

# URBAN GOVERNANCE AND EMERGENT FORMS OF LEGAL PLURALISM IN MUMBAI<sup>1</sup>

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## Legal Pluralism and the Selective State

Studies of legal pluralism in India have for long addressed the issue of the relation between state and non-state legal orders. Particularly the origin of the Indian state legal system in colonial rule has focussed discussions on the question of the imposition of a foreign normative system and its adoption and adaptation within Indian society. The supersession of traditional legal orders and the degree of their displacement by state law (Galanter 1997) have been at issue just as much as their resilience and lasting determination of social order (Cohn 1959). At the same time that studies have examined the adaptation of state law to local practices others have shown the transformation of custom and religion through state codification (Kolff 1992), an issue that pertained particularly to the state's accommodation of legal pluralism through the personal status principle in family law.

Thus perspectives on legal pluralism have concentrated on the apparent dichotomy between customary legal norms (religious norms among them) and state law, and the negotiation of this dichotomy in the practices of the state as well as of its citizens. Because of this scholarly commitment to the 'entities' of custom and state law and their relationship, there has been little discussion of forms of legal pluralism that

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<sup>1</sup> I am indebted to Franz and Keebet von Benda-Beckmann, Gerhard Anders and Werner Schiffauer for insightful comments and questions that helped me to improve and sharpen my argument.

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emerge within the effective administration of justice and entitlements by state and non-state agencies.

It is banal to say that the administration of justice and of law and order in India is not concentrated in the state's hands (Baxi 1992, 100). Rather, it is fragmented and subject to situational constellations of actors that wield control and apportion rights. Various state and non-state agencies like different state agencies, community organisations, NGOs, and commercial (legal and illegal) enterprises, are involved in the governance of distribution, regulation and adjudication; these define legal institutions in their practices; they offer frames of interpretation and act themselves on specific interpretations of a legal framework; they set rules and practice sanctions and enforce thus certain norms and certain versions of a legal order.

These forms of legal pluralism shape much of everyday ordering and disputing in urban India. They relate to formal law and various customary legal orders equally in ways that are eclectic and pragmatic; they involve social norms filtered through the relations of power that shape them. They could be termed 'unnamed law' (F. v. Benda-Beckmann 1992, 2) as they do not refer to a specific basis of legitimacy, but rather are produced in the interactions within regimes of governance. These forms of legal pluralism are not new. They have for long determined the operative legal order of (urban) India (Chandarvarkar 1998), differing in the actors who had parts in their constitution, differing in the roles these different actors had within the constellations of governance, and differing as well in the power relations that determined these constellations. Their historic continuities and changes are not subjects of this paper; here these forms of legal pluralism are to be discussed in their relation to the emergence of what I want to call the selective state.

The selective state is determined by a particular division of labour, by particular processes of the formal and informal delegation and appropriation of governmental activities that differ from other such governmental divisions of labour, e.g. those constitutive of systems of indirect rule, or those envisioned by neo-liberal policies of public-private partnership - although they may result from such policies. The processes of the formal or informal devolution of judicial competences of the state to alternative organisations can take at least three principal forms: (a) The devolution of state productive and distributive tasks to private organisations like charitable organisations or commercial enterprises - that possibly also informally devolve regulation in as much as it is inherent in distribution and production. (b) The formal decentralisation and devolution of regulatory tasks in specific legal fields, be they of the kind of personal status regulations or the devolution of regulation for and

jurisdiction over the internal affairs of corporations, but also of development projects and international NGOs. These will most probably also affect other legal fields than those specified, as well as persons not immediately part of the entity thus empowered. (c) The third process is the independent establishment of parallel centres of judicial authority that wield control over specific territories, specific groups of people or specific economic spheres and do not stand in a subsidiary, complementary relation to the state but in a parallel and autonomous one. The establishment of such autonomy has often been treated as a sign of state crisis, or the infringement of state sovereignty, of “fragmented sovereignties” (Randeria 2002). Such infringements have been associated with the autonomy of trans-national corporations and their regulatory autonomy but recently also with the ‘project law’ established by international development organisations (K. v. Benda-Beckmann 2001; Risse et al. 1999). Frequently, however, such autonomy and the associated ruptures of the integrity of the ideal-type modern state, and thus signs of its failure, have been seen in the establishment of local fiefdoms of criminal gangs, warlords, (neo-) traditional authorities etc. (Humphrey 1999; Schlichte and Wilke 2000; Volkov 2000).

In relation to the establishment of control by transnational corporations and also international (development) organisations, the active involvement of government in the fragmentation of state sovereignty has been demonstrated (Strange 1996; Likosky 2002; Randeria 2002). The appropriation of certain degrees of autonomy by sub-national entities within the selective state has been seen mostly as evidence for incomplete processes of state-building (particularly where such centres of authority refer to customary genealogies), or as signs of state crisis (Trotha 2000).

However, rather than such forms of legal pluralism being residues of incomplete state-building, or results of the incomplete expansion of the state legal and judicial system, it appears that such local, sub-national centres of governmental authority and their particular infringements of state monopolies, particularly those of coercive force and law, are also part of and embedded in functional regimes of governance that are shaped by the merger of processes of delegation and forceful appropriation, sometimes informal or unofficial.

On the one hand, this makes an idea of decentralisation and devolution that assumes the state to retain the competence to delegate competences obsolete; it becomes obvious that an operative legal order is shaped frequently by the interaction of various state and non-state agencies. The autonomy of the individual agencies within such constellations can differ; the state is not necessarily the one that regulates the relations among the others. On the other hand, the processes wherein devolution and

appropriation merge show that the state is often deeply involved in the so-called 'informal', in the reproduction of informality and thus in the drawing of its own boundaries and limits. "The centrality of the state lies to a significant extent in the way the state organises its own decentering..." (Santos 1995: 118). However, selectivity of statecraft is not necessarily an integrated strategy, as the idea of the slim state would advocate. It evolves from possibly contradictory strategies of different state and non-state actors. It has its own dynamic, and its own rules that govern the cooperation and competition of these agencies.

The precarious interactions within these constellations of governance are evident in the new, or newly relevant forms of generation and administration of law in Mumbai (formerly known as Bombay.) The practices of one particular organisation active in the field of adjudication and law and order, namely the *Shiv Sena*, a regional political party of the Hindu Right, and its interaction with other organisations active in the field, show the merger of devolution and appropriation that characterise selective statecraft. On the one hand, the *Shiv Sena* is an extreme example to illustrate the emergence of new forms of legal pluralism: The *Shiv Sena* is an organisation whose domination extends from municipal and other regional public offices to a tightly knit network of local offices, its *Shakhas*, and thus spans the whole range of social and political life in the city. It is a political party, government (of the city of Mumbai), local NGO, social movement and (criminal) economic organisation all at once. Its degree of autonomy is high compared to NGOs, community organisations or even oppositional parties that are also involved in local governance. It is thus an extreme example for the issues in question because here the processes of the de-étatisation of regulation and adjudication involve a considerable degree of autonomous coercive force that has not been formally delegated by the state but has been appropriated by the *Shiv Sena* – although without much resistance from the state agencies, or maybe even with their connivance.

And thus the *Shiv Sena* is at the same time a mild example of the processes in question, not in terms of coercive force but in terms of its impact on state cohesion. The *Shiv Sena's* autonomy and the legal order it has established are well integrated into the state order, treading the line, and shifting it, between norm breaking and norm setting. The organisation had been integrated thus even before it held public office, as its modes of operation have been instrumentalised for the strategies and agendas of various other agencies, namely those of industrial management, the Congress party for a period, for a later period the following national governing party, the BJP, and various other local interests.

The processes of delegation, devolution and appropriation are thus not always clearly distinct or distinguishable. Devolution to the *Shiv Sena* has often happened through neglect or default. Default has always had an ambivalent relation to intention. Instrumentalisation of the *Shiv Sena* by various other organisations was common and gave space to the activities of the party. But strategies of avoidance or simply lack of control were just as important in its establishment. Thus, differing and sometimes contradictory intentions combined and produced in the aggregation of their intended and unintended consequences spaces wherein the party could set its own rules. Thus it is also a clear example of the merging of informal devolution and forceful appropriation of normative control, and thus for the selectivity of state-craft. The *Shiv Sena's* appropriation of normative authority, and its rupture of the state monopoly of coercive force, a monopoly which is usually seen as a distinctive characteristic of the state, does not imply a crisis of the state or its incomplete expansion.

I attempt here to sketch the processes that characterise the evolution of legal pluralism in the competitive relations of various institutions of governance by concentrating on one of these and on its position within this field. I want to discuss the establishment of the *Shiv Sena Shakhas* and their courts within the spaces opened by the promises as well as the inefficiencies and inaccessibilities of state services, that is, within the spaces created by the contradictions between the idea of the state and state practices. Their offers relate to tangible needs, but these needs are also defined by the aspirations of the developmental state. The normative order that they evolve in their practices is shaped by their political agenda but also remains bound to the normative offers of their competitors in the field of local order. The competition with these actors is shaped by rules that are generated by the integration and overlapping of various political and economic aspirations held by these different agencies, or by the networks involved in this competition. However, the competitive pressures that bind these various agencies to the interests of their clients and open up the operative legal order to change and adaptation are limited by the alliances, the cooperative relations and the divisions of labour that develop between some of the actors, and particularly those that involve state agencies. These divisions of labour are constitutive for the selective state, as they shape the processes of delegation and appropriation, the institutional specialisation and differentiation that dominate the operative legal order.

### *The Shiv Sena Shakhas*

The *Shiv Sena* was founded in 1966 by its still uncontested leader Bal Thackeray. First espousing regionalist claims within the newly created state of Maharashtra, it

has made Hindu nationalism its central issue of mobilisation since the early 1980s. The party has been governing the city of Mumbai since 1985, and formed the state government of Maharashtra in coalition with the BJP (Bharatiya Janata Party) from 1995 to 1999. From 1998 until 2004 it was part of the governing coalition in the central government of India. Its distinguishing feature, however, is its strong local presence. It has established local party offices, the *Shakhas*, in every part of Mumbai as well as in most towns and villages of Maharashtra. These have become the dominant centres of local governance in many places, offering social services ranging from counselling and festivities to infra-structural improvements and protection.

The *Shiv Sena* and its *Shakhas* present themselves, and are seen by many people as providers who 'get things done'. The offer of efficient pragmatism answers to needs felt in many areas of the city. These needs are tangible but also shaped by the expectations and norms of governance that the promise of development by the state has affirmed. The state's ambiguous deliverance on its developmental promise - sometimes too much and often too little - opened spaces for the substitution for the state of various institutions, which constitute themselves bases of (local) power.

The *Shiv Sena* is explicit in its critique of the state and professes to correct both the 'excessive state', the inefficient, bloated, expensive, inaccessible bureaucracy as well as the 'insufficient state', the perceived failure of the state to fulfil its developmental promise. It thus connects to the widely asserted disillusionment over the capacity of state bureaucracies in matters of administrative services, and poses as a critic of both the bureaucratic organisation of the developmental state and the political deliberation in a parliamentary democracy. At the same time its leaders explicitly or tacitly answer to and reaffirm understandings of politics as the paternalist administration of distribution. They thus also cater to the idea of the providing and productive state once introduced by the Nehruvian ethos, and turned into mass populism by Indira Gandhi's programme of *Gharibi Hatao* ('abolish poverty'). Bal Thackeray calls for 'benevolent dictatorship', and lays the blame for state inefficiency on parliamentary procedures and on democracy which in the *Sena's* view are responsible for corruption and indecision. "What is politics? Politics is just good administration. So our politicians don't know politics," was the opinion of the *Shiv Sena* leader Shrikant Samolkar. "They just come and talk and go. We solve their problems," felt Vinodh Kumble, an older member of the movement. Many party members of the *Shiv Sena*, the *Sainiks* (soldiers), claim that their own activities are not 'politics', but are instead based on 'obvious' notions of what is good and what needs to be done. *Sainiks* have projected their acts of protest and their acts of resolution as a model for a

counter-project of politics. Thus 'getting things done' is their credo. Direct action replaces parliamentary politics and is superior in efficiency and moral rectitude.

The party's *Shakhas* are thus a 'better state', a 'benevolent dictatorship' on a local scale; they profess to fulfil what the state promised but failed to deliver. They supplement various functions that in India are usually associated with the state. They offer local services; they organise infrastructural measures such as water connections, garbage collection, public toilets or roads; they initiate employment schemes, youth activities, crèches and tutoring; they put up festivals, help in obtaining admission to schools; and thus address a wide variety of concerns and every-day issues of urban life.

Along with these distributive and productive tasks come regulatory functions inherent in the organisation of allocation. The *Shiv Sena* explicitly takes on regulatory functions, as the party connects its local formal and informal governance role to its particular concepts of substantive rights. True to its stance of defending the claims to the city of those who 'were there before' against those who have come later, enemy images have been the mainstay of the *Sena's* postures. It has always attributed the ills it detected in society to specific social groups and thus personalised the civic crisis of the city. The party does not call for structural changes, revolution or reform; rather, it calls for the elimination, in whatever way, of those it holds guilty for the identified malaise. The targets are interchangeable: it is its mode of distinguishing between friend and foe rather than specific public enemies which characterises the *Sena's* ideology. What is common to the depictions of all of its enemy images is that they are made out to be existential threats to the lives and livelihoods of every 'good Indian'. The justification for the urgency to fight them lies in their portrayal as being connected with larger threats, be they Pakistan, Islam or the Soviet Union or the general category of 'evil' in the form of decadence, dishonesty, poverty, crime, dirt, scarcity. And it is the alleged hold on the Indian state of these 'enemies' which is the real threat to legitimate citizens of that state.

The identity of these threatening 'others' has often been related to the *Sena's* electoral strategies. Especially since its expansion into the BMC they are frequently those who "... won't be able to cause us damage since they haven't been included in the voting list," as Manohar Joshi explained when he was still Chief Minister.<sup>2</sup> Thus at the same time that the party pours forth exclusionary vituperations, it engages in a populism

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<sup>2</sup> Manohar Joshi in an interview in the *Indian Express*, 17.1.1998.

of many forms which suggests integrating almost anybody into the category of the 'legitimate ingroup'. Thus the culprits of scarcity and threat to one's status are always 'the others'. In all cases the *Sena* retains the claim to define the legitimate in-group and affirms this claim with violence. It is a fundamental delineation of legitimate and illegitimate citizens.

These possessive claims of the party are also expressed in the many renamings of the city's public buildings, streets and, of course, of the city itself, with names that suggest the conquest of the city for its allegedly original proprietors, the *Marathi Manoos*. However, rather than those claims the regulation implicit in the *Shakha's* distributive and productive tasks shapes the operative rules of many of Mumbai's neighbourhoods. As centres of distribution the *Shakhas* are accessible and therefore relevant to the organisation of everyday life. They become the vehicle of regulation in many matters, implicitly in their underlying ideas of just allocation, but most clearly in their administration of local disputes.

### Adjudication in the *Shakha*

The *Shiv Sena* has established an informal system of 'courts' within its *Shakhas*. These courts deal with disputes relating to everyday living in the city, with quarrels over water taps and other public property, neighbourly tensions, family matters, conflicts over property, contracts and debts, questions of land ownership and alimention, labour issues, harassment and violence. Issues range from disputes about the rights to a specific location for a hawker's stall, quarrels about garbage dumps or noise, issues of petty crime and cheating, to litigation over loans and property and real-estate disputes, which easily become deadly serious in a real-estate market like Mumbai's. Thus they deal with civil as well as criminal matters, and often also with administrative regulation.

Mostly issues are brought before the *Shakhas Pramukh*, the leader of a *Shakha*, by one of the litigants; sometimes the *Shiv Sena* intervenes on its own initiative.<sup>3</sup> Court

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<sup>3</sup> In all cases observed there was a class imbalance as the members of the *Shakha* all came from more secure economic backgrounds than their clients. This also meant that there was a deference relating not only to the status arising from the court room interaction but also a more general status difference. The latter involved considerable degrees of deference on the part of the clients. These were difficult to distinguish from the awe or fear inspired by the party's reputation for 'effective delivery'. The party

sessions are short; most disputes are resolved in one sitting. Judgments are swift and produce clear-cut decisions. They attempt to produce the results demanded by the party whose claims are upheld: a piece of land changes ownership, a building is demolished, a garbage dump is removed, a hawker is expelled, money is paid, or not, a divorce takes place, etc.

Judgments are certain to be carried out - and that is one reason for the use of the courts - as they are swiftly enforced by the *Sainiks* of the *Shakha*. Thus women *Sainiks* prided themselves on their efficacy: "When we ask a man to come it is an order." "We threaten them to ensure that they do whatever we say." "If they do not come they will regret it." "They know we'll use violence," insisted young women *Sainiks* on the occasion of the former leader of the *Mahila Aghadi*, the *Shiv Sena's* women's wing, Sudha Churi, holding her weekly court at *Shiv Sena Bhavan*.

*Shakha* Pramukhs insist that their rulings are guided by common sense. Quite a few of the Pramukhs have legal training. But they insist the *Shakhas* - like *Lok Adalat* courts of the state judicial system - are not the place for legal intricacies that 'the common man is tired of' but for common sense and effective and conclusive agreements. 'Common sense' implies that the status of the litigants as well as their position within social relations are taken into account in various ways, since the rights of individual litigants, and thus the solution to a dispute, are inherently connected to their role and position within the local context. However, *Shakha* rulings do not necessarily aim at recreating a status quo and repairing the social relations possibly impaired by a dispute. Rather, they take into account what they assume to be considered each litigant's rightful due, but they also have to consider their relations to his other activities and concerns in a locality. The *Shakha Pramukh's* rulings are part of the social capital he accumulates; he has to balance 'popular opinion' against his social networks.

Thus the notion of 'common sense' involves implicitly the *Shiv Sena's* notions of the proper order, but is intricately linked to local social relations.

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also engages in dispute resolution among clients who hail from wealthier segments of society. These disputes are, however, seldom dealt with at the *Shakhas'* court sessions but rather in the offices or private residences of the *Shakha Pramukhs*.

## Modes of Legitimation

The establishment as well as the use of the *Shiv Sena* courts by the clients of the party arises from the inefficiency and inaccessibility of the state courts. These are due to the immense backlog in state courts resulting from procedural problems of the Indian legal system. This is reflected both in the explanations of people who have sought the assistance of the *Shiv Sena* courts as well as in the self-representation of the *Shiv Sena*.

For the people, anything is better than paying lawyers' fees and then waiting endlessly for judgments. We have had *lok panchayats* [local governing councils] long before they were introduced by law and I think this is just like common *lok adalat* [customary law], as now favoured by the government.<sup>4</sup>

The party's justifications of its courts thus often speak the same language as and are in line with widely advanced analyses of the crisis of the state judicial system (for example World Bank 2000). They are part of the party's general claim that its *Shakhas* fulfil state tasks better than the state itself.

The *Shiv Sena's* criticism of, and distinction of its own institutions from state agencies is not expressed in terms of the norms and values of state law but in terms of the alleged inefficiency and inaccessibility of state procedures. The significant exception to this is the party's advocacy of the introduction of a uniform civil code, that is in line with the stances of its ideologically more radical Hindu-nationalist allies of the Sangh Parivar, as well as the party's militant opposition to caste based quotas<sup>5</sup> and minority rights. But the *Sena's* courts do not contest the validity of state law. They do not name an alternative normative order as more valid or legitimate, and do not, for example, refer to religious law or other sources of legitimate ideas of justice. Rather, the *Shakhas* contest the efficiency and accessibility of state courts.

Thus, the norms that are explicitly and most regularly espoused are pragmatism, common sense and efficacy. The *Sena's* courts are presented as accessible and therefore as more participatory and 'close to the people'. They are presented as

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<sup>4</sup> Sudha Churi, former leader of the *Shiv Sena's* women's wing *Mahila Aghadi*, during an interview in March 1997.

<sup>5</sup>The party has for many years favoured (and fought for) regional quotas and son-of-soil policies, while always denouncing caste-based quotas as divisive.

representing the ‘common man’s’ sense of justice and as making that sort of justice available to that very ‘common man’.

Thus, in the courts as well as in its administrative role in the localities of Mumbai the *Sena* claims to be ‘the better state’. This is one aspect of their reference to institutions such as *Lok Adalat*,<sup>6</sup> that have recently been revived by the State Legal Aid Authority to solve the problem of backlog of cases. This promotes the idea that the *Shakhas* are deeply embedded in local or ‘traditional’ culture and therefore ‘close to the peoples’ minds’, but also the idea that they are already practising what modern statecraft is only now discovering to be beneficial models of conflict resolution. They thus allegedly respond simultaneously to the value systems of Indian tradition and the modern state. They seem to affirm the status of both, the institutions as well as the traditions used to justify them, pointing towards both the primaevial age of these traditions and their concurrent modernity.

The criticism of legal procedures as inefficient, and the concentration on substantive law is central to the transformations of material law effected by the appropriation of regulative tasks by the *Shiv Sena*. The substantive content of the legal institutions that the *Shiv Sena* refer to is defined by the party’s practices. Thus, *lok adalat* is what the *Shiv Sena* does in its courts anyway; *mediation* “like you in the West also have now”<sup>7</sup> is what the *Shakha Pramukh* has long done when presiding over the courts; *human rights*, and ‘*the right to self-defence*’<sup>8</sup> is what is declared by the *Shiv Sena* to be ‘nationalist and human’<sup>9</sup> and justification for the party’s anti-Muslim stance.

Thus, its overall Hindu-nationalist stance becomes central to the interpretation of justice. In the *Shiv Sena*’s courts the party’s opposition to personal law, to caste-based reservations or to minority rights are less significant as these are legal issues that the

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<sup>6</sup> *Lok adalat* was once introduced as a local form of judiciary connected to the *panchayat* system, the village councils, to administer state law by the state itself as part of its decentralisation programme (Galanter 1997: 68). Nowadays *lok adalat* courts are part of the judicial reform programme introduced by the central state to function as institutions of mediation (Galanter and Krishnan 2002; Whitson 1992).

<sup>7</sup> *Shiv Sena* leader Madhokar Sarpotdar in an interview, February 1997.

<sup>8</sup> "The right to self-defence is bestowed upon every citizen by the constitution."  
Saamna 9.1.1993

<sup>9</sup> Saamna, 29.4.1998

*Shakhas'* courts rarely deal with. More significant are the party's ideas of who are legitimate participants in entitlements and rights, and its vision of the nation and of the proper order that underlie its rulings. It draws a militant line between those who rightfully belong and those who are deemed outsiders and who are thus illegitimate participants.<sup>10</sup> It holds an idea of order that basically stresses the harmonious body politic, denouncing claims to equality or merely equal rights as 'selfish' and potentially dangerous self-interests that destroy the unity of the community. Although the party sometimes espouses class rhetoric ("I believe that only two castes exist in this world: the poor and the rich. There is no third caste,"<sup>11</sup>), paying heed to the large working class segment among its supporters, it vigorously propounds the necessity of this communal unity in the face of alleged threats by the identified 'enemies' of Hindu culture.

### Pluralist Pressures

The processes described above could be analysed as the shift from the rule of law to the rule of force. However, this rule of force is precarious. The normative order that is established through the effective administration of justice by the *Shiv Sena* is not

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<sup>10</sup> Within the logic of competitive patronage the exclusionary principles of the *Shiv Sena* are partly modified. Populism takes precedence. As long as people seek access to the *Shiv Sena*, they can avoid the possible stigma of being illegitimate participants in the city's largesse - at least as long as their votes are considered relevant. Belonging to the *Sena* is a means of belonging to the legitimate in-group simply because the *Sena* relies on its mass base. As a political party with aspirations to acquire formal positions in government, and therefore tied to democratic procedures, it is interested in as large a mass-base as possible, no matter how it is gathered. Where minority groups or those that the party defines as the public enemy are relevant in terms of local elections, their demands may, at least temporarily, be considered. A continuous example of this opportunism is the party's stance towards the rights and demands of the various *Dalit* groups in the city and the state of Maharashtra. Generally fiercely opposed to politically organised *Dalits*, and often having made explicit this opposition with violence against *Dalit* organisations, the *Shiv Sena* has wooed all sections of the *Dalits* ever since they entered into a successful coalition with the Congress party and the National Congress Party (NCP) and ousted the *Sena* from the state government in 1999.

<sup>11</sup>Thackeray in an interview with *Onlooker*, May 16-31, 1981.

hegemonic. The operative legal order is plural in the sense that it is precarious, that it is constantly open to adaptations and changes that result from plural pressures and the competitive normative offers of various actors in the field of adjudication, be they other private or community organisations or the state. The operative legal order thus sways between phases of monopolisation and dominance and phases of pluralisation and adaptation.

*Shakha Pramukhs* are not the only providers of services, and they compete with a variety of ‘local leaders’, social workers - a rather vague term which can refer to a wide array of activities in the city -, *dadas* (strongmen), ‘slumlords’, *goondas* (local gangsters), as well as self-help organisations, NGOs and the police in the field of setting rules and generating law (see also Panwalkar 1998). The institutions of *Dada* and *Dalal* (middle men) have been part of the city’s modes of governance ever since its rapid expansion during industrialisation (Chandavarkar 1981; 1994: 168-238). The *Shiv Sena* has in no way driven out other organisations, nor has it won predominance over its competitors everywhere. The degree of dominance of the *Shakha* differs from area to area and depends on various factors: the strength of the competitors, be they gangs or *dadas*, political parties or NGOs; it depends on the potential of the area in terms of revenue and votes; or the need in an area for extra-state services. In some areas the *Shiv Sena* is hardly active at all, for example in some of the Muslim areas of central Mumbai, but also in others where it has lost the competition with its rivals or where the specific services of the organisation are of little value to the residents.

The positions of the various agents in matters of conflict, distribution and allocation have always been precarious (Chandavarkar 1998: 191-193). They have been and are restricted by demands of reciprocity, competition with rivals, and the expectations of their clients. Communities can and do reject leaders (Panwalkar 1998). Moreover, the term ‘community leader’ is often misleading. It assumes a higher degree of social integration of neighbourhoods than is often the case. It assumes a higher degree of authority than those leaders necessarily hold: their ‘lead’ is often situational, as is the ‘community’, which is formed around particular issues. As a ‘community’ they make use of ‘community leaders’ in particular situations when such collective representation is demanded in dealing with an outside situation, whether it concerns the state or another ‘community’. Thus, leaders are leaders in particular situations and the integration of the entity they represent is often subject to the issues at hand.

Thus, the sway of self-proclaimed leaders is shaky. The influence of the *Dalals* derives from their connection to political parties. Political parties are interested

mainly in voters. Local leaders, in order to be able to provide parties with voters and thus get influence within the state administration, which is the base for their local support, need to pay heed to the interests of the residents - as these have the option of favouring the competitor. The competition between various local leaders or local strongmen over an area constitutes a possibility for the residents of an area to bind these local leaders to their interests. Thus, because of the direct or indirect involvement of these various local agencies in democratically organised party politics, competition means the adaptation to demands from the side of voters as well as to the offers to voters by competitors.

This also holds for the competition of *Shakha Pramukhs* over party posts within the party structures. For party-internal competition the rule is: "If you can't bring a mob you are a flop," as one *Shakha Pramukh* who hoped to rise high in the party put it in an interview. A 'mob' can be bought, but a 'mob' knows its price. And a 'mob' is a 'mob' only when the right price is paid. Otherwise it is a 'community' with its own priorities and demands on the bidders. One housing society within Dharavi, allegedly Asia's biggest slum, agreed to operate as a 'mob' in turn for the improvement of local water connections. Earlier the society 'had been Congress'. But after the Congress candidate failed to deliver, the society, under the leadership of a few of its residents, turned against their president and took up the repeated offers of the *Shiv Sena* corporator, then collectively - but not necessarily unanimously - voting for the party. Another housing society in another area of the city demanded public toilets in return for agitating publically for a *Shiv Sena* leader. They were indeed awarded with toilets, and had previously had their paths paved by the *Shiv Sena* corporator.

Whether the exchange of patrons is possible and is actually done is dependent on whether the competitors of the *Shiv Sena* in the area are alternative political parties or commercial criminal enterprises. In the latter case many will prefer the *Shiv Sena*'s demands for donations to that of a purely criminal gang, as the gangs are less efficient in bringing about public services, being less well connected to the Municipality than the *Shiv Sena*. As one resident of Sion, an area in Mumbai, laconically stated:

Costs have not gone down. What we now give as donation we gave as protection money before. They say it's for cleaning up the area. And they say that they cannot guarantee security otherwise. We all know what that means! But we still prefer them [the *Shiv Sena*]. At least you know who you are talking to.

If however the *Shiv Sena*'s competitors are other political parties with an alternative system of patronage or their own party comrades, the competition will take a different course.

The influence of the competing bidders is thus dependent on the offers they can make in terms of civic priorities and the demands of areas, even where the competition between the various agents has turned into an arms race, as at times it has.

However, while the *Shiv Sena* competes in terms of clients with NGOs, community leaders or *dadas*, and while it competes for these clients in terms of votes with other political parties, it has an advantage in its integration of the various formal and informal positions of power. This advantage is shared with few other organisations, and when the party perceives competition as threatening its specific offer and thus its niche in the landscape of relations of domination, its reaction is fierce. It once virtually eliminated the gang of underworld don Arun Gowli with the help of the police. Gowli had started *Shakhas* himself and had been successful in attracting many *Sainiks*.

Thus the checks and balances inherent in the competition and the dependency on voter support are precarious as the *Shiv Sena* can, where it has enough strength, eliminate its rivals. More importantly, some of its competitors, particularly the Congress party, have made good use of the *Shiv Sena*'s services themselves and have locally developed more cooperative than competitive relations with the *Shiv Sena* (Gupta 1982, 176-177; Ribeiro 1998). Alliances between various political competitors restructure and diminish the checks and balances inherent in their competition over voter support. At the same time, party alliances do not diminish internal party competition. Thus, as already stated, the rule that 'If you can't bring a mob you are a flop' binds *Pramukhs* with aspirations to higher party posts to the frequently diverse interests of their local clients.

In Mumbai it is the rules of the common political space which most of these actors are directly or indirectly involved in. These are the rules of mass politics: 'If you can't bring a mob you are a flop.' In Mumbai, the power of the various actors and the establishment of monopolies over jurisdiction and legislation are always subject to the competition within the democratically organised access to control. The rules which govern the chances to succeed in this competition are those of democratic party competition - because those offices that are acquired through democratic means are also those which provide the easiest access to and control over the still lucrative resources of the state. In many ways the terms of the competition between the various

agencies active in the field of adjudication and regulation, up to the competition between *Shakha Pramukhs* over party posts, are thus structured by state law.

### Strategic Adaptations

Thus, even where the *Shiv Sena* has established an institutional dominance within the local constellation of governance, the rules that shape the operative legal order are subject to adaptation. The *Shiv Sena* is particularly adept at adapting its methods to local moods as it has never shown much concern for programmatic consistency but has favoured action. "I don't believe in programmes," declares Bal Thackeray. "In the last 40 years too many manifestos have been published and then consigned to the dustbin. I believe in implementing..." The party has shown a considerable degree of flexibility, or perhaps opportunism. Once, for a period of two weeks, it even voiced socialist demands. Its vague reference to all sorts of traditions and its practice of singular rulings specific to a case keeps its 'content' flexible, to be adapted to opportunity structures in the public discourse. It can shift its militancy from one daily issue to the next and re-interpret its agenda in terms of the demands made by its clients and in terms of public discourses. Thus the 'occupation' of a definition of a legal institution is never complete, nor is the definition of the *Shiv Sena* itself final, but always dependent on the relations determining the specific issue at hand.

One example of strategic adaptations to changing demands by clients would be the definition of women's rights as practised in the *Shiv Sena* courts, as they often deal with family matters of alimentation and violence. Women's rights are generally one of the favourite subjects of Hindu-nationalist organisations that have been skilful in using the "obvious popularity of women's issues" (Setalvad 1995, 240; see also Agnes 1995). Within their agenda, women's rights are redefined in terms of communal antagonism: Protecting women's rights turns into a way of protecting Hindu culture (and protecting Muslim women from their men). Thus, the issue of women's rights is transformed from one of gender relations into one of a struggle between two communities. 'The Muslim' is constructed as the violator of women: the violated 'his own' women - the possessive language recurs in this discourse - by Islamic family law, polygamy and triple talaq. He violates Hindu women by their rape and abduction throughout history and especially at the time of partition (where the same acts by Hindu or Sikh men are termed simply retaliatory). And thirdly, he violates the country, *Bharat Mata*, Mother India by 'her' partition (Butalia 1995, 69),

for which Muslims are held responsible. Women's honour, thus, is conflated with the protection of India and 'Indian tradition' and the practices which go along with it.<sup>12</sup>

In the daily practice of the *Shiv Sena* these issues are often dealt with in contradictory ways, differing from one *Shakha* to the other, as well as depending on the specific local constellation and demands. A 'feminist' tune is often voiced particularly by women *Sainiks* to legitimise many of the *Mahila Aghadi's* activities. Their justification of their role as arbiters in marital disputes was regularly couched in terms of a pro-woman attitude.<sup>13</sup> The women *Sainiks* usually claimed that they took up the women's cause in the marital disputes brought before them and proudly related how they forced men to comply with their commands by threatening them and publicly humiliating them.

However, some *Pramukhs* described how they had also told the women of 'their duties as wives.' In one case, a husband was granted permission to obtain a 'customary divorce' because he and his family felt that the young wife did not work hard enough in the home. He claimed that the failure of the marriage was entirely his wife's fault, and therefore he demanded to retain the dowry payments. The *Shakha Pramukh* granted the husband a divorce and the dowry. The family of the women unhappily agreed to a divorce largely because her in-laws had started to physically

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<sup>12</sup> The disputes and contradictions in the debate about women's rights within the Hindu nationalist movement, for example on the issue of *Sati* among prominent women of the *Sangh Parivar*, do not exist within the *Shiv Sena*. Unlike the *Sangh Parivar's* women's organisation, but like the BJP's *Mahila Morcha* or the VHP's *Durga Vahini*, *Shiv Sena* displays no public discord. This is possibly because the *Mahila Aghadi* is, like the *Shiv Sena* in general, little concerned with ideological intricacies or contradictory interpretations of Hindutva and women's role in it. Not only is the line given by Bal Thackeray decisive, but its vagueness integrates contradictions. Moreover, the *Mahila Aghadi*, too, believes in 'getting things done' rather than thinking about the nature of *Shivshahi*. Disputes here concern rather the control of and rights to certain territories and their revenue, posts and responsibilities.

<sup>13</sup> The fact that in all the cases described the man had been found 'guilty' and had been punished may be due to the fact that it was assumed that such a 'feminist' logic would find legitimacy with the western listener. It is noticeable how much stress is put on the defence of women's rights and feminist rhetoric, and relatively little on the nationalist and communalist foundations of the women's agenda of the *Mahila Aghadi*.

abuse the wife, and her mother wanted to save her lest she should be seriously harmed. But they wanted to retrieve the dowry and also did not want the name of their daughter further sullied by the allegations of her in-laws that the failure of marriage was due to her being an unfit wife, since this would have made the prospects for a second marriage even more remote. A local NGO stepped in and managed to retrieve the dowry for the young woman by proving that the young man had indeed made use of his wife's wifely duties and had at the same time started an affair with another woman, thus indicating his failures in the marriage. The *Shakha Pramukh* reversed his ruling accordingly. This was a result of the NGO mobilising the neighbourhood to speak up about their knowledge, mobilising public opinion so to say, but also of their threatening the husband with a divorce in court which he feared would take far too long for his desires.

In their 'common sense' judgments in family disputes the *Mahila Aghadi* uses a model of order which lies firmly within the patriarchal fold, where women and men have duties and rights according to their roles in the patriarchal family. However, they adhere to the normative standards of other agencies when they are compelled to do so by 'public opinion'. Moreover, state courts and the state legal system often remain the frame of reference. On the one hand they pose a threat, above all because of the immense amount of litigants' time they consume. But on the other hand they extend a promise within a normative system of specific rights that people can claim in their disputes even outside of these state courts, for example through local NGOs that employ them together with the threat of formal litigation. Thus, adaptive changes are situational and local and depend on the terms of alternative normative offers in the context. While in one case a *Shakha Pramukh* might grant permission for a divorce to a husband not satisfied by the services of his wife, or tell a woman demanding alimentation from a gambling or drinking husband of her wifely duty to endure and send her away, in another case a *Pramukh* might gather a group of *Sainiks* (women or men), search for the husband, beat him up and threaten him with further action if he does not comply with his duties as head of the family.<sup>14</sup>

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<sup>14</sup> Thus happened to a couple where the wife had complained to the local *Shakha* that her husband was spending the little money he earned on drinking and on other women. The wife was ambivalent about the result of her action as her husband was unable to work for several days after the judgment had been imposed and thus she had to rely again entirely on her own meagre earnings and look after her husband as well.

More complex are the programmatic adaptations of the *Shiv Sena* regarding labour issues. Here, the *Shiv Sena* has also espoused contradictory positions, not only consecutively but even simultaneously. It generally favours a management-friendly policy and self-help schemes for those made redundant (Purandare 1999: 91). In particular the failure of the textile strike in 1982 and the progressive de-industrialisation of Mumbai serve to support the argument of many *Sainiks* that only through cooperation between management and workers can both profit. Many *Shiv Sainiks* - but certainly not all - are convinced that strikes are as bad for the workers as for the management and above all for the nation. "We don't subscribe to the notion that the owner is an enemy. Large hearted and good owners are not our enemies, and we will never organise strikes in factories whose owners identify themselves with the interests of the workers and the interests of Maharashtra," proclaimed Bal Thackeray (Purandare 1999: 91). "The workers will be taught to produce more and only then ask for more," says the guidelines for the BKS published in *Marmik*, the *Shiv Sena* weekly magazine in 1968.

The *Shiv Sena* has affirmed this stance by busting unions unfavourable to management (Gupta 1982; Purandare 1999). It has often been able to gain employment for its own clients when members of radical unions were sacked. According to oppositional unionists, the management of many a company encouraged the establishment of *Shiv Sena* unions in its factories when, for example, the militancy of factory-based unions made it seem beneficial to have an internal union with a 'cooperative' outlook. Many a time *Shiv Sena* leaders have placed their clients in the jobs of workers who had been sacked in the course of labour agitation. This was a strategy largely confined to unskilled jobs. In the process non-*Shiv Sena* unions lost their support base because their support base lost their jobs.

In the long run, this trapped the *Shiv Sena* unions in a difficult position because they had to pay heed to the demands of the new workers, who were the party's clients. Thus, occasionally the party has taken up labour issues in a manner that opposed management strategies. On April 25<sup>th</sup> 2001, for example, the *Shiv Sena* Unions took part in a general *bandh* (closure, strike) protesting against the government's suggestions to make labour laws more flexible (Hensman 2001). This measure was clearly out of line with their general management-friendly stance and their hostility to militant unions. Earlier they had taken up the workers' opposition to the closure of the Balco steel plant in Chhattisgarh. Both were possibly strategies to strengthen the *Sena's* base among unionised workers.

In the *Shakha* courts, *Pramukhs* deal mostly with the so-called informal sector, i.e. with employers and employees of enterprises that employ officially less than 100 workers and which are in consequence not subject to many of the labour regulations. Injury, unpaid wages or delays in payment, as well as petty theft or shirking are the most common issues. Redundancies and compensation are not dealt with here as employment in these industries is mostly highly irregular. *Pramukhs* assert that their rulings in labour disputes are guided by pragmatic reason and 'common sense'. It was common sense, for example, that children of poor people could be employed - contravening child labour laws - because poverty makes this necessary and 'these children would otherwise go hungry'. Common sense also implied that they do not enjoy the same rights as adult employees - thus contravening labour regulations - but that they cannot be expected to work as hard and as long as adults. In one case, a boy had been badly injured, losing his right hand. The employer cancelled the employment. The boy was the sole bread winner in a family consisting of his aged grandmother and a mentally disturbed mother. A local NGO demanded the employer pay compensation. The *Shakha Pramukh* ruled that the employer did not have to pay. After the NGO mobilised the neighbourhood, the employer offered to take the boy back at a lower wage. The *Shakha Pramukh* told people not to address the NGO with their matters. The NGO again mobilised public opinion and threatened court action. It succeeded in making the *Shakha Pramukh* sign a paper that he would guarantee that the employer paid compensation to the boy. The *Shakha Pramukh* personally accompanied the employer for the payment of the first instalment.

The status of litigants is also taken into account in the sense that the relevance of the litigants to the *Pramukhs*' or the party's interests is given weight. In another case, a *Shakha Pramukh* ruled that a contractor had to pay the wages agreed upon to the workers he had employed for a specific construction site although he himself had been paid less than he had calculated by the builder. This decision might have related to the fact that the workers all came from a slum pocket in Mumbai that the *Shakha Pramukh* patronised as a Municipal corporator; alienating them might have meant losing their votes. In a way, the *Shakha Pramukh* by his ruling circumvented the control of the contractor and established a direct patronage towards the workers of the area.

Shifts in normative positions are thus closely related to local relations of power and dependent on the individual *Shakha Pramukh*'s social networks and local aspirations. His interest in votes or popular support are potentially opposed to his interests in possible 'donations' or payment of services from entrepreneurs. Such funds can, however, serve to buy votes or pay them off in kind. Thus, a *Shakha Pramukh* has to calculate whether he will gain more public support by using entrepreneurial funds

to finance infrastructural projects, or by taking up the causes of the voters in their disputes with those who possibly would provide the funds.

Thus, the dominance of the *Shiv Sena*'s institutions over the operative legal order is precarious. It constantly has to adapt to the normative claims of its competitors. Its strategies relate to the specific rules of competition within the field of local governance. However, the competition over normative control is not equal; the rules that have evolved privilege those that are better equipped to form cooperative relations with the state agencies.

### Re-entering the State

The operative legal order thus generated in the practices and interactions of the various agencies active in the field of law and order in Mumbai's neighbourhoods is not 'outside' the state legal system. It is not in opposition to, autonomous of, or soon to be replaced or circumscribed by state law. Rather it is part of a regime of governance that also involves state institutions in a division of labour regarding control, allocation and adjudication. Its plural character derives from the specific rules of competition within this regime of governance, rules that open it up to constant contestations, but that also privilege some forms of contestations and limit the chances of others.

The interpretations of law, of the proper order and of specific legal institutions that are produced in the practices of various non-state organisations that administer adjudication to be endorsed and incorporated by the state agencies. 'Capturing' the state, or entering it via cooperative or complementary relations with individual state agencies is still the most successful strategy to dominate the field of local governance. Partly related to this intent of 'capturing the state', partly resulting from the state agencies' efforts to delegate particular tasks or simply to shed parts of their workload, the institutional integration between non-state actors and state agencies is intricate.

The *Shiv Sena* in particular has achieved a degree of institutional incorporation into state modes of governance that means that its interpretations and enactments of law are (re-) introduced into the practices of state agencies. While other agencies do often operate in a parallel, oppositional or hierarchical relation with the state agencies, it appears that the character of the institutional integration of the *Shiv Sena* with some, although not all state agencies is one of various degrees of cooperation and complementarity, and thus of mutual interdependence.

This becomes particularly evident in the cooperation between the police and the *Shiv Sena*. This involves the explicit delegation of tasks to the *Shiv Sena* and thus the implicit 'officialisation' of its practices and the norms effective therein. This is immediately relevant to the transformation of the operative legal order.

In most areas of the city the police are addressed in many disputes. These range from family disputes (between mother and daughter-in-law, between father and son, between brothers, between spouses), to quarrels over water taps or other public facilities, financial transactions that have gone wrong, fraud and violence. Every police station has to deal with a large number of complaints every day. They are registered either as non-cognisable offences or as cognisable offenses, and the form of registration is often an issue of local politics.<sup>15</sup>

In some areas the police delegates the resolution of these disputes to the *Shakhas*: "If you want to solve anything with the police you have to be with the *Shakha*. The police will send you to the *Shakha*," explained a Muslim resident of Dharavi. As Madhokar Sarpotdar, a prominent *Shiv Sena* leader, explained: "Some people go to the police, some go to the *Shakha*. We then cooperate with the police," and he was echoed by many of his fellow *Shakha Pramukhs*. Some of the police likewise cooperate with the *Pramukhs*. For many it was simply a way of getting rid of some of their workload. For others it was acceptance of their dependence on the local control the *Shiv Sena Shakha* might wield in an area. Others approve more fundamentally of such cooperative relations with the party. They feel legitimised, as former Police Commissioner Tyagi<sup>16</sup> put the matter in an interview, by the new policy of "community policing like in America."

Thus, in many areas there is no way around the *Shakha* for local disputes as the immediate, always accessible and largely cost-free agency of the state, the police

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<sup>15</sup> Sometimes registering a cognisable offense as a non-cognisable offense relieves the police of the work that is necessarily involved in the investigation into a cognisable offense. However, many a non-cognisable offense is converted into a cognisable one by the parties, either through a process of escalation of a dispute, or by representing a matter in a way that forces the police to take action. (Eckert 2002).

<sup>16</sup> Ramdeo Tyagi was charged in 2002 with shooting dead unarmed Muslim boys during the Bombay riots in 1992. He had previously joined the *Shiv Sena* as party member.

delegates their resolution to the likewise immediate, always accessible and largely cheap *Shakha* jurisdiction.

It is not simply in matters of dispute regulation that the police delegate work to the *Shakhas*. In administering the local system of ‘illegality’ the police frequently co-operate with the *Shakhas* and rely on the party’s executive powers. The various constellations of ‘illegality’ present in the so-called informal economy of the city are ‘supervised’ by the *Shakhas*: tenure rights are controlled, permits are granted, checks are placed on certain activities, and access to municipal offices and to official licenses are organised by the *Pramukhs*. Thus, law and order, as well as the system of fines and licenses, ‘taxes for the poor’, are often administered by the police and the *Shakhas* in cooperation.

These daily instances of complementation are accompanied by regular non-intervention of the police in the illegal activities of the *Shiv Sena*. This is the most publicised form of cooperation, or ‘devolution by default’.

In minor cases, someone who wishes to appeal to a state court against a ruling by a *Shakha* court, or to sue for a *Shakha*’s activities is faced with serious obstacles. Not only does the *Shiv Sena* have efficient and violent ways of imposing their rulings, but also judgments against the *Shiv Sena* and its members have been rarely given and even more rarely enforced. This is true especially for the more political rather than the purely economic illegal activities of the party. While some cases arising from economic activities, like the shoot-outs between various local leaders over territory, or the real-estate cases *Shiv Sena* members have been involved in, sometimes lead to convictions, the cases of agitation, rioting or incitement of hatred<sup>17</sup> are mostly inconclusive. Many of them are pending, and many somehow or other lapse.

Often the lack of legal sanction against clearly illegal activities of the *Shiv Sena* starts with police failure to register, prevent or investigate acts of members of the party. The initial explanation of police inaction is frequently that such action would lead to the escalation of violence. It is a preventive caution, a fear of arousing Bal Thackeray’s anger and threats of escalation. Additional Commissioner of Police V.N. Deshmukh revealed an instance in his deposition before the Srikrishna commission.

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<sup>17</sup> These cases relate usually to Section 153 (A) of the Indian Penal Code forbidding the promotion of enmity between groups on grounds of religion, race, place of birth and residence.

This said that, despite the speeches of Bal Thackeray and other *Sena* leaders being actionable at law, no action was taken against them because of previous police experience that, whenever *Sena* leaders were arrested, *bandhs* and violence followed. “The anticipated consequences were a deterrent to taking preventive action against leaders of the *Shiv Sena*”.<sup>18</sup>

However, judicial inaction against the *Shiv Sena* as well as judicial bias in favour of it becomes particularly apparent in the judgments passed against *Sainiks*. Hansen reports how sentences for rioting in Maharashtrian villages against *Sainiks* and Muslim youths differed vastly in severity (Hansen 1998: 59-60).

The Srikrishna Commission’s ineffectiveness is possibly the most extreme example of the immunity given to the *Shiv Sena*. While the commission held the party and its leaders responsible for the 1993 riots in Mumbai (Srikrishna Commission Report 1998), its findings were not admitted as legal evidence and its indictment did not have any legal, let alone other consequences for those indicted. In 2000 the Supreme Court ordered the government of Maharashtra to open criminal investigations, but not against the *Shiv Sena*. Only the police officers indicted by the report were charged with atrocities and investigated.<sup>19</sup>

There are, thus, strategies of delegation, like the every-day delegation of dispute resolution by the police to the *Shakhas* or the delegation of administrative control over the local economy. There are also strategies of default or avoidance, like the inaction towards the *Shiv Sena*’s minor and major criminal activities. These strategies together permanently change the operative legal order. Both are part of a system of division

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<sup>18</sup> Reported in *The Afternoon*, 24.2.1997, p.8

<sup>19</sup> The attempts by members of the NCP to convict Bal Thackeray failed. Thomas Hansen considers the commission an instrument for the upkeep of the facade of the state’s neutrality (Hansen 2001). In fact, the frequent use of judicial commissions of enquiry, and their status, seem to relate to the state’s idea of the encompassing state and the republic. However, the fact that such commissions are regularly rather ineffectual, and that their status is by definition not judicial, has the paradoxical effect that the performance makes all the more visible the fact that it is all a mere facade. The function of a facade to pose as something more than a facade is undermined by the obvious facade-nature of the commissions. Thus, the facade of the encompassing state facading the selective state is increasingly abandoned, thus shifting legitimacy and legality towards the latter’s practices.

of labour that has evolved through the mutual usefulness of the unrelated strategies of individual organisations.

What is of interest for the emergence of new forms of legal pluralism is firstly that the legal order is changed by the *Shiv Sena* dominating adjudicative and regulative practices. This occurs because it is the institution to which various state agencies delegate tasks, and its activities are rarely hindered. Hence it can dominate or even monopolise local governance. Secondly, however, the operative legal order is changed beyond this, because the immunity awarded to the *Shiv Sena*'s activities generally shifts the delimitation of legality and legitimacy within the public space. Decisive is not simply the ability of the *Shiv Sena* to practise freely its visions of normative order and to impose them to a large degree on the local context. Also important is the fact that situations created by the *Shiv Sena*'s activities and their subsequent toleration as factual entail a possibly permanent shift in the norms of legality and legitimacy. The immunity awarded to the *Shiv Sena* treats activities that are officially denoted illegal as if they were legal, or at least legitimate. They become imbued with the 'normativity of the factual' and thus guide action and expectations: the rules of the game have changed.

Neither the practices of delegation nor those of default are necessarily due to an integrated strategy on the part of the government or 'the powers that be'. Rather they arise from complex situational processes of avoidance and instrumentalisation. Delegation to the *Shiv Sena Shakhas* is often a result of the attempt to shed workload; immunity is sometimes awarded because of fear of escalation. However, at the same time the party's activities have been useful to or made use of for the purposes of other organisations.

There are manyfold instrumentalisations of the *Shiv Sena*'s activities for other ends. Such are the Congress party's in its struggle against the communist unions of Bombay once upon a time (Ribeiro 1998: 116-117, 217; Gupta 1982: 176; Purandare 1999: 67); the BJP's in its symbiotic relationship with the party (Hansen 1998; Eckert 2003: 159); those of industrial management on the local level (Gupta 1982: 176-177; Eckert 2003: 193); or those of different state agencies, like the police or some of the municipal offices. These instrumentalisations promote also the dominance of the *Shiv Sena* in local governance and the changes in the operative legal order. Thus, although within these alliances of governance individual actors and organisations have their own agendas, and although these are often unrelated to each other and possibly even contradictory to a degree, the aggregation of their strategies, and their collaboration or cooperation creates a tendency that is clear in direction. These implicit and

instrumental alliances and quasi-circumstantial cases of co-operation inserted new norms into the practices of state agencies and the operative legal order, thus shifting the norms and rules of legitimate action.

### Between monopolisation and pluralisation

Studies of legal pluralism have stressed how the rules operative in different semi-autonomous social fields are constituted by the interaction, mutual influence and situational use of state and non-state legal orders (Moore 1973; K. v. Benda-Beckmann 1981; Fitzpatrick 1983). State law is, however, often treated not as semi-autonomous but (implicitly) as autonomous, as shaping but not as being shaped. Moore, for example, when elaborating on her idea of the semi-autonomous social field mentions that state law might be affected (Moore 1973: 745) but she shows only how it is part of the operative 'rules of the game' (Moore 1973: 743). However, as the case of the *Shiv Sena* seems to indicate, state law is fundamentally transformed by the productions of legal order in the interactions of various actors involved in the administration of law and order. In the case of Mumbai, too, state law is constitutive of the rules of the game. However, looking at the local establishment of the *Shiv Sena* it becomes clear that organisations that are involved in governmental tasks, be they administrative, charitable, judicial or others, transform the operative legal order. Not only is the relation between productive, distributive, regulative and legislative tasks more intricate than currently fashionable policies of subsidiarity assume. Law is generated in practices that are formally not concerned with legislation. The 'laws' generated in organisational practices become part of the operative legal order and are, through the interaction of these institutions, re-introduced into the practices of state agencies and thus enter, via practice rather than legislation, the state legal order.

The informal devolution of judicial tasks has the paradoxical effect that it triggers the 'capture of the state' by those non-governmental organisations that have posed as alternatives to the state, by the entry into state practices of their particular versions of law. At the same time this 'capture' of the state triggered by de-étatisation is structured in its means by state law which inadvertently forces the 'captors' to adhere to the demands and ideas of law brought into the fray by their clients. This produces a specific form and determines specific means of competition, not abolishing other possible means but limiting them within the confines of existing alternatives.

Hence, on the one hand, the state and state law are central as they are to be occupied, to be captured, to be the vehicle of a particular normative vision. On the other hand the state and state law are central in that they still structure the terms through which non-state actors introduce their norms into state practice, as well as the conditions within which they act and compete with each other.

What is at issue is thus the production of a relatively integrated operative legal order in the interactions of various actors involved in the field of regulation and adjudication. This distinguishes these processes of legal pluralism from situations where distinct sets of law operate in competition with or in subsidiary relation to one another.

These processes of the establishment and adaptation of unnamed law shed light on the complex matters of the use and transformation of law and the precariousness of power relations. The fact that an organisation like the *Shiv Sena*, that has obtained a considerable degree of regulatory autonomy and powers of implementation, is still bound to the offers of its competitors (among them the state) of normative and legal interpretations, highlights the conditions under which an operative legal order is shaped by plural pressures. The operative legal order is thus a conglomerate of competing versions, swaying between the monopolisation of a single version and processes of pluralisation.

Thus, if we consider state law and non-state law as constitutive of each other we need still to look at the particular constitutive processes of a legal order, i.e. at the processes that produce, re-produce and/or transform it. Different processes of interaction, of mutual impact, and of various modes of ‘devolution’ and ‘appropriation’ have different results regarding the questions of who are the social actors involved in encoding the content of legal plurality are. They also have different results regarding the shape of legal pluralism itself. They differ as to the degrees of pluralisation or homogenisation, the nature of the borders between various ‘sets of law’, and between different semi-autonomous social fields, they differ in the ways these borders are drawn and by whom.

Fitzpatrick’s notion of ‘combined law’ (Fitzpatrick 1983: 168) draws attention to the plurality of *interactions* between various actors that are involved in shaping the ‘combined’ legal institutions. He focuses on the analysis of the history of the establishment of these institutions, the precise processes of ‘combining’ that shape an operative legal order. Both the transformation as well as the preservation of an operative legal order, its pluralisation as well as its homogenisation, are dynamic processes resulting from social, political and economic struggles.

It can be argued that the resulting situation of legal pluralism is a function of the power relations of a particular society at a particular point in time. Specific constellations of legal pluralism have often been considered to be congruent with and determined by elite interests, and “probably functional to the power structures of ... society” (Santos 1995: 236). The Indian state, too, has been seen as the expression of the power relations between specific dominant groups or classes (Bardhan 1984; Vanaik 1990). The story of the emergence of the dominance of local governance by organisations like the *Shiv Sena*, however, can be told in two apparently contradictory ways: either as the story of the (cunning) engagement of the ‘elites’ in shaping a particular constellation of legal pluralism and *devolving* local control to organisations like the *Shiv Sena* (e.g. Brass 1997); or as the story of the ‘failure of governance’ (Sen Gupta 1996; Chopra 1996) where a local organisation has *appropriated* the powers of the state, its monopoly of coercive force and of law, as many of the analyses of the demise of the Nehruvian developmental state would hold. (It can be told also as the story that the failure of governance is in fact a strategy of cunning: Randeria 2002). But both seem to be the case. The evident strategies of instrumentalisation, avoidance and default towards the activities of the *Shiv Sena* created opportunities for the dominance or even monopolisation of local modes of governance. The shifts in the relations of power and in the norms of public space are, thus, possibly more fundamental than could be attributed to connivance. They are due to the particular use made of the opportunities created in the aggregation of the strategies of instrumentalisation and default, and thus a product of the merger of cunning devolution and forceful appropriation.

## References

- AGNES, Flavia  
1995 ‘Redefining the agenda of the women’s movement within a secular framework.’ Pp. 136-157 in Urvashi Butalia and Tanika Sarkar (eds.).
- BARDHAN, Pradab  
1984 *The Political Economy of Development in India*. Oxford: Blackwell.
- BAXI, Upendra  
1992 ‘People’s law, development and justice.’ Pp. 97-114, in: Csaba Varga (ed.), *Comparative Legal Cultures*. Aldershot: Dartmouth.
- BENDA-BECKMANN, Franz von  
1992 ‘Changing legal pluralism in Indonesia.’ *Yuridika* 8(4): 1 -23.

BENDA-BECKMANN, Keebet von

1981 'Forum shopping and shopping forums: dispute processing in a Minangkabau village in West Sumatra.' *Journal of Legal Pluralism* 19: 117-139.

2001 'Transnational dimensions of legal pluralism.' Pp. 33-48 in Wolfgang Fikentscher (ed.), *Begegnung und Konflikt - eine kulturanthropologische Bestandaufnahme*. Munich: C.H. Beck.

BRASS, Paul

1997 *Theft of an Idol. Text and Context in the Representation of Collective Violence*. Princeton: Princeton University Press.

BUTALIA, Urvashi

1995 'Muslims and Hindus, men and women: communal stereotypes and the partition of India.' Pp. 58-81 in Urvashi Butalia and Tanika Sarkar (eds.).

BUTALIA, Urvashi and Tanika SARKAR (eds.)

1995 *Women and the Hindu Right: A Collection of Essays*. New Delhi: Kali for Women.

CHANDAVARKAR, Rajnarayan

1981 'Worker's politics and the mill districts in Bombay between the wars.' *Modern Asian Studies* 15(3): 603-647.

1994 *The Origins of Industrial Capitalism in India; Business Strategies and the Working Classes in Bombay, 1900-1940*, Cambridge: Cambridge University Press.

1998 *Imperial Power and Popular Politics; Class Resistance and the State in India 1850-1950*, Cambridge: Cambridge University Press.

CHOPRA, Vir

1996 'The mirage of good governance.' *Politics India*: 24-28.

COHN, Bernard

1959 'Some notes on law and change in Northern India.' *Economic Development and Cultural Change* 8: 79-93.

ECKERT, Julia

2002 'Policing Mumbai.' Unpublished manuscript.

2003 *The Charisma of Direct Action; Power, Politics and the Shiv Sena*. Delhi: Oxford University Press.

FITZPATRICK, Peter

1983 'Law, plurality, and underdevelopment.' Pp. 159-182 in David Sugarman (ed.), *Legality, Ideology and the State*. London: Academic Press.

URBAN GOVERNANCE AND LEGAL PLURALISM IN MUMBAI  
Julia Eckert

---

- GALANTER, Marc (with Upendra BAXI)  
1997 'Panchayat Justice: An Indian experiment in legal access.' Pp. 54-91 in Marc Galanter (ed.), *Law and Society in Modern India*. Delhi, Oxford: Oxford University Press.
- GALANTER, Marc and Jayant KRISHNAN  
2002 'Debased informalism: Lok Adalats and legal rights in modern India.' Paper presented at the panel *The Reach of Law in India* at the Conference of the Law and Society Association, Vancouver.
- GUPTA, Dipankar  
1982 *Nativism in a Metropolis: The Shiv Sena in Bombay*, Delhi: Manohar.
- HANSEN, Thomas Blom  
1998 *Hinterland Hindutva*. Unpublished manuscript, Roskilde.
- 2001 'Governance and myths of state in Mumbai.' Pp. 31-67 in Chris Fuller and John Harris (eds.), *The Everyday State and Society in India*. Delhi: Oxford University Press.
- HENSMAN, Rohini  
2001 *The Impact of Globalisation on Employment in India and Responses from the Formal and Informal Sectors*, Working Paper, No. 15. Amsterdam: CLARA.
- HUMPHREY, Caroline  
1999 'Russian protection rackets and the appropriation of law and order.' Pp. 199-232 in Josiah Heyman (ed.), *States and Illegal Practices*. Oxford: Berg.
- KOLFF, D.H.A.  
1992 'The Indian and the British law machines; some remarks on law and society in British India.' Pp. 201-236 in Wolfgang J. Mommsen and Jaap de Moor (eds.), *European Expansion and Law*. Oxford: Berg.
- LIKOSKY, Michael (ed.)  
2002 *Transnational Legal Processes: Globalisation and Power Disparities*, London: Butterworths.
- MOORE, Sally Falk  
1973 'Law and social change: the semi-autonomous social field as an appropriate subject of study.' *Law and Society Review*: 719-746.
- PANWALKAR, Pratima  
1998 'Slum Ökonomie in Dharavi.' *Stadtbauwelt* 48: 2640-2645.
- PURANDARE, Vaibhav  
1999 *The Sena Story*, Mumbai: Business Publications Inc.

RANDERIA, Shalini

2002 'Glocalisation of law: environmental justice, World Bank, NGOs and the cunning state in India.' Paper presented at the conference *Mobile People, Mobile Law*. Max Planck Institute for Social Anthropology, Halle/Saale.

RIBEIRO, Julio

1998 *Bullet for Bullet: My Life as a Police Officer*, New Delhi: Viking.

RISSE, Thomas, Stephen C ROPP and Kathryn SIKKINK

1999 *The Power of Human Rights: International Norms and Domestic Change*, Cambridge: Cambridge University Press.

SANTOS, Boaventura de Sousa

1995 *Towards a New Common Sense; Law, Science and Politics in the Paradigmatic Transition*. New York, London: Routledge.

SCHLICHTER, Klaus, and Boris WILKE

2000 'Der Staat und einige seiner Zeitgenossen.' *Zeitschrift für Internationale Beziehungen* 2: 359-384.

SEN GUPTA, Bhabani

1996 *Problems of Governance*. New Delhi: Konark Publishers.

SETALVAD, Teesta

1995 'The Woman Shiv Sainik and her Sister Swayamsevika.' Pp. 233-244 in Urvashi Butalia and Tanika Sarkar (eds.).

SRIKRISHNA COMMISSION REPORT

1998 Mumbai: Jyoti Punwani, Vrijendra.

STRANGE, Susan

1996 *The Retreat of the State. The Diffusion of Power in the World Economy*, Cambridge: Cambridge University Press.

TROTHA, Trutz von

2000 'Die Zukunft liegt in Afrika: Vom Zerfall des Staates.' *Leviathan* 2000/2: 253-279.

VANAİK, Achin

1990 *The Painful Transition: Bourgeois Democracy in India*. London: Verso.

VOLKOV, Vadim

2000 'Gewaltunternehmer im postkommunistischen Russland.' *Leviathan* 2000/2: 173-191.

WHITSON, Sarah Leah

1992 'Neither fish, nor flesh, nor good red herring. Lok Adalats: an experiment in informal dispute resolution in India.' *Hastings International and Comparative Law Review* 15: 391- 445.

URBAN GOVERNANCE AND LEGAL PLURALISM IN MUMBAI  
Julia Eckert

---

WORLD BANK

2000 *India: Policies to Reduce Poverty and Accelerate Sustainable Development.*  
Washington DC: World Bank.