigenous banking sector and modern banking even when the latter was still in its infancy in the 1930s. After the Banking Enquiry Committee Reports of the 1930s, other than the 1958 Law Commission report, no significant government initiative occurred until 1969. This 1958 report highlighted the lack of integration between the *hundi* and the modern banking sector. The 1960s saw the nationalisation of banks and a revival of interest in *hundi*. However, by 1969, the rift between the two sectors had widened. Although earlier legislation had the effect of marginalising *hundi*, it had not extinguished the system.

According to the 1978 Banking Laws Committee's report, the codification of *hundi* rules and usages was successful. However, *hundi* became illegal<sup>12</sup> sometime in the years following 1978, and the bill was never passed. Why it did not do so must remain the scope of future enquiry beyond the remit of this discussion.<sup>13</sup> However, the very attempt at codification, and the Banking Laws Committee's perception that it was ultimately successful, yields critical information about the encounter between the indigenous and the legacy of the colonial legal architecture. This discussion focuses on the way in which the post-independence Indian government sought to reconcile the indigenous credit institution *hundi* with the legacy of colonial legislation. The manner in which the post-independence government attempted this reconciliation provides a framework and argument for perceiving an intimate relationship between law and culture.

The original Banking Commission meeting in October 1969 provides further context for revisiting the issue of *hundis*. In his paper, R. Krishnan the convenor of the meeting directed the attention of the Study Group reviewing legislation affecting banking, towards questions which had arisen on the subject.<sup>14</sup> Since negotiable instruments were considered the main medium of international trade and commerce, the paper highlighted the need to review the law concerning such instruments. The discussion surrounding *hundi* underscored both that *hundi* still had problematic status, but also that it was still important. Krishnan outlined a backdrop within which there had been international steps to standardize the laws for bills of exchange and promissory notes. Although the 1930-32 'Geneva Conventions' laid down a "uniform law for bills of exchange and promissory notes" (RBI Banking Commission 1972, 405), the UK was one of a few countries which did not adopt these conventions. Consequently, India followed suit and also abstained.

However, the 1960s had seen a move towards the adoption of standardized rules by all banking entities in India, otherwise known as the Uniform Rules. By 1969, the Banking Commission of India felt that "the adoption of these Uniform Rules was reportedly held up on account of differences between the law and practice in India and the Uniform Rules"(Krishnan 1969, 21st October, 3). Given that bills of exchange, promissory notes, cheques, receipts or other similar documents, fell under the classification where the Uniform Rules applied, *hundi* proved a bone of contention. The Commission sought standardization because of the practical difficulties of applying rules. it brought "the question of bringing indigenous bankers within the purview of legislation regulating banking" to the table. The overarching aim was to iron out inconsistencies with mainstream banking rules. A review of *hundi* was essentially called upon at a time when the Banking Laws Committee sought to align its own framework of negotiable instruments law with its international context.

One model for reviewing the banking rules was USA's 1958 official text of the Uniform Commercial Code (UCC). A joint product of the American Law Institute and the National Conference of Commissioners on Uniform State Laws in the U.S.A., this code offered a completely revised and modernized version of Negotiable Instruments Law. Krishnan reported that the Banking Laws Committee perceived critical changes in commercial practices since the introduction of the NIA and the formation of the UCC, rendering the NIA out-of-date. The UCC's standardized rules on the rights and limitation of all parties, served to offer a wider

scope in the provision of bank deposits and collections, particularly in view of the increasing volume of transactions which cut across international borders (RBI Banking Commission 1972, 407-408).

The Banking Laws Committee sought to bring NIA rules in line with recognized rules of international law. Principle matters concerned:

“The capacity of parties, the formal and essential validity of the contract, the liability of the parties including the formalities regulating presentment for acceptance/payment, notice of dishonour for non-acceptance/non-payment and noting and protest” (RBI Banking Commission 1972, 410).

International dealings in negotiable instruments were found to be poorly guided by the NIA, and the English ‘Bills of Exchange Act’(1882) was “not considered as any ‘better guide’, and has been criticised as ‘ambiguous’ and verging ‘perilously on the unintelligible’.”<sup>15</sup>

Issues of jurisdiction occupied a prominent point of contention. *Lex domicilii* (Law of domicile) and *lex loci contractus* (Law of the place where the contract took place) were given differential importance by institutions. On the one hand, the Madras High Court had upheld the pre-eminence of *lex loci* contracts, while the Geneva Convention of 1930 (RBI Banking Commission 1972, 410) framed a general rule based on *lex domicilii*. Ultimately, the Law Commission favoured the *lex loci* contracts, believing this would facilitate the use of negotiable instruments in international contexts. As far as *hundi* was concerned, this kind of standardization presented even greater difficulty. Discerning the *lex loci contractus* of any given *hundi* transaction, let alone the particulars of that law in terms of presentation and so on, was a highly complex task.

How the government could resolve this matter was left initially for the determination of an Indian Banking Commission. Created in March 1969, this Banking Commission was tasked with enquiring into the Indian financial system. Structure and methods of operation formed central lines of enquiry. However, uncertainty about the structure and methods of operation pertaining to indigenous bankers prevailed. The overarching aim of bringing indigenous bankers into the mainstream realm of banking, was “to ensure improved and efficient functioning of banking and non-banking institutions.” However, the 1969 Commission viewed the issue as a matter for consideration rather than a hard and fast design. To this end, the Chairman of the Study Group held with the Chairman of the Banking Commission’s belief that “there should be scope for sufficient flexibility in such matters” (Krishnan 1969, 21st October).

Initially, the Banking Commission considered whether the English Cheques Act of 1957, should be copied and *hundis* brought within its scope (Krishnan 1969).<sup>16</sup> This was more in line with a civil law culture, by seeking to make *hundis* fit into the central arm of governance. Afterwards, the Banking Commission espoused an approach culturally similar to that of a common law framework; it sought to engage with indigenous banking institutions in a bid to bringing *hundi* practices within its purview. A Study Group was set up to investigate and report on indigenous bankers in 1971, particularly as the Commission observed that there was very little legislation regarding them (Krishnan 1969, 21st October). The report provided the

first update into indigenous banking operations since the large-scale systematic Provincial Banking Enquiry Committee Reports of the 1930s. This report demonstrated the continued importance of *hundi* amongst indigenous bankers, both for ease of negotiability and liquidity, as well as acting as “an indispensable link between the organised banking system and the class of small borrowers who may not be in a position to obtain funds at the right time and in the right quantum from the organised banking system.” Despite the fact that the indigenous bankers and modern banking sector were separate, *hundi* discounting shroffs were able to act as “vital” intermediaries to the commercial banks who possessed limited knowledge about the creditworthiness of small borrowers (Banking Commission 1971, 98). Previously, this kind of role would have been undertaken by a *Khazanchee* (treasurer), however, the Imperial Bank phased out this role.

Even in the 1930s, recognition of *hundi*'s importance was provided by the Central Banking Enquiry Committee with the recommendation that *hundis* be linked to the Reserve Bank of India. The 1969 Study Group viewed this as having been a potential route by which “a truly integrated bill market adapted to the needs of the local environment” (Banking Commission 1971), might have developed. Failure to integrate accordingly appears to have been the result of conflicting attitudes, inability to meet middle ground, and mistrust towards *hundis* used for trade transactions versus those entailing advances of money in general.

The hardening of attitudes on both sides, however, rendered any direct link or integration with the organised sector difficult. The indigenous bankers were reluctant to segregate their banking and non-banking activities. Another major difficulty was that the authorities were sceptical of regarding the *hundi* as emanating from a particular trade transaction and therefore as a genuine trade bill. In their opinion the advances were more often in the nature of accommodation paper and in the absence of documentary evidence to back the paper, it was difficult to say that the credit was in all cases used to support a genuine productive activity (Banking Commission 1971, 98-99).

This “hardening” of attitudes may also help to explain why, despite several amendments, *hundi*'s position relative to the Negotiable Instruments Act (NIA) of 1881 remained unresolved. An ever contentious issue, the Banking Commission of India posed serious enquiries about whether it was necessary to advance legislation to cover indigenous negotiable instruments like *hundis* (Krishnan 1969, 21st October). In the recommendation of the 1971 Banking Commission report, the Group rejected the wish “expressed in some quarters” advocating the discontinuance of indigenous negotiable instruments falling outside the remit of the NIA. The technical studies papers, prepared by the Banking Commission in 1970<sup>17</sup> proposed the potential necessity of bringing *hundis* within the framework of codified law (RBI Banking Commission 1972, 412). The Banking Commission's 1971 report on indigenous bankers appears to go a step further, proposing to both codify “peculiar incidents and usages” (Banking Commission 1971, 107) and bring them within the NIA.

Why codify? The act of codifying *hundi* was believed “nearly a century” overdue. Even in 1968, the Banking Laws Committee advised the Finance Minister that “the indigenous banking system was not given the attention it deserved” during the colonial period (Banking Laws Committee 1978, i). As mentioned previously, although a number of *hundis* were theoretically excluded from the NIA, such as

those written in the vernacular, in practice the statute did not always function in this way. In the case of contrary usage, and even if written in the vernacular, where proof of a *hundi*'s customary usage could not be supplied, the *hundi* would be subject to the NIA (Law Commission of India September 26, 1958, paragraphs 8 and 9).

On the back of recommendations from the Banking Commission, and because the matter of *hundi* was so complex, the Government of India decided to entrust the issue of *hundi* codification to the Banking Laws Committee of 1978. This was not the first time codification was proposed and attempted. Several commissions had underscored the importance of *hundi* prior to the 1978 Banking Laws Committee. In the Law Commission's eleventh report (1958), it observed that the *hundi* system should be preserved because of its utility in rural areas, where modern banking was lacking. The Banking Commission of 1972 pointed out that even where modern banking had sufficiently spread, *hundi* and the indigenous banking system played a no less necessary 'complementary' role (Banking Laws Committee 1978, 3).

However, two earlier attempts to codify *hundi*, in 1881 and 1958 respectively, had failed, illustrating the challenge involved in undertaking codification.

The suggestion made by some of the Chambers, however, was that *hundis* should be allowed to retain their peculiar incidents according to usage and that those usages should be codified by us. It is, however, not easy to define a *hundi* or to discover its essential attributes. It would appear from text-books and judicial decisions that no less than a dozen varieties of *hundis* are in vogue in this country. The usages differ so widely as between these species and from place to place that we can discover only a few characteristics or incidents which may be attributed to *hundis* in general (Law Commission of India September 26, 1958, paragraph 14).

The 1975 Banking Laws Committee seems to have triggered the desire for a separate *hundi* Act. At this juncture, the government concluded that *hundis* could not be subsumed within the NIA. Certain important varieties of *hundis* operated as conditional instruments, whereas the NIA treated bills of exchange as unconditional orders (Banking Laws Committee 1975, 31).

The 1978 report examines the matter of codification and details the Banking Laws Committee's recommendations. In common with previous reports, this Committee outlined several of the instrument's continued functions. *Hundi* was still core to Indian indigenous bankers, merchants and trading community for business credit, the remittance of funds, and financing the storage and movement of goods (Banking Laws Committee 1978).

Since modern banks neglected interior parts of the country, rural and semi-urban areas particularly benefited from the existence of *hundi*, largely owing to the fact that it was classed as 'inexpensive', 'expeditious', and 'safe' in these areas (Banking Laws Committee 1978, 2-3).

At this point in time, *hundi* served too useful a function for indigenous bankers, and those served by them, for abolishment to be considered. In concluding that *hundis* could co-exist and even complement existing banking services, the 1978 Banking Commission demonstrated an engagement with the indigenous and its customs, which apparently sought to redress a cultural balance of power issue.

In effect, *hundi* occupied an uneasy hybrid space. On the one hand, it was excluded from the law. On the other, where customary sanctions could not apply, or where parties to a *hundi* transaction sought dispute resolution from the courts, it came under the purview of the law. The disputes as well as legislative debates on the status of *hundi* (Martin 2012, chapters 4-5) are all valuable markers of a particular process that was taking place. *Hundi* disputes in the courts not only express the colonial encounter with the indigenous, but also the formation of colonial law. Furthermore, colonial law constituted an ongoing process reflecting interests which were particular to the cultural and political contexts in which it was embedded. It was not merely a straightforward transplant of English law in the Indian context. That is not to say that the colonial law was congruent with its Indian cultural and political context, however, it was not impervious to it either.

Through codification, the Banking Laws Committee's primary goal was to standardize *hundi*. In so doing, it expressed the belief that this would strengthen indigenous business practices and banking systems, so that they could have recourse to the legal system in order to have commercial and trade claims settled. It was also believed that *hundi* codification would support the economic development of rural India by lending greater "respectability and certainty" (Banking Laws Committee 1978) to indigenous business practices of village entrepreneurs and small businessmen.

Codification provided a means for the government to better understand indigenous banking and business practices and also extract the most useful and complementary *hundi* usages within a fresh Act. Within the draft Act, the Banking Laws Committee proposed retaining the essential features and attributes of the *hundi* system. As with other codification attempts, the challenge for the Committee lay in properly identifying such characteristics. The Committee's engagement with *hundi* to achieve this goal reveals much about the culture of the law at the time.

### **The Committee's Engagement with *Hundi* and the Culture of the Law**

How willing was the Banking Laws Commission to embrace indigenous customary practices? According to the Banking Laws Commission, there had been key institutional developments surrounding *hundi* dispute settlement mechanisms. Merchant guilds of ancient times had 'devolved' into chambers of commerce and sharafi associations. The Commission evidently regarded these associations as possessing their own strength and reliability. For this reason, it expressed surprised that the *hundi* system had not gained greater currency and acceptance amongst the rest of the business sector, including corporate entities.

The chambers of commerce and sharafi associations appear to have brought greater clarity to the practices of the *hundi* system. They laid down institutionalized rules that were recognized by the British Indian legal courts, and successive courts following the colonial period. Moreover, merchant chambers of commerce recognized the purview and practices of other associations in their dealings with each other. Thus codes of *hundi* practice were relatively similar, and potentially,

seldom in conflict. The systematic nature of the bazaar rate, was probably the most visible expression of this.

Yet even still, the wider public remained ignorant of these rules. Colonial government attitudes towards *hundi* at the time of the creation of acts like ISA, and the NIA, persisted in the post-independence period. Such prevailing attitudes created the growing perception that *hundi* usages were confusing and impenetrable as far as codification was concerned.

Cooperation from the various associations vastly helped the Commission's task on this occasion. One clear reason for indigenous bankers' cooperation is attributed to constrictive elements of certain provisions falling under the Income Tax Act. Merchant and trade bodies were unable to fully utilize the *hundi* system because of these provisions (Banking Laws Committee 1978, 4). So, it was in the interest of these bodies to cooperate as far as possible in order to raise their profile in the government's eyes. Another favourable condition for the process of codification was the attitude of the Government of India itself, which was described as more responsive than either the governments operating at the time the NIA of 1881 was framed, or during the period of the Law Commission's 11<sup>th</sup> report in 1958.

The codification project sought to provide an up-to-date glance at *hundi* as it operated in 1978, and not merely in the past. In order to achieve its aims, the commission needed to extensively rely on sources other than judicial decision or well-known age-old customs. A questionnaire—which is in itself revealing of the extent of *hundi* knowledge at the time—was sent to 31 various institutions and individuals. The most useful input for the draft *hundi* bill, seems to have been *hundi* committees consisting of experts, who were believed to have been highly knowledgeable with the rules and practices relating to *hundi*.

*Hundi* rules and practices had always been a source of contention dooming previous codification attempts to failure. Difficulties of this kind, the 1978 commission claimed, were due to the 1958 commission having inadequate data. Insufficient analysis of the primary features of the instrument also led to undue weight being given to “marginal differences found in the usages relating to the different forms of *hundis* between the different parts of our country” (Banking Laws Committee 1978, 12).

It was the 1978 commission's belief that the impoverishment of data on *hundi* was also a consequence of too great a reliance on the decisions of courts. These decisions were based on some careful scrutiny, but such scrutiny as did occur was need-based and insufficiently comprehensive (Martin 2012, chapter 5). The 1978 commission also observed this ad-hoc approach to *hundi* and strongly advocated the need for field study – its primary method for ascertaining facts for the report.

Nevertheless, the 1978 commission recognized that *hundi* instruments with ‘inconsistent usages’ caused the greatest problems for the framers of the 1881 NIA and the 1958 commission. More accurately, these inconsistent usages constituted those *hundi* practices which were at variance with English bills of exchange, cheques and promissory notes (Banking Laws Committee 1978). For the 1958 Commission it was easier to simply propose that the *hundi* system should operate

utterly outside the framework of codified law (Banking Laws Committee 1978, 13). Clearly the 1978 Commission also found such usages too great an obstacle and this is why they opted to construct a separate act for *hundi*, rather than pursue full integration of *hundi* within the NIA.

Coming back to our introductory question, did codification of *hundi* serve to give greater weight to traditional customary rules, rather than those established by statute and precedent? The question strikes at the heart of the evolution of modern Indian law. Since Indian law is primarily of English origin, the codification of *hundi* raises the theme of fidelity of Indian law to British models, and assessing the relative influence of the international context in the government's selectivity of *hundi* customs.

It was mentioned previously that as *hundi* disputes appeared in the British instituted courts, several *hundi* customs fused with British practices, making their point of departure indistinguishable (Martin 2012, chapters 4-5). There was a very practical reason for this, for the courts largely accepted the authority of those customary practices which could be authenticated through common law methods of assessment. British procedure, methods and doctrine would have permeated the Indian merchant community, so that even if Indian customary practices were not wholly discarded in favour of English practices, the influence of the latter in matters of litigation was indisputable. One could therefore argue that over the years *hundi* customary variation might have diminished considerably from what it had been at the time of the creation of the NIA.

There was no longer any doubt that *hundis* in their entirety could not be properly embodied within the NIA as other English bills of exchange had been; several *hundi* customary usages diverted from English bills of exchange practices, rendering the NIA irreconcilable with *hundi*. Indeed the 1978 Banking Laws Commission concluded that *hundis* were in "a class by themselves":

The NIA has confined itself only to three classes of instruments, viz, bills of exchange, cheques and promissory notes. In view of this, the courts in India have held that the indigenous negotiable instruments (especially shahjog *hundis*) are neither bills, nor cheques, nor promissory notes and as such they are wholly outside the purview of the NIA (Banking Laws Committee 1978, 73).

This event raises an interesting question: when the government made the decision that *hundi* could not be reconciled with the NIA, did this not essentially further demarcate *hundi* as the indigenous? In some sense it did for the government recognized *hundi* as being the 'other' and wished to bring it properly within its control. It was too complex a phenomenon to bring within the remit of the NIA. In fact, application of the NIA to *hundis* was rather inconsistent, often subject to the jurisdiction rather than absolute compliance:

17. There has been a difference of opinion among the High Courts as to the basis for applying any provision of the NIA to *hundis* even when there are no specific usages or practices proved with reference to any particular aspect. In such circumstances, while the Allahabad High Court seems to apply the provisions of the NIA "on the ground of the reasonableness of the rules" in the NIA, the Bombay High Court seems to apply the NIA provision "as a matter of course." ... Thus, when there is no practice or usage to decide the question, the provisions of the NIA are not *proprio vigore* applied to *hundis* and in such

cases, a substantial compliance with the NIA provisions is required (Banking Laws Committee 1978, 13-14).

Codification within a separate Act would not however diminish the power of the NIA, but rather bring those *hundi* practices which the government regarded as useful and consistent with the official legal system's principles, into alignment with the wider arena for negotiable instruments. In other words, *hundi* would never revert back to pre-British practices.

With respect to *hundi*, there is indeed no evidence to suggest that the Indian business community wished a full reversion back to pre-British *hundi* practices. The notion that the Indian business community might even have possessed such an indisputable sense of pre versus post-British *hundi* practices is highly questionable. Perhaps it comes as no surprise then, that several shroff associations sought provisions in the *Hundi* code bill which were similar to those applicable to bankers under the NIA (Banking Laws Committee 1978, 7). These provisions<sup>18</sup> outlined rules governing the presentment of acceptance or payment, along with the liability of the banker receiving payment of a cheque or draft. By seeking the same provisions, shroffs wished to be viewed in the same light as 'bankers'.

The *hundi* codification process quite clearly draws attention to law as a social institution relative to the larger political and social situation in which it existed. The input of specialized institutions such as the Indian mercantile associations served to show how the Banking Commission selected or abrogated rules relating to *hundi*. Despite the fact that shroffs sought these provisions, the 1975 Law Commission and the 1978 Banking Commission felt that *hundis* were *sui generis*, that is, a class unto themselves. *Hundi* was distinct from NIA instruments largely on the basis of customary conditions governing the use of *hundi*, concluded the Commission. Therefore, it argued that it was not necessary to apply the provisions of the NIA to *hundi* (Banking Laws Committee 1978, 17).

R. Krishnan, the Secretary of the Banking Laws Committee, credited the indigenous sharafi associations (mercantile associations) for maintaining the "vitality" of the *hundi* system. Writing in 1976, he described these associations as the "sustaining organisational link that has helped the *hundi* system to survive the powerful onslaughts from western trade influences and to withstand so far the attempts made at different times for the abolition of the system" (Banking Laws Committee 1978, annexure 6). Krishnan goes on to note that the sharafi associations crucially served to inexpensively and expeditiously resolve a large number of *hundi* disputes, by implication, avoiding the need for length and expensive litigation in the courts. For "small businessmen" and "retail traders", this was a particularly important dispute resolution channel. Drawing from documentation on Calcutta, Krishnan argued that most *hundi* dispute resolution was carried out successfully through the sharafi associations (Banking Laws Committee 1978, 107). The courts did respect recognized sharafi associations. When *hundi* disputes reached the courts, litigators and judges referred first to any given rule presided over by sharafi associations within the jurisdiction.

Conversely, while the Commission argued for *hundi*'s distinctiveness relative to NIA instruments, it also acknowledged that the NIA provisions took primacy in the

courts where *hundi* customs and usages were not at variance (Banking Laws Committee 1978, 17). In practice this meant that disputing parties could, and did, bring two competing *hundi* customs into the courts (Martin 2012, chapter 5). For the courts, decisions on which *hundi* custom should take priority were often guided by their sense of which party's custom better fulfilled contractual obligations according to consideration<sup>19</sup> that could be 'objectively' determined. In practice, as mentioned previously, objectivity was subject to the degree of legitimacy given to customary practices according to British procedure, methods and doctrine. Those litigating parties that were able to make recourse to English law, and in particular the NIA, to support custom bound *hundi* agreements were likely to be more effective at gaining favourable resolution.

In essence, as *hundi* judicial precedent evolved in the courts, it is also likely that several *hundi* rules became obsolete, modified or distorted with rules consciously and unconsciously imported from English law. Drawing on the 1971 Banking Commission's report on indigenous bankers, the 1978 Banking Laws Committee observed that "the [*hundi*] usages as to the negotiable paper are gradually changing and the tendency is to bring them more and more in keeping with the modern style of banking" (Banking Laws Committee 1978, 21). It also noted that various types of *hundis* had "fallen into disuse".

The Commission could readily perceive the benefits of certain *hundis* by likening them to English banking instruments. The *Namjog hundi*, was a named *hundi*, which meant that it could not be negotiated, and was only payable to the person named on the instrument. It could also only be endorsed if it was expressly for realization or collection. For the Commission this seemed functionally similar to an "account payee cheque" (Banking Laws Committee 1978, 61).

A *Shahjog hundi* was traditionally a *hundi* that was only payable to a 'shah', most usually defined as a respectable person of some means, and of known standing in the bazaar.<sup>20</sup> It was drawn by one merchant on another, with the condition that the drawee ultimately pay out the *hundi* only to a 'shah'. In effect, this served to reinforce the security of the *hundi*. On receipt of the *hundi*, it would be the shah's responsibility to make sufficient enquiries as to the authenticity of the *hundi* itself, and to pay out to the holder. Once satisfied, the shah would present the *hundi* to the drawee for acceptance of the payment. The benefit of this kind of *hundi* was that if the *hundi* was ultimately discerned as fraudulent, or stolen, liability would rest with the shah—who served as a banker—and the drawee could seek a full refund from the shah.

In the Western zones of India this *hundi* had retained its traditional functional meaning. However, the Commission noted that the interpretation of *shah* in the Eastern zones had changed to simply mean: "'To Shri" or "To Shriman", i.e., an expression of honorific significance without anything specially intended thereby" (Banking Laws Committee 1978, 60). After some discussion on resolving this divergence in usage, the 1978 Commission sought to sharpen the functionality of the *hundi* which most closely conformed to the prevailing culture of negotiable instruments. By seeking the addition of "two transverse parallel lines across its face" (Banking Laws Committee 1978, 61), the Commission hoped to bring *shahjog hundi* functionality in line with that of a crossed cheque, and reinforce its protective

qualities. In this way, the Commission consciously filled perceived gaps in *hundi* usages with rules imported from a wider English and international banking context.

A telling indication of American influence in legal matters by the 1970s, is revealed by the fact that the Banking Law Commission perceived an insufficiency in the NIA, and an even greater insufficiency in the English Bills of Exchange Act as compared to laws which had evolved in the United States. Given the transplanted quality of Indian law, Indian “common law” differed from English law in being largely codified, rather than being the substantively gradual accumulation of judicial precedent. As a consequence of the relatively limited bank of judicial precedent to draw on, Indian law tended to operate more at the interstices of an enumerated legislative framework.<sup>21</sup> Unsurprisingly therefore, US law carried more weight than is commonly acknowledged. By implication, this cast Indian law into more of a civil rather than common law culture.

## Conclusion

Even though the Indian Banking Laws Committee was not successful at achieving its goal of introducing a new *hundi* act, the attempt at creating one provides much information about the state of Indian legislation at the time. The draft *hundi* bill directs our attention to the position and direction of the law in relation to the indigenous in 1978. In this discussion we saw that transplanting English laws into the Indian context was not without significant problems and limitations, but by the 1970s, the matter of *hundi* also became subject to a wider international context of legislative trends and reforms.

Codification of *hundi* was attempted within the context of drawing on existing common law precedent. The attempt sought conformity as far as possible with existing Indian statute, adherence with international standards, as well as the extraction of the practical and cultural value of *hundi* within its Indian context. Thus the model for reviewing *hundi* was greatly influenced by a wider national and international historical context. Accordingly, perceptions of *hundi*'s functionality and negotiability were also subject to prevailing notions of negotiable instruments. In other words, the process of codifying *hundi* reveals how Indian law was primarily directed by a larger context.

In specific ways, the development of law around *hundi* in the courts, followed the Roman maxim *judicandum est legibus non exemplis* (adjudication is to be according to declared law, not precedent). As the NIA itself became more closely influenced by wider international trends in the negotiable instruments domain, so too did this filter through into the courts. Similarly, *hundi* precedent developed through the courts gave rise to an ever greater accretion of NIA influenced *hundi* practices.

While *hundi*'s place and function in Indian society was coloured by the law, the attempt at codifying *hundi* reveals a process of greater estrangement, in formal terms between the NIA and *hundi*. Stronger lines of separation were drawn around the NIA in relation to *hundi*, coloured by an even greater sense of irreconcilable difference.

Why the draft codification bill failed, when the Banking Laws Committee considered its exercise in codifying *hundi* a success, is not a subject that can be treated in this study. It is certainly worthy of exploration in future work. However, the retrospective knowledge that it did fail does inform our reading of the 1978 Banking Laws Committee report. We can read this report with the understanding that the Committee was still grappling with a complex and often vexing subject. It is also clear that indigenous actors and their tools, in this case *hundi*, were marginalised by colonial laws, and ultimately squeezed out by the post-Independence Indian government's steps towards accommodating wider international trends.

## References

- 3rd July, 1884. Papers Relative to the Bill to Amend the Negotiable Instruments Act. From A.P. MacDonell, Esq., Secretary to the Government of Bengal, Revenue Department, Darjeeling, to the Secretary to the Government of India, Legislative Department. In *India Office Records, Legislative Department, Public and Judicial Branch, 6/134, File 1764*.
- 1929-30. Report of the Bombay Provincial Banking Enquiry Committee, 1929-30. Bombay.
- 1930a. Report of the Bengal Provincial Banking Enquiry Committee, 1929-1930. Calcutta: Bengal Govt. Press.
- 1930b. Report of the Burma Provincial Banking Enquiry Committee, 1929-30. Rangoon.
- 1930c. Report on the Madras Provincial Banking Enquiry Committee. Madras.
1971. Report of the Study Group on Indigenous Bankers. Bombay: Banking Commission; Government of India.
- April 1893. Decision that legislation is not necessary for the purpose of defining "Bill of Exchange" and "Hundi" in the Stamp Act so as to include "Barati Chittis" or of bringing "Samachari Chittis" within the scope of the Act. Finance and Commerce Department, Separate Revenue, Progs. Nos. 436-602, part A.
- Bagchi, Amiya Kumar. 1987. *The evolution of the State Bank of India : the roots, 1806-1876. Part 1 , The early years, 1806-1860*. Bombay: Oxford University Press.
- Bagchi, Amiya Kumar. 1997. *The evolution of the State Bank of India. Vol.2, Era of the presidency banks, 1876-1920*. Walnut Creek: Altamira.
- Bagchi, Amiya Kumar. 2002. *Money and credit in Indian history from early medieval times*. New Delhi: Tulika.
- Banarasidas. 1981. *Ardhakathanak (1641)*. Jaipur: Rajasthan Prakrit Bharati Sansthan.
- Banking Commission. 1971. Report of the Study Group on Indigenous Bankers.
- Banking Laws Committee. 1975. Report on Negotiable Instruments Law. Government of India.
- Banking Laws Committee. 1978. Report on Indigenous Negotiable Instruments (*Hundis*). Government of India.
- Bayly, C. A. 1983. *Rulers Townsmen and Bazaars: North Indian Society in the Age of British Expansion 1770-1870*. New Delhi: Oxford University Press.
- Bhashyam, Krishnamachari, K. Y. Adiga, and India. 1935. *The Negotiable Instruments Act*. 6th ed. Calcutta: Eastern Law House.
- Birla, Ritu. 2009. *Stages of capital : law, culture, and market governance in late colonial India*. Durham, N.C. ; London: Duke University Press.
- Galanter, M. 1972. "Aborted Restoration of Indigenous Law in India." *Comparative Studies in Society and History* no. 14 (1):53-70.
- Galanter, Marc, and Rajeev Dhavan. 1989. *Law and society in modern India*. Delhi ; Oxford: Oxford University Press.
- Greif, Avner. 2012. "The Maghribi traders: a reappraisal?1." *The Economic History Review* no. 65 (2):445-469. doi: 10.1111/j.1468-0289.2012.00645.x.

- Habib, Irfan M. 1960. "Banking in Mughal India." In *Contributions to Indian Economic History I*, edited by Tapan Raychaudhuri. Calcutta: Firma K.L. Mukhopadhyay.
- Jain, L.C. 1929. *Indigenous Banking in India*. London: Macmillan.
- Kolsky, Elizabeth. 2010. *Colonial justice in British India*. Cambridge: Cambridge University Press.
- Krishnan, R. 1969. "Agenda for the Meeting of the Study Group on Legislation Affecting Banking to be Held at Madras on 21st October."
- Krishnan, R 1969, 21st October. Banking Commission - Study Group to Review Legislation Affecting Banking - Minutes of the Inaugural Meeting of the Study Group held on the 21st October 1969 at the Reserve Bank Building, Madras.
- Law Commission of India. September 26, 1958. Eleventh Report on the Negotiable Instruments Act, 1881
- Martin, Marina. 2009. "Hundi/Hawala: The Problem of Definition." *Modern Asian Studies* no. 43 (4):909-937. doi: 10.2307/40284915.
- Martin, Marina. 2012. *An Economic History of Hundi, 1858-1978*, Economic History, LSE.
- Passas, Nikos. 1999. *Informal Value Transfer Systems and Criminal Organisations: A Study into So-Called Underground Banking Networks*: Netherlands Ministry of Justice.
- Ray, Rajat Kanta. 1995. "Asian Capital in the Age of European Domination: The Rise of the Bazaar, 1800-1914." *Modern Asian Studies* no. 29 (3):449-554.
- RBI Banking Commission. 1972. Technical Studies Prepared for the Banking Commission, Vol II. Reserve Bank of India, Bombay.
- Rudner, David. 1994. *Caste and Capitalism in Colonial India: The Nattukottai Chettiars*. University of California Press.
- Setalvad, M. C. 1960. *The Common Law in India, etc*: pp. viii. 227. Stevens & Sons: London.
- Subrahmanyam, Sanjay, and C. A. Bayly. 1988. "Portfolio Capitalists and the Political Economy of Early Modern India." *The Indian Economic and Social History Review* no. 25 (4).
- Washbrook, D. A. 1981. "Law, State and Agrarian Society in Colonial India." *Modern Asian Studies* no. 15 (3):649-721.
- Watson, Alan. 1993. *Legal Transplants : an Approach to Comparative Law*. 2nd ed. ed. Athens, Ga. ; London: University of Georgia Press.

---

## NOTES

<sup>1</sup> For a comprehensive linguistic and etymological analysis of the two words *hundi* and *hawala* see (Greif 2012)

<sup>2</sup> See (Subrahmanyam and Bayly 1988); (Banarasidas 1981) The 17<sup>th</sup> century autobiographical poem the *Ardhakathānak*, the author, a Jain merchant from Jaunpur, describes the use of a *hundi* which operated rather like a promissory note: "The *hundi*

against which my father had borrowed money earlier in Jaunpur had now fallen due. I received it and paid out the required sum.” (Ray 1995); (Bagchi 2002, 1987, 1997); (Bayly 1983); (Habib 1960); (Jain 1929); (Martin 2009)

<sup>3</sup> According to a search of English language news on Nexis.

<sup>4</sup> The difference between the coloniser and the colonised.

<sup>5</sup> Ramachandran, p. 53, again cited by Galanter.

<sup>6</sup> Birla examined three forms of legislation from the 1880s: the Negotiable Instruments Act, the Companies Act, and the Income Tax Act.

<sup>7</sup> David Rudner has argued that the legal approach “simply ignores customary sanctions on *hundi* transactions that are rigorously enforced by multilocal, multiregional and even multinational communities of businessmen.” P.37.

<sup>8</sup> As mentioned above, Birla also draws on this Act, albeit by way of examining how Marwari merchants and their social relations created new parameters of legality and legitimacy.

<sup>9</sup> This related to the trade of opium in 1908, where a proposal to replace the *hundi* system with a system of exportation of opium in bond, was strongly opposed by the Government of Bombay. Exchange *hundis* were also indispensable to trade between Afghanistan and India in 1940, when currency restrictions were imposed by Afghan law. It was also an artery of trade in 1945 between customs frontiers in the east of India and north of Assam between Tibetan and Chinese merchants.

<sup>10</sup> For evidence of shroff associations see for instance: (1930a, 1929-30, 1930c)

<sup>11</sup> Watson writes about this phenomenon of legal transplants, legal change and customary borrowings in his work: (Watson 1993, 116)

<sup>12</sup> For an extended discussion on the current status of *hundi* as both a migrant worker remittance system, and a perceived vehicle for the black market, See (Martin 2009) This provides an analysis of the various policy discourses

<sup>13</sup> Stringent currency regulations may have pushed *hundi* into illegal terrain.

<sup>14</sup> R. Krishnan contributed a chapter to the published volume of technical studies from information prepared for the Banking Commission between 1969 and 1970, entitled ‘The Law Relating to Negotiable Instruments and Negotiable Documents’, 1970 IN *Technical Studies Prepared for the Banking Commission, Vol II*.

<sup>15</sup> (RBI Banking Commission 1972) Here Krishnan cites Cheshire’s “Private International Law”, 4<sup>th</sup> edition for his view on the English Act.

<sup>16</sup> See annexure. These points were proposed for consideration by Shri R.K. Seshadri, Executive Director, Reserve Bank of India.

<sup>17</sup> These papers were written in 1970, but only published as a volume by the RBI in 1972.

<sup>18</sup> *Negotiable Instruments Act*, (1881). See sections 85, 85A, 131 and 131A.

<sup>19</sup> Consideration in this legal sense.

<sup>20</sup> This meaning of shahjog *hundi* appears to be the most traditional judging by older descriptions of the shahjog *hundi*, as well as the etymology of the word shah itself. See for instance, (Jain 1929)

<sup>21</sup> Galanter discusses this idea.