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BETWEEN COMMUNITY AND *QĀNŪN*: DOCUMENTING ISLAMIC LEGAL PRACTICE IN NINETEENTH-CENTURY BRITISH INDIA

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ABSTRACT

This dissertation traces the modernization of Islamic legal practice in nineteenth- and twentieth-century South Asia by considering the relationship between colonial bureaucracy and local legal procedure. Focusing on the formalization and professionalization of the offices of the *qāẓī* (Islamic judge) and *muftī* (jurisconsult; writer of legal opinions, *fatwā*s), "Between Community and *Qānūn*" contends that the bureaucratization of legal procedure introduced new modes of legal activity that rendered Islamic law legible and relevant to the modern nation state. Traditionally, scholars have characterized South Asian legal history in terms of increasing Anglicization and codification, drawing attention to the colonial construction of law and the influence of knowledge-production projects like compilation, translation, and legislation. Though these projects had significant influence on the shape of the legal system, such attention to legislative efforts to segregate, systematize, and standardize legal practice has promoted a top-down understanding of law and legal activity throughout this period. By focusing on local practitioners like the *qāẓī*, this dissertation takes a law and society approach to the study of colonial legal change to highlight the effects of authoring agreements, documenting exchanges, and recording everyday personal and familial affairs on ordinary individuals' understandings of and interactions with the legal system.

Rather than placing indigenous legal practitioners on the sidelines of legal history and foregrounding the narrative of colonial intervention, this dissertation takes an alternative position and demonstrates that despite their supplemental status within the colonial courtroom, *qāẓī*s and *muftī*s nonetheless played an important role in the administration of law into the twentieth century and that such developments under British rule continue to shape legal pluralism in South

Asia today. Though these individuals held an uncertain position in the eyes of colonial officials, they participated in, responded to, and competed with mainstream discourses on the development of legal administrative procedure throughout the nineteenth century. By changing their modes of practice, adopting new forms of writing and documentary procedure, and working to make their work legible to the state, Islamic legal practitioners not only made their service germane to the burgeoning bureaucracy of the expanding colonial administration but also remained relevant to the communities they served. To demonstrate the ways in which these figures contributed to the changing legal landscape of British India, the dissertation draws upon a variety of archival and published sources, including documents relating to the appointment and administration of *qāẓī*s, the vernacular (Persian and Urdu) registers and writings they produced, civil court proceedings that sit at the crossroads between Islamic and British modes of legal action, and published and unpublished *fatwā* collections and other forms of legal discourse. In this regard, the dissertation also contributes to a growing body of literature on the development of the legal profession and the important role legal intermediaries played in the establishment and extension of imperial authority.

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And lastly, there's Nick. What can I say? Who knew another semester of HIST 857 would lead us everywhere we've been since then. Here's hoping the next decades have just as much adventure and excitement!

TRANSLITERATION

The transliteration of terms derived from Persian, Urdu, and Arabic, follows the scheme used in Francis Joseph Steingass's *A Comprehensive Persian-English Dictionary,* modified to accommodate the extra letters in the Urdu script.[1] When quoting directly from English-language sources, original spellings have been preserved and standard spellings have been noted in brackets when appropriate. The term *qāẕī* when used in the body of the text retains its diacritics but when borrowed from quoted material, it follows the term's alternative spellings (e.g., kazi, kadi, cazy, cauzy, cazee, qazee, qadi, etc.). Standard spellings have been provided for Muslim personal names, except for a few cases in which alternative spellings have become predominant. Place names follow the same convention: standard spellings are offered whenever possible, though quotations preserve the original.

b	*bē* ب	d	*dāl* د	ṣ	*ṣuad* ص	g	*gāf* گ
p	*pē* پ	ḍ	*ḍāl* ڈ	ẕ	*ẕuād* ض	l	*lām* ل
t	*tē* ت	ẕ	*ẕāl* ذ	ṭ	*ṭō͡ē* ط	m	*mīm* م
ṭ	*ṭē* ٹ	r	*rē* ر	ẓ	*ẓō͡ē* ظ	n/ñ	*nūn* ن
ṣ	*ṣē* ث	ṛ	*ṛē* ڑ	ʿ	*ʿain* ع	v	*vā'ō* و
j	*jīm* ج	z	*zē* ز	g̲h	*g̲hain* غ	h	*hē* ہ
ch	*chē* چ	ž	*žē* ژ	f	*fē* ف	h	*hē-yi dōchashmē* ھ
ḥ	*ḥē* ح	s	*sīn* س	q	*qāf* ق	y	*yē* ی
k̲h	k̲h̲ē خ	sh	*shīn* ش	k	*kāf* ک	ʾ	*hamza* ء

Vowels: a ā e ē i ī o ō u ū ai au

[1] Francis Joseph Steingass, *A Comprehensive Persian-English dictionary, including the Arabic words and phrases to be met with in Persian literature* (London: Routledge & K. Paul, 1892).

COMMON ABBREVIATIONS

Add. MS.	Additional Manuscripts (Asia, Pacific, and Africa Collection, British Library)
AHR	*American Historical Review*
APSA	Andhra Pradesh State Archives (Hyderabad, India)
BL	British Library (London, UK)
EIC	East India Company
FHC	Family History Centre (London, UK)
IOR	India Office Records
JD	Judicial Department
MSA	Maharashtra State Archives (Mumbai, India)
NAI	National Archives of India (Delhi, India)
OMS	Oriental Manuscripts (Asia, Pacific, and Africa Collection, British Library)
Or.	Oriental Manuscripts (Asia, Pacific, and Africa Collection, British Library)
SDA	Ṣadr Dīwānī ʿAdālat (Chief Civil Court)
TNA	The National Archives (Kew, UK)
UPSA	Uttar Pradesh State Archives (Lucknow, India)

GLOSSARY

ʿadālat	court (of law)
anna	one-sixteenth of a rupee
dār-ul-iftāʾ	institute for issuing *fatwā*s (Islamic legal opinions)
dār-ul-qaẓā	*qāẓī*'s court
dīwānī ʿadālat	civil court
fārigẖkẖaṭṭī	deed of release
fatwā	Islamic legal opinion
foujdārī ʿadālat	criminal court
hiba / hiba-nāma	gift / deed of gift
inshāʾ	epistolary arts, belles-lettres
inʿām	grant of rent-free land
istiftāʾ	*fatwā* question; inquiry submitted to a *muftī*
jawāb	answer
kōṭwāl (kutwāl)	chief police officer for a city or town, municipal functionary with wide-ranging powers, city magistrate
kacharī / cutcherry	court, magistrate's office
lākh	one hundred thousand (1,00,000)
madad-i maʿāsh	rent-free, or subsistence, grant
maḥal, or maḥall	place, district, station
maḥalla	quarter, district, part of a town, neighborhood
mufaṣṣil	rural districts
muftī	Islamic legal scholar, person who issues legal opinions, writer of *fatwā*s
mukẖtār-nāma	deed of representation, power of attorney (document)
munshī	scribe, writer, author
munṣif	subordinate judge
mustaftī	person seeking a *fatwā*, *fatwā*-seeker

nā'ib qāẕī	assistant *qāẕī*
nikāḥ	Muslim marriage
nikāḥ-nāma	Muslim marriage contract
nāẕim	court registrar, also the chief officer of a province
niẕām	administrator, provincial administrator
pargana	district, division of a province
paisa	monetary denomination, equivalent to 1/64th of *rupee*, or 1/4th of an *anna*
pie	monetary denomination, equivalent to 1/192nd of a rupee, 1/12th of an *anna,* or 1/3 of a *paisa*
qaẕāt	the functions of a *qāẕī* or judge
qāẕī	a judge, Muslim judge or magistrate
rupee, rupiyā	monetary denomination; silver coin, also cash, money, wealth; worth about two shillings in the 1880s; equivalent to sixteen *anna*s
ṣadr dīwānī ʿadālat	chief civil court
ṣadr ʿadālat	chief court
sanad	certificate of appointment
sawāl	question
sheristadār	district officer
ṭalāq	divorce, male-initiated divorce in Islam
ṭalāq-nāma	divorce decree
taʿarruf	district
tehṣil	district
vakīl	agent, representative
vakālat-nāma	power of attorney (document)
waqf / auqāf (pl.)	endowment, Islamic religious endowment
waṭan / waṭāndārī	land grant / land grantee
ẕilaʿ	district

INTRODUCTION: ISLAMIC LAW AND THE CHALLENGE OF MODERN GOVERNANCE

I. THE QUESTION OF ISLAMIC LAW

How did Islamic law become relevant to the project of modern governance? In British India, the answer to this question sat at the intersections of colonial regulations, religious doctrine, and bureaucratic science, but the relationship between these concepts was complicated by multiple understandings of what Islamic law was and how it could be interpreted. For Orientalist scholars, the key to Islamic law lay in the translation and interpretation of classical works of jurisprudence. For colonial officials, modernizing Islamic law meant ridding local offices of corruption and venality. And for Islamic legal practitioners (i.e., the *qāẓī*s and *muftī*s on whose careers and professional lives this dissertation focuses), practicing law in the nineteenth century meant demonstrating the social necessity and advancing the bureaucratic utility of their work as cultural and legal intermediaries. Tracing the convergence and divergence of these perspectives across the nineteenth century, "Between Community and *Qānūn*" weaves together the history of Islamic revival and reform with the history of colonial bureaucracy and legal modernization to suggest that the bureaucratic modernization of Islamic legal practice was one of the most profound changes to emerge during the period of British rule in South Asia. The effects of these changes continue to shape debates about religion's place in the post-colonial states of South Asia as well as to reverberate throughout conversations on multiculturalism, legal pluralism, and legal exceptionalism in many parts of the world that were shaped by European—and particularly British—imperialism.

Scholarship in both of these areas (that is, the history of colonial bureaucracy, knowledge-production, and documentation, and the history of Islam's revival and reform in the nineteenth

century) is vast, but to date, there has been little effort to bring these two fields together.[1] Using Islamic legal practice as the subject of analysis, this dissertation bridges the gap between the study of the bureaucratic, legal, and administrative tools that made Britain's empire in South Asia possible and the ways Muslims living in South Asia, particularly those interested in maintaining and preserving the relevance of *sharī'a* in an increasingly modern and global world, responded to the imposition of foreign, imperial rule.

Responses to the challenges of colonial rule and the problem of foreign domination were not uniform, and individuals living and working in British India produced multiple reactions to the question of how to make Islamic law relevant to the emerging colonial and later post-colonial state. Within this domain, the history of Company and colonial attempts to create standardized codes of "Islamic" and "Hindu" law has garnered the most attention among scholars, who have tackled the question of legal transformation and modernization from the perspective of top-

[1] For a treatment of paperwork and imperialism, see, e.g., Stephen Henningham, "Bureaucracy and Control in India's Great Landed Estates: The Raj Darbhanga of Bihar, 1879 to 1950," *Modern Asian Studies* 17, no. 1 (January 1, 1983): 35–55; Martin Moir, "Kaghazi Raj: Notes on the Documentary Basis of Company Rule: 1783–1858," *Indo-British Review* 21, no. 2 (1993), 185–186; Richard Saumarez Smith, *Rule by Records: Land Registration and Village Custom in Early British Panjab* (Delhi: Oxford University Press, 1996); and Saumarez Smith, "Rule-by-Records and Rule-by-Reports: Complementary Aspects of the British Imperial Rule of Law," *Contributions to Indian Sociology* 19 (1985): 153–76; along with more recent accounts like Hayden J. Bellenoit, *The Formation of the Colonial State in India: Scribes, Power and Taxes, 1760-1860* (New York: Routledege, 2017); Miles Ogborn, *Indian Ink: Script and Print in the Making of the English East India Company* (Chicago: University of Chicago Press, 2007); Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India*, South Asia across the Disciplines (Chicago: The University of Chicago Press, 2012); and Raman, "The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras," *Comparative Studies in Society and History* 54, no. 02 (2012): 229–50, doi:10.1017/S0010417512000023. (Chapter three considers these issues in more detail.) For scholarship on Islamic reform, see, e.g., Rajarshi Ghose, "Politics for Faith: Karamat Ali Jaunpuri and Islamic Revivalist Movements in British India circa 1800--73" (Ph.D., The University of Chicago, 2012); Bernard Haykel, *Revival and Reform in Islam: The Legacy of Muhammad Al-Shawkānī*, Cambridge Studies in Islamic Civilization (New York: Cambridge University Press, 2003); Shireen Hunter, *The Politics of Islamic Revivalism: Diversity and Unity, A Midland Book* (Bloomington: Indiana University Press, 1988); Ira M. Lapidus, "Islamic Revival and Modernity: The Contemporary Movements and the Historical Paradigms," *Journal of the Economic and Social History of the Orient* 40, no. 4 (1997): 444–60; and Barbara Daly Metcalf, *Islamic Revival in British India: Deoband, 1860–1900* (Princeton, N.J: Princeton University Press, 1982).

down policies and approaches.[2] Supplementing this approach, there has been an effort among some scholars to understand how Muslims employed as judges and lawyers within the colonial legal system worked to provide their own interpretations of Islamic law—and how that law should be implemented—through litigation and adjudication.[3] This approach follows recent interest in the role of colonial and legal intermediaries in making and maintaining colonial rule not only in South Asia but in Africa and Latin America as well.[4] Such studies reveal the many complications, entanglements, and uncertainties that emerged through such cross-cultural interactions and dependencies, and as with other explorations of this kind, questions of agency, authority, and intent also play a role in the negotiation of legal authority and interpretation. Focusing on legal practice, rather than legal policy, helps to foreground these questions.

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[2] Cohn's essay remains seminal on this topic. Bernard S. Cohn, "The Command of Language and the Language of Command," in *Subaltern Studies IV: Writings on South Asian History and Society*, ed. Ranajit Guha (Delhi: Oxford University Press, 1985), 276–329. For a consideration of rule-of-law policies and imperial rule, see, e.g., David Gilmartin, "Rule of Law, Rule of Life: Caste, Democracy, and the Courts in India," *The American Historical Review* 115, no. 2 (April 1, 2010): 406–27; Jonathan K. Ocko and David Gilmartin, "State, Sovereignty, and the People: A Comparison of the 'Rule of Law' in China and India," *The Journal of Asian Studies* 68, no. 01 (2009): 55–100, doi: 10.1017/S0021911809000084; and Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press Delhi, 1998).

[3] On jurisdictional jockeying, see Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (New York, NY: Cambridge University Press, 2002), 13–14. On forum-shopping and legal uncertainty, see Rohit De, "The Two Husbands of Vera Tiscenko: Apostasy, Conversion, and Divorce in Late Colonial India," *Law and History Review* 28, no. 04 (2010): 1011–41, doi:10.1017/S0738248010000751; Mitra Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda," *Law and History Review* 28, no. 04 (2010): 979–1009, doi:10.1017/S073824801000074X; Julia Stephens, "An Uncertain Inheritance: The Imperial Travels of Legal Migrants, from British India to Ottoman Iraq," *Law and History Review* 32, no. 04 (November 2014): 749–72, doi: 10.1017/S0738248014000443. On interpretation and adjudication, see, e.g., Nandini Chatterjee, "Law, Culture and History: Amir Ali's Interpretation of Islamic Law," in *Legal Histories of the British Empire: Laws, Engagements and Legacies*, ed. Shaunnagh Dorsett and John McLaren (Abingdon, Oxon: Routledge, 2014), 45–57; Alan M. Guenther, "Syed Mahmood and the Transformation of Muslim Law in British India" (Ph.D. Dissertation, McGill University, 2004); Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The University of Chicago Press, 2016); Mitra Sharafi, "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism Meets Anglo-Islamic Dower and Divorce Law," *The Indian Economic and Social History Review* 46, no. 1 (January 1, 2009): 57–81; and Sharafi, "Judging Conversion to Zoroastrianism: Behind the Scenes of the Parsi Panchayat Case (1908)," in *Parsis in India and the Diaspora*, ed. John R Hinnells and Alan Williams (London: Routledge, 2007),159–180.

[4] On colonial and legal intermediaries, see, e.g., Benjamin N. Lawrance, Emily Lynn Osborn, and Richard L. Roberts, eds., *Intermediaries, Interpreters, and Clerks: African Employees in the Making of Colonial Africa* (Madison, Wis.: University of Wisconsin Press, 2006); Yanna Yannakakis, *The Art of Being In-between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham, NC: Duke University Press, 2008); and Chapter Three of this dissertation.

The literature on Islamic revival and reform is equally diverse, representing the manifold perspectives and approaches Muslims living in British India adopted when facing—and trying to reconcile themselves against—the challenges of colonial rule.[5] Even for colonial collaborators like Sayyid Aḥmad K̲h̲ān (1817–1898), Islamic reform meant many things.[6] Sir Sayyid's efforts as a reformer involved uplifting the Muslim community by creating new opportunities for education and professional development through projects like the Muhammadan Anglo-Oriental College at Aligarh and the journal *Tahz̲īb-ul-Ak̲h̲lāq*, which would advance the community by introducing students to new (Western) subjects of study.[7] For other figures, like Maulvī ʿAbdul Ḥaqq (1870–1961), co-founder and eccentric leader of the Anjuman-i Taraqqi-yi Urdū, Muslim success could be engineered through efforts to modernize, standardize, and promote the Urdu language.[8] Through the vehicle of Urdu, ʿAbdul Ḥaqq's several projects suggested, South Asia's Muslims could participate in the global world of scientific and economic knowledge through their own linguistic idiom. These perspectives were separate, through not entirely divorced, from other viewpoints.

Specifically, religious reformers worked to rid Islam in South Asia of the features, practices, and superstitions that made it characteristically South Asian (or more derisively,

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[5] Barbara Metcalf's work remains paramount in this field, but the scholarship continues to grow. See, e.g., Barbara D. Metcalf, *"Traditionalist" Islamic Activism: Deoband, Tablighis, and Talibs* (Leiden: ISIM, 2002); Metcalf, *India, Islam and Everyday Jihad* (Egham: Royal Holloway, University of London, 2004); Metcalf, *Islamic Revival in British India*; Francis Robinson, *The ʿulama of Farangi Mahall and Islamic Culture in South Asia* (New Delhi: Permanent Black, 2001); Usha Sanyal, *Devotional Islam and Politics in British India: Ahmad Riza Khan Barelwi and His Movement, 1870-1920* (New York: Oxford University Press, 1996).

[6] For an assessment of Sayyid Aḥmad Khan's religious views, see Christian W. Troll, *Sayyid Ahmad Khan: A Reinterpretation of Muslim Theology* (New Delhi: Vikas Publ. House, 1978).

[7] On Aligarh, see David Lelyveld, *Aligarh's First Generation: Muslim Solidarity in British India* (Princeton: Princeton University Press, 1977).

[8] It is no surprise, then, that ʿAbdul Ḥaqq was known as "Bābā-yi Urdū" (Father of Urdu). (See Muḥammad Raẓī Rāhī, *Bābā'e Urdū Maulavī ʿAbdulḥaq: ḥayāt aur uslūb* [Karācī: Idārah-yi Majlis Adabiyāt-i Pākistān, 1999].)

"Indic"). Foremost among these characteristically "South Asian" elements, which reformers argued, had contributed to the degradation of Islam and made it susceptible to foreign critique, included worship at Ṣūfī shrines, participation in Hindu rites and festivals, and failure to follow the teachings of Islam with consistency and rigor.[9] Different "factions" emerged across the nineteenth century to promote these visions and to entice their followers to pursue (their interpretation of) a more righteous Islam.[10] The approaches and perspectives that gained dominance and attracted strong followings still shape the religious landscape not only in post-colonial South Asia but in places with prominent diaspora populations as well, including South Africa, and East Africa, North America, and Europe.[11]

Yet, as Barbara Metcalf's pioneering work on the *dār-ul-ʿulūm* at Deoband makes manifestly clear, even efforts to return to a more traditional, fundamental, and text-based form of Islam involved the use of "modern" modes of communication (beginning with the printing press but later followed by the telegraph, the radio, the audio cassette, and now the internet),[12] engaged

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[9] Usha Sanyal's history of the Barelvi movement summarizes many of these arguments. Usha Sanyal, *Devotional Islam and Politics in British India: Ahmad Riza Khan Barelwi and His Movement, 1870-1920* (New York: Oxford University Press, 1996).

[10] Metcalf's "pamphlet wars" are emblematic of this competition.Barbara Daly Metcalf, *Perfecting Women: Maulana Ashraf ʿAli Thanawi's Bihishti Zewar, A Partial Translation with Commentary* (Berkeley: University of California Press, 1990), 21.

[11] See, e.g., Brannon D. Ingram, "Deobandis Abroad: Sufism, Ethics and Polemics in a Global Islamic Movement" (Ph.D., The University of North Carolina at Chapel Hill, 2011); and Metcalf, *"Traditionalist" Islamic Activism*; and Muhammad Khalid Masud, ed., *Travellers in Faith: Studies of the Tablīghī Jamāʿat as a Transnational Islamic Movement for Faith Renewal* (Leiden: Brill, 2000).

[12] See, e.g., Lawrence A. Babb and Susan S. Wadley, *Media and the Transformation of Religion in South Asia* (Philadelphia, PA: University of Pennsylvania Press, 1995); Gary R. Bunt, *Islam in the Digital Age: E-Jihad, Online Fatwas and Cyber Islamic Environments* (Sterling, VA: Pluto Press, 2003); Miriam Cooke and Bruce B. Lawrence, eds., *Muslim Networks from Hajj to Hip Hop*, Islamic Civilization & Muslim Networks (Chapel Hill: University of North Carolina Press, 2005); Dale F. Eickelman and Jon W. Anderson, eds., *New Media in the Muslim World: The Emerging Public Sphere*, 2nd ed, Indiana Series in Middle East Studies (Bloomington: Indiana University Press, 2003); Charles Hirschkind, *The Ethical Soundscape: Cassette Sermons and Islamic Counterpublics, Cultures of History* (New York: Columbia University Press, 2006); and Flagg Miller, *The Moral Resonance of Arab Media: Audiocassette Poetry and Culture in Yemen* (Cambridge, Mass.: Distributed for the Center for Middle Eastern Studies of Harvard University by Harvard University Press, 2007); Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State : Muftis and Fatwas of the Dār Al-Iftā*, Social, Economic, and Political Studies of the Middle East and Asia (Leiden: Brill, 1997).

with Western modes of education (e.g., formal, standardized curricula, established academic calendars, etc.), and benefitted from the ease of travel enabled by steam transportation, which contributed to the expansion of global networks of trade, communication, and intellectual exchange.[13] All of this is to say that as reformers returned to the past to provide solutions for problems facing the present and the future, they drew upon new tools to create, promote, and disseminate their opinions in competition with other factions and approaches.[14]

Rather than addressing one response, promoted by a particular reformer, school, or faction, this dissertation considers multiple responses within the context of Islamic legal practice. In order to understand how these responses emerged and what they meant for the individuals who engaged with them, however, it is first necessary to understand what "Islamic legal practice"—the central subject of this study—means. Islamic legal practice encapsulates the everyday routines of Islamic law, particularly the day-to-day work of making legal documents, settling disputes, and using law to solve problems or to guide personal decisions.[15] Here practice differs from theory in that it does not refer to theoretical goals or ideals established in classical

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[13] Metcalf, *Islamic Revival and Reform,* 199–206. See also James L. Gelvin and Nile Green, eds., *Global Muslims in the Age of Steam and Print* (Berkeley: University of California Press, 2014); Robinson, *The 'ulama of Farangi Mahall*; and Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton: Princeton University Press, 2010).

[14] For an alternative perspective on the dynamics and economics of the religious marketplace, see Nile Green, *Bombay Islam: The Religious Economy of the West Indian Ocean, 1840-1915* (New York: Cambridge University Press, 2011); and Green, *Terrains of Exchange: Religious Economies of Global Islam* (New York: Oxford University Press, 2014).

[15] This definition follows Black's *Law Dictionary*, which defines "practice" as "The form or mode of proceeding in courts of justice for the enforcement of rights or the redress of wrongs, as distinguished from the substantive law which gives the right or denounces the wrong. The form, manner, or oder of instituting and conducting a suit or other judicial proceeding, through its substantive stages to its end, in accordance with the rules and principles laid down by law or by the regulations and precedents of the courts." Henry Campbell Black, *A Law Dictionary Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern: And Including the Principal Terms of International, Constitutional, Ecclesiastical and Commercial Law, and Medical Jurisprudence, with a Collection of Legal Maxims, Numerous Select Titles from the Roman Modern Civil, Scotch, French, Spanish, and Mexican Law, and Other Foreign Systems, and a Table of Abbreviations*, Second edition (St. Paul, MN: West Pub. Co., 1910), 924.

works of jurisprudence (*fiqh*).[16] Practice also stands apart from the more typical interest in legal texts and law codes that have dominated legal-historical scholarship to date. By contrast, the dissertation's emphasis on practice represents a departure from the study of textual precedents and "authentic" interpretations that were so critical to the East India Company's (EIC) efforts to acquire, translate, and digest existing legal compendia and classical works of *fiqh.*[17] Such interpretations ignored centuries of evolution and change over time that had recast and reshaped the practice of Islamic law in South Asia not in the manner observed in eighth-century Arabia or even eleventh-century Central Asia but as a unique apparatus for the administration of justice and the maintenance of law and order within South Asia's diverse local communities. Rather than focusing on how one *should* interpret the law, this dissertation works to recover how it actually *was* practiced, and how those practices changed following the EIC's territorial and legislative expansion in the first-half of the nineteenth century.

Today, scholarship on the history and transformation of Islamic law in South Asia continues to wrestle with the problems of theory and practice.[18] Efforts to reform the interpretation and application of Islamic legal teachings from within often manifest as an effort to recover or reinterpret the true meaning of legal principles *qua* rules, written not only in medieval commentaries but also in the Qur'ān and Ḥadīth themselves. The return to textual sources here

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[16] Wael Hallaq provides a good introduction to these terms. See Wael B. Hallaq, *Sharī'a: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009); and Hallaq, *An Introduction to Islamic Law* (New York: Cambridge University Press, 2009).

[17] Michael R. Anderson, "Islamic Law and the Colonial Encounter in British India," in *Institutions and Ideologies: A SOAS South Asia Reader*, ed. David Arnold and Peter Robb (London: Curzon Press Ltd., 1993), 165–85; Bernard S. Cohn, *Colonialism and its Forms of Knowledge*; and Cohn, "The Command of Language and the Language of Command," in *Subaltern Studies IV: Writings on South Asian History and Society*, ed. Ranajit Guha (Delhi: Oxford University Press, 1985), 276–329; and Hallaq, *An Introduction to Islamic Law.*

[18] Mashood Baderin, "Understanding Islamic Law in Theory and Practice," *Legal Information Management* 9, no. 3 (September 2009): 186–90, doi:10.1017/S1472669609990302; and R. Gleave and E. Kermeli, *Islamic Law: Theory and Practice*, Paperback ed. (London: I.B. Tauris, 2001).

presents an attempt to recover an "authentic" or "unadulterated" form of law whose (re)introduction into colonial or post-colonial society would correct society's misguided entry into the modern world through the recovery of pre-modern solutions to modern problems. This approach, in a word, attempts to undo centuries—if not a millennium—of change, adaptation, cross-cultural encounters, and contextual interpretation that emerged as Islam spread from Arabia to the far reaches of the world by the end of the first millennium. Likewise, scholars in the Western academy adopt similar approaches when trying to understand what went wrong in the colonial interpretation and application of "Islamic law". In these debates, colonial efforts to "codify" or to "fix" the living legal tradition often takes the brunt of such criticisms.[19] These critiques take particular issue with colonial efforts to codify Islamic law (that is, to turn it into law codes and statutes) for the purposes of creating a static and uniform law applicable to all members of society identified as "Muslim".[20] Since then, the Orientalists and administrators who worked to compile and translate texts considered canonical for the jurisprudence of Islam—figures like Warren Hastings, William Jones, Neil Baillie, and Roland Wilson of the late-eighteenth and nineteenth centuries—have taken the fall for the practical and ideological failures of the 1772 Plan for the Administration of Justice (i.e., the Warren Hastings Plan) and for the short-comings of South Asia's systems of personal law in the past and the present. Translators mistranslated passages. Administrators misinterpreted the rules. Judges misjudged the situation.

Within this strain of scholarship, one of the critiques that has sparked the most active

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[19] Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35, no. 2 (May 1, 2001): 257–313.

[20] Needless to say, determining who counted as "Muslim" was one of the problems plaguing this approach to personal law. Michael R. Anderson, "Islamic Law and the Colonial Encounter in British India," in *Institutions and Ideologies: A SOAS South Asia Reader*, ed. David Arnold and Peter Robb (London: Curzon Press Ltd., 1993), 165–85; Cohn, *Colonialism and its Forms of Knowledge*; and Hallaq, *An Introduction to Islamic Law*, 86.

animosity has been the application of British procedure to the administration of Islamic law. Accordingly, the Common-law doctrine of precedent, or *stare decisis*, has remained an obvious point of criticism, but the application of legal precedent only affects one part of legal doctrine, that of interpretation via adjudication.[21] Beyond this, the colonial administration of law introduced other procedural changes in addition to its application of legal precedents. Along these lines, this dissertation focuses in particular on changes to the production, authentication, and interpretation of legal documents, which influenced almost all areas of legal activity—from the process of recording lifecycle events likes births and deaths, to the act of buying or selling immovable property, to the possibility of establishing or maintaining religious institutions, to the integrity of various forms of legal representation and guardianship. Legal documentation penetrated nearly all areas of law, and yet the East India Company's reliance upon existing modes of documentation and the introduction of new document forms has only recently begun to receive attention from scholars.[22]

Legal procedure, this dissertation contends, encompasses more than the stages of courtroom litigation and the application of legal precedents to new cases.[23] It includes elements of legal documentation that extend from the top of the legislative hierarchy where laws are written to the bottom-most rung of legal action where individuals employ every scrap of paper available to them to write pledges, promises, and marriage vows to one another. Turning to everyday forms of legal writing, this dissertation moves away from the history of doctrinal,

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[21] Hallaq, *An Introduction to Islamic Law*, 88.

[22] The most recent contributions in this regard include Bhavani Raman's *Document Raj: Writing and scribes in early colonial South India* (Chicago: University of Chicago Press, 2012) and Hayden J. Bellenoit's *The Formation of the Colonial State in India: Scribes, Paper and Taxes, 1760–1860* (New York: Routledge, 2017).

[23] Here I expand Black's definition of "practice" to include what happens outside the courts of law as well.

textual domination that continues to inform debates on Islamic law in South Asia today and instead focuses on the production of everyday legal articulations that reflect individuals' understandings of what the formal legal system is and can do for them as well as their own understandings of how law—as written statutes as well as ethical principles—operates.[24] That is, rather than separating law as written in British, or Anglo-Indian, statutes from law as ethical action (i.e., *sharīʿa* as *aḵẖlāq*) or social tool, this dissertation uses legal documentation to bring together these two aspects into a single analytical framework and calls upon a variety of documentary forms (deeds, registers, published rulings, and unpublished interpretations) to do so.[25]

In order to excavate the history of legal documentation at the heart of the larger process of legal transformation, this dissertation focuses on figures frequently rendered liminal in histories of colonial legal change: *qāẓī*s and *muftī*s. There are many explanations for the marginal position these figures hold in mainstream histories of colonial rule and legal administration. Yet no picture of legal pluralism in post-colonial South Asia can be complete without accounting for their influence. In part, the absence of archival material has rendered it difficult to follow the

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[24] In this way, the dissertation contributes to recent discussions in the anthropology and history of paperwork. See, e.g., David Barton and Uta Papen, *The Anthropology of Writing: Understanding Textually Mediated Worlds* (London: Bloomsbury, 2010); Laura Bear and Nayanika Mathur, "Introduction: Remaking the Public Good: A New Anthropology of Bureaucracy," *The Cambridge Journal of Anthropology* 33, no. 1 (March 1, 2015): 18–34; Bear, *Navigating Austerity: Currents of Debt along a South Asian River, Anthropology of Policy* (Stanford, CA: Stanford University Press, 2015); James T. Bennett and Manuel H. Johnson, "Paperwork and Bureaucracy," *Economic Inquiry* 17, no. 3 (July 1, 1979): 435–51, doi:10.1111/j.1465-7295.1979.tb00541.x; David Graeber, *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy* (Brooklyn, NY: Melville House Publishing, 2015); Matthew S. Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2012); Ben Kafka, "Paperwork: The State of the Discipline," *Book History* 12, no. 1 (August 16, 2009): 340–53, doi:10.1353/bh.0.0024; Laura Lowenkron and Letícia Ferreira, "Anthropological Perspectives on Documents. Ethnographic Dialogues on the Trail of Police Papers," *Vibrant: Virtual Brazilian Anthropology* 11, no. 2 (December 2014): 76–112, doi:10.1590/S1809-43412014000200003; and Kevin McLaughlin, *Paperwork: Fiction and Mass Mediacy in the Paper Age* (Philadelphia: University of Pennsylvania Press, 2011).

[25] For a discussion of *sharīʿa* as norm or ethic, see Muzaffar Alam, "Guiding the Ruler and Prince," in *Islam in South Asia in Practice*, ed. Barbara Daly Metcalf (Princeton: Princeton University Press, 2009), 279–92; and more generally, Alam, *The Languages of Political Islam in India, C. 1200–1800* (Delhi: Permanent Black, 2004).

lives and careers of these individuals. Beyond that, the tendency among scholars to consider the prescriptive role *qāẓī*s *should* perform (i.e., according to the dictates of classical Islamic jurisprudence and in relation to their history in other Islamic polities) combined with the limited role *muftī*s *could* perform, given their lack of enforcement power, has led scholars to treat these figures' liminal position within the formal administration of law in British India as evidence of their liminality within the larger (social, intellectual, and material) histories of law and legal practice.[26] The proliferation of Islamic legal writings circulating in the vernacular, multi-lingual public sphere by the end of the nineteenth century, as Chapter Five outlines, instead reveals that the voices, impressions, and actions of these figures (who performed minor roles in the state's statutory and legislative frameworks) nonetheless remained influential socially—if not entirely legally—throughout the period in question.[27] By dissecting the minute practices of legal documentation, registration, and paperwork located at the crossroads of the colonial legal system and indigenous legal practices, this dissertation argues that such actors contributed to the project of legal modernization and created a template for legal procedure that could be simultaneously religious and modern—and that continues to shape legal pluralism in and beyond South Asia

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[26] For further discussion of the trouble between normative and contextual interpretation of the *qāẓī*'s role, see Chapters One and Three of this dissertation. For an introduction to the work of the *qāẓī* and that of the *muftī* from multiple perspectives and multiple periods and locations, see Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, eds., *Islamic Legal Interpretation: Muftis and Their Fatwas*, Harvard Studies in Islamic Law (Oxford: Oxford University Press, 2005); and Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, eds., *Islamic Legal Interpretation: Muftis and Their Fatwas*, Harvard Studies in Islamic Law (Cambridge, Mass: Harvard University Press, 1996).

[27] This treatment of legal discourse as it circulated, was questioned, and challenged in the public sphere modifies the straightforward association theorists of nationalism posit between print culture, print capitalism, and national-communal unity. Benedict R. O'G Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Rev. and extended ed (London: Verso, 1991); and more generally Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society, Studies in Contemporary German Social Thought* (Cambridge, Mass: MIT Press, 1989).

today.[28] Additionally, considering legal history from the level of documents and papers—rather than from the perspective of treatises and statutes—offers a previously under acknowledged point of entry into their role in shaping local conceptions of law throughout the colonial period.

This shift in scale from the legislative to the documentary, from the ideological to the social, also reflects recent trends in legal-historical scholarship, which over the past several decades has moved away from the study of law as articulated in law books to the study of law-in-action.[29] Legal documentation represents another stride in this direction to look beyond the construction and adjudication of law from within the confines of the colonial courts toward the material artifacts that constitute, shape, produce, and constrain legal action from beginning to end. From the first articulation of legal intent in an informal contract to the final publication of a ruling or judicial decree in a law report or digest, documentation shapes every stage of the process, and the introduction of British rule likewise changed expectations surrounding acceptable forms of documentation.[30] As such, the evolution of the legal documents considered throughout this dissertation emphasizes the tangible materials of legal history to trace the mechanisms by which the theoretical articulation of legal intent and the ideological objectives that structured legal activity were engaged in the process of making law work across multiple

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[28] On the post-colonial legacy of the personal law system, see, e.g., Rina Verma Williams, *Postcolonial Politics and Personal Laws: Colonial Legal Legacies and the Indian State* (New Delhi: Oxford University Press, 2006).

[29] This approach also builds upon recent developments in the fields of legal anthropology and the study of legal pluralism. Lauren A. Benton and Richard Jeffrey Ross, eds., *Legal Pluralism and Empires, 1500-1850* (New York: New York University Press, 2013); Lauren Benton, "Historical Perspectives on Legal Pluralism," *Hague Journal on the Rule of Law* 3, no. 1 (2011): 57–69, doi:10.1017/S1876404511100044; Benton, "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State," *Comparative Studies in Society and History* 41, no. 3 (1999): 563–88; Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96, doi: 10.2307/3053638; and Merry, "Anthropology, Law, and Transnational Processes," *Annual Review of Anthropology* 21, no. 1 (1992): 357–77, doi:10.1146/annurev.an.21.100192.002041.

[30] Conventional narratives suggest British rule accompanied a shift toward written documentation. This dissertation challenges that assumption and instead argues that documentation remained a contested practice into the post-colonial period.

frames of legal action.

Shifting the focus from the ideological articulation of law at the level of legislative enactment to the material artifacts of legal action at the level of individual practice also underscores the importance of legal documentation and bureaucratic procedure for the production of legal subjectivity that here emerges within the context of colonial objectification. In a similar vein, such attention demonstrates the role of bureaucratic efficiency (or its opposite, bureaucratic obfuscation) for establishing the relationship between post-colonial citizen-subjects and the contemporary state. In this context, the physical materiality of bureaucracy is not incidental to the power bureaucratic organizations exert over subject populations, as everyone from Jeremy Bentham, to J.S. Mill, to Max Weber, to Michel Foucault, to James Scott, to Matthew Hull has argued.[31] What exists in the file, record, or document at once constructs and distorts the reality it purports to represent. But as this dissertation demonstrates, East India Company civil servants and colonial administrators were not the only individuals capable of putting legal truths into writing. Indigenous legal practitioners also participated in, responded to, challenged the hegemony of, and at times rejected outright the authority of these constructed,

[31] Jeremy Bentham, *Theory of Legislation,* trans. Etienne Dumont and Richard Hildreth (London: Trübner, 1864 [1802]); Thomas Poole, *Reason of State* (Cambridge, UK: Cambridge University Press, 2015), 168–209; Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, trans. Ephraim Fischoff (New York: Bedminster Press, 1968); Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd Vintage Books ed (New York: Vintage Books, 1995); Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality, with Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 87–104; James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed*, Yale Agrarian Studies (New Haven [Conn.]: Yale University Press, 1998); and Hull, *Government of Paper*.

negotiated, mediated, and translated "paper truths", to use Emma Tarlo's expression.[32] Uncovering the history of this process and establishing the shared language through which competing sources of legal authority vied for popular and public support throughout the nineteenth and into the twentieth century sits at the heart of this project. The study offered here of legal action in towns like Bharuch, Meerut, and Mumbai is not a mere academic exercise but rather contributes to an understanding of the operation of emergent conceptions of legal identity, personhood, citizenship, and belonging.

As Ebrahim Moosa has recently written with respect to the forgotten—or swept-under-the-rug—histories of the Indian *ʿulamā* more broadly, "acquiescing to the rules of the game also allows the players…to have control of the game."[33] In this case, the rules of the game were established by the colonizers and agreeing to play the game—as the negotiations between East India Company officials and local q*āẓī*s that appear in Chapter Two demonstrate—meant not only acquiescing to the rules of the game but also establishing alternative playing fields on which the game could be played—fields like the pages of printed media, the post-colonial *qāẓī*'s court, and the late-colonial *dār-ul-iftā*'.[34] Colonial legislation and indigenous responses to those laws were mutually constitutive of the personal law system and modes of legal pluralism that persist in the

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[32] Emma Tarlo, *Unsettling Memories: Narratives of the Emergency in Delhi* (London: C. Hurst, 2003), 74. This objection to documentation does not reflect an essentially "Islamic" antithesis or skepticism toward written documentation. Rather, it suggests that indigenous legal practitioners offered their form of "paper truths" in order to challenge the state's hegemonic authority in this regard. (Cf. Brinkley Messick, "Evidence: From Memory to Archive," *Islamic Law and Society* 9, no. 2 [January 1, 2002]: 231–70; Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*, 1st. pbk. ed, Comparative Studies on Muslim Societies 16 [Berkeley: University of California Press, 1996]; Messick, "Textual Properties: Writing and Wealth in a Shari'a Case," *Anthropological Quarterly* 68, no. 3 [July 1995]: 157–70.)

[33] Ebrahim Moosa, "Introduction," *The Muslim World* 99, no. 3 (July 1, 2009), 431, doi:10.1111/j.1478-1913.2009.01285.x.

[34] Ebrahim Moosa, "Shari'at Governance in Colonial and Postcolonial India," in *Islam in South Asia in Practice*, ed. Barbara Daly Metcalf (Princeton: Princeton University Press, 2009), 317–25; and more broadly, Gopika Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India* (Cambridge, UK: Cambridge University Press, 2011).

post-colonial period, along with the multi-lingual, multi-religious, and multi-perspectival voices that continue to debate the meaning of these frameworks.

Before proceeding, it is also important to define the terms "Islamic law," "sharīʿa", and "fiqh." Academic and popular discussions of law in Islam tend to gloss the *sharīʿa* as Islamic law and often read the latter in place of the former.[35] In this dissertation, the term Islamic law brings together ideas of the *sharīʿa* (divine prescriptions drawn from the Qurʿān and Sunnah, the "way" or "path") and those of *fiqh* (jurisprudence, interpretation, procedure)[36] but offers a reading of Islamic law that refers not to a singular Islamic "law" but rather to Islamic "laws", or the possibility for multiple worldly interpretations and instantiations of *sharīʿa*'s divine dictates.[37] What "counts" as Islamic law here reflects the application of human reason to the interpretation of divinely ordained rules within a particular socio-historical context. Islamic law by this definition, is neither the *qānūn* of the state, nor the law of the *Sulṭān*, though some versions of law considered "Islamic" in this dissertation do emanate from state sources (as in the codes of Anglo-Muslim law that appear in British India). Accordingly, this definition of "Islamic law" reflects the idea that those who use the law draw upon something they consciously identify as "Islamic" within their construction, interpretation, or application of that law. This definition thus allows for multiple forms of Islamic law to exist contemporaneously and coterminously with one another,

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[35] The titles of Wael Hallaq's textbooks, one of which uses "Sharīʿa" the other of which uses "Islamic law" demonstrate this linguistic looseness. See Hallaq, *An Introduction to Islamic Law*; and Hallaq, *Sharīʿa.*

[36] For a more expansive treatment of *fiqh*, see Ahmed El Shamsy, "Fiqh, Faqīh, Fuqahā'," ed. Kate Fleet et al., *Encyclopaedia of Islam, Three* (Leiden: Brill Online, 2015), http://dx.doi.org/10.1163/1573-3912_ei3_COM_27135. Within Sunni Islam, scholars identify four sources of law—the Qurʿān, Ḥadith (Sunnah), qiyās (analogical reasoning), and ijmaʿ (consensus)—which provide jurists with room to maneuver within. Hallaq, *An Introduction to Islamic Law*, 14–30.

[37] This dissertation builds only the definition Iza Hussin offers in "The Politics of Islamic Law" but expands this definition to read law in a more capacious sense, derived from multiple understandings, interpretations, relationships to "Islam." See Hussin, "The Politics of Islamic Law: Local Elites, Colonial Authority and the Making of the Muslim State" (PhD Dissertation, University of Washington, 2008), 4.

and privileges a historical interpretation that reveals Islamic legal practice to be multiple, diverse, and contingent.[38] The course taken for examining the law begins with Islam as the point of departure but the path toward implementation takes different routes depending upon whose voices one hears. There is no singular idea of what Islamic law is or what Islamic law does that emerges at the end of the nineteenth century, or even at the end of British rule in South Asia.[39] Rather, this dissertation shows that the colonial encounter allowed multiple ideas of what it was, who it was for, and what it meant to live according to Islamic law to exist simultaneously. This dissertation is less interested in the question of what "counts" as Islamic law than the question of what Islamic law meant to the people and protagonists who contributed to the making of this history of Islamic law. The "Islamic" (or "Islamicate") in this definition thus derives from the recognition that the protagonists who appear in the pages that follow took Islam as the foundation for what they were doing.[40]

At the same time, this dissertation engages with the history of Islamic law, rather than with that of *sharī'a,* or even with the idea of jurisprudence, or *fiqh*, in an effort to understand

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[38] Those familiar with Marshall Hodgson's work might find remnants of his formulation of the "Islamicate" within this definition of Islamic law, but the difference here is that unlike in Hodgson's idea of the "Islamicate," which offers an umbrella term that includes vaguely "Islamic" gestures and influences, Islam here is un-self-consciously the origin and justification for the ideas of law considered here.Marshall G. S Hodgson, *The Venture of Islam Conscience and History in a World Civilization*, Vol. 1, The Classical Age of Islam. Pbk. ed. (Chicago: University of Chicago Press, 1977), 45–50. Vogel employs a similar distinction. Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden [The Netherlands]: Brill, 2000); and P. J. Bearman, Wolfhart Heinrichs, and Bernard G. Weiss, eds., *The Law Applied: Contextualizing the Islamic Shari'a, A Volume in Honor of Frank E. Vogel* (London: I.B. Tauris, 2008).

[39] It should also be recognized that the term "Islam" was going through a similar period of definition, determination, and redefinition. What "law" was and what "Islam" was depended on who was engaged in the process of definition. Recent scholarship on secularism (e.g., Talal Asad's *Formations of the Secular: Christianity, Islam, Modernity* [Stanford: Stanford University Press, 2003]) provides a good introduction to the formation and reformulation of "Islam" in this period.

[40] This idea of Islam as point of departure does not presuppose that all of the figures who contributed to this history placed themselves uniformly in relation to Islam. The very idea of "Islam" and what it was underwent a transformation in his period and certainly the idea of Islam that shaped the Qāẓī of Bharuch's work in the middle of the nineteenth century different from that of Muftī Kifāyatullāh's in the early twentieth century.

human attempts to interpret divine law within a particular historical context. If *sharī'a* refers to divine law and *fiqh* to its interpretation, then the Islamic law considered here refers in part to the idea of "practice" and reflects also an element of legal realism. As such, this dissertation, through its choice of primary sources, addresses human responses to particular circumstances presented in frameworks of law as interpreted through the teachings of Islam. As a work of history—rather that one of theology or religious philosophy—this dissertation is less interested in the proper, true, or correct interpretation of the law than with the responses to, engagement with, interpretation of, adherence to, or rejection of what various individuals judged to be the law. These views were not always consistent across time, nor were they identical for the individuals considered here, but these intelligent, informed, and necessarily human responses to the circumstances of colonial rule and modernization are the heart of the narrative outlined here. If the strength of the legal-bureaucratic state is capillary power exercised through the micro-practices of everyday life, then the human responses and negotiations considered here are the pumps that control the flow of blood through the capillaries of the state.[41]

This approach yields a history of Islamic law in nineteenth-century South Asia that is very different from the perspectives found in contemporary news-media and more popular scholarship.[42] The narrative of timeless opposition between the world's great civilizations that emanates from these Euro-centric discourses becomes a far less defensible position when one recognizes the contingency and change within each civilization over time—and the processes by

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[41] Michel Foucault, *Ethics: Subjectivity and Truth*, ed. Paul. Rabinow, trans. Robert Hurley, vol. v. 1, Essential Works of Michel Foucault, 1954-1984 (New York: New Press, 1997), cited in Moosa, "Introduction," 431.

[42] Indeed, Samuel Huntington's "clash of civilizations" hypothesis becomes less realistic when one realizes that the nineteenth-century had profound effects not only on the interpretation of but also the practice of Islamic law. Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, 1st Touchstone ed. (New York: Touchstone, 1997).

which they worked to define themselves in opposition to one another, as much of the recent scholarship on colonial encounters has shown. As counter-intuitive as it may seem, even fundamentalist discourse bears the indelible imprint of the contemporary, and this seemingly un-modern position more often than not locates its expression, reason, justification, and popular presence in identifiably modern forms.[43] Recognizing changes in modes of interpretation and practice from within and without makes it possible to locate commonalities amid the apparent antagonism between and across traditions. This dissertation contributes to the larger humanistic project of locating human commonalities and equivalences by attending to the micro-practices of adjustment, change, translation, and transmutation that characterized the colonial encounter.

Several decades after Huntington introduced his "clash of civilizations" thesis, the idea of incompatibility and incommensurability continues to drive debates and discussions—academic and non-academic—on the subject of Muslims, modernity, and global peace. From the seemingly eternal antagonism between Hindus and Muslims in South Asia, to the proliferation of anti-Muslim rhetoric from among different political factions in post-9/11 America and the now-unravelling European Union, the many clashes between "Islam" and the "West", or even "Islam" and "the rest" as some political pundits would put it, seem to be impossible to resolve.[44] Yet by attending to the details of individual human responses to the problems of foreign domination, loss of political power, and challenges to personal, familial, or communal autonomy, more similarities than differences emerge. "Between Community and *Qānūn*" is as much a tale of legal

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[43] Karen Armstrong, *The Battle for God*, 1st ed. (New York: Alfred A. Knopf, 2000); Michael O. Emerson and David Hartman, "The Rise of Religious Fundamentalism," *Annual Review of Sociology* 32, no. 1 (2006): 127–44, doi: 10.1146/annurev.soc.32.061604.123141; and Harriet A. Harris, *Fundamentalism and Evangelicals*, Pbk. ed., Oxford Theological Monographs (Oxford: Oxford University Press, 2008).

[44] Edward Said's observations on the effects of studying Islam in order to "other" it should not be discounted here. (Edward W Said, *Orientalism*, 1st Vintage Books ed. [New York: Vintage Books, 1979].)

modernization among South Asian Muslims living in the late-nineteenth and early-twentieth centuries,[45] as it is a tale of cultural accommodation, adjustment, negotiation, transformation, translation, and exceptionalism.

While these terms of cosmopolitan engagement have a recognized place within scholarship on the colonial period,[46] they are often omitted from scholarship on the history of Islamic law, which tends to place instances of "flexibility" and "adaptability" beyond the pale of the late-nineteenth century's more rigid definition of Islam. Contrary to these views, this dissertation instead shows that Islamic law became modern through the colonial encounter not by returning to rigid fundamentalisms but by adapting to new modes of practice and procedure, emphasizing professionalism and formal training, and introducing documentary protocols that mirrored those of the colonial state. If the colonial state "saw" its subjects through its strategic deployment of bureaucratic-enumerative technologies, then the Islamic legal practitioners considered here learned to "speak" like the state by conducting their business through the same

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[45] "Legal modernization" has many possible definitions, but for the sake of simplicity, this dissertation draws upon the ideas Marc Galanter outlined in the 1960s. Legal modernization involves uniform rules, that are rooted in transactional agreements and founded upon universal norms. The "modern" legal system is hierarchical (with established paths for appeal), bureaucratically organized, founded on rational principles, technical and complicated, and open to amendment. The history of legal codification under British rule encompasses many of these concerns. This dissertation considers the relationship between the procedural elements of legal modernization (bureaucracy, hierarchy, professional training) and the substantive elements (uniform rules, transaction-based, dependent upon universal norms). See Marc Galanter, "The Modernization of Law," in *Modernization: The Dynamics of Growth*, ed. Myron Weiner (New York: Basic Books, 1966), 153–65. Galanter describes these features on pages 153–156. For other perspectivs on the question of legal modernization, see Benjamin Gregg, "The Modernization of Contemporary Chinese Law," *The Review of Politics* 55, no. 3 (1993): 443–70; and Arthur T. Vanderbilt, "Modernization of the Law," *Cornell Law Quarterly* 36, no. 3 (Spring 1951): 433–442.

[46] For an introduction to the "cosmopolitan" in post-colonial studies, see, e.g., Seema Alavi, *Muslim Cosmopolitanism in the Age of Empire* (Cambridge, Massachusetts: Harvard University Press, 2015); Sugata Bose and Kris Manjapra, eds., *Cosmopolitan Thought Zones: South Asia and the Global Circulation of Ideas*, Palgrave Macmillan Transnational History Series (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2010); Julian Go, "Fanon's Postcolonial Cosmopolitanism," *European Journal of Social Theory* 16, no. 2 (May 1, 2013): 208–25, doi:10.1177/13684310 12462448; and Nico Slate, *Colored Cosmopolitanism: The Shared Struggle for Freedom in the United States and India* (Cambridge, Mass.: Harvard University Press, 2012). For an alternative perspective, see Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, 2nd ed. (Princeton, N.J.: Princeton University Press, 2008).

paperwork practices as the state.[47] Such practices mean that today, advocates for the introduction and preservation of Islamic law to post-colonial and secular-democratic states use the same tools, devices, forms, and modes of communication and publicity as their detractors. The origins of this mutual intelligibility lie in the nineteenth-century colonial encounter and continue to shape debates today.

This study engages with elements of political history, intellectual history, religious history, and law but in order to uncover the voices of individuals who experienced British rule in India, who dealt with the challenges and changes foreign rule created, who resisted and adopted new communications technology into their everyday lives, this dissertation embraces a mixed historical method. Political histories of the British in India abound. Likewise there are countless legislative and legal histories of the colonial period that focus on the great legislators and legal minds of the age—European and Indian alike. The religious history of this period has always grabbed the attention of scholars interested in uncovering the devotional, soteriological, and theological history of this rather impressionable era, and religious histories of this period continue to emerge—covering the rich histories of an increasingly diverse array of believers, followers, and practitioners. The present study builds upon these existing historiographies and theoretical positions in and effort to expand understandings of how the lines between religion and the state, between religious practices and legal practices, between the ethical elements of faith and the ethical elements of right and just government were drawn in the colonial period and continue to be drawn. Looking at the long history of Islamic legal practice from the late-eighteenth into the early twentieth century, this dissertation seeks to answer these questions not

[47] This treatment of the colonial state's ability to "see" employs James Scott's idea of "seeing like a state". (James C. Scott, *Seeing like a State*.)

from the perspective of legal theory but from the history of everyday legal practice in an increasingly global age.

II. Outline for this study

This dissertation considers multiple responses to the question of how Islamic law became relevant to the project of modern governance. The first-half of the dissertation considers attempts to legislate Islamic legal practice from the perspective of East India Company officials and their native interlocutors. The second-half of the dissertation then turns to the formation of legal practices and discourses of law beyond the bounds of colonial legislation. These practices include the production and use of vernacular-language publications as well as the introduction of novel administrative units in the premier princely state of British India, Hyderabad. The discussions that appear across the dissertation's six chapters are organized chronologically and thematically, using a different form of legal action, highlighting a different type of legal documentation, and focusing on a different mode of legal discourse to frame the conversation in each chapter. The chronological organization does not mean, however, that earlier modes of debate and discourse disappeared as new forms arrived. Rather, the dissertation suggests that there were, and continue to be, multiple responses and multiple efforts to provide a compelling answer to the question that opened this chapter.

The first chapter introduces the problem of the irresponsible *qāẓī* (or, Islamic judge) as he surfaced in European and Indian literature, historical accounts, and administrative debates. These depictions criticize the *qāẓī* for his corruption, venality, and arbitrary meting out of justice (pace Max Weber's critique of *kadijustiz*). Europeans, looking to justify their Empires in Asia, however, were not the only ones to paint this picture. The *qāẓī*'s compromised morality was a

well-known trope in Indo-Islamic writings as well, and has origins stretching back to the classical age of Islamic jurisprudence. Such stereotypes shaped European attitudes toward native legal practices in early colonial South Asia and justified many of the ways in which colonial policies intervened in the *qāẓī*'s execution of his office. These stereotypes also framed the *qāẓī* as the apotheosis of bureaucratic inefficiency. Indeed, improving this image by promoting internal reforms and advancing efforts to professionalize the office drove many of the *qāẓī*s' responses to European rule—particularly for leading *qāẓī* families like that of Sayyid Aḥmad Ḥusain of Bharūch.[48] Taking these early perceptions into consideration, the chapter then explores early Company engagement with the *qāẓī*s of Bengal, following the formulation of the Warren Hastings Plan for the Administration of Justice (1772), which planted the shaky foundation from which the construction of legal pluralism in British India arose. The chapter ends by looking at early regulatory efforts to define and confine the work of the *qāẓī* to an increasingly narrow range of legal activities using regulations originating in late-eighteenth-century Bengal.

After establishing the problem of the unreliable *qāẓī* in Chapter One, Chapter Two considers British East India Company (EIC) efforts to manage the office of the *qāẓī* in the first-half of the nineteenth century. By the time Mountstuart Elphinstone's Bombay Code took effect in 1827, the precedent had been established—at least on paper—for treating *qāẓī*s as religious, rather than as legal officials. In practice, however, the *qāẓī*'s role remained ill-defined until after the transition to Crown rule and it was only through prolonged efforts and negotiations with current and future office-holders that EIC judicial department administrators in Western India were able to achieve a nebulous hold over the hundreds of individuals nominally titled "*qāẓī*".

[48] See Chapter Two of this dissertation and the author's "Writing law at the edge of empire,"(forthcoming).

Chapter Two treats Company efforts to manage and control these officeholders by incorporating the office into the Company's administrative hierarchy, controlling and monitoring the professional qualifications and abilities of its appointees, and working to decouple the work of the office from the hereditary entitlements of the officeholders, and concludes by addressing some of the rivalries, controversies, and complexities that unsettled these efforts. This chapter argues that despite EIC efforts to "manage" the office of the *qāẓī*, the imperial-managerial project remained incomplete. Company officials could never replace entirely the existing system of officeholders, appointments, and entitlements with their vision of an orderly judicial bureaucracy.

Chapter Three focuses on a particular family of *qāẓī*s from Bharūch (in present-day Gujarat) who were exemplary and ordinary in their interactions and negotiations with Company officials. The family was exemplary in that individuals from multiple generations were able to create and maintain productive, symbiotic relationships with Company officials from the late-eighteenth into the mid-nineteenth century. The success of these negotiations are also evident in the family's archive of manuscripts, documents, and registers, which served as a repository for the work its family members performed in the first decades of the nineteenth century and now provides a record of the ways in which the *qāẓī*s of Bharuch changed their work habits, and scribal *habitus*, to address criticisms leveled against them by Company administrators.[49] Yet the family's history is ordinary in that it resembles transformations many scribal and scholarly families underwent in the nineteenth century. Bringing together exchanges located in the colonial archive and records from the family's private collection, this chapter traces the processes of challenge, interference, negotiation, response, and reconfiguration that shaped the *qāẓī*'s everyday

[49] Raman, *Document Raj*, 3–7, 57–58; and Messick, *Calligraphic State*, 86–89.

involvement in local legal life. In so doing, the chapter assesses EIC efforts to separate the *qāẓī*'s "religious" function from his "secular" or "legal" function and analyzes the relationship between the employment of those concepts in official Company discourse and the making of legal categories in the first-half of the nineteenth century.

Building upon Chapter Three's discussion of the private records from the *qāẓī*s of Bharuch, Chapter Four considers the effects of a late-colonial policy reversal. After deciding to end its appointment of native law officers for the courts and *qāẓī*s for the performance of certain religious and legal functions in 1864, the Legislative Council in Calcutta re-introduced in 1880 an Act for the Appointment of Individuals to the Office of Kazi. Act XII of 1880, the Kazis' Act, created a new administrative position, cloaked in the familiar language of the old title, for individuals appointed to the office to perform and record Muslim marriages and divorces. The *qāẓī*, now employed as a de facto marriage registrar, would continue to serve local communities in this capacity into the post-colonial period. At the same time, however, despite retaining some of their administrative autonomy, the records of marriages performed and recorded by these individuals, took a decided turn toward the modalities of colonial-governmental record-keeping, incorporating terms, concepts, and categories representative of the enumerative technologies employed in government documents like the Gazetteers, the All-India Census, and later colonial passports. The *qāẓī*s' marriage registers, now written in this form, were simultaneously religious and legal, traditional and modern, and placed the veneer of government surveillance over the *qāẓī*'s now-marginal, yet quasi-autonomous, legal function. Such developments continue into the present day and reveal the common language that *qāẓī*s and the state use to address one another. This chapter suggests that the records' questionable position in administrative debates and courts

of law emerged from their ability to disrupt the colonial state's hegemony over the production of legal documents which in turn necessitated constant reflection on whether the registers were accurate as legal evidence.

The final two chapters of the dissertation turn from explicit efforts to regulate and to legislate the practice of law, to the production and circulation of public legal discourses (Chapter Five) and the introduction of an alternative form of bureaucratic legal discourse found in the princely state of Hyderabad (Chapter Six). These chapters address the question of what happened to other areas of law as the colonial courts tightened their grasp around issues of "personal" law. *Fatwā* literature from this period presents an opportunity to examine public ideas of law and the legal and to consider different approaches to the question of information, authority, interpretation, and legality presented in these alternative legal writings. One of the central aims in Chapter Five is to consider the relationship between law and the making of a Muslim "community" and between vernacular printing and legal authority. The question of what happens to "law" and its principled ideologies is one that should interest legal historians from a variety of backgrounds; *fatwā* literature, Chapter Five contends, presents an opportunity to understand the public circulation of legal concepts in a time when the calculus was shifting between the recognition of legal authority on the one hand and the compulsion of personal, moral, or ethical authority on the other.

Furthermore, *fatwā* literature, which forms the basis for these chapters, has yet to receive adequate attention or recognition from historians interested in this period. Drawing upon examples taken from a handful of the period's well-known—along with some less-well-known—*fatwā* collections, Chapter Five considers the relationship between the evolution of the vernacular

public sphere, the emergence of trans-national communication networks involving steam transportation and telegraphic exchanges, and the use of the *fatwā* as a form of legal debate. Highlighting the circulation and reception of these at times polemical, at times practical, at times provocative, at times plain writings, this chapter returns to the idea of law as norm or civic ethos in order to understand the ways in which Muslims, living in and under different circumstances, employed the normative frameworks of Islamic law to guide their responses to changes in their lives and the world around them. Rather than treat these writings as established rules, this chapter considers late-colonial *fatwā* literature as a form of legal discourse through which Muslims from the South Asian subcontinent constructed the moral and ethical frameworks that shaped their attitudes to the new world and new circumstances in which they were living and attends to the lively and living world of Islamic legal interpretation. This approach also offers a way to view law from below, as it was constructed through local and trans-regional debates.

Chapter Six builds upon this introduction to the conversational space produced by the question-and-answer format of the *fatwā* to consider the relationship between the flexibility of the *fatwā* and the rigidity of bureaucratic practice. Focusing on the *dār-ul-iftā*' of the Ṣadārat-ul-ʿĀliya of the princely state of Hyderabad, this chapter identifies an alternative response to the question of how Islamic law could operate within a modern government. As the Niẓāms of Hyderabad worked over successive generations to bring their administration in line with the needs and demands of British administrators, they introduced several new measures to reform the courts of law, manage religious institutions, and administer state functions in concert with the needs of its population. When the long-standing (Mug̲ẖal) institution of the Ṣadārat-ul-ʿĀliya was incorporated into the state's new Religious Affairs Department at the beginning of the twentieth

century, the *dār-ul-iftā*ʾ (institute for issuing *fatwā*s) assumed a new form—as a bureaucratic office guided by official procedures and protocols that nonetheless retained the flexibility to answer legal questions by taking individual circumstances into consideration. In this case, the princely state's *dār-ul-iftā*ʾ may have been short-lived, but the institution's approach to addressing its petitioners' queries offers yet another answer to the question of how Islamic law could operate within the context of modern government.

The dissertation concludes by following these late-colonial practices into the post-colonial period. Though political changes in the middle of the twentieth century introduced a new period in the history of South Asia's independent nation-states, the legacies of colonial rule continue to loom large in the form of legislation that remains on the books, social and political categories that continue to shape individual lives and dictate government policy, and religious and ethical perspectives that shape everyday interactions. Some of these legacies are evident in the ways scholars have approached the history of the colonial period; others are more subtle, and appear only in the ways office workers bind files together or record the movement of files from one part of the office to another. The fact that these practices have their origin in the nineteenth century suggests that change is possible over the course of time and that categories, divisions, and mindsets that shape the activities of governmental and non-governmental actors today could also change in the future. Historicizing these practices in order to reshape their interpretation is one of this dissertation's objectives.

To unearth the buried history of legal change not at the top of the imperial order but at the lower levels of legal action, this dissertation turns to paperwork, to the material artifacts that populated and fueled the legal system and administrative order of British India. Bringing to light

new sources—sources that capture the articulation of law at the level of a single register entry, for instance—this dissertation pursues a law-and-society approach to legal history. Across its six chapters, the dissertation thus offers several contributions to scholarship and historiography on South Asia, Islamic law, religious history, and the history of European colonialism and imperialism. First, the story it provides of Islamic legal practice in nineteenth-century British India reconfigures the history of law and religion through its consideration of what constitutes "religious" law and its exploration of how that category was developed, defined, and produced in British India. Along these same lines, the dissertation also considers how novel understandings of law also shaped nineteenth-century understandings of religion—and of Islam. It raises questions, for instance, about what constitutes a legal marriage and how such a concept might be proved and according to whose documentary, evidentiary, or socio-legal standards such proof might emerge. Chapters Three and Four, for instance, suggest that the definition of a legal marriage (or what constitutes the "legal" more broadly) changes depending upon *who* is doing the interpretation and on the basis of *what* documents he employs in his interpretation. These changes are not incidental to the practice of Islamic law in post-colonial South Asia today, but historiography on the "colonial construction" of Anglo-Muslim law to date has considered only one side of this story. This dissertation offers another perspective, one that considers how legal practitioners—as well as the "clients" they served—responded to these changes and introduced new forms of paperwork to meet the needs of the emergent colonial state in India. In this way, the dissertation builds upon but offers a new perspective to scholarship on law, colonialism, and religion.

Similarly, by attending to the nitty-gritty processes of paperwork presented in the context of the *qāẓī*'s office, the colonial courts, various government offices, private institutions, civic associations, and a state-run *dār-ul-iftā*', the dissertation contributes to a growing body of literature on paperwork and bureaucracy, empire and information not only in the context of South Asia but in other areas as well.[50] At the same time, attending to documentation at the level of the individual (marriage) register entry, this dissertation offers a history of law from below that takes seriously the way law and documentation operated to aid, control, contain, or define individual lives. Records from this level of legal action offer an alternative perspective on the effects of colonial legal change more broadly, one that allows historians to tease apart strands of continuity across extensive periods of time and successive acts of legislation, and one that also allows us to begin to understand what legal change might have meant for individuals and their families.

Thirdly, the dissertation challenges prevailing narratives of order through legislation, and simplicity through codification and offers a new perspective on British rule in South Asia that heeds the call from other socio-legal historians to look beyond legislation to consider how law spreads, what changes emerge on the ground after legislation goes into effect, and how such changes move unevenly and affect different places and populations at different rates. In focusing on the local, this dissertation questions some of the larger narratives of British rule in South Asia

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[50] Along these lines, see, e.g., C. Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870*, 1st pbk. ed. (New York: Cambridge University Press, 1999); Peter Crooks and Timothy Parsons, eds., *Empires and Bureaucracy in World History: From Late Antiquity to the Twentieth Century* (Cambridge: Cambridge University Press, 2016); David Graeber, *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy* (Brooklyn, NY: Melville House Publishing, 2015); Matthew S. (Matthew Stuart) Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2012); Ben Kafka, *The Demon of Writing: Powers and Failures of Paperwork* (New York: Zone Books, 2012); and Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India*, South Asia across the Disciplines (Chicago: The University of Chicago Press, 2012).

that present a top-down treatment of what happened to Islamic law during this period. Such assessments are necessarily superficial and privilege a small sub-set of relevant voices. This dissertation takes a decisive step toward expanding the lens of historical study and encourages others to look beyond the mere statement of policy in order to consider the effects of such policies on people, living in particular places, at particular times. This widened perspective also highlights the constructed nature of British rule and analyzes how certain ideals or expectations necessarily collapsed in the face of material or economic constraints. Attending to these mechanisms of imperial rule also offers a way to break down some of the undifferentiated categories that continue to proliferate in scholarship on the colonial period—categories like "Indian" and "Briton", "Hindu" and "Muslim", "legal" and "illegal"—and complicates the historical understanding of category formation, enumeration, and documentation more generally.

Across its several chapters, the dissertation argues that paperwork matters for the practice of law and that paperwork connected to the practice of Islamic law went through several phases of adjustment and "modernization" to meet the demands of British civil servants and judicial administrators in the nineteenth and early twentieth centuries. These adjustments do not signal the decline of Islamic law but rather preserved its place in colonial and later post-colonial society. By responding to the demands of the imperial administration, Islamic legal practitioners made their work matter to the modern state. That is, by learning to speak the same language of legal documentation, *qāẓī*s and *muftī*s not only resisted the state's hegemony over the production of legal truths but also made their work legible—and by extension relevant—to the project of modern governance.

CHAPTER 1: INTERSECTIONS OF EMPIRE: THE ADMINISTRATION OF ISLAMIC LAW IN THE INDIAN AND EUROPEAN IMAGINATION

I. JUSTIFYING INTERVENTION: LOCATING THE DESPOTIC OTHER

One of the assumptions this dissertations challenges is the idea that religion—and by extension religious law—stands in opposition to the rational forms of governance European rulers claimed to bring to South Asia. Rather than working to disprove these assumptions by demonstrating the rational underpinnings of Islamic law,[1] or to illustrate the extent to which discretion still pervades the purportedly rational and equitable laws of the secular nation today,[2] this dissertation turns to paperwork, to the alleged accountability produced by the rigidity and regularity of bureaucratic activity to demonstrate the ways in which European policy-makers and indigenous legal practitioners both embraced bureaucracy to bolster the legitimacy and authority of their work.[3] For East India Company officials, bureaucracy was one of the checks introduced to stem the flow of corruption and venality in the administration of the Company's affairs and the territories it gradually acquired. Bureaucratic routine was also one of the ways in which

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[1] On Islam and rationalism, see Ali Reza Bhojani, *Moral Rationalism and Sharīʿa: Independent Rationality in Modern Shīʿī Uṣūl Al-Fiqh*, vol. 48, Culture and Civilization in the Middle East (Abingdon, Oxon: Routledge, 2015); Abū al-Faḍl ʿIzzatī, *Islam and Natural Law* (London: ICAS Press, 2002); Michael G. Morony, *Universality in Islamic Thought: Rationalism, Science and Religious Belief*, vol. 52, Library of Middle East History (London: I.B. Tauris, 2014); and John Walbridge, *God and Logic in Islam: The Caliphate of Reason* (Cambridge: Cambridge University Press, 2011).

[2] There is a vast literature on the role of judicial discretion in the American justice system today. See, e.g., Loraine Gelsthorpe and Nicola Padfield, eds., *Exercising Discretion* (London: Routledge, 2012); Daniel P. Kessler and Anne Morrison Piehl, "The Role of Discretion in the Criminal Justice System," *Working Paper* (National Bureau of Economic Research, November 1997), http://www.nber.org/papers/w6261; Elizabeth F. Moulds, "Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System," *Western Political Quarterly* 31, no. 3 (September 1, 1978): 416–30, doi:10.1177/106591297803100311; Arthur I. Rosett and Donald R Cressey, *Justice by Consent: Plea Bargains in the American Courthouse* (Philadelphia: Lippincott, 1976); Stephen J. Schulhofer, "Criminal Justice Discretion as a Regulatory System," *The Journal of Legal Studies* 17, no. 1 (January 1, 1988): 43–82, doi:10.1086/468121; and Samuel Walker, *Taming the System: The Control of Discretion in Criminal Justice, 1950-1990* (New York: Oxford University Press, 1993). For a thoughtful treatment of "discretion" in Islamic law today, see Lawrence Rosen, "Equity and Discretion in a Modern Islamic Legal System," *Law & Society Review* 15, no. 2 (1981 1980): 217–45.

[3] For a consideration of how bureaucratic paperwork can nonetheless support totalitarian or despotic states, see, e.g., Ben. Kafka, *The Demon of Writing: Powers and Failures of Paperwork* (New York: Zone Books, 2012).

bureaucratic employees evaded the agency of individual decision-making.[4] But in order to prove the superiority of their approach to governing natives, British East India Company officials first had to establish the ideological basis for their intervention.

The ideological origins and political justifications Company officials provided to explain Britain's empire in Asia have been widely debated and discussed.[5] While such ideological presuppositions clearly shaped the administration of law throughout the several phases of British rule in South Asia, the origins, accuracy, contradictions, or failures of these ideological explanations are not the primary focus here.[6] Rather these ideological explanations outline the context into which East India Company administrators inserted new policies. Such policies at times overlooked the ways prevailing systems operated on the ground, deliberately misinterpreted the workings of said systems, or found another means by which to dismiss that which already existed. This approach is as much a part of British policies toward land acquisition, territorial expansion, and settler colonialism in North America as it was integral to the justification of social and political intervention in South Asia. Elsewhere, scholars have considered in detail British

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[4] The question of individual agency within bureaucratic organizations continues to interest scholars. See Chapter Six of this dissertation for further consideration of this question.

[5] See, e.g., David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000); Thomas R. Metcalf, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 1994); Robert Travers, *Ideology and Empire in Eighteenth Century India: The British in Bengal* (New York: Cambridge University Press, 2007)

[6] On the contradictions of a "liberal empire" in South Asia and North America, see, Spencer Austin Leonard, "A Fit of Absence of Mind? Illiberal Imperialism and the Founding of British India, 1757--1776" (Ph.D. Dissertation, University of Chicago, 2010); Uday Singh Mehta, *Liberalism and Empire : A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999); Andrew Sartori, "The British Empire and Its Liberal Mission," *The Journal of Modern History* 78, no. 3 (2006): 623–42; Christopher L. Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (New York: Cambridge University Press, 2010); Aziz Rana, *The Two Faces of American Freedom* (Cambridge, Mass.: Harvard University Press, 2010).

efforts to reform and improve the allegedly backwards aspects of Indian society.[7] This chapter instead focuses on British attitudes toward indigenous forms of law and justice in general and the vexed image of the *qāẓī* in particular, then identifies a shift in British attitudes toward the *qāẓī*'s office, following the Company's resumption of revenue-collecting rights and move from its focus on commerce and trade toward land management and taxation. The exigencies of mediating relationships between local populations and Company officials necessitated the EIC's recognition of local officials' legal authority and political utility. Not only in Bengal but across the subcontinent, *qāẓī*s were some of the officeholders on whom Company officials came to rely for support, information, and the extension of Company rule to the hinterlands of Empire. The implications of this shift, however, require first analyzing and assessing European and indigenous perceptions of the *qāẓī,* what those perceptions meant for European understandings of Indian law and society, and how those perceptions relate to the fragmentary evidence of the *qāẓī*'s work that remains available to historians today.

Max Weber was neither the first nor the last theorist to critique the *qāẓī*, but his remarks on the arbitrary nature of Islamic law have, perhaps, been the most enduring. In Weber's writings on law, "Kadi Justice" (or, *kadijustiz*, in German) became short-hand for the discretionary dispensation of justice practiced by ill-trained individuals who sat beneath trees and offered rulings not on the basis of legal texts or treatises but on the basis of their own whim and wish.[8]

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[7] For examples of these reform efforts, see, e.g., Bart Schultz and Georgios Varouxakis, *Utilitarianism and Empire* (Lanham, Md.: Lexington Books, 2005); Kenneth W. Jones, *Socio-Religious Reform Movements in British India* (Cambridge [England]: Cambridge University Press, 1989); Andrea Major, *Sovereignty and Social Reform in India: British Colonialism and the Campaign against Sati, 1830-60,* Edinburgh South Asian Studies Series (Abingdon, Oxon: Routledge, 2011); and Eric Stokes, *The English Utilitarians and India* (Oxford: Clarendon Press, 1959).

[8] Weber, *Economy and Society,* vol. 3, 976–978. See also, Powers, "Kadijustiz or Qāḍī Justice? A Paternity Dispute from Fourteenth-Century Morocco," 23; Rosen, "Equity and Discretion in Islamic Law," 217; and Intisar A. Rabb, "Against Kadijustiz: On the Negative Citation of Foreign Law," *Suffolk University Law Review* 48 (2015): 343–377. I retain the "*kadijustiz*" spelling when referring to the concept presented in Weber's writings.

Generous readings of Weber's stereotyped account might take the term to refer to a system of justice in which "judges have recourse to a general set of ethical precepts" that they apply "unevenly…on a case-by-base basis," in contrast to a system of law in which rules are expertly formulated and universally—and uniformly—applied.[9] Such interpretations take the *qāẓī*'s process of judicial interpretation and adjudication as one that finds value in individual circumstances and prevailing cultural norms and renders judgments on an *ad hoc* basis.[10] The *qāẓī* might respond to a case involving a struggling woman or widow more favorably than one involving a successful banker or merchant.[11] Yet the exercise of such discretion stands in contrast to the supposed equity of European law, the meaning of which is available to all and the application of which is equal to all. For Weber's compatriots, then, "invoking *kadijustiz* ends up being a convenient way for judges to cite foreign law in order to contest one set of values without being specific about the reasons for their own value preferences," as Intisar Rabb has recently suggested.[12]

Using Weber's concept of *kadijustiz* to introduce European attitudes toward justice and law in pre-colonial South Asia may seem anachronistic, but the views Weber articulated in his works on the meaning and sociology of law represent the apogee of prejudicial Orientalist

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[9] Rosen, "Equity and Discretion in Islamic Law," 217; (Cf. Galanter's analysis of "legal modernization". Marc Galanter, "The Modernization of Law," in *Modernization: The Dynamics of Growth*, ed. Myron Weiner [New York: Basic Books, 1966], 153–65.)

[10] Rosen, "Equity and Discretion in Islamic Law," 218.

[11] Leslie Peirce, Farhat Hasan, and others identify instances in which the *qāẓī* considered these circumstances when making a decision. Farhat Hasan, *State and Locality in Mughal India: Power Relations in Western India, C. 1572-1730*, vol. 61, University of Cambridge Oriental Publications ; (Cambridge, U.K.: Cambridge University Press, 2004); and Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003).

[12] Rabb cites Justice Frankfurter's remark from the case of *Terminiello v. Chicago* from 1949 in which he declared the U.S. Supreme Court to be better than "a kadi under a tree dispensing justice according to considerations of individual expediency." Rabb, "Against Kadijustiz," 346. (Rosen also cites this case. Rosen, "Equity and Discretion in Islamic Law," 217.)

thinking. Rather than being the first to utter this condemnation of Islamic legal practice, Weber's characterization represents a synthesis of prevailing attitudes toward Oriental ideas of law and justice (or lack thereof). Where European constitutional thought valued the administration of justice on the basis of "fixed rules" and their universal application, *kadijustiz* placed the expediency of "ethical, religious, [and] political" concerns above all else.[13] But when thinking about how the practice of Islamic law changed by responding to and cooperating with colonial administrators, it is important to remember that Weber did not conjure *kadijustiz* out of the ether. Indeed, Weber cannot even take credit for coining the term "*kadijustiz*," as Richard Schmidt was the first to use the expression.[14] Nonetheless, Weber's enduring description provides a framework for thinking about the history of the colonial encounter and introduces the paradigms of injustice, despotism, and religious passion East India Company policies were expected to remedy. Indeed, other European writings on the failures of Islamic law presented similar criticisms. These critiques attacked Islamic justice for being simultaneously too harsh and too lenient, but regardless of the assessment, these critiques surfaced to justify and motivate European imperial intervention.[15]

In his "Dissertation on the Origin of Despotism in Hindostan" appended to his three-volume *History of Hindostan from the Death of Akbar to the Complete Settlement of the Empire under Aurangzebe*, which was a translation of Muḥammad Qāsim Hindū Shāh Firishta's Persian history,

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[13] Weber, *Economy and Society*, 806, n40, cited in Rabb, "Against Kadijustiz," 349.

[14] Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1999), 48–49, cited in Rabb, "Against Kadijustiz," 348. On the reception and interpretation of Weber's concept, see Bryan S. Turner, *Max Weber: From History to Modernity* (London: Routledege, 1992).

[15] Fisch, *Cheap Lives and Dear Limbs,* 7–14. For another perspective on the image of the *qāẓī* in pre-colonial India, see Sudipta Sen, "Retribution in the Subaltern Mirror: Popular Reckonings of Justice, and the Figure of the Qazi in Medieval and Precolonial Bengal," *Postcolonial Studies* 8, no. 4 (November 1, 2005): 439–58, doi: 10.1080/13688790500375116.

Alexander Dow (c. 1735–1779), for example, pilloried the "law of compensation for murder" to support his thesis on the origins of oriental despotism by comparing the price of a life to the price of a horse, saying,

> The law of compensation for murder, authorised by the Coran [Qurʾān], is attended with pernicious effects. It depresses the spirit of the poor; and encourages the rich in the unmanly passion of revenge. The price of blood in India is not the third part of the value of a horse. The innate principles of justice and humanity are weakened, by these means; security is taken from society, as rage may frequently get the better of the love money. A religion which indulges individuals in a crime, at which the rest of mankind shudder, leaves ample room for the cruelty of a prince.[16]

Dow's hyperbolic claim here presented a mixed message. Under the practice of offering blood-money, or *diya*, as compensation for the losses caused by murder, human life was valued at less than one-third the price of a horse, making human life rather worthless. This valuation caused the poor to lose spirit, knowing their lives did not have much worth, but at the same time encouraged the expression of "rage", over the value of "love" or of money. Failure to punish a crime "at which the rest of mankind shudder," Dow desires to suggest, encourages criminality. This was not Dow's only complaint. The arbiter's ability to condemn men with the nod of his head habituates him to death and does no more than "impress terror on the guilty or suspected."[17] One might consider taking Dow's assumptions at face value and put stock in the way he equates the arbitrary dispensation of punishment with the origins of despotism were it not for the statements that follow this brief discourse on justice.

On the same page, Dow links the fear of arbitrary punishment and the habit of excessive bathing as two equally blameworthy causes for the development of oriental despotism. Bathing,

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[16] Alexander Dow, Esq., "A Dissertation on the Origin of Despotism in Hindostan," in *The History of Hindostan, from the Death of Akbar to the Complete Settlement of the Empire Under Aurungzebe* (London: T. Becket and P.A. De Hondt, 1772), xv. Cohn also summarizes this perspective. Cohn, *Colonialism and its Forms of Knowledge*, 62–65.

[17] Dow, "A Dissertation," xvi.

Dow argues, "hasten[s]…the approach of age" and "has, by debilitating the body, a great effect on the mind."[18] At the same time, like bathing, the prohibition of alcohol consumption also inclines the population to submit to despotic rule, owing to the fact that without wine, there is no "free communication of sentiment which awakens mankind from a torpid indifference to their natural rights."[19] Arbitrary punishment, frequent bathing, and abstinence from the consumption of alcohol all come together in Dow's "Dissertation" to create the necessary conditions despotism. Dow conflates these faults to paint the picture of an Indian society that has fallen into a state of indolence and decline. Such a picture might seem plausible, given the received history of eighteenth-century discord and decline, but his illogical and inconsistent interpretation of ideas he associates with "Islam" renders his thesis indefensible on the whole.

Alexander Dow's contemporary and fellow-countryman Robert Orme's historical writings on India also reveal similar prejudices toward the dispensation of justice among locals. Like Dow, Orme (1728–1801) also took issue with evidence of religious prejudice in the exercise of government and the lack of a proper legal code. In his "Dissertation on the Establishments made by Mahomedan Conquerers in Indostan," Orme writes:

> Intelligent enquirers assert that there are no written laws amongst the Indians, but that a few maxims transmitted by tradition supply the place of such a code in the discussion of civil causes; and that the ancient practice, corrected on particular occasions by the good sense of the judge, decides absolutely in criminal cases. In all cases derived from the relations of blood, the Indian is worthy to be trusted with great confidence; but in cases of property, in which this relation does not exist, as a cunning subtil people they are perpetually in disputes; and for the want of a written code the justice or injustice of the decision depends on the integrity or venality of the judge. Hence the parties prefer to

[18] Ibid., xvi.

[19] Ibid.

> submit their cause to the decision of arbitrators chosen by themselves, rather than to that of the officers appointed by the government.[20]

In the absence of a written code of law, Orme explains, "a few maxims" provide the means for settling civil disputes, while the judge decides criminal cases "absolutely."[21] At the same time, the people of India, on account of their "cunning" and "subtl[ety]", are prone to be "perpetually in disputes" that can only be remedied, for want of a written code, by the judge upon whose "integrity" or "venality" judgement rests.[22] Despite these harsh criticisms, Orme admits that he is neither an expert in nor does he possess the materials to produce "[a]n accurate description of the functions allotted to the Cadi [*qāẓī*]," but that if he were at liberty to do so, the volume produced "would leave us imperfectly informed about the general administration of justice in cases supposed to fall under the jurisdiction of these offices [the cadi and the mulla]."[23] Referring briefly to the third part of Monsieur de Thevenot's *Travels,* Orme then continues his assessment of justice as delivered by the *kōṭwāl* to say that his "punishments…are different from those prescribed by the Alcoran [al-Qur'ān]," that he "deviates [from the Qur'ān] in exercising the torture," and remains "always open to bribery."[24] Deviating from what little textual evidence of law and legal procedure exists, incorporating torture and other devious means into his routine affairs, and accepting bribes in place of delivering justice, the *qāẓī*, *kōṭwāl*, and other offices Orme

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[20] Robert Orme, *A History of the Military Transactions of the British Nation in Indostan, from the Year 1745: to Which Is Prefixed a Dissertation on the Establishments Made by Mahomedan Conquerors in Indostan,* 4th rev. ed. (Madras: Pharoah, 1861), 25.

[21] Ibid.

[22] Ibid.

[23] Ibid., 26. Orme defines the "cadi" (*qāẓī*) as one who "holds courts in which are tried all disputes of property." The "catwal" (*kōṭwāl*), then, "is the judge and executor of justice in criminal cases" and the "mulla…superintends the practice and punishes the breach of religious duties." (Ibid., 26) M.P. Singh provides a much more detailed overview of these offices. M. P. (Mahendra Pal) Singh, *Town, Market, Mint, and Port in the Mughal Empire, 1556-1707: An Administrative-Cum-Economic Study* (New Delhi: Adam Publishers & Distributors, 1985), especially pages 40–72.

[24] Orme, *A History of the Military Transactions*, 26.

described were the epitome of false justice.

This "Dissertation" was not the only opportunity Orme took to describe the institutes of justice prevailing in India. In another work, *Historical Fragments*, Orme included anecdotal evidence to support his general observations. According to one such account, Orme described an incident involving "the martyrdom of four friars" at Tannah, on the island of Salsette (now Bombay) as narrated by Friar Odoric of Friuli.[25] When the Catholic friars engaged in a dispute with the local *qāẓī*, who Orme defines as the "ecclesiastical judge of the town," and began to tell the *qāẓī* "that his prophet Mahomed was in hell with his father the devil," the governor objected to the insults being put forth by the friars and "executed them under excessive tortures."[26] When the king learned of this tragic event, however, he took the *qāẓī* of Tannah to task for his cruelty and ordered that he "and all his family" be "put…to death for his despotism and cruelty." The *qāẓī* fled Tannah and Friar Odoric collected the bones of the four sacrificed friars to be preserved as relics of their martyrdom.[27] Justice, the moral of this anecdote suggests, is not obtained through the application of law but through the triumph of force.

Alexander Dow and Robert Orme, though seasoned travelers and employees of the British East India Company, did not develop these attitudes toward indigenous justice *sua sponte*. In fact they drew upon, as Orme's references to Friar Odoric and Monsieur Thevenot suggest,

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[25] Ibid. Several versions of Friar Odoric's travels exist. See, e.g., Odorico da Pordenone, *Elogio storico alla gesta del Beato Odorico: dell'ordine De Minori Conventuali, con la storia da lui dettata de' suoi viaggi asiatici* (Venezia: Antonio Zatta, 1761); Odorico da Pordenone, *Les Voyages En Asie Au XIVe Siècle Du Bienheureux Frère Odoric de Pordenone*, ed. Henri Cordier (Paris: Ernest Leroux, 1891); Odorico da Pordenone, *Les merveilles de la terre d'outremer: traduction du XIVe siècle du récit de voyage d'Odoric de Pordenone*, ed. Jean de Vignay, trans. D. A. Trotter (Exeter, England: University of Exeter, 1990); 4. Anselm W. Romb, *Mission to Cathay; the Biography of Blessed Odoric of Pordenone* (Paterson, N.J.: St. Anthony Guild Press, 1956); Odorico of Pordenone, *The Travels of Friar Odoric*, trans. Henry Yule (Grand Rapids, Mich.: W.B. Eerdmans Pub. Co., 2002).

[26] Orme, *Historical Fragments*, LXII–LXIII.

[27] Ibid., LXIII.

the writings and observations of other predecessors as well.[28] Their predecessors included individuals like Nicolò Manucci, who traveled to India and found employment in the Mughal court in the seventeenth century, and François Bernier, a French physician and traveler who briefly worked for the Mughal prince Dara Shukoh, who also commented upon the judicial procedures they observed in the context of particular incidents and as general observations.[29] Bernier, for instance, in his "Letter to Monseigneur Colbert," assesses the arbitrary dispensing of justice in the context of despotism, claiming, "the weak and the injured are without any refuge whatever; and the only law that decides all controversies is the cane and the caprice of a governor."[30] Again, Bernier regarded the capriciousness of the ruler as an obstacle to achieving justice.

Yet in the paragraph that follows, Bernier admits that capricious judgements might be preferable to prolonged judgements and that swift decisions might, in fact, be one of the "advantages peculiar to despotic governments."[31] These advantages included "hav[ing] fewer lawyers, and fewer law-suits, and those few are more speedily decided."[32] To support his point, Bernier then quotes "the old Persian proverb": *nā ḥaqq-i kotāh, bihtar az ḥaqq-i dirāz* (swift injustice

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[28] For a discussion of how these patterns of travel and travel-writing emerge, see Mary Pratt, *Imperial Eyes : Travel Writing and Transculturation*, 1st publ. (London: Routledge, 1992). Thévenot also appears in Bernier's account. See François Bernier, *Travels in the Mogul Empire, AD 1656–1668.* Revised and Improved Edition, ed. Archibald Constable and trans. Irving Brock, trans. (Westminster: Archibald Constable and Company, 1891).

[29] On Manucci's storied career and its place in historiography, see Sanjay Subrahmanyam, "Further Thoughts on an Enigma: The Tortuous Life of Nicolò Manucci, 1638–c. 1720," *The Indian Economic & Social History Review* 45, no. 1 (January 1, 2008): 35–76, doi:10.1177/001946460704500102.

[30] The text's full title is "Letter to Monseigneur Colbert Concerning the extent of Hindoustan, the Currency towards, and final absorption of gold and silver in that country; its Resources, Armies, the administration of Justice, and the principal Cause of the Decline of the States of Asia." Bernier, *Travels in the Mogul Empire*, 236.

[31] Ibid.

[32] Ibid.

is better than justice delayed)."[33] With this reference, then, Bernier begins to unpack his thinking on the institutes of law and the exercise of seeking justice: "Protracted law-suits are, I admit, insupportable evils in any state, and it is incumbent upon a Sovereign to provide a remedy against them….Do away with this *meum* and *tuum*, and the necessity for an infinite number of legal proceedings will at once cease, especially for those which are important, long, and intricate."[34] Offering "the destruction of the right of private property" as an efficacious solution to the torturous institution of me-and-you (*maiñ-tum*) lawsuits, Bernier searches for a "remedy" to cure the "disease" of this injustice, but later admits that "the remedy would be infinitely worse than the disease" and the success of justice relies not on the honesty of the country's magistrates but on the mercy of its rulers.[35] He continues, "In *Asia*, if justice be ever administered, it is among the lower classes, among persons who, being equally poor, have no means of corrupting judges, and of buying false witnesses; witnesses [were] always to be had in great numbers, at a cheap rate, and never punished."[36] Corrupt judges, witnesses for hire, and justice only for those who can afford it are the chief complaints Bernier presents, which he suggests might be at odds with the accounts his fellow countrymen have carried back to France after their travels. In contrast to what he has observed after years of experience, these naïve travelers, Bernier suggests, must have seen "two poor men, the dregs of the people, [receiving judgement] in the presence of a *Kadi* [*qāẓī*]."[37] Justice for these fellows, Bernier suggests, would be swift and kind, and might provoke

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[33] Bernier's translation differs slightly. He writes "Speedy injustice is preferable to tardy justice." Bernier, *Travels in the Mogul Empire*, 236.

[34] Ibid., 236–37.

[35] Ibid., 237.

[36] Ibid., 237.

[37] Ibid.

his fellow Frenchmen to admit their "admiration" of the process.[38] Bernier, however is not so easily convinced by these appearances. He knows that "if the party really in the wrong had possessed the means of putting a couple of crowns into the hands of the *Kadi* or his clerks, and of buying with the same sum two false witnesses, he would indisputably have gained his cause, or prolonged it as long as he pleased."[39] Only the lowest classes of people have any hope for justice, as they have nothing to lose or to gain.

Bernier concludes his discourse on despotism and injustice by advocating the institute of private property, establishing a precedent later European policy-makers would come to embrace:[40]

> Yes, My Lord, to conclude briefly I must repeat it; take away the right of private property in land, and you introduce, as a sure and necessary consequence, tyranny, slavery, injustice, beggary and barbarism: the ground will cease to be cultivated and become a dreary wilderness; in a word, the road will be opened to the ruin of Kings and the destruction of Nations. … [I]n a word, it is the prevalence or neglect of this principle which changes and diversifies the face of the earth.[41]

Allow man to profit from his efforts, allow him to own the fruits of his labor, and rulers will be just and nations will prosper. Take away this right, and tyranny, injustice, barbarism, and slavery will triumph. Hidden within Bernier's remarks on the benefits of swift justice only a despot can produce, lies ample justification for European interference in the government and legal administration of India.

Manucci, whose travels in India overlapped with Bernier's, takes a slightly different tack.

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[38] Ibid., 237–8.

[39] Ibid., 238.

[40] This turn to property is evident in efforts to create a permanent settlement, an idea that has had long-lasting effects and received extensive attention from scholars. See, e.g., Ranajit Guha, *A Rule of Property for Bengal; an Essay on the Idea of Permanent Settlement* (Paris: Mouton, 1963).

[41] Bernier, *Travels in the Mogul Empire*, 238.

Introducing Qāḍī Mīr, a Mughal minister and scholar, Manucci writes: "He was the most learned man in the empire, always occupied in writings which were approved by other learned men of that time. He composed a new work drawn from the Old Testament and the evangelists."[42] Qāḍī Mīr received permission from Emperor Aurangzeb to take this work on pilgrimage to Mecca where scholars there debated the accuracy of his treatise. Once they confirmed its accuracy, Qāḍī Mīr returned to India, and placed the book before Aurangzeb who summoned hundreds of experts to examine Qāḍī Mīr's account. After several months of consideration, "they returned the book, saying that on the whole it set forth the true faith, and its precepts might rightly be followed."[43] This determination angered Aurangzeb, who ordered the book be burnt and then "directed the chief qāḍī to pronounce a sentence of beheadal on the author, Qāḍī Mīr."[44] The *qāḍī* disagreed with Aurangzeb's command and argued that "if under royal compulsion he sent an order of execution, it would be a manifest injustice."[45] The emperor opted for imprisonment over beheading and locked Qāḍī Mīr away for two years before summoning him to court again. Again at the inquest, the emperor employed men of learning to persuade Qāḍī Mīr to disavow the heretical words he had written. Qāḍī Mīr declined. Aurangzeb then ordered the chief *qāḍī* to issue a death sentence upon Qāḍī Mīr. Again, the chief *qāḍī* declined. The emperor and his opponent exchanged words on the meanings and teachings of the Qur'ān, after which the emperor ordered the prisoner's return to the fortress where his life would be taken.[46]

This tale stands out not because Manucci waited several years before writing about it but

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[42] Manucci, *Storia Do Mogor*, 118.

[43] Ibid., 118.

[44] Ibid., 118–119.

[45] Ibid., 119.

[46] Ibid.

because the chief *qāẓī* in Aurangzeb's employ repeatedly rebuffs the ruler's demands for the death penalty. Manucci does not describe which aspects of Qāẓī Mīr's writings Aurangzeb found objectionable, other than to imply they were sympathetic to Christianity, nor does he identify the "chief *qāẓī*" by name, which raises doubts about the accuracy of the account.[47] What is interesting, however, is the chief *qāẓī*'s constant insistence on upholding the tenets of justice and rebuffing the emperor's arguments to execute the offending Qāẓī Mīr. Even Manucci questions the incident's meaning and delays retelling it until he finds support for it in another anecdote nearly ten years later.[48] As such, the story of Qāẓī Mīr remains anomalous not for its depiction of Aurangzeb's orthodoxy but for its illustration of the chief *qāẓī*'s seemingly incorruptible nature—especially when compared to the "passion" and violence of the *qāẓī* featured in Manucci's follow-up example from Aḥmedābād in 1699.[49]

In this regard, not all of Manucci's references to *qāẓī*s embrace the officer's piety or authority—even if such authority appears in the form of violent passion. In one chapter, he describes an incident involving the punishment of the *qāẓī* from Sūrat, following Shivājī's invasion of the region in 1706. As Manucci writes:

> At that time the *qāẓī* of Sūrat found himself there [i.e, in Gandevī, half-way between Damān and Sūrat]; he had gone not only to amuse himself, but to make rent collections from, and audit the accounts of, his villages. The unhappy man [i.e., the *qāẓī*] was unable to flee before the arrival of the Mahrattah troops and he was taken prisoner. They pierced his hands, passed a cord through the holes, and dragged him about everywhere

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[47] N. Hanif describes the chief complaint against Qāẓī Mīr's writings as their apparent sympathy toward Christians. (N. Hanif, *Islamic Concept of Crime and Justice* [New Delhi: Sarup & Sons, 1999].)

[48] Manucci, *Storia Do Mogor*, 120.

[49] In this tale, a youth "made attacks on the Qurān…extolling the Gospel and decrying what Muḥammad had enjoined," which made the *qāẓī* "[fly] into a great passion…and endeavoured to force [the youth] into a disavowal." The youth was beaten, imprisoned, and subjected to daily catechism. When these efforts could not force the youth to recant, "they cut off the young man's head, and threw his body on to a dung-heap outside the city, to be devoured by dogs and wolves." Ibid., 120-121.

> in the country, demanding money from him and a statement of where his hoards were buried. From these tortures he died.[50]

Rather than decry the barbarity of the treatment this poor *qāẓī* received at the hands of Shivājī marauding armies, Manucci defends their behavior, asserting, "This was a merited punishment, for the man was not only an oppressor, but an unjust judge."[51] The *qāẓī* was not so cruelly punished for his efforts to escape or to evade the treachery of the army so much as for his reputation as an unjust judge and oppressive tax-collector. Manucci thus delivers this matter-of-fact account of the *qāẓī*'s horrific torture and continues with his history, noting the legitimacy of the justice meted out by the military mob.

II. Identifying Indigenous Critiques

European travelers, explorers, and diplomats were certainly not the only intellectuals to comment upon the propriety—or more often impropriety—of native officers of the law. The figure of the *qāẓī* also attracted attention, ridicule, and comment from the Persian literati as well. The *Ẏādgār-i Bahādurī*, for instance, recounts an anecdote in which a *darwesh* came to the *qāẓī*'s house looking for food. The *qāẓī* informed the *darwesh*, however, that all of his domestic servants (*muta'alliqān*) had left. The *darwesh* politely replied, "Oh *qāẓī*, I have come looking for food, not to enquire about the state of your servants." The obtuse *qāẓī*, realizing his foolishness, smiled and gave the *darwesh* food.[52] An observant and generous *qāẓī* would offer the *darwesh* food without stooping to this level of ignorant obfuscation, the tale implies.

Another anecdote describes an incident involving a woman who approached the *qāẓī*

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[50] Ibid., 228.

[51] Ibid.

[52] *Ẏādgār-i Bahādurī*, Vol. 1 (British Library, Asia Pacific and Africa Collection, Or. 1652), 399b. I am indebted to Nick Abbott for drawing my attention to these references.

seeking remedy for a carnal injustice perpetrated against (*bī k̲h̲wushī-yi man, zinā kard*) her by a man. When the *qāẓī* heard the woman's story, he called the accused man before him and asked the man why he committed this act. The man denied the accusation (*inkār kard*), yet the *qāẓī* was not convinced. He ordered the man to pay the woman ten rupees as a fine for his crime (*jumāna*). Helpless to the *qāẓī*'s command (*lā chār*), the man complied and paid the woman. After she left, the *qāẓī* said to the man, "The woman must still be on the road. Go, and take back your money." The man went and attempted to take back his money forcefully. After this assault, the woman returned to the *qāẓī* and complained of the man's attempt to take back his money. She said to the *qāẓī*, "If this is your wish, I will give it [to him]." The *qāẓī* replied to the woman, "If that man could not force you to relinquish ten rupees, how was he able to force you into bed?" The *qāẓī*, who proved the man's innocence by tricking the woman, accused the woman of lying and admonished her to have more shame when making false accusations in the future.[53] The *qāẓī*'s methods might be unconventional, but the moral of the tale suggests that the clever *qāẓī* has many means by which to uncover the truth or to achieve justice through trickery.

Another anecdote from the same collection narrated a brief tale in which a woman approached the *qāẓī* decrying the immoral actions of another man. Hearing the woman's plaint, the *qāẓī* summoned the man, who came to the *qāẓī*'s house with his brother. The *qāẓī* asked the man multiple times why he had assaulted the woman. Finally, the *qāẓī* turned to the man's brother and asked why he would not reply. The brother answered, "When my brother was doing the dirty deed (*kār-i bad*) with that woman, she made so much noise and created so much commotion (*shōr wa g̲hau g̲hā*) that my brother went deaf." This response prompted the woman to

[53] Untitled Collection of Anecdotes (British Library, Asia Pacific and Africa Collection, Additional Manuscript, 7005), 7b.

exclaim, "What a lie! I really didn't make noise." Recognizing the truth of the matter, the *qāẓī* caught the woman in her lie, which caused her to become speechless and ashamed. Having finished his work, the *qāẓī* left.[54]

Both of these anecdotes depict the *qāẓī* using unconventional means to suss out the truth from incidents involving false accusations. The anecdotes also vindicate the sexual dalliances of the men, while punishing the woman for speaking out against the sexual violence they experienced. In doing so, these examples might say more about attitudes toward sexual practices, late-Mughal masculinities, and the *qāẓī*'s ability to see through the mist of indiscrete allegations the women in these tales cast against the men involved. Their relation to the administration of justice and the operation of law in late-Mughal and early colonial society remains less apparent. Was the *qāẓī* able to detect falseness in the women's accusations and to devise plots and plans to reveal their treachery? Or was he simply using his position of power and privilege to support the man's perspective while leaving women vulnerable and oppressed? Where did the truth at the heart of these jokes lie? For these and other reasons, it is often difficult to assess the relationship between anecdotes, sketches, jokes, and tales that surface in Persian miscellanies of this variety, but rather than treat these anecdotes as evidence of what might have happened in India at this time, it is more apt to read them as evidence of perceptions in circulation at this time. Along these lines, the *qāẓī* that emerges from these tales is prone to trickery and will employ various forms of deception in order to discover the truth, but he sheds light on the truth, even if his methods for uncovering that truth place different parties at a disadvantage.

In addition to describing tortures inflicted upon unjust and oppressive *qāẓī*s and

[54] Ibid., 18b-19a.

caricaturing the clever *qāẓī*'s infinite ability to get to the heart of any accusation, letters, verses, and other tales often associated the *qāẓī* with corruption and injustice. The *Ḵẖuṭūṭ-i Shivājī*, for instance, uses the appointment of untrained and unqualified individuals to the office of *qāẓī* as a syllogism for societal decline. The opening couplet reads reads:

> *Ba daur-i Shāh ʿĀlamgīr Ġẖāzī*
> *Shudah ṣābūn-farōshān ṣadr wa qāẓī*
>
> In the time of Shāh ʿĀlamgīr Ġẖāzī
> Soap-sellers are appointed *ṣadr* and *qāẓī* [55]

Such statements about the signs of decline are at once humorous and revealing. The amusement that arises from the inversion of these occupations—the lowly inhabiting high office, and vice versa—draws upon the reader's familiarity with generic conventions and ability to read between the lines. Humor becomes a form of critique as well as an expression of hopelessness in the same way that Mīr Ja'far Zatalli's playful rebellions against the daily routines of Mughal paperwork, for instance, perhaps belie a growing sense of hopelessness or dissatisfaction with the workings of the system.[56] Similarly, jests about soap-makers being appointed to the office of *qāẓī* might be an exaggeration of the actual conditions but would not fall too far from the truth. These jokes also reflect fears of decline, such as those felt in the period following Aurangzeb's reign when the office of *qāẓī* became less merit and more lineage based.[57] Anecdotes preserved in collections from North India reveal this tension between expectations for the office, experiences of systemic failings, and powerlessness to appeal its injustices.

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[55] *Ḵẖuṭūṭ-i Shivājī,* Royal Asiatic Society Ms. No. 71, 37a, cited in Niccolo Manucci, *Storia do Mogor*, 176, n. 1.

[56] See Mir Ja'far Zatalli, *Ẓatal Namah*, ed. Rasheed Hasan Khan. ([Aligarh]: Anjuman Taraqqi-i Urdu [Hind], 2003), cited in Abhishek Kaicker, "Unquiet City: Making and Unmaking Politics in Mughal Delhi, 1707-39" (Ph.D. Dissertation, Columbia University, 2014), 349.

[57] On these power struggles, see Muzaffar Alam, *The Crisis of Empire in Mughal North India: Awadh and the Punjab, 1707-48*, 2nd. ed. (Delhi: Oxford University Press, 2013), 112–125.

One such anecdote presented in the *Yādgār-i Bahādurī* relates a tale from the Iranian town of Qazvīn in which the local *qāẓī* died (*wafāt yāft*), leaving behind his ignorant son (*pisarī jāhil*).[58] Owing to the son's hereditary right (*ba sabab-i ḥaqūq-i padarish*) he was appointed *qāẓī*, but on account of his ignorance, several of his relatives insisted the son receive training before he could undertake the work of the *qāẓī* and appointed a student to give him training.[59] Accordingly, student began the *qāẓī-zāda*'s training with grammatical exercises. In one of these lessons, the student explained that Zayd attacked 'Umar, meaning Zayd was the *fā'il* (the actor) and 'Umar the *maf'ūl* (the recipient; also the abused).[60] When asked to remember the lesson, the *qāẓī*'s son replied: "Why did Zayd hit 'Umar when 'Umar did nothing wrong?" The student tried to explain that this statement was only a lesson in grammar, not an actual incident. The *qāẓī*'s son, too dim-witted to understand the point, exclaimed instead, "Call the lawyers so they can take Zayd into custody and interrogate him!" Still failing to grasp the meaning of the sentence, and unable to heed the student's entreaties, the *qāẓī*'s son grew angry and turned his accusations against the student: "You must have taken a bribe from Zayd. I cannot permit such oppressions to take place in my courtroom. Throw that student in jail!" When the *qāẓī-zāda*'s relatives were notified, the student was released but not before the folly of the ignorant *qāẓī* was revealed.[61]

Set in Qazvīn, beyond the pale of the South Asian subcontinent, this anecdote's value as a historical narrative is dubious at best. It neither provides an account of what happened in India nor does it purport to narrate a particular incident. The tale does, however, provide insight into

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[58] *Yādgār-i Bahādurī*, Vol. 1 (British Library, OR. 1652), 401b.

[59] Ibid.

[60] Ibid. (*Fā'il* and *maf'ūl* are parts of speech in Arabic grammar and the names Zayd and 'Umar are place holder names like Tom, Dick, and Harry.)

[61] Ibid.

the moral lessons such tales about mis-guided *qāẓī*s sought to convey. The student's instruction in grammar suggests the importance of literacy and book-learning for someone employed as *qāẓī*, but the humor of *qāẓī-zāda*'s mis-reading of the lesson and the relative harmlessness of his expression of outrage casts the anecdote as more reflective of stereotypes and caricatures than of actual fact. Still, the joke would fail if it did not play upon stereotypes. Buried within accounts of this kind is the knowledge that *qāẓī*s were corrupt, that they lacked proper knowledge and training, and that they suffered from a sense of entitlement and privilege. Anecdotal descriptions are not evidence of historical fact but instead intimate the presence of certain ideas, stereotypes, and expectations current at the time. Certainly in late-Mughal India, the *qāẓī* held little esteem and was the frequent butt of jokes. Yet anecdotes such as the ones provided here were part of a literary economy that used allegories to comment on current political conditions. As such, these anecdotes open a window onto popular understandings of the *qāẓī* and his office and introduce some of the more common public fears about the dangers of ignorant, ill-trained, and irresponsible *qāẓī*s.

Moving from the imagined lives and prejudices of the *qāẓī*s of India in the seventeenth and eighteenth centuries toward the history of their engagement with East India Company officials in the first-half of the nineteenth century that concludes this chapter, the final example presented here considers the life of an actual *qāẓī*, 'Abdul Wahāb of Paṭan (in what is now Gujarat) and his son and explores the manner in which narrations of his life (especially in relation to those of his "peers' and rivals) depict him as an exceptionally upright and noteworthy figure.[62]

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[62] This account comes from the first volume of Samsām-ud-daula Shāh Nawāz Khān's *Ma'asir-ul-Umara*. Shāhanavāja Khān Aurangābādī, *The Ma'asir-ul-umara*, ed. Abd-ur-Rahīm, 3 vols. (Calcutta: Asiatic Society, 1887), 235–241 and Samsām al-Daulah Shāh-navāz Khan 'Abd al-Razzāk, *The Maāthir-Ul-Umarā, Being Biographies of the Muhammadan and Hindu Officers of the Timurid Sovereigns of India from 1500 to about 1780 A.D.*, Vol. 1 (Calcutta: Baptist Mission Press, 1911), 73–79.

Qāẓī ʿAbdul Wahāb, the *Maʾāṣir-ul-Umarāʾ* relates, was the grandson of the esteemed scholar and imperial servant, Muḥammad Ṭāhir, who was known for his "piety, asceticism and the science of Tradition."[63] Like his grandfather, ʿAbdul Wahāb was also skilled in the science of theology (*dar ʿilm-i fiqh wa uṣūl-i mahārat tamām dasht*). He served as *qāẓī*[64] in Paṭan for many years before traveling to the Deccan to serve Prince Aurangzeb as *qāẓī* for the camp.[65] Not only did ʿAbdul Waḥāb gain great prestige among the men he served but he also worked to disgorge other *qāẓī*s of their improper and nefarious behaviors.[66] His imperious administration, however, prevented other governors and magistrates from collecting fees and profits from their sale of rights and titles, which caused him to accumulate enemies among merchants and traders—including the jealous and conniving Mahābat K̲h̲ān Luhrāsp.[67] On account of illness, ʿAbdul Waḥāb retreated from service and ʿAlī Akbar of Lahore was appointed his deputy. When ʿAbdul Waḥāb died in 1675, his eldest son, Shaik̲h̲-ul-Islām came to the imperial capital in obedience to the king and was made *qāẓī* of the camp, in his father's place.[68] The son was so pious that he neither took money from his father's inheritance nor acceded blindly to Aurangzeb's wishes.[69] The *qāẓī* routinely sought to retire, appointed a successor in his stead when he traveled to Mecca on pilgrimage and resisted, to the extent that he could, the emperor's pleas to return to royal service

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[63] Shāh Nawāz K̲h̲ān, *The Maāt̲hir-Ul-Umarā,* (Beveridge translation), 74.

[64] The Beveridge translation refers to him as *qāẓī*; the Persian text refers to his employment as *muftī*, engaged in *iftāʾ*. Shāh Nawāz K̲h̲ān, *The Maāt̲hir-Ul-Umarā,* (Beveridge translation), 74; and Shāhanavāja Khān Aurangābādī, *The Maʾasir-ul-umara,* vol. 1 (Persian edition), 236.

[65] Ibid. (Persian edition), 236.

[66] Ibid.

[67] Ibid. (Persian edition), 236–237.

[68] Ibid. (Beveridge Translation), 76.

[69] Ibid.

following his return.[70] When he could no longer resist the ruler's urgings to reenter his retinue, Shaikh-ul-Islām set out for Delhi but was struck with illness and died en-route. Upon the *qāẓī*'s passing, the emperor took pleasure in the fact that stately service and kingly affairs had not managed to tarnish the *qāẓī*'s religiosity between the time of his pilgrimage to Mecca and his voyage to paradise.[71]

Before turning to the fate of Shaikh-ul-Islām's children and grandchildren, then, Shāh Nawāz Khān Aurangabādī pauses to praise Shaikh-ul-Islām's devotion and sincerity, saying "In this Timuride [*sic*] dynasty of 200 years there has been no Qāẓī like him for honesty and piety."[72] This assessment makes Shaikh-ul-Islām the exception that proves the rule of the corrupt *qāẓī*, the author seems to suggest. Continuing in this vein, Shāh Nawāz Khān makes a point to separate Shaikh-ul-Islām from others who held the office of *qāẓī*. "Those who sell religion for worldliness (*dīn ba duniyā farōshān*) regard this noble office (*īn amar-i jalīl-ul-qadar*) as a very easy one," he begins.[73] These individuals "spend money on bribes (*zar-hā ba-rishwat kharaj kunand*) so that in nullifying the rights of man, they may reap rewards one-hundred times over (*tā abṭāl-i ḥaqūq-i mardom, ṣad chandān sitanand*)."[74] They treat the fees they receive—the *nikāḥāna* (fee for performing *nikāḥ*) and *mahrānā* (fees collected on dower payments)—as their god-given right, "purer than their mother's milk (*ḥalāltar az shīr-i mādar*)."[75] Shaikh-ul-Islām was not like this; he did not fit the pattern established by "the hereditary Qāẓīs of the townships" who treat "the registers of the

[70] Ibid., 76–77.

[71] Ibid., 77.

[72] Ibid.

[73] This passage follows Beveridge's translation but draws upon Persian phrases from the other edition. (Ibid.)

[74] Ibid.

[75] Ibid.

despāndiya (village accountants) and the words of the zamindars" with greater respect than "their law and holy books."[76] Like his father, Shaikẖ-ul-Islām held the tenets of his faith above earthly wealth. Other *qaẓī*s put account books above god's books, Shāh Nawāz Kẖān suggests. 'Abdul Waḥab and then his son Shaikẖ-ul-Islām broke this mold and therefore stand out as paragons of piety and fortitude.

III. Looking beyond stereotypes

As the examples cited above demonstrate, stereotyped portrayals of the *qāẓī*'s arbitrary, violent, or mocking administration of justice in late-Mughal and early colonial India were common, if not clichéd. In the travelogues of European adventurers, envoys, and ambassadors, these accounts ranged from the speculative (as in Manucci's account of the incident he observed between Qāḍī Mīr and Emperor Aurangzeb) to the damming (as in the account he offers of the corrupt *qāẓī* of Sūrat rightfully punished for his misdeeds), from the witty (as in the account of the grammar lesson gone awry) to the dangerous (as in the account of *qāẓī*s' playful dismissal of women's accusations of rape), but despite the use of many of these texts as primary sources for historical study, these references provide very little information about what the administration of justice in early modern India was like.[77] This tenuousness is further exacerbated by the sticky relationship between normative interpretations of what the *sharī'a* should be compared to what might have existed in pre-colonial India. This stickiness continues to cloud scholarly interpretations of the past.

The purpose of laying out some of the perceptions prevalent in European and India

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[76] Ibid.

[77] Farhat Hasan's *State and Locality* is an exception to this statement. (See Hasan, *State and Locality in Mughal India: Power Relations in Western India, c. 1530–1730*, University of Cambridge Oriental Publications [New York: Cambridge University Press, 2004].)

literature in the decades—if not centuries—leading up to the expansion of British sovereignty and territoriality across the subcontinent, is not to present a normative framework for how British administrators *should* have interpreted Islamic law nor to critique elements of local custom and administrative decay that had, in fact, seeped into these offices as the Mughal empire expanded into new regions, fractured, splintered, and gave rise to new political powers in the eighteenth century. Rather, the purpose of presenting these accounts here is to offer—to the limited extent possible—an introduction to the stereotypes, concerns, arguments, experiences, encounters, and reactions that shaped not just East India Company policies but also native responses to those practices.

To the extent that East India Company officials identified corruption, impropriety, and degradation in the execution of duties assigned to *qāẓī*s (and to a lesser extent *muftī*s), local observers and officeholders also saw and critiqued these short-comings. For these reasons, the history of colonial cooperation is so enduring precisely because external critiques often paralleled internal critiques. Accordingly, the responses, reactions, criticisms, and corrections that developed in multiple stages throughout the nineteenth and into the twentieth century emerged as a constellation of options available to different actors. The *qāẓī*s who appear in Chapter Two, for instance, could give up and cede all of their rights to the new foreign rulers, condemn their failing peers in order to bolster their own credibility, exert their expertise in the interpretation of textual authorities, develop mutually beneficial partnerships with Company officials to demonstrate their financial utility, retool their activities to combat the criticisms they faced, or simply refuse to engage with the new political system or to acknowledge the relevance of its countless new rules.

The actors presented in this study generally chose to practice one or more of the middle options listed above. They drew lines around who belonged to the category of *qāẓī* by making claims against those who did not belong. They accepted some of the Company's reforms in order to demonstrate their value and establish their willingness to cooperate and at times assumed magisterial and administrative positions in order to prove the correct interpretation or implementation of a specific rule. These choices were not the only ones available to the figures considered here, but they are the types of choices that make the history of colonialism and the study of colonial rule particularly challenging. The uncertain trajectory of their engagements with Company officials (and with their local rivals) reveals the successes and failings of local agency in shaping the outcomes of imperial rule.

In general, then, the tendency to ignore *qāẓī*s and their work in histories on this period stems from two interrelated impulses. First, there has been a tendency to read the office of the *qāẓī* according to normative, textual sources, particularly those of classical Islamic theology. This approach not only replicates the mistakes of colonial officials in treating textual authorities as proof of either what *did* proceed colonial rule or what *should have* proceeded colonial rule and had been, by extension, corrupted by local innovations, but it also misses the history of many important changes effected in the early colonial period. As Gregory Kozlowski notes in his seminal work on religious endowments in Mughal and British India, administrative discourse regarded the office of the *qāẓī* as analogous to the British "judge" and subsequently read his work in relation to this concept.[78] Following the assumption that *qāẓī*s worked as judges in pre-colonial India, then, shifts toward notarial work in the nineteenth century were characterized as a

[78] Gregory C. Kozlowski, *Muslim Endowments and Society in British India*, vol. 35, Cambridge South Asian Studies. 35 (New York: Cambridge University Press, 1985), 97.

demotion, rather than a reconfiguration of the *qāẓī*'s work that preceded larger disruptions in the practice of Islamic law.[79] Reading the office of the *qāẓī* against normative literature and definitions drawn from classical Islamic understandings thus failed to comprehend the more socially integrated, pluralistic nature of the *qāẓī*'s work.

The second impulse among scholars has been to accept administrative discourse as an accurate representation of what was happening "on the ground". For this reason, discussions of legal practice in the nineteenth century have, until very recently, focused on debates in the legislative and judicial departments, making colonial officials the protagonists of history. More recent scholarship challenges this idea methodologically and ideologically. Indeed, the import of foreign institutions was frequently complicated by local exigencies and exceptions. Likewise, administrative debates not only include dissenting and non-conformist opinions and perspectives but they also reveal consistent inconsistencies and offer evidence of continued action in opposition to stated policy. The continued acceptance of hereditary *qāẓī*s is one of the ways in which these differences surface: Despite explicit disavowals of the hereditary nature of the office of the *qāẓī*, heirs were repeatedly appointed, and administrators made only superficial excuses for these appointments and then only did so some of the time.[80] The office of the *qāẓī* was certainly not the only office or institution to witness a complicated transformation under Company and later policies, but the *qāẓī*'s pivotal position as an agent of law makes this transformation worthy of further study.

Such oversights in the study of the *qāẓī*, or the study of legal practice in South Asia more

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[79] I consider this point in greater detail in the second half of the dissertation.

[80] See Chapter Two for additional examples of these tensions.

generally, is not confined to scholars of modern South Asia. Studies of law and legal administration in Mughal India have been equally plagued by the twin tendencies to privilege imperial over local sources and to read normative literature as historical evidence.[81] Fortunately, a renewed interest in the social history of Mughal and early colonial society has propelled scholars to return to the archives in search of alternative sources. Thus far, Farhat Hasan and Nandini Chatterjee begun to remedy some of these oversights in the study of South Asian legal history by re-examining the work of the *qāẓī* and the history of legal documentation in Mughal India.[82] In their quest to fill these gaps in the literature, both scholars have turned to the actual documents signed and sealed by *qāẓī*s to recover information about the type of work *qāẓī*s performed—and the types of clients or communities they served—in Mughal India. Such explorations suggest that, contrary to received stereotypes of the *qāẓī*'s ignorance, obsolescence, or arbitrariness, many of the *qāẓī*s appointed under the Mughals were actively involved in a range of legal and social activities. In fact, existing documentary evidence suggests that the *qāẓī*'s role as a "judge" or "arbitrator" was perhaps secondary to his more important role as a notary, or magistrate. That is, rather than presiding over major cases dealing with major crimes, recent scholarship suggests that the *qāẓī*'s work more likely centered around creating, copying, and authenticating legal

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[81] On *qāẓī*s, see, e.g., M.P. Singh, *Town, Market, Mint, and Port in the Mughal Empire, 1556-1707: An Administrative-cum-economic Study* (New Delhi: Adam Publishers & Distributors, 1985), 95–98; Ibn Hasan, *The Central Structure of the Mughal Empire and Its Practical Working up to the Year 1657* (London: Oxford University Press, H. Milford, 1936), 310–316; and more generally Muhammad Basheer Ahmad, *Judicial System of the Mughal Empire. A Study in Outline of the Administration of Justice Under the Mughal Emperors Based Mainly on Cases Decided by Muslim Courts in India* (Karachi: Pakistan Historical Society, 1978).

[82] See, e.g., Hasan, *State and Locality*; Nandini Chatterjee, "Reflections on Religious Difference and Permissive Inclusion in Mughal Law," *Journal of Law and Religion* 29, no. 3 (2014): 396–415; and Chatterjee, "*Mahzar-Nama*s in the Mughal and British Empires: The Uses of an Indo-Islamic Legal Form," *Comparative Studies in Society and History* 58, no. 2 (April 2016): 379–406, doi:10.1017/S0010417516000116.

documents.[83] These documentary practices were the realm of legal action in which the *qāẓī* worked most consistently. Though Hasan's study identifies some instances in which the *qāẓī* worked as a judge, making decisions to settle disputes between different parties,[84] these activities appear alongside his other engagements as a document-writer and representative of the state's legal order. As the arguments and complaints presented in the *qāẓī* petitions cited below suggest, *qāẓī*s continued actively to pursue many of these activities into the nineteenth century. Understanding the *qāẓī*'s transformation under British rule would certainly benefit from continued revision of the pre-colonial narrative.

IV. Qāẓīs and the Company: Reframing the Analysis

Given the biased remarks amateur historians working for the Company presented with respect to the state of law and order in pre-colonial South Asia, it is amazing the Company decided to engage with these corrupt, venal, inefficient, and unreliable officials at all. Yet the Company's engagement with *qāẓī*s evolved from its dependence upon local leaders and intermediaries for the purpose of establishing its authority on the subcontinent. *Qāẓī*s who could prove their worth to Company officials stood to make gains in economic and social prestige on account of their affiliation with and access to the new regime. At the same time, those *qāẓī*s interested in reaping the rewards of Company service were cautious about admitting others into their ranks. For native *qāẓī*s, eligibility for appointment often revolved around family rank and lineage.[85] For the Company servants they served, however, questions about who was eligible for

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[83] On Persian documents more generally, see J. S. Grewal, *In the By-lanes of History: Some Persian Documents from a Punjab Town*. 1st ed. (Simla: Indian Institute of Advanced Study, 1975); and Kondo Nobuaki, ed., *Persian Documents: Social History of Iran and Turan in the Fifteenth to Nineteenth Centuries*. New Horizons in Islamic Studies (London: Routledge Curzon, 2003).

[84] Hasan, *State and Locality*.

[85] I consider efforts to disaggregate these two aspects in Chapter Two.

employment revolved around issues of textual interpretation and translation. This aspect extended from the Company-state's interest in identifying and preserving "authentic" and "legitimate" title-holders in the course of its administrative expansion.

Accordingly Company civil servants created working definitions of the *qāẓī*'s office not from observing practices on the ground but from reading normative sources dating back to the formative period of Islamic jurisprudence.[86] These definitions allowed Company administrators to posit structural equivalencies between the "*qāẓī*" (*qua* Islamic judge) and the English judge or magistrate, on the one hand, and between the priest or rabbi, on the other.[87] Administratively, Company officials needed the *qāẓī* to fulfill the role of the former and to interpret the legal documents and entitlements they encountered throughout the first several decades of Company rule. But as Company authority—and confidence in its civil servants' ability to interpret legal texts independently—grew, Company officials worked to separate the *qāẓī*'s "judicial" functions from his "religious" status. That is, as the Company established its hold over the exercise of law and the administration of justice following the expansion of its territorial holdings across the subcontinent, EIC officials worked to claim authority over the *qāẓī*'s"secular" functions (including those pertaining to non-Muslims), while strengthening his association with his performance of

[86] Cohn, "The Command of Language and the Language of Command"; Anderson, "Islamic Law and the Colonial Encounter in British India"; and Nandini Chatterjee, "Law, Culture and History: Amir Ali's Interpretation of Islamic Law," in *Legal Histories of the British Empire: Laws, Engagements and Legacies*, ed. Shaunnagh Dorsett and John McLaren (Abingdon, Oxon: Routledge, 2014), 47. On the employment of natives to help with this work, see, BL, IOR/F/4/363/9040, Employment of Maulvis for the translation of *Mukhtasar-al-Quduri.*

[87] Gregory C. Kozlowski, *Muslim Endowments and Society in British India* (Cambridge, UK: Cambridge University Press, 1985), 97.

"religious" of "Islamic" functions.[88]

Initially, at least in some locations, *qāẓī*s provided Company officials with access to reliable information about local populations and enabled the Company-state to extend its authority through the *qāẓī*'s cooperation.[89] But as Company officials worked to limit the *qāẓī*'s authority to an increasingly narrow range of tasks and functions, these compliant native intermediaries began to oppose Company interference in their work.[90] Individual circumstances, regional differences, and the challenges of the position's historical antecedents also complicated Company officials' efforts to rationalize and manage the *qāẓī*'s office.[91] Such tensions between the ideas of an orderly and disciplined administration and the EIC's desire to accommodate local variation characterize many of the narratives memorialized in the judicial department's proceedings. Yet these narratives of uncertainty and negotiation rarely appear in more strident histories of legal regulation and the construction of legal pluralism in South Asia.

As the subsequent chapters of this dissertation narrate, the history of the Company's

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[88] For a more detailed discussion of this dynamic, see Chapter Three. Historians who have examined the work of the *qāẓī* in pre-colonial society have all noted the qāẓī's ability to serve Hindu communities, as well as Muslims. See, e.g., Chatterjee, "Reflections on Religious Difference and Permissive Inclusion in Mughal Law"; Chatterjee, "*Mahzar-Nama*s in the Mughal and British Empires"; Hasan, *State and Locality*; Grewal, *In the by-lanes of History*; Grewal, "The Shariat and the Non-Muslims of Batala," in *Proceedings of the Punjab History Conferece*, vol. 6th Session (Patiala: Punjabi University, 1972), 152–6; and J. S. Grewal, "The Qāzi in the Pargana," in *Studies in Local and Regional History* (Amritsar: Guru Nanak University, 1974), 1–17.

[89] This pattern is particularly evident in Yusuf Moorgay's early career as translator for the Company during its expansion into Sindh, but the discussion below highlights other instances as well. (BL, IOR/F/4/1265/50902, Reduction in the establishment of the Native Agent at Hyderabad in Sind [1823]; IOR/F/4/895/2329, Increase of Salary with to the Native Agent in Scind [1835].) On the transformation and transition of scribal classes, see among others, Hayden Bellenoit, "Between Qanungos and Clerks: The Cultural and Service Worlds of Hindustan's Pensmen, c. 1750–1850," *Modern Asian Studies* 48, no. 4 (July 2014): 872–910, doi:10.1017/S0026749X13000218; and Prachi Deshpande, "The Writerly Self: Literacy, Discipline and Codes of Conduct in Early Modern Western India," *Indian Economic & Social History Review* 53, no. 4 (October 1, 2016): 449–71, doi:10.1177/0019464616662137; Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India*, South Asia across the Disciplines (Chicago: The University of Chicago Press, 2012).

[90] See Chapter Three for a particularly telling example of this objection.

[91] On the Company's use and manipulation of local functionaries, see, Cohn, *Colonialism and its Forms of Knowledge*, 68.

engagement with *qāẓī*s, particularly those of the Bombay Presidency on which chapters two and three focus, demonstrates the failures and successes of the EIC's administrative apparatuses of imperial rule. As historians of South Asia, Africa, and Latin America strive to bring the metropole and colony together into a single frame, the possibility for using local stories, like those of individual *qāẓī*s, their family histories, and professional trajectories, become even more indicative of the larger "tensions of empire."[92] Many of the discussions foregrounded in these historical narratives elide or overlook the hidden motivations of imperial domination beneath the veneer of local toleration, but read collectively, these histories coalesce around the macro-historical trajectories of European expansion, imperialism, and modernization.[93] There are also instances in which narratives involving *qāẓī*s disrupt the macro-historical narratives of British imperialism. In these cases, appointments intended to fulfill idealized functions often clashed with local exigencies and personal circumstances. To the extent that the history of the *qāẓī* contributes to the larger narrative of the administration of justice in the Bombay Presidency, then, it is also, perhaps, equally disruptive, for it is at this local level that the organizational and ideational principles of the British Empire gave way to the influence of personality, uncertainty, and

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[92] See, e.g., Frederick Cooper and Ann Laura Stoler, eds., *Tensions of Empire: Colonial Cultures in a Bourgeois World* (Berkeley, Calif: University of California Press, 1997); and Cooper and Stoler, "Introduction Tensions of Empire: Colonial Control and Visions of Rule," *American Ethnologist* 16, no. 4 (November 1, 1989): 609–21.

[93] For a popular telling of this narrative, see Kwasi Kwarteng, *Ghosts of Empire: Britain's Legacies in the Modern World* (London: Bloomsbury, 2011), along with C. A Bayly, *The Birth of the Modern World, 1780-1914 : Global Connections and Comparisons,* The Blackwell History of the World (Malden, MA : Blackwell Pub., 2004); Cem Emrence, *Remapping the Ottoman Middle East: Modernity, Imperial Bureaucracy, and the Islamic State*, vol. v. 31, Library of Ottoman Studies (London: I.B. Tauris, 2012); and Lydia He Liu, *The Clash of Empires* (Cambridge, MA: Harvard University Press, 2004) for a comparative perspective on China. On the history of empire and professionalism, see Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (Berkeley, CA: University of California Press, 1979), especially chapters 7 and 8; and Colin Newbury, "Patronage and Professionalism: Manning a Transitional Empire, 1760–1870," *The Journal of Imperial and Commonwealth History* 42, no. 2 (March 15, 2014): 193–214, doi: 10.1080/03086534.2013.851872.

indecision.[94] When viewed through multiple frames, the smooth history of British rule in South Asia (and its narrative of progress) becomes riddled with the bumpiness of individual action and inconsistency.

Before turning to the meat of the material surveyed in this study, it will be useful first to consider the history of the Company's early engagement with *qāẓīs* in the context of larger attitudes toward law, local culture, and Company administration. The development of the EIC's administration on the subcontinent remains one of the more elusive objects of study for historians interested in the trajectory and legacies of British imperial rule in South Asia. Certainly, the relationship between traders and rulers, between Britons and South Asians, between stated objectives and on-the-ground realities requires further investigation and exploration of the Company's multilingual, heterographic, and multi-vocal archive. In recent decades, historians of South Asia have made considerable strides in this direction, moving away from the received wisdom of early Company rule presented in the self-reflective histories later civil servants and administrators wrote to bolster the legitimacy and importance of Britain's continued engagement with the subcontinent and returning to the archive to offer fresh perspectives on this period. More work remains to further this objective. The present study offers a small step in this direction by considering the origin and evolution of early Company policies, which scholars of the later nineteenth century tend to take for granted. To do so, the remainder

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[94] Seeley's remark about England's ability to "conque[r] and peopl[e] half the world in a fit of absence of mind" is indicative of the persistence of uncertainty and indecision within the world of imperial administration and has sparked many to consider the logic (or illogic) behind British imperialism. Sir John Robert Seeley, *The Expansion of England: Two Courses of Lectures* (Boston: Little, Brown & Co., 1922), 10. Many of the administrative reforms introduced in the late-eighteenth and early nineteenth century were aimed at removing the possibility for malversation, corruption, and personal profit among EIC administrators. See, more generally, Nicholas B. Dirks, *The Scandal of Empire* (Cambridge, MA: Harvard University Press, 2009); Miles Ogborn, *Indian Ink: Script and Print in the Making of the English East India Company* (Chicago: University of Chicago Press, 2007).

of this chapter examines some of the Company's involvement in the appointment of *qāẓī*s from late-eighteenth century Bengal, before turning to the reconfiguration of these practices in the Bombay Presidency in the first-half of the nineteenth century in Chapter Two.

V. Administrative Precedents from Bengal

Considering the imagined—and critical—representations of the *qāẓī* that were current among European Orientalists and Indian writers in the seventeenth and eighteenth centuries, it might be jarring to take seriously early Company dependence upon and respect for the *qāẓī* and his office. As emphasis within the East India Company shifted from monopolizing trade to governing territories in the second-half of the eighteenth century, the attitudes of Company civil servants also changed.[95] The *qāẓī*'s presence became less a source of criticism and more a source of legitimacy and support. At this time, Company officials accepted the *qāẓī*'s authority in the performance of some necessary functions but worked simultaneously to wrest certain other functions from the *qāẓī*'s hands. These efforts followed the Company's ideological approach to non-interference in religious affairs—following the formulation of Warren Hastings plan in 1772—but at the same time exposed the practical inefficiencies of the categorical distinction between

[95] For a summary of these administrative changes, see Chapter 6, "The Establishment of Efficient and Responsible Government: Warren Hastings, 1772–1785," in Ramsay Muir, ed., *The Making of British India, 1756-1858: Described in a Series of Dispatches, Treaties, Statutes, and Other Documents* (Manchester: University of Manchester Press, 1915), 102–166, which includes details an account of the judicial plans formulated under Hastings (117–120), as well as North's Regulating Act, 1773 (33–139) for regulating the behavior of Company employees, and Hastings's defense of Indian law (143–145). For a more general summary of this transition, see G.J. Bryant, *The Emergence of British Power in India, 1600-1784: A Grand Strategic Interpretation* (Rocherster, NY: Boydell and Brewer, 2013), 153–85, "Crossing the Threshold and Becoming a 'Country' Power."

"religious" and "non-religious" law.[96] In other words, Company policy operated at two levels: First, it worked to limit the authority of native intermediaries—like the *qāẓī*— to a more narrow set of duties and obligations. Then, it worked to improve the Company's status and competence through the introduction and insistence upon new policies and procedures. Many of these efforts began first by working to define specific offices and to assign to them precise tasks (in contradistinction to the workings of despotic government). Evidence of this approach is located in the first articulations of the Company's perspective on administering justice in 1772 and its attempts to define the *qāẓī*'s office.

According to the definition put forth by the Committee of the Circuit (i.e., the body responsible for devising the 1772 Plan), the *qāẓī*, or "the Judge of all Claims of Inheritance or Succession; [who] also performs the Ceremonies of Weddings, Circumcision, and Funerals," discharged the following duties:

> The Câzee is assisted by the Muftee and Mohtesib in his Court: After hearing the Parties and Evidences, the Muftee writes the Fettwa, or the Law applicable to the Case in Question, and the Câzee pronounces Judgment accordingly. If either the Câzee or Mohtesib disapprove of the Fettwa, the Cause is referred to the nazim, who summons the Ijlas, or General Assembly, consisting of the Câzee, Muftee, Mohtesib, the Darogos of the Adawlut, the Moulavies, and all the learned in the Law, to meet and decide upon it. Their

[96] References to the Warren Hastings Plan of 1772 are a short-hand for "A Plan for the Administration of Justice," composed by the Committee of the Circuit in August 1772. Correspondence surrounding the plan is available in "Appendix B" in George Forrest, ed., *Selections from the State Papers of the Governors-General of India*, vol. 2, Warren Hastings (Oxford: B.H. Blackwell, 1910), 290–299. For a brief discussion of the Hastings Plan of 1772 in the larger history of law in British India, see Courtenay Ilbert, *The Government of India, Being a Digest of the Statute Law Relating Thereto* (Oxford: The Clarendon press; London and New York, H. Frowde [etc.], 1907), 250. On the life and legacy of Warren Hastings more generally, see, Jeremy Bernstein, *Dawning of the Raj: The Life and Trials of Warren Hastings* (London: Aurum Press, 2001); G. J. Bryant, *The Emergence of British Power in India, 1600-1784: A Grand Strategic Interpretation*, vol. 9 (Boydell and Brewer, 2013); A. Mervyn Davies, *Warren Hastings, Maker of British India* (London, Nicholson and Watson, 1985); Thomas Babington Macaulay, *Essays on Lord Clive and Warren Hastings* (New York: Charles E. Merrill Co., 1910); Robert Stone, "The Trial of Warren Hastings," *American Bar Association Journal* 13, no. 7 (1927): 398–403; Mithi Mukherjee, "Justice, War, and the Imperium: India and Britain in Edmund Burke's Prosecutorial Speeches in the Impeachment Trial of Warren Hastings," *Law and History Review* 23, no. 3 (2005): 589–630.

Decision is final.[97]

This description, which appeared here as part of the Committee's introduction to the offices and officials involved in the administration of justice, provided a baseline understanding of who was responsible for performing which functions in the current judicial system. From this position, the Committee could then elaborate its plan for administration and reform, explaining why certain positions required modification or adjustment. The Committee's advice to abolish the "Fees of the Câzee" was backed by the Committee's conviction about "the pernicious Effects of so impolitic a Tax," for instance.[98] Although the Committee defined the *qāẓī*'s office in reference to cases involving inheritance and succession (categories that later became part of the personal law system), at this point, the Committee did not see the function of the *qāẓī* as one confined to the Muslim community. Rather, the *qāẓī*'s court, the Committee reasoned, was coterminous with the *ʿAdālat Dīwānī*, or the court responsible for "the Decision of Civil Causes".[99] The division of civil causes into those adjudicated according to religious law and those adjudicated according to the laws of the state would not reach maturity until several decades later.

One of the major aims of the Committee's plan was to establish clear divisions between the various judicial bodies and their jurisdictions. The civil courts, or *dīwānī ʿadālat*s, would settle "[d]isputes concerning Property…Inheritance, Marriage, and Caste; all Claims of Debt, disputed Accounts, Contracts, Partnerships, and Demands of Rent."[100] This definition was later supplemented by the Committee's elaboration of different procedures "to curb and restrain

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[97] *Selections from the State Papers of the Governors-General of India,* 283. (The list included ten different officers, as well as the "memorandum" on the interactions of the *qāẓī*, *muftī*, and *muḥtasib* quoted above.)

[98] Ibid., 287.

[99] Ibid., 285–6.

[100] Ibid, 290.

trivial and groundless Complaints, to the deter Chicane and Intrigue," for "adjusting the Claims of old Debts," and executing bonds (requiring "the Presence of Two Witnesses").[101] In addition to these considerations, the Plan also stated

> That in all Suits regarding Inheritance, Marriage, Caste, and all other religious Usages or Institutions, the Laws of the Koran with respect to Mahometans, and those of the Shaster with respect to *gentoos*, shall be invariably adhered to: On all such Occasions, the Moulavies or Brahmins shall respectively attend and expound the Law, and they shall sign the Report, and assist in passing the Decree.[102]

This passage, which scholars routinely cite as the judicial plan's most enduring feature, drew lines around certain categories of legal action that cast them as "religious" and made them central to what became the system of personal law.[103] Deciding how far these categories extended and which aspects of suits involving these ideas belonged to the category of Anglo-Muslim law and which were subject to non-religious law evolved over the course of the nineteenth century, and as a result, the *qāẓī*s of the Bombay Presidency were often involved in contesting or upholding the boundaries surrounding these types of law. As Company policy developed in the late-eighteenth and into the first decades of the nineteenth century, these lines came to be drawn more tightly

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[101] Ibid., 294.

[102] Ibid., 295–6.

[103] These categories were "religious" in that they were different for "Hindus" and "Muslims", though these ideas of religion were still under construction at this time. In recent decades, scholars have been working to understand the processes by which these systems of "personal" law developed at this time and following this statement of policy. See, e.g, Nandini Chatterjee, "Religious Change, Social Conflict and Legal Competition: The Emergence of Christian Personal Law in Colonial India," *Modern Asian Studies* 44, no. 6 (2010): 1147–95; Chatterjee, *The Making of Indian Secularism: Empire, Law and Christianity* (New York: Palgrave Macmillan, 2011); Rohit De, "Mumtaz Bibi's Broken Heart: The Many Lives of the Dissolution of Muslim Marriages Act," *Indian Economic & Social History Review* 46, no. 1 (2009): 105–30; J. Duncan M. Derrett, "The Administration of Hindu Law by the British," *Comparative Studies in Society and History* 4, no. 1 (November 1961): 10–52; Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The University of Chicago Press, 2016); Chandra Mallampalli, *Race, Religion, and Law in Colonial India: Trials of an Interracial Family*, Cambridge Studies in Indian History and Society, no. 19 (New York: Cambridge University Press, 2011); Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947* (New York, NY: Cambridge University Press, 2016); Julia Anne Stephens, "Governing Islam: Law and Religion in Colonial India" (Ph.D. Dissertation, Harvard University, 2013); and Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights*, Cambridge Studies in Indian History and Society 21 (New York: Cambridge University Press, 2012).

around various aspects of legal action, and the *qāẓī*'s voice became less audible in their definition. Before looking at the implementation of—and contests over—these later regulations from the Bombay Presidency, it will be useful first to consider, briefly, their early instantiation in Bengal.

Regulations introduced in the Bengal Presidency set the precedent for regulations implemented in other jurisdictions, defining important terms and establishing customary usages. Regulation XXXIX of 1793 ("A regulation for the appointment of the Cauzy-ul-cozaat, or head Cauzy of Bengal, Behar, and Orissa, and the Cauzies stationed in the several Districts, and prescribing their respective Duties"), for instance, clarified the procedure for appointing *qāẓī*s, as follows:

> Cauzies are stationed at the cities of Patna, Dacca, and Moorshedabad, and the principal towns in the pergunnahs, for the purpose of preparing and attesting deeds of transfer and other law papers, celebrating marriages, and performing such religious duties or ceremonies prescribed by the Mahomedan law, as have been hitherto discharged by them under the British Government, and also for superintending the sale of distrained property, and paying charitable and other pensions and allowances, under Regulations XVI and XXIV [of] 1793. The nature of the above-mentioned duties renders it necessary that persons of character, and duly qualified with respect to legal knowledge, should be appointed to these offices; and to encourage them to discharge their trusts with diligence and fidelity, they should not be liable to removal, unless proved to be incapable or guilty of misconduct, to the satisfaction of the Governor General in Council. The following rules have been accordingly enacted.[104]

The regulation first acknowledged the presence of *qāẓī*s across the East India Company's northeastern territories, explicitly citing the cities of Paṭnā, Dhākā, and Murshidābād, among other "principal towns" in other districts as well, where *qāẓī*s were already stationed.[105] It then outlined some of their main functions, beginning with the preparation and attestation of deeds,

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[104] BL, IOR/V/8/16, *Regulations passed by the Governor General in Council of Bengal, with an Index and Glossary. Vol. I, containing the regulations passed in the years 1793, 1794, and 1795* (London: printed by the Order of the Honourable Court of Directors. J.L Cox).

[105] Ibid.

the celebration of marriages, and the performance of certain religious functions. The regulation then stipulated that only "persons of character" who are "duly qualified with respect to legal knowledge" should hold the office.[106] Already in this early regulation, then, the crux of the EIC's administrative conundrum was evident: *qāẓī*s were necessary for the effective administration of law and order, but as members of the judicial administration, they were also expected to uphold certain administrative standards, and these administrative standards belonged to Company policies and regulations. Like other civil servants, *qāẓī*s would "be liable to removal" if found "incapable or guilty of misconduct."[107] Regulations written along these lines, citing the *qāẓī*'s pre-colonial authority but rendering his work susceptible to Company's supervision recognized and called upon his authority, while at the same time defining and containing the work he could perform.

For *qāẓī*s stationed in towns and districts within the Company's territories, Regulation XXXIX recognized their authority as judicial officials, but through the addition of certain terms and conditions surrounding the *qāẓī*'s professional conduct, early Company regulations also imposed administrative constraints on the office that left the door open for future intervention. The regulation recognized the *qāẓī*'s utility for aiding the interpretation and authentication of "law papers," for instance, but at the same time admitted the need to rein in the list of duties the *qāẓī* could perform.[108] Successive acts of regulation achieved this aim by explicitly delineating the duties associated with the *qāẓī* and making that list of duties increasingly short. Rather than granting the *qāẓī* complete control over the preparation of deeds and documents, for instance,

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[106] Ibid.

[107] Ibid. (The language of later *sanad*s [certificates of appointment] issued by the Company employed similar language.)

[108] Stephens, "Governing Islam," 40.

the regulation presented this function in relation to the *qāẓī*'s parallel role as an Islamic legal official, attached to the "religious duties or ceremonies prescribed by the Mahomedan law."[109] Over time, the *qāẓī*'s work "preparing and attesting deeds" came to be part of his religious duties, rather than appearing in addition to his so-called religious duties.[110] Whereas the language of the early regulation presented here acknowledged the *qāẓī*'s multiple functions and purposes, subsequent generations of East India Company officials interpreted these functions exclusively through his religious function and in relation to the Muslim community he served.

Though Bengal Regulation XXXIX of 1793 had lasting effects on the *qāẓī*'s office, it was certainly not the only regulation that touched upon the work of *qāẓī*s employed in the service of the Company. Regulation XL of 1793 ("A Regulation for granting Commissions to Natives to hear and decide Civil Suits for Sums of Money, or personal Property of a value not exceeding fifty *sicca* Rupees, and prescribing Rules for the Trial of the Suits, and enforcing the Decisions which may be passed upon them"), for instance, allowed certain *qāẓī*s to perform additional judicial functions pertaining to suits and acknowledged their ability to be deputed for this purpose under special "commission".[111] As the regulation stipulated, "The cauzy of each of the three cities of Patna, Dacca, and Moorshedabad, shall be nominated [as] a Commissioner…and shall attend at the cutcherree or court-house, for the trial and decision of suits, three days in each week, or as often as the Judge may direct."[112] Regulation XL thus required *qāẓī*s employed in the

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[109] BL, IOR/V/8/16, *Regulations passed by the Governor General in Council of Bengal, with an Index and Glossary. Vol. I, containing the regulations passed in the years 1793, 1794, and 1795.*

[110] For further discussion of how the category of personal law developed at this time, see Stephens, "Governing Islam" (especially chapter one).

[111] Government of India, *The Regulations of the Bengal Code in Force in September 1862* (Calcutta: Savielle and Cranenburgh, Bengal Printing Co., Ltd., 1862), 162.

[112] Ibid.

region's largest cities (i.e., Patna, Dhaka, and Murshidabad) to attend the local court and to participate in the settlement of disputes three times per week.[113] The regulation then went beyond this measure, adding a specific clause pertaining to the *qāẓī* for the city of Calcutta that made him "Commissioner for the zillah of the twenty-four pergunnahs" and also made "the cauzy of the town or place in which each of the other zillah Courts is established… Commissioner for the zillah in virtue of his office [as *qāẓī*]."[114] By bringing the *qāẓī*'s office together with that of the local judicial commissioner, Regulation XL of 1793 reintroduced the *qāẓī*'s former judicial functions but did so under another heading and according to the Company's vision for the administration of justice. This provision allowed the person appointed to the office of *qāẓī* to oversee cases and to settle disputes not in his role as *qāẓī* but as "commissioner for the zillah."[115] The regulation did not grant local *qāẓī*s exclusive jurisdiction over the settlement of disputes, but it did call upon the *qāẓī*, by "virtue of his office," to serve in this capacity to settle disputes of limited monetary value. The regulation further clarified that *qāẓī*s appointed to act as commissioners "in the large towns, bazars, gunges, hauts, or aurungs" were to function as "referees and arbitrators only," except for in instances in which the Ṣadr Dīwānī ʿAdālat (SDA) "empower" them to "act as munsiffs…specifying…the limits of their jurisdiction, and the descriptions of persons over whom their authority is to extend."[116] Under this provision, then, the *qāẓī*'s jurisdiction for the purpose of hearing and settling minor disputes was limited as well as elastic.

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[113] Ibid.

[114] Ibid., 163.

[115] Ibid.

[116] Ibid., 164.

Under certain conditions or special orders, then, the *qāẓī*'s judicial powers could expand to cover additional judicial functions. These functions would later retract, following the conclusion of his special commission. How such expansions and contractions operated is unclear, but the extended treatment of the *qāẓī*'s judicial functions here suggests that Company officials had not yet figured out where the *qāẓī* fit into the Company-state's evolving administrative-judicial schema.[117] On the surface, Regulation XL acknowledged and preserved some of the *qāẓī*'s original privileges as a judicial officer, allowing him to hear cases involving disputes of low monetary value, but in reality, the regulation also separated his judicial authority as *qāẓī* from the authority granted to him as a Company appointed commissioner. Rather than call upon his traditional authority in his capacity as local *qāẓī qua* judge, Regulation XL gave the local commissioner permission to allow the person holding the office of *qāẓī* to perform these functions, but only under special appointment.

In practice, the application of Regulation XL's terms may have had little effect on the *qāẓī*'s day-to-day actives, but it changed the origin and locus of his judicial authority. Early regulations like those outlined here certainly recognized the *qāẓī*'s utility as a judicial official but also recast those roles according to the categories of the Company's judicial program. As the roles and responsibilities of these appointments became better-defined and increasingly specialized during the first decades of the nineteenth century, the *qāẓī*'s work settling minor monetary disputes contracted and his role in the adjudication of "personal" matters or religious-doctrinal affairs expanded. Although subsequent legislation in the late-eighteenth and early-

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[117] On the early administrative history of the Company, see, e.g., John William Kaye, *The Administration of the East India Company: A History of Indian Progress* (London: R. Bentley, 1853); and Francis Russell, *A Short History of the East India Company: Exhibiting a State of Their Affairs, Abroad and at Home, Political and Commercial* (London : Printed for J. Sewell, 1793).

nineteenth century refined the *qāẓī*'s office further, the regulatory framework established in 1793 remained the principal framework for defining the office of the *qāẓī*, until renewed efforts to systematize and codify Company regulations appeared second quarter of the nineteenth century.[118]

Regulations like these provide an overview of the *qāẓī*'s office but offer limited insight into the execution of the *qāẓī*'s duties at this time. Evidence from the Company's Persian Department provides a more meaningful perspective on the EIC's early involvement managing the appointment of *qāẓī*s. This correspondence covers new appointments to the office and reveals Company efforts to capitalize upon the advice and expertise of its allies and informants. Muḥammad Najm-ud-dīn was one of these figures. At the turn of the nineteenth century, Qāẓī Muḥammad Najm-ud-dīn held the title of *qāẓī-ul-quẓāt* for the Bengal Presidency, and as part of his work, he investigated and approved nominations for *qāẓī* appointments elsewhere in the Company's territories.[119] Toward the end of May 1801, for example, Najm-ud-dīn recommended Muḥammad Arshad Hājjī to the office of *qāẓī* in the Rukanpūr Pargannah in the place of the appointee's father, the former *qāẓī* who had recently passed away. Muḥammad Arshad was qualified for the office, Najm-ud-dīn explained, on account of the fact that as a boy he had received training in the work of the *qāẓī* from his father.[120] Later that year, Najm-ud-dīn wrote a similar letter to George Dowdeswell to confirm the capabilities of Qudrat 'Alī who had been recommended for the office of *qāẓī* in the Mymensingh region of East Bengal.[121] Yet again,

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[118] Regulation XLIX of 1795, for instance extended the regulation to the newly ceded province of Benares. (BL, IOR/V/16, *Bengal Regulations 1793, 1794, and 1795*, 656).

[119] Ishrat Husain Ansari and H. A Qureshi, trans., *Medieval & Modern India: New Sources, 1000-1986 AD* (Delhi: Idarah-i Adabiyat-i Delli, 2009), 118.

[120] NAI, Foreign Department, Original Persian Letters Received, 1 June 1801.

[121] NAI, Foreign Department, Original Persian Letters Received, 17 October 1801.

when Shaiḵẖ Ghulām Ḥusain died without issue, Qāẓī Najm-ud-dīn recommended Ḥashmat Allāh for the office, describing him as a worthy person, qualified for the position. He further added that the applicant had come to Kolkata (Calcutta) expressly for the purpose of seeking the appointment.[122] Ḥashmat Allāh submitted his own request for the appointment a few days later, reiterating his hope for the appointment and citing his ability to perform the duties of the office.[123] In his capacity as *qāẓī-ul-quzāt*, Najm-ud-dīn's recommendations often worked in conjunction to support and confirm individual requests the Company received.

Though correspondence from the Persian Department in Bengal makes frequent reference to the appointment of *qāẓī*s in the several districts of Bengal and Bihar, the correspondence lacks the depth and detail presented in the petitions sent to the Governor in Council for the Bombay Presidency later in the nineteenth century. Najm-ud-dīn's responses vary slightly for each case, but the letters are short, his description of candidates brief, and the requests for appointment straightforward. Most of the letters are less than two hundred words long and are remarkably uniform. Occasionally, Najm-ud-dīn refers to particular details, such as the fact that Shaiḵẖ Ghulām Ḥusain died without issue or the fact that Muḥammad Arshad learned the trade from his father, but on the whole, the letters are formulaic and suggest that seeking approval from the *qāẓī-ul-quẓāt* was little more than an administrative formality. Furthermore, the ease with which Najm-ud-dīn worked with Company officials like Dowdeswell to fill these openings suggests either that the chief *qāẓī*'s role was ceremonial or that the regional appointments themselves held little prestige. Najm-ud-dīn was called upon to fulfill the terms of the regulation without being truly engaged as a consultant. Regardless of the motivations behind this

[122] NAI, Foreign Department, Original Persian Letters Received, 19 March 1801.

[123] NAI, Foreign Department, Original Persian Letters Received, 28 March 1801.

mechanical process, the regulations in place in the Bengal Presidency in the early nineteenth century facilitated the appointment of several *qāẓī*s to various districts across the Company's territories. The following chapter builds upon this introduction to the *qāẓī* and his office in Bengal but turns to the rich archive of materials (and the complicated history of the *qāẓī*'s office it relates) from the Bombay Presidency and begins by introducing Yusuf Moorgay, an important Company ally and prominent *qāẓī*, in the midst of a legal suit over his allegedly improper—and immoral—behavior.

CHAPTER 2: BUREAUCRATIC BREAKING POINTS: *QĀḌĪ* APPOINTMENTS IN THE BOMBAY PRESIDENCY, 1831–1882

I. INTRODUCTION

In 1859, Qāḍī Muḥammad Yūsuf Moorgay (Murghay) faced accusations of misconduct in the execution of his duties as *qāḍī* for the city of Bombay. The charges, brought against him by "a great number" of the city's Muslim inhabitants, accused him not only of performing "illegal" marriages and refusing to oversee legitimate unions but also of being a sinner and frequenter of bawdy houses.[1] Over the course of the month-long inquiry into his behavior, lawyers from each side presented their evidence, but despite the litany of charges lodged against him, the petitioners' efforts proved for naught. In November, the government announced that Yusuf Moorgay had been honorably acquitted of all the charges against him, and that he would continue to serve as the city's *qāḍī*[2]—a position he held until his death in 1866.[3]

Yusuf Moorgay's position as the *qāḍī* of Bombay placed him at the center of a quickly-changing and turbulent legal landscape in which earlier forms of legal practice and pre-colonial legal institutions were incorporated into, transformed by, and removed from the nascent colonial state's legal system. With Anglo-Muslim (or, Anglo-Muhammadan) law coming into its own as a codified system of legal interpretation, traditional practitioners of Islamic law—namely *qāḍī*s and *muftī*s—were first embraced as legal intermediaries, then incorporated into the bureaucratic hierarchies of the British East India Company (EIC) administration, and employed in the

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[1] "Complaints against the Cazee of Bombay," *The Bombay Times and Journal of Commerce*, 6 June 1859. For a brief history of Yūsuf Moorgay's legacy in Bombay and his later literary works, see Maimūnah Dalvī, *Bamba'ī men Urdū.* (New Delhi: Maktab-i jāmi'a, 1970). 82–86.

[2] "Acquittal of the Cazee of Bombay," *The Bombay Times and Journal of Commerce,* 9 November 1859.

[3] National Archives of India (NAI), Foreign Department, Political, Sept. 1866, Nos. 10/12 (B); Maharashtra State Archives (MSA), Judicial Department Proceedings, 1866, Vol. 6: No. 748.

colonial courts as law officers, only to be later sidelined by and removed from these offices.[4] Despite the changing positions these native intermediaries held in the administration of law at the local level, scholarship on the legal history of this period however tends to focus instead on the efforts of colonial officials to translate, interpret, and codify local laws.[5] Yet as the lives and careers of individuals like Yusuf Moorgay suggest, the process of codification and administration was dependent upon and challenged by local officials who had a stake in what they saw as the proper administration of Islamic law. Yusuf Moorgay's life and career as the *qāẓī* of the capital city of the Bombay Presidency, thus tells another story about the history of legal practice in the nineteenth century, one that reveals the uneven trajectory of colonial policies and programs.

Yusuf Moorgay was but one of several hundred *qāẓī*s appointed and managed by the Judicial Department of the British East India Company (EIC) of the Bombay Presidency

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[4] On the construction of Anglo-Muslim law, see, e.g., Alan M. Guenther, "Syed Mahmood and the Transformation of Muslim Law in British India" (Ph.D. Dissertation, McGill, 2004); Shahnaz Huda, "Anglo-Muhammedan and Anglo-Hindu Law—Revisiting Colonial Codification," *Bangladesh Journal of Law* 7, no. 1&2 (2003): 1–22; Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35, no. 2 (May 1, 2001): 257–313; Mitra Sharafi, "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism Meets Anglo-Islamic Dower and Divorce Law," *The Indian Economic and Social History Review* 46, no. 1 (January 1, 2009): 57–81; and Julia Anne Stephens, "Governing Islam: Law and Religion in Colonial India" (Ph.D. Dissertation, Harvard University, 2013); and Muhammad Zubair Abbasi, "Islamic Law and Social Change: An Insight into the Making of Anglo-Muhammadan Law," *Journal of Islamic Studies* 25, no. 3 (September 2014): 325–49. The present dissertation considers the practice of Islamic law in its many colonial and post-colonial guises but does not deal directly with the construction of Anglo-Muslim law, as conceived of by the Anglo-Indian legal system.

[5] These codes of Anglo-Muslim (also referred to as Anglo-Muhammadan) law, included works like Neil Benjamin Edmonstone Baillie, *A digest of Moohummudan law on the subjects to which it is usually applied by British Courts of Justice in India*. (London: Smith, Elder, 1887); William Jones, *The Mahomedan Law of Succession to the Property of Intestates, in Arabick, Engraved on Copper Plates from an Ancient Manuscript, with a Verbal Translation and Explanatory Notes ...* (London: Nicholas, 1782); W. H. Macnaghten and William Sloan, *Principles and Precedents of Moohummudan Law, Being a Compilation of Primary Rules Relative to Inheritance, Contracts and Miscellaneous Subjects* (Madras: Higginbotham, 1882); and Roland Knyvet Wilson, *A Digest of Anglo-Muhammadan Law, Setting Forth in the Form of a Code, with Full References to Modern and Ancient Authorities, the Special Rules Now Applicable to Muhammadans as Such by the Civil Courts of British India*, 1st ed. (London: W. Thacker, 1895). Later works include Asaf Ali Asghar Fyzee, *Outlines of Muhammadan Law* (New York: Indian Branch, Oxford University Press, 1949); Fyzee, *Cases in the Muhammadan Law of India and Pakistan* (Oxford : Clarendon Press, 1965); Abinaschandra Ghosh, *The Principles of Anglo-Mahomedan Law* (Calcutta: H. Ghose, 1917); Mahomed Ullah ibn Sarbuland Jung, *A Digest of Anglo-Muslim Law, Compiled from the Original Arabic Authorities* (Allahabad: Juvenile, 1932); and Dinshah Fardunji Mulla, *D.F. Mulla's Principles of Muhammadan Law: With Survey of Case-Law from the Superior Courts, 1906-2008*, 1st ed. (Lahore : al-Qanoon Publishers, 2009); and I. Mulla, *Commentary on Mohammedan Law* (Allahabad : Dwivedi Law Agency, 2006).

throughout the nineteenth century,[6] yet despite growing interest in the practice and administration of religious law in British India, the professional and personal lives of *qāẓī*s and *muftī*s have received little attention.[7] To these ends the careers of individuals like Muḥammad Yusuf Moorgay of Bombay, Sayyid Aḥmad Ḥusain of Bharūch,[8] Syed Ḥayātullāh K̲ẖān of Pune, and others highlight the tensions and conflicts that emerged when East India Company officials attempted to bring the existing system of qāẓīships, entitlements, and appointments under the purview of the Company's growing and increasingly bureaucratic administration.[9] In the wake of consistent efforts to regularize, rationalize, and bureaucratize the office, controversies surrounding *qāẓī* appointments, disputes between rivals, and anxieties over undue influence or improper conduct in the office nevertheless continued to hinder the East India Company's

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[6] Before the Government of India terminated its appointments of *qāẓī*s in 1864, it collected information about the incomes of approximately two hundred fifty individuals holding the office of *qāẓī* in the Presidency. (MSA, Judicial Department Proceedings, 1864, S. No. 207, "General Statement showing the lands and emoluments now enjoyed by the Cazees in the several Districts of the Bombay Presidency.")

[7] Literature on the administration of religious law in British India is vast and continues to grow. Introductions to this history include J. Duncan M. Derrett, *Religion, Law, and the State in India* (New York: Free Press, 1968); M.P. Jain, *Outlines in Indian Legal History*, 3rd ed. (Bombay: N.M. Tripathi, 1972); Derrett, "The Administration of Hindu Law by the British," *Comparative Studies in Society and History* 4, no. 1 (November 1961):10–52; Faiz Badrudin Tyabji, *Principles of Muhammadan Law: An Essay at a Complete Statement of the Personal Law Applicable to Muslims in British India*, 2nd ed. (Calcutta: Butterworth, 1919); Tyabji, *Muslim Law; the Personal Law of Muslims in India and Pakistan*, 4th ed. (Bombay,: N. M. Tripathi, 1968). More critical studies of law in the colonial context include Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India*, Princeton Studies in Culture/power/history (Princeton, N.J: Princeton University Press, 1996); Cohn,"From Indian Status to British Contract," *The Journal of Economic History* 21, no. 4 (December 1961): 613–28; and Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (New York: Oxford University Press, 2003). For an appraisal of law in action during this period, see below (Chapters Three and Four) and Rohit De, "Mumtaz Bibi's Broken Heart: The Many Lives of the Dissolution of Muslim Marriages Act," *Indian Economic & Social History Review* 46, no. 1 (2009): 105–30; De, "The Two Husbands of Vera Tiscenko: Apostasy, Conversion, and Divorce in Late Colonial India," *Law and History Review* 28, no. 04 (2010): 1011–41, doi:10.1017/S0738248010000751; Chandra Mallampalli, "Escaping the Grip of Personal Law in Colonial India: Proving Custom, Negotiating Hindu-Ness," *Law and History Review* 28, no. 4 (November 2010): 1043–65, doi:10.1017/S0738248010000763; Mallampalli, *Race, Religion, and Law in Colonial India: Trials of an Interracial Family, Cambridge Studies in Indian History and Society*, no. 19 (New York: Cambridge University Press, 2011); and Mitra Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda," *Law and History Review* 28, no. 04 (2010): 979–1009, doi:10.1017/S073824801000074X; and Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947* (New York, NY: Cambridge University Press, 2016).

[8] See Chapter Three of this dissertation.

[9] The term *qāẓīship* is a neologism employed by Company officials to refer to the office of the *qāẓī*. The use of the term is similar to that of *quẓāt* (i.e., the office of the *qāẓī*) but it also carries certain connotations from the English idea of an office as well.

administrative aims. These conflicts not only draw attention to the *qāẓī*'s continued importance in the extension of law to areas beyond the Presidency capitals, but also reveal particular understandings of the *qāẓī*'s function in British-Indian society—among local Muslims and British administrators—that remain at odds with more conventional accounts. By examining questions of appointment and administration, social status and judicial function, competition and cooperation among and across these perspectives, the lives of Yusuf Moorgay and other individuals appointed to the office of *qāẓī* under the East India Company demonstrate the ways in which the administration of religious law was imbricated in larger processes of social change, legal modernization, and government bureaucratization, and how patterns established in the early colonial period laid the foundation for entanglements that continue to shape legal policy today.[10]

There is more to this discussion, however, than details about the lives of individual *qāẓī*s who interacted with the Company-state as it extended its reach in this region might suggest.[11]

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[10] For a concise definition of legal modernity, see Marc Galanter, "The Modernization of Law," in *Modernization: The Dynamics of Growth*, ed. Myron Weiner (New York: Basic Books, 1966), 153–65. For a discussion of legal modernity in the context of "rule of law" rhetoric, see, e.g, Ritu Birla, "Performativity Between Logos and Nomos: Law, Temporality and the 'Non-Economic Analysis of Power,'" *Columbia Journal of Gender and Law* 21 (n.d.); David Gilmartin, "Rule of Law, Rule of Life: Caste, Democracy, and the Courts in India," *The American Historical Review* 115, no. 2 (April 1, 2010): 406–27; Nasser Hussain, *The Jurisprudence of Emergency Colonialism and the Rule of Law, Law, Meaning, and Violence* (Ann Arbor: University of Michigan Press, 2003); Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law*, 1st ed., Cambridge Studies in Indian History and Society 17 (New York: Cambridge University Press, 2010); Renisa Mawani and Iza Hussin, "The Travels of Law: Indian Ocean Itineraries," *Law and History Review* 32, no. 04 (November 2014): 733–47, doi:10.1017/S0738248014000467; Jonathan K. Ocko and David Gilmartin, "State, Sovereignty, and the People: A Comparison of the 'Rule of Law' in China and India," *The Journal of Asian Studies* 68, no. 01 (2009): 55–100, doi:10.1017/S0021911809000084; Jeffrey A. Redding, "Secularism, The Rule of Law, and 'Shar'a Courts': An Ethnographic Examination of a Constitutional Controversy," *Saint Louis University Law Journal* 57, no. 2 (Winter 2013): 339–76; Richard Saumarez Smith, "Rule-by-Records and Rule-by-Reports: Complementary Aspects of the British Imperial Rule of Law," *Contributions to Indian Sociology* 19 (1985): 153–76.

[11] The expression "Company-State" owes its origins to Edmund Burke, but historian Philip Stern is best-known for engaging with this concept to define the hybrid nature of Company sovereignty in the first decades of its territorial expansion. See Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundation of the British Empire in India* (New York: Oxford University Press, 2011).

The story of *qāẓī* appointments in the Bombay Presidency also provides a lens through which to survey the larger history of British imperial expansion across western India.[12] In this way, the East India Company's interest in employing, appointing, and controlling local *qāẓī*s follows the contours of European engagement with the region, imperial-territorial expansion, and colonial-governmental interference.[13] Furthermore, the history of *qāẓī* appointments in the Bombay Presidency also contributes to the history of the legal profession and professionalization. To the extent that they might be grouped together, *qāẓī*s working in the Bombay Presidency constituted a class of individuals, variously appointed and recognized by the pre-colonial Mug̲hal, Pēshwā, and later successor states who were—like many of the princely sovereigns themselves—welcomed into and recognized as useful allies by the nascent Company-state, but were later incrementally reformed, casually ignored, openly criticized, intentionally undermined, and eventually legislated into obsolescence, after which they were brought back into employment following public and administrative outcry little over a decade later, under the same titular heading but with a different

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[12] In this way, the history of *qāẓī*s contributes to recent scholarship on the importance of legal intermediaries. See, e.g., Carlos Aguirre, "Tinterillos, Indians, and the State: Towards a History of Legal Intermediaries in Post-Independence Peru," in *One Law for All? Western Models and Local Practices in (Post) Imperial Contexts*, ed. Stefan B. Kirmse (New York: Campus Verlag, 2012), 119–51; Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (New York, NY: Cambridge University Press, 2002); Assaf Likhovski, *Law and Identity in Mandate Palestine, Studies in Legal History* (Chapel Hill [N.C.]: University of North Carolina Press, 2006); Nigel Ramsay, "Scriveners and Notaries as Legal Intermediaries in Later Medieval England," in *Enterprise and Individuals in Fifteenth-Century England.*, ed. Jennifer Kermode (Wolfeboro Falls, N.H.: Alan Sutton, 1991), 118–31; Mitra Sharafi, "A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire," *Law & Social Inquiry* 32, no. 4 (2007): 1059–94, doi:10.1111/j.1747-4469.2007.00087.x; and Yanna Yannakakis, *The Art of Being In-between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham, NC: Duke University Press, 2008).

[13] On the expansion of the early Company state and its engagement with existing systems and structures of power, see, e.g., G. Anderson and Manu Subedar, *The Expansion of British India (1818-1858)* (New Delhi: Uppal Publishing House, 1987); Michael Herbert Fisher, ed., *The Politics of the British Annexation of India, 1757-1857* (Delhi: Oxford University Press, 1993); A. Aspinall, *Cornwallis in Bengal; the Administrative and Judicial Reforms of Lord Cornwallis in Bengal, Together with Accounts of the Commercial Expansion of the East India Company, 1786-1793, and of the Foundation of Penang, 1786-1793*, Historical series, no. 60, Publications of the University of Manchester ([Manchester]: Manchester University Press, 1931); Stern, *The Company-State*; Ian St. John, *The Making of the Raj India under the East India Company* (Santa Barbara, Calif.: Praeger, 2012); Matthew H. Edney, *Mapping an Empire: The Geographical Construction of British India, 1765-1843* (Chicago: University of Chicago Press, 1997); Jack Harrington, *Sir John Malcolm and the Creation of British India*, 1st ed., Palgrave Studies in Cultural and Intellectual History (New York, NY: Palgrave Macmillan, 2010).

purpose.[14] The professional—and professionalized—trajectory of *qāẓī*'s office during the first-half of the nineteenth century thus provided the slate onto which Company administrators wrote larger changes into their imperial-administrative order.[15] These changes are not only evident in administrative debates over individual appointments but also visible in the evolution of management strategies employed by Company officials throughout the first-half of the nineteenth century.[16] Surveying the East India Company's administrative records pertaining to the appointment and management of *qāẓī*s in the nineteenth century, the present chapter delineates these changes through the lens of East India Company efforts to professionalize, manage, and organize the system of qāẓīships and appointments it inherited as its territorial holdings in western India dramatically increased in the first decades of the nineteenth century.

Focusing on the appointment and management of *qāẓī*s in the Bombay Presidency, this chapter begins by examining East India Company efforts to insert *qāẓī*s into the judicial administration of the presidency. These efforts involved overt attempts to regulate the office through the introduction of regulations, as well as more passive efforts to subject the *qāẓī*s'

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[14] Historiography in Mughal successor states, particularly in the context of Mughal decline and European expansion in South Asia is vast (and somewhat contentious). See, e.g., Michael Herbert Fisher, *A Clash of Cultures: Awadh, the British, and the Mughals* (New Delhi: Manohar, 1987); Karen Leonard, "The 'Great Firm' Theory of the Decline of the Mughal Empire," *Comparative Studies in Society and History* 21, no. 2 (April 1979): 151–67, doi:10.1017/S0010417500012792; M. N. Pearson, "Symposium: Decline of The Mughal Empire," *The Journal of Asian Studies* 35, no. 2 (February 1976): 221–35, doi:10.2307/2053980. (I consider the *qāẓī*'s re-employment after the passage of Act XII of 1880 in Chapter Four.)

[15] For an introduction to the administrative order of the early Company-state, see, e.g., East India Company, *Rules, Orders, and Directions Appointed and Established by the Governour and Committees of the East-India Company, for the Well Regulating and Managing Their Affairs in the Parts of India General Rules for the President, Agents or Chiefs, and Their Respective Council*, vol. 02353, Goldsmiths'-Kress Library of Economic Literature ([London: s.n., 1680); Henry Dodwell, *The Indian Empire, 1858-1918: With Chapters on the Development of Administration, 1818-1858* (Delhi: S. Chand, 1958); D.H.A. Kolff, *Grass in Their Mouths: The Upper Doab of India under the Company's Magna Charta, 1793–1830*, Brill's Indological Library 33 (Leiden: Brill, 2010); and Robert Travers, *Ideology and Empire in Eighteenth Century India: The British in Bengal*, vol. 14, Cambridge Studies in Indian History and Society (New York: Cambridge University Press, 2007).

[16] On the early history of British East India Company administration, see and Peter Marshall, "The Making of the Hybrid Raj, 1700-1857," *History Today* 47, no. 9 (1997): 4–9.

communications and interactions with the judicial administration to the formal expectations and protocols of Company correspondence. Administrative discipline went to great lengths to bureaucratize and professionalize the office, making it difficult for non-licensed or unrecognized *qāẓī*s to remain employed as such. The second part of the chapter then explores moments in which the project of administrative organization was complicated and challenged by controversies over deciding whose appointment was legitimate, instances of rivalry between competing *qāẓī*s, and cases in which the public confronted or challenged a *qāẓī*'s comportment or propriety. Such moments demonstrate how and why Company policy failed and how the rationale of imperial rule struggled when facing the exigencies of local implementation. In some of these examples, Company officials proffered solutions to alleviate rivalries, used delaying tactics to wait out competing claims, and invented creative solutions to the problems they faced (and justified them accordingly). In these ways, then, the lives of the individual *qāẓī*s considered here both challenge and conform to the larger narratives of imperial rule and the administration of justice.

II. Attempts to Administer

Early Involvement under Regulation X of 1815

In the Bombay Presidency, the early history of *qāẓī* appointments under EIC supervision follows the pattern from Bengal outlined in Chapter One. *Qāẓī*s and *shāstrī*s worked as native law officers in the courts of *ʿadālat* from their inception,[17] and there are references to replacing these

[17] The first regulations made by the Governor in Council for the Bombay Presidency were passed in 1799. In 1800, the Governor in Council added additional regulations, including Regulation V, pertaining to "Native Law Officers". These acts were subsequently incorporated into the Bombay Code of 1827. (Jamʿīyatram Nānābhaī and Chimanlal Harilal Setalvad, *Bombay Acts and Regulations, with Notes, Decisions, Notifications, &c.,* Vol. 1[Bombay: Ripon Printing Press, 1894], xi.)

officers at the Court of Sūrat as early as 1811, following the deaths of the incumbents.[18] The first legislative enactment dealing exclusively with *qāẓī*s, however, does not appear until 1815. The full contents of Regulation X of 1815 dealing with "Kazis" in the Presidency are uncertain, given that the act was later incorporated into and swallowed up by Regulation XXVI of the Bombay Code of 1827,[19] but references from Judicial Department proceedings suggest that the regulation was modeled after the earlier Bengal regulation and likewise provided for the Company's appointment of *qāẓī*s in the districts and a *qāẓī-ul-quẓāt* in the capital as well.[20] As with other regulations, there is also evidence that this one was publicly known and advertised.[21]

Following the implementation of the 1815 regulation, there are a handful of references to EIC involvement in the appointment of *qāẓī*s. In 1816, for instance, Qāẓī Ghulām Ḥusain, a resident of Bombay, petitioned the government to widen a thoroughfare in the city; the government referred his request to the court of petty sessions. Although *qāẓī*s occasionally claimed responsibility for maintaining public roads and for preventing encroachments upon them, it is unclear from this entry whether Ghulām Ḥusain was acting in an official capacity *qāẓī* or simply as a private individual.[22] Then, in 1818, the Judge and Magistrate at Aḥmedābād petitioned the government at Bombay for permission to present the *qāẓī* with a pair of

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[18] BL, IOR/Z/P/3145, Index for the Judicial Ship to Ship Diary for the Year 1811.

[19] Nānābhaī and Setalvad, *Bombay Acts and Regulations,* Vol. 1, xiv, xvii.

[20] BL, IOR/Z/P/3149, Index, Bombay Judicial Consultations, 1815.

[21] Later correspondence relating to *qāẓī*s, such as petitions submitted by incumbents, periodically cite Regulation X of 1815, though such references are usually corrected in the margins to read "Regulation XXVI of 1827." See MSA, Judicial Department Proceedings, 1831, Vol. 3/217: Letter to J.P. Willoughby from the Judicial Commissioner for the Konkan, dated 8 Feb. 1831.

[22] BL, IOR/Z/P/3150, Index, Bombay Judicial Consultations, 1816.

ceremonial shawls, as was the customary practice.[23] Later in that year, the Judge and Magistrate for the Northern Konkan region requested the government introduce a rule for regularizing the appointment of hereditary officials in villages—including that of the *qāẓī*—upon the occurrence of vacancies.[24] Subsequently, in 1821, with the opening of several "vacancies of Hindoo and Mahomedan Law Officers" across the presidency, the government requested local judges to send their candidates to appear before the Ṣadr Dīwānī ʿAdālat for examination.[25] Also in that year, the Magistrate at Anjar wrote to the Judicial Department in Bombay to request a delay in the transfer of his court's *nāẓir* who had recently been promoted to the position of *qāẓī* in the office of the Political Agent for Khandesh so that the magistrate could arrange for a replacement.[26] In 1822, the *nā'ib qāẓī* (assistant *qāẓī*) at Bharuch requested the Company's assistance in securing for him a share of the principal *qāẓī*'s allowances; the Company declined to intervene in the dispute, but it did consider the *nā'ib*'s request for a salary.[27] Then, when the widow of Qāẓī Sharf-ud-dīn petitioned the Company for the continuance of the pension her late husband received on account of his service, judicial department officials agreed to continue to pay her a portion of the amount he formerly received.[28] In that same year, when Sayyid Aḥmad, a native of the Deccan, sent a petition stating that he had been unjustly deprived of his hereditary right to the qāẓīship,

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[23] For a description of this practice, see N. A. Stillmann, "Khilʿa," ed. P. Bearman et al., *Encyclopaedia of Islam, Second Edition*, (Leiden: Brill Online, April 24, 2012), http://dx.doi.org/10.1163/1573-3912_islam_COM_0507. On gift-giving more generally, see Ania Loomba, "Of Gifts, Ambassadors, and Copy-Cats: Diplomacy, Exchange and Difference in Early Modern India," in *Emissaries in Early Modern Literature and Culture: Mediation, Transmission, Traffic, 1550–1700*, ed. Brinda Charry and Gitanjali Shahani (New York: Routledge, 2016), 41–76; and Wiliam R. Pinch, "Same Difference in India and Europe," *History & Theory* 38, no. 3 (October 1999): 389–407.

[24] BL, IOR/Z/P/3152, Index to Bombay Judicial Consultations, 1818.

[25] BL, IOR/Z/P/3155, Index, Bombay Judicial Consultations, 1821.

[26] Ibid.

[27] BL, IOR/Z/P/3156, Index, Bombay Judicial Consultations, 1822.

[28] Ibid.

the government forwarded his petition to the Commissioner for review.[29] Similarly, the Judge at Surat considered a petition from the *qāẓī* there requesting the appointment of his son to his office (under the temporary guardianship of the minor's uncle—i.e., the petitioner's brother), and the government agreed.[30]

The following year, a vacancy opened up in the office of *qāẓī* in the Khandesh District, and the Commissioner stationed there sent an advertisement for the position to department officials in Bombay requesting them to send a suitable candidate as soon as possible. The vacancy arose after the incumbent *qāẓī* traveled with Captain Briggs to Satara to attend to affairs there.[31] In 1825, Lallma (Lālmā), the widow of Qāẓī Fateḥ Muḥammad of Ballum petitioned the government requesting the transfer of her late husband's pension to herself. This time, the government referred the widow to the local authorities for the purposes of assessing her case.[32] The following year, the President in Council raised the question of whether the government in fact had the right to interfere in the appointment of *qāẓī*s, as the office was usually considered hereditary. In a petition tied to this issue submitted that same year, the *qāẓī* of Bharuch asked for his son to replace him as *qāẓī*, challenging the extent to which government officials considered the title to be hereditary or professional.[33] In 1827, the Civil Auditor, referring to a question about a pension submitted by the *qāẓī* at Bharuch the previous year, replied after inquiry to say that the *qāẓī* was entitled to a full pension on account of his service.[34] Pensions of this kind complicated

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[29] Ibid.

[30] Ibid.

[31] BL, IOR/Z/P/3157, Index, Bombay Judicial Consultations, 1823.

[32] BL, IOR/Z/P/3159, Index, Bombay Judicial Consultations, 1825.

[33] BL, IOR/Z/P/3160, Index, Bombay Judicial Consultations, 1826. (See Chapter Three for further discussion of the *qāẓī*s of Bharuch.)

[34] Ibid.; and BL, IOR/Z/P/3161, Index, Bombay Judicial Consultations, 1827.

interpretations of the office as one contingent upon inheritance, though the Civil Auditor did note that this pension was a "Special Case."[35] Also in February of that year, the Collector at Dharwar reported an incident in which the Principal Collector had deprived the local *qāẓī*, Sayyid ʿUṣmān, of his powers, after concluding he was not suitable for office, and at the end of the year, the judge stationed in the Southern Konkan district reported the receipt of a petition from residents at Jaitāpīr complaining that the *qāẓī* stationed there was unfit for office and requesting his replacement by a capable candidate.[36]

Though these references are brief, they demonstrate that the judicial department of the Bombay Presidency engaged in the appointment, removal, payment, and oversight of *qāẓī*s serving in different locations across its territories throughout the first decades of the nineteenth century. Some of the correspondence from these individuals likely arrived in the form of Persian or other vernacular petitions, but the presidency's administrative infrastructure has erased most of those traces, making direct comparison to the records from the Bengal Presidency complicated, to say the least.[37] Yet the handful of references to *qāẓī*s in the Bombay Presidency between the introduction of Regulation X of 1815 and the promulgation of a more consistent policy under Regulation XXVI of 1827, suggest that Company officials in Bombay took an active role in appointing *qāẓī*s prior to the implementation of the more comprehensive regulation in 1827 but that the practice was *ad hoc* and inconsistent. The real push to regularize the administration of *qāẓī*s does not obtain in the proceedings until 1831 when "Cazee" becomes an independent subject heading in the proceedings produced in Bombay and the consultations kept

[35] BL, IOR/Z/P/3161, Index, Bombay Judicial Consultations, 1827.

[36] Ibid.

[37] When I requested to review files from the Persian Department of the Bombay Presidency, I was told such records never existed.

in London. Nonetheless, this early Company engagement with individuals appointed to the office of *qāẓī* suggests that EIC regulations and legislative enactments often cover or conceal more complicated and contested histories on the ground. The longer-term picture is necessary to understand motivations behind later administrative actions and regulatory efforts.

Codification under Regulation XXVI of 1827

As part of a widespread effort to consolidate and systematize legal regulations not just in the Bombay Presidency but across the Company's territories in India at this time,[38] the first twenty-six regulations passed in 1827 became the foundation for subsequent judicial and legislative activities in the region until the transition to Crown rule in 1860. Referred to as the "Bombay Code"—or alternatively as the "Elphinstone Code" in honor of Mountstuart Elphinstone's role in its implementation as Governor in Council[39]—the first twenty-six regulations of 1827 covered civil and criminal adjudication, in addition to revenue, military, and other administrative matters.[40] The parts of the code dedicated to civil and criminal affairs included elements of procedure (e.g., Regulation IV), jurisdiction (e.g., Regulations V and XI), and some aspects of substantive law (e.g., Regulations VI and X).[41] The appointment of native law officers (Hindu and Muslim) fell under the general guidelines for the civil courts while the

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[38] Other important law codes emerged around this time, including the Napoleonic Code in 1804, followed by the Louisiana Civil Code in 1808. The Law Commission on which Thomas Babington Macaulay served first convened in 1833 and produced a draft penal code by 1835, though most of its efforts to promote codification would not come into effect until after 1860. On the Indian Penal Code and codification more generally, see T.B. Macaulay, G.W. Anderson, and F. Millett, *The Indian Penal Code, as Originally Framed in 1837* (Madras: Higginbotham and Co, 1888); Stanley Yeo and Barry Wright, "Revitalising Macaulay's Indian Penal Code," in *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform*, ed. Wing-Cheong Chan, Barry Wright, and Stanley Yeo, International and Comparative Criminal Justice (Farnham: Ashgate Publishing Ltd, 2011), 3–17; and more generally, Wing-Cheong Chan, Barry Wright, and Stanley Yeo, eds., *Codification, Macaulay and the Indian Penal Code.*

[39] Amrita Shodhan, *A Question of Community: Religious Groups and Colonial Law* (Calcutta: Samya, 2001), 5.

[40] BL, IOR/V/8/24, *The First Twenty-Six Bombay Regulations of 1827*.

[41] Ibid.

regulation pertaining to *qāẓī*s came under the "Miscellaneous" section.[42] It would be easy to read this classification as an indication of the *qāẓī*'s already waning influence, but other important issues like the acquisition of landed property by people in office, treatment of prisoners, and restrictions on the press also fell under the miscellaneous heading.[43] Though these final four regulations covered an assortment of topics, none could be considered superfluous, or unnecessary for the proper judicial administration.

In its content, however, Regulation XXVI of 1827 differed in character from earlier regulations mentioned above. The biggest difference was that it removed the Company's involvement in the appointment of a *qāẓī-ul-quẓāt*. Although under this new regulation, the EIC continued to appoint someone of the office of *qāẓī* for the city of Bombay, that person technically did not rank above those appointed to serve in the districts, as was the practice in Calcutta.[44] But the elimination of *qāẓī-ul-quẓāt* was not the only way in which the regulation shifted the symbolic underpinnings of the office. The regulation also made strides toward bureaucratizing the office and bringing it in line with that of other administrative personnel responsible for preserving and maintaining an official function. In contrast to earlier regulations from Bengal, then, Regulation XXVI of 1827 attempted to define the office more precisely in terms of professional responsibility and limited authority. As the Regulation's preamble makes clear, the *qāẓī*'s role in performing certain religious functions now took precedence over his earlier work attesting deeds, which appeared first in the Bengal regulation; the preamble also highlighted the *qāẓī*'s importance for the "Mahomedan" population, stating:

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[42] Ibid.

[43] Ibid.

[44] Legislatively there was no distinction for *qāẓī-ul-quẓāt*, but in practice, the *qāẓī* of Bombay held a special status. I consider these differences below.

> Whereas in certain of the towns and purgunnas subordinate to the Presidency of Bombay the office of kazee exists, and is necessary for the purpose of authenticating and recording marriages, attesting divorces, and assisting in various other religious rites and ceremonies amongst Mahomedans; and whereas the important uses of the office, more especially in furnishing the means of settling questions of inheritance and succession between Mahomedans, require that rules, as well for the appointment and removal of kazees, as for ensuring an efficient and regular discharge of the functions of their office, should be established and promulgated;—the following Rules are accordingly enacted, to have effect from such date as shall be prescribed in a Regulation to be hereafter passed for that purpose.[45]

Where the Bengal regulation from 1793, first mentioned the *qāẓī*'s role in "preparing and attesting deeds of transfer and other law papers" within its list of duties, Regulation XXVI of 1827 first mentioned "authenticating and recording marriages" in its description of the office.[46] Following that, the preamble listed additional activities pertaining to "religious rites and ceremonies" conducted "amongst Mahomedans", as well as the *qāẓī*'s necessity for "settling questions of inheritance and succession between Mahomedans."[47] Though these responsibilities were also present in the earlier regulation, the wording here placed more emphasis on their religious foundations. At the same time, references to the other ways in which the *qāẓī* assisted the courts in the past have been removed.[48] What is more, the new regulation stressed the importance of making the office "efficient and regular" in order to minimize local and personal variation. Although the regulation's emphasis on the *qāẓī*'s religious function is clear, its efforts to transform the *qāẓī* into a bureaucrat following the model of the Company civil servant had a more profound impact on the future practice of Islamic law in South Asia.

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[45] Ibid.

[46] *Regulations passed by the Governor General in Council of Bengal*; and BL, IOR/V/8/24, The First Twenty-Six Bombay Regulations of 1827.

[47] BL, IOR/V/8/24, *The First Twenty-Six Bombay Regulations of 1827.*

[48] Ibid.

That Regulation Twenty-Six of 1827 sought to transform the *qāẓī* into a bureaucrat is evident not only in the preamble but in the substance of the law as well. Though the duties it highlights focus on areas of law that would later constitute "Anglo-Muhammadan" law, the regulation actually provides more detail about the *qāẓī*'s operational responsibilities than it does about the content of the religious "rites and ceremonies" over which he was expected to preside. In order to understand how the regulation laid out these expectations, it may be useful to consider its substance in relation to theories of bureaucratic efficiency and governance. Though Regulation XXVI came into existence well before Max Weber would write on the subject of bureaucracy, many of the observations he makes (following earlier observations of Jeremy Bentham and other utilitarians) about the structure and functioning of bureaucratic offices are evident in the wording of the regulation.[49]

First, confining the *qāẓī*'s work to the spheres of marriage, divorce, and inheritance, for instance, aligns with the bureaucratic ideal of providing each officeholder with regular and fixed duties, as bureaucratic efficiency dictates that each officer perform a specific set of task.[50] The regulation further delineated these duties by enjoining the *qāẓī* to "keep a book, in which he shall enter all contracts of marriage and acts of divorce lawfully acknowledged before him or his

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[49] For a summary of Weber's ideas on bureaucracy, see Max Weber, "Bureaucracy" in *From Max Weber: Essays in Sociology*, trans. and ed. Hans Heinrich Gerth and C. Wright Mills (New York: Oxford University Press, 1946), 196–245. Weber also addresses theses ideas in the context of law and bureaucracy in *Economy and Society* (vols. 2 and 3). (See Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, trans. Ephraim Fischoff [New York: Bedminster Press, 1968].) For an analysis of Bentham's contribution's to bureaucratic theory, see L.J. Hume, *Bentham and Bureaucracy, Cambridge Studies in the History and Theory of Politics* (New York: Cambridge University Press, 1981). With the return of imperial studies, there has also been a renewed interested in the study of bureaucracies of empire. Weber's formulation of bureaucracy remains central to this historical studies, as well as to more recent theoretical contributions. For two such examples, see Peter Crooks and Timothy Parsons, eds., *Empires and Bureaucracy in World History: From Late Antiquity to the Twentieth Century* (Cambridge: Cambridge University Press, 2016); and David Graeber, *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy* (Brooklyn, NY: Melville House Publishing, 2015).

[50] BL, IOR/V/8/24, *The First Twenty-Six Bombay Regulations of 1827*, Preamble and Chapter II, Section VI, Regulation XXVI of 1827.

naibs, whether in writing or verbally" and stipulating that he, as *qāẓī*, would be subject to a penalty "not exceeding one hundred (100) rupees…for every such marriage contract and act of divorce not so entered."[51] In exchange for performing this service, the *qāẓī* was then "entitled to receive such fees…as the Judge of the Zillah with the sanction of the Suddur Adawlut may determine."[52] In addition to maintaining registers, the *qāẓī* was also instructed to use a seal "not exceeding one inch in length or breadth that included his name, his station—i.e., "Kazee of the town (or purgunna, as the case may be)"—and the "year of the Hijree" of his appointment.[53] Such details framed and circumscribed the *qāẓī*'s work in a way that tied the *qāẓī*'s activities to that of the particular office he held, rather than to his individual personhood, interpretation, or discretion.[54] Certainly, the regulation's framers considered such limitations essential to the proper functioning of the office.

The regulation further bureaucratized the *qāẓī*'s office by placing him with the EIC's administrative structure. In particular, the regulation specified that the *ẓila*ʿ judge would be responsible for identifying and determining acts of malfeasance performed by the *qāẓī*, thereby inserting the *qāẓī* into the hierarchy of judicial oversight.[55] Furthermore, within this hierarchy, the *qāẓī* himself had permission to appoint *nā'ib*s, or assistants, to help with his work, while at the

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[51] Ibid., Chapter II, Section VIII, Clause 1st, Regulation XXVI of 1827.

[52] Ibid.

[53] Ibid., Chapter I, Section I, Clause 3rd, Regulation XXVI of 1827.

[54] Here the Company's efforts to define and delimit the *qāẓī*'s authority run counter to Weber's assessment of the office under the rubric of "kadijustiz". See Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, trans. Ephraim Fischoff, vol. 3 (New York: Bedminster Press, 1968), 796–8; and Chapter One of this dissertation. Cf. Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society*, The Lewis Henry Morgan Lectures 1985 (New York: Cambridge University Press, 1989), 58-80.

[55] BL, IOR/V/8/24, *The First Twenty-Six Bombay Regulations of 1827*, Chapter I, Section II, Regulation XXVI of 1827.

same time remaining subject himself to the supervision of the *zilaʿ* judge.[56] Such stipulations thus placed the *qāẓī* within the bureaucratic structures of super- and sub-ordination, following Weber's schema.[57] Along these lines, the *qāẓī* could be removed from office for committing acts of personal or professional impropriety, if his supervisor—i.e., the *zilaʿ* judge—determined him to be "unfit to hold his office" as a consequence of "gross negligence or misconduct in the discharge of his public duty, or by acts of profligacy in his private conduct."[58] Negligence or misconduct would render the *qāẓī* liable to be removed from office such that personal respectability as well as professional capability were incorporated into this conception of the office. Allegations of wrong-doing in either area would then prompt an investigation either by the local *zilaʿ* judge or by higher officials, such as the Governor in Council.[59] In the event that a *qāẓī* accused of wrongdoing were sent to trial, the *qāẓī* would then be "suspended from the exercise of his functions as kazee" and "dismissed from his office" if convicted.[60] Following such a conviction or in the event of a vacancy created for other reasons such as the retirement or death of an incumbent, the district judge, was also responsible for appointing individuals to fill the vacancy if or when it should occur. These arrangements and stipulations further brought the *qāẓī* into the larger administrative structure of the Bombay Presidency where he was made liable for upholding not only the expectations of his particular office but also the higher ideals of the Company administration.

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[56] Ibid., Chapter II, Section V, Regulation XXVI of 1827.

[57] Weber, "Bureaucracy," 197.

[58] BL, IOR/V/8/24, *The First Twenty-Six Bombay Regulations of 1827*, Chapter I, Section II, Clause 2nd, Regulation XXVI of 1827.

[59] Ibid., Chapter I, Section II, Clause 3rd, Regulation XXVI of 1827. (See the discussion of the Company's engagement with the Camp *qāẓī* at Pune for an example of this process.)

[60] Ibid., Chapter I, Section II, Clause 1st., Regulation XXVI of 1827.

Third, by making the *qāẓī*'s records a part of the state's records—that is, by requiring him to deposit his records with the Superintendent of the Register of the Zillah, for the purpose of being preserved by the General Register upon "the death, or dismissal of a kazee"—the regulation rendered the *qāẓī*'s office "official," following Weber's model.[61] Transactions the *qāẓī* recorded were incorporated into the state's larger administrative structures and separated from the "sphere of private life."[62] Guidelines such as this sought to manage the office of the *qāẓī* through the possession of his "written documents" and records. What the *qāẓī* produced in his official capacity, namely "the files" that came to dominate the workings of the modern bureaucratic state, belonged not to the *qāẓī* but to the Company state.[63] The Regulation imagined managing the *qāẓī* through regularizing his work and regulating his income. Following Regulation XXVI, the office of the *qāẓī* in the Bombay Presidency was thus redefined according to ideas bureaucratic regularity and divested of any elements of personality, charisma, or favor. Though the regulation outlined these objectives clearly, following their meaning and intent, however, turned out to be much more complicated.

III. Administrative Fumbles: Toward an Overview of the Office

When Regulation XXVI went into effect in 1827, *qāẓī*s already "acting under competent authority" at the time were "to be considered to be duly appointed in the same manner as if they had been appointed according to the provisions of Section I of this regulation," but the question of what constituted a "competent authority" proved somewhat difficult to define.[64] In places like

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[61] Ibid., Chapter II, Section VIII, Clause 2d., Regulation XXVI of 1827.

[62] Weber, "Bureaucracy," 197.

[63] BL, IOR/V/8/24, *The First Twenty-Six Bombay Regulations of 1827*, Chapter II, Section VIII, Clause 2d., Regulation XXVI of 1827.

[64] BL, IOR/V/8/24, *The First Twenty-Six Bombay Regulations of 1827.*

Surat and Bharuch where the Company had been involved in the appointment and recognition of local *qāẓī*s prior to the implementation of this act, understanding who had the proper authority to act in those locations was clear. Elsewhere in the Presidency, however, determining who held the office—or where the jurisdiction of that office lay—was more complicated. Efforts to confirm appointments and to reissue *sanad*s led to confusion, anger, resentment, and occasional embarrassment among Company officials. Furthermore, after countless attempts to understand and to sift through myriad claims to the office, it was not until a decade after the regulation took effect, that officials began to contemplate the benefit of compiling and tabulating information about current office-holders across the Presidency. Yet even with such efforts, the department was not able to tabulate a list of *qāẓī*s until the question of ending government involvement in their appointment had surfaced in the context of Act XI of 1864.[65] Looking through some of the earlier debates—and drama—that emerged in response to the Company's efforts to develop an administrative overview of the office of the *qāẓī* in the Bombay Presidency thus provides insight not only into the government's approach to monitoring and managing the appointments but also into the individual lives and local circumstances from which government appointees emerged. The situation in the Southern Konkan district is particularly illustrative.

Encountering messiness at Ratnagiri

In 1833, shortly after the introduction of Regulation XXVI of 1827, the assistant judge at Ratnāgirī, J.A. Shaw penned a lengthy missive to John Hind Pelly, his supervisor stationed at Tannah, lambasting the way the office of the *qāẓī* functioned in his district and outlining the irreconcilable problems he encountered when attempting to ascertain who rightfully held the

[65] See, MSA, Judicial Department Proceedings, 1864, Vol. 6, No. 207.

office in which location. Addressing Pelly, he wrote:

> [Y]ou are probably well aware that every village which possesses three or four houses of Mussalmans has one or more Cazees, who according to the usual tenants of spiritual Establishments in this country or at least in this district have been accustomed to look upon themselves and to be looked upon by others as the hereditary and undispossessable proprietors of the office. Wuttans [*waṭan*s] are each divided into separate shares among many separate houses and then again subdivided among the Brethren of each House, with a minuteness of Division that ha[s] rendered the claim of each sharer as intricate and perplexing as that of any Wuttendar [*waṭandār*] would be upon a disputed claim in his Wutton. You are also well aware that, in pursuance of this view of the case, Cazeepuns [*qāẓī-pan*] have been hitherto bought, sold, and mortgaged; that persons living out of the District and holding situations under Native Princes; that persons living in the Company's territories, but out of this District, that persons living in this District (even Bramins) but holding situations and following pursuits that rendered it impossible for them personally to perform the duties of their offices have each (one and all) held the superiorities over Cazeepuns and discharged their duties by nayibs [*nā'ib*s] and that, on almost every one of these several descriptions of claim, suits have been tried and decrees issued and enforced by the Court of Adawlut.[66]

Shaw's invective went on to blame the meddling of interlopers, to condemn the claimants to various offices for failing to perform any of the work associated with the position, and to stand up for some of the decisions he had been compelled to make in order to sort out the meaning of different claims.[67] Shaw requested further instructions for the course of action he should pursue, "for the investigation of all these original cases…would take several months to accomplish…and involve the summoning of at least one 20th part of the population as evidence."[68] In concluding, he "[took] the liberty" to suggest that until a more reasonable solution be found, the offices "remain either in the state in which they were (and in which consequently they now are) before [he] was originally ordered to commence these investigations or otherwise allowed to be placed

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[66] MSA, Judicial Department Proceedings, 1833, Vol. 6 / 271: Letter to J.H. Pelly Esquire, Acting Judge, Tannah, No. 42, dated 11 February 1833.

[67] Ibid.

[68] Ibid.

on the condition in which [he] placed them, by [his] former investigation."[69] Reading Shaw's remarks, it is easy to sense his frustration at the situation. The offices he was sent to ascertain, decide, confirm, count, and organize turned out to be a mess of competing claims over increasingly minute portions of the rights and territories originally assigned to the office. Over time, successive generations of each family had partitioned the office—and more importantly, the land grant attached to it—into successively smaller and smaller pieces, such that even in his capacity as administrator, Shaw could not effectively separate the wheat from the chaff amidst all of the competing claims. This confusion, however, had caused the Company a bit of trouble and needed immediate attention.

In forwarding Shaw's statement to his superior, Pelly referred to the predicament outlined in Shaw's letter as an "embarrassing question" and regretted his own inability to oversee the solution, given that he had been recently called away to the Northern Konkan on urgent business.[70] The government at Bombay took up the problem in stride, responding to the letter by pointing out that despite Shaw's detailed analysis of the situation, the enclosure "[did] not contain the information called for in the 2nd para[graph] of Mr. Bax's" earlier letter requesting information about the officers and appointees in the Konkan.[71] Despite Shaw's efforts to challenge the bureaucracy's status quo by pointing to several flaws in the proposed method of ascertaining and assigning *qāẓī* positions in different districts, the government instead focused on a question of administrative subordination in the guise of epistolary politeness. In truth, the judges in Bombay had no interest in helping Shaw sort through the evidence—and animosity—

[69] Ibid.

[70] Ibid., Letter to the Register of the Sudr Dewanee Adalut, Bombay, No. 174, dated 26 February 1833.

[71] Ibid., Letter from W.E. Frere, Assistant Register, No. 224, dated 14 March 1833.

facing him; they simply wanted an answer to their question and to have the problem of competing claims go away. Shaw could not abide their request.

The problems in Ratnagiri first surfaced the previous year when the judge issued a notification asking all acting *qāẓī*s to visit the district headquarters for the purpose of having their offices confirmed by the Company. Despite Shaw's request that *qāẓī*s acting in several villages across the Southern Konkan district "should attend, substantiate their claims and take their sunnuds [*sanad*s]," many of the *qāẓī*s in the region failed to follow through.[72] Qāẓī Shumsoodeen [Shams-ud-dīn] was absent from Kurdhe when the notification went out and therefore could not attend, for instance.[73] In a petition from June of 1832, the "principal Moosulmans" of the village complained to the judge that Shumsoodeen's rival, Qāẓī Booranoodeen [Burhān-ud-dīn], "took advantage of this circumstance to send in a false report to Rutnagerry asserting a claim to the Kazeeship of Kurdee."[74] Owing to their affinities for Shumsoodeen and to the fact that Booranoodeen had no connection to their village, the petitioners requested that the government "issue an order for continuing the Kazeeship to Shumsoodeen according to previous usage."[75] The petitioners apparently did not agree with the decision that had been made relative to the *qāẓī* for their village and therefore wanted the government to appoint their candidate instead.

In response to the petition, Shaw informed the government that Shumsoodeen neither attended in person nor sent an authorized agent to demonstrate his claim to the office in question. Then, upon further inquiry into the situation, Shaw ascertained that by regarding his

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[72] MSA, Judicial Department Proceedings, 1832, Vol. 4/247: Letter from Shaw, Assistant Judge at Ratnagiri, No. 243, dated 1 August 1832.

[73] Ibid., "Substance of a Petition form the Undersigned principal Moosulmans under the Jurisdiction of Kazee Shumsoodeen Wullud Kazee Moohummud…dated 25 June 1832."

[74] Ibid.

[75] Ibid.

qāḍīship as property, Shumsoodeen was not only in the habit of residing elsewhere but had grown accustomed to having it "managed by the hands of agents."[76] Earlier governments might have tolerated Shumsoodeen's absenteeism and his sense of entitlement, but Shaw declined to find any reason to reverse his earlier decision in the matter. Had the *qāẓī* sent an agent to represent (and to substantiate) his claim at the proper time, the government might have acquiesced in recognizing his appointment, but this was not the case.

Shumsoodeen's supporters were not the only residents to petition the government relative to this appointment. A second group of petitioners, in fact, objected to Booranoodeen's appointment for another reason. As their petition laid out, when the government notification went out requesting all acting *qāẓī*s to appear before the court at Ratnagiri, their candidate, Qāḍī Ḥusain went before the court to prove his claim against that of Booranoodeen.[77] Owing to the apparent conflict between the two candidates, Shaw referred the matter to the *muftī* of the local court, who then decided on the basis of the evidence provided who was the more suitable candidate for the office. The *muftī*, however, did not have the opportunity to make a fair assessment of the two competing claims, the petitioners averred, and under the influence of the court's record-keeper, Muḥammad Ibrahīm, the *muftī* ruled in the favor of Qāḍī Booranoodeen.[78] In his defense, Qāḍī Ḥusain argued before Shaw that the decision was based on partial information, but his entreaties were not powerful enough to overcome the *muftī*'s biased report.

In light of these events, the petitioners wrote to the government in Bombay assuring it that Qāḍī Ḥusain "is perfectly acquainted with the business, and has an ancient hereditary right

[76] Ibid., Letter from Shaw, Assistant Judge at Ratnagiri, No. 243, dated 1 August 1832.

[77] Ibid., "Substance of a Petition from the undersigned principle Musulmans…under the jurisdiction of Kazee Hooseein Wullud Kazee Kootbooddin Mooroodkur.…Dated 19 June 1832."

[78] Ibid.

to the situation."[79] When the government at Bombay forwarded this petition to the judge at Ratnagiri, Shaw had little to say with respect to the allegations brought against the *muftī* and his alleged conspirator in the court, Muḥammad Ibrahīm. "I am not aware of any just cause of complaint," Shaw wrote, "against either the Udalut Mooftee or Mahomed Ibrahim Purkar."[80] Owing to the need to find an "amicable" solution to the conflict, Shaw reasoned that Booranoodeen presented a stronger case for his claim to the office in question, but his involvement did not end there.[81] Because the government regulation did not seem to support "a divided jurisdiction with[in] a single village," Shaw had already granted Qāẓī Ḥusain jurisdiction over two other villages, "which [he] considered a very handsome compensation for the loss of his divide of the shares."[82] Shaw added to this explanation that he thought the residents' petition had been "got up by Cazee Hoosain with fraudulent intentions," adding, "He has not made it in his own name as he would then have been obliged in Common honor, to have mentioned the handsome compensation he had received, whereas in making it in the names of others he anticipated the chance of being able to eject Cazee Boorawoodin."[83] After receiving Shaw's response, the government requested further input from the judges of the Ṣadr ʿAdālat for the purpose of ascertaining "under what circumstances the Asst. Judge at the detached station [i.e., Shaw] has acted in displacing and appointing Qazees and why the Judge of the Konkan has not restrained him."[84] The secretary then added, at the close of his comment, that neither officer

[79] Ibid.

[80] Ibid., Letter from Shaw, No. 244, dated 14 August 1832.

[81] Ibid.

[82] Ibid.

[83] Ibid.

[84] Ibid., Judicial Department Notes. No. 36.

seemed to be aware of the "expedience of Regulation XXVI of 1827 which should be brought to their notice."[85] What the secretary meant by this remark is unclear, as the motivation for issuing the initial notification requesting the attendance of the local *qāẓī*s at court proceeded from the officers' interest in bringing local practice in line with the regulation's terms, but as Shaw's complaints suggest, doing so in response to local circumstances and well-established practices was challenging, to say the least.

This government communication put Shaw's investigation into the appointment of *qāẓī*s in his district on hold, pending further inquiry into the various claims, but this suspension did not prevent other inhabitants of the district from presenting similar complaints. In July, Qāẓī Shaboodeen [Shihāb-ud-dīn] wrote to assert his hereditary claim to the qāẓīship in Rājapūr and to explain his absence during the first inquiry at Ratnagiri.[86] When the *qāẓī*s of the district were first summoned to appear before the court, he was ill and sent a "wukeel (*vakīl,* agent) with full powers" in his stead, but the court did not accept his agent as legitimate.[87] Upon regaining his health, the *qāẓī* went to the court himself where he learned that one "Goolam Ḥusain" [Ġẖulām Ḥusain] of Jaitāpur, who "without having any claim, made false representation" and was appointed to the office at Rajapur.[88] Having been turned away from the court at Ratnagiri for the purpose of having his claim recognized, Shaboodeen now requested the intercession of the Governor in Council. The government's helpful advice to Shaboodeen was to lay his claim

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[85] Ibid.

[86] Ibid., "Substance of a Petition from Kazee Shaboodeen Wullud Kazee Adam Hukeem, inhabitant of Rajapoor, Talooka Vizeydroog, Zillah Concan to the Right Hon'ble Governor in Council, Dated 9th July 1832."

[87] Ibid.

[88] Ibid.

before the Ṣadr ʿAdālat or the visiting Judicial Commissioner.[89] The government could not intervene in such matters.

Qāẓī Yunus (Yūnas) proffered a similar claim to villages in the Vijaydrug district which had belonged to his family for generations. The former (Maratha) government had bestowed half the hereditary district upon his father in 1807, and the petitioner had "continued to do so since the establishment of the British Government."[90] When the government's "summons" relative to the changes ushered in by the passing of Regulation XXVI of 1827 arrived, Qāẓī Yunus "produced proofs of [his] having held the situation," but the judge "without attending to [Yunus's] testimony, gave the qāẓīship of half of the mahal [*maḥall*, district, area] to Kazee Isoob [Yūsuf] and that of the other half to [his] brother Kazee Moohummud [Muḥammad]."[91] The "latter" appointment "was proper," the petitioner reasoned, "but the former was not"; the judge had given Qazī Yunus's share of the family claim to an undeserving claimant. In conclusion, then, Qāẓī Yunus requested the government give him the share it had already bestowed upon Yusuf. Again, as in the case Shaboodeen presented, the government referred the petitioner to the Ṣadr Court for a decision.[92] Naturally, this response did not improve the *qāẓī*s' general disapproval of the way appointments had been meted out in the district.

The following year, the government received nearly a dozen petitions relative to these particular offices in the Ratnagiri district. Qāẓī Yusuf (son of Faqīr Aḥmad) sent a petition claiming all the papers relative to his position as the *qāẓī* of Lānji in the Satāvli Turuf (*taʿarruf*)

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[89] Ibid., Judicial Department Minute, dated 17 August 1832.

[90] Ibid., "Subatnace of a Petition from Kazee Inoosbin Kazee Ahmed Kazee of turruf Sowdul Talooka Fizeedroog, inhabitant of Korey in the same turruf Talooka Zillah Concan to the Right Hon'ble the Governor in Council, Dated 7th July 1832."

[91] Ibid.

[92] Ibid., Judicial Department Minute, dated 9 August 1832.

were destroyed when fire consumed his house.[93] Mahomed Zaeer [Ẓahīr] son of Qāḍī Shahboodeen of Dhamanse along with Qāḍī ʿAbdool Wahab claimed Ismaʿil, son of Qāsim, who was married to the daughter of the *muftī* of the court brought charges against them "before the acting Assistant Judge," which caused them to lose their positions. They "petitioned the sessions judge but got no redress," and therefore sought the government's intercession on their behalf.[94] Qāḍī Ibrahim son of Qāḍī Ḥusain from Sagave, went to the Zillah Court in response to the notification sent on January 2, 1833 "ordering all cazees who were conducting Cazee's duties to appear at Rutnagurry," but after going, "the Zillah Judge would not give [him] the Cazeeship," so he also requested the aid of the Governor in Council.[95] Qāḍī Ismaʿīl, son of Qāḍī Muḥammad of Aukrey in Kelshī district, claimed his family held the local qāḍīship "from former generations" and that "on the introduction of the British Rule a sunud was issued to [his] father for that office," but recently, a certain Qāḍī ʿUmar had presented himself to the court at Ratnagiri and made false claims to the office belonging to Qāḍī Ismaʿīl.[96] "Without any inquiry being made he was made Cazee in the [those] places," Qāḍī Ismaʿīl continued.[97] Despite presenting his own claims before the court at Ratnagiri, though, Qāḍī Ismaʿīl could not regain control of the qāḍīship belonging to him and his family.[98] The judge declared he would inquire into the matter

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[93] MSA, Judicial Department Proceedings, 1833, Vol. 6 / 271: "Substance of a petition from Cazee Yusoof bin Cazee Fukeer Ahmed of Satowley Turuf Lanje - Talooka Rutnagurry to the Right Hon'ble the Governor in Council dated 15th and received 19th Feb. 1833."

[94] Ibid.

[95] Ibid., "Substance of a Petition from Cazee Ibrahim [son] of Cazee Hussein of Sagave, Talooka Fzeydroog[Vijaydroog], Zillah Concan, to the Right Hon'ble the Governor in Council. Dated 15th Received 19th February 1833."

[96] Ibid., "Substance of a Petition from Cazee Ismaeel son of Cazee Mahamood of Kusbah Aukrey Turuf Calsey [Kelshi] Talooka Sindoodrag Zillah Concan. Dated 14 and Received 22 February 1833."

[97] Ibid.

[98] Ibid.

at Bombay and left Qāẓī Ismaʿīl in the lurch. Writing to the Governor in Council at Bombay, Qāẓī Ismaʿīl now hoped that "the management of the office of Cazee" be returned to him "after examining the papers relating thereto and taking proofs and evidences respecting it."[99] In yet another petition, Qāẓī Yunus claimed entitlement to the qāẓīship for forty villages in Soundale, which had belonged to his family for generations.[100] He went to Ratnagiri "with [his] kinsman," but upon arrival, "was told that letters had been sent regarding this to Bombay and that on an answer coming[,] things would be ordered accordingly." He therefore prayed that the judge would soon be ordered to restore him to his rightful place.[101]

The government in Bombay responded to these requests by informing the petitioners that their concerns were under consideration, but the slow response to these petitions did not dissuade others from sending similar requests.[102] In addition to the aforementioned petitions, the government received six additional petitions, all making statements similar to those presented above. In some cases, the petitioners complained against a usurper who had undeservedly received the appointment to which they were entitled. In others, they wrote to explain their predicaments in order to win the government's favor, but all of them presented some claim to the qāẓīship in districts and villages in the region. Frustrated by his inability to act and overwhelmed by the number of competing claims and overlapping and subdivided jurisdictions, J.A. Shaw, judge at the detached station at Ratnagiri, had no choice but to pen the diatribe that opened this section.

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[99] Ibid.

[100] Ibid., "Substance of Petition from Cazee Eneus bin Cazee Mukroodeen[?] of Karee turuf Soundeel [Soundale]. Talooka Viserdroop [Vijaydroog], Zillah Concan to the Governor in Council Dated 14 and Received 19 February 1833."

[101] Ibid.

[102] Ibid., Judicial Department Minute dated 21 March 1833.

Indeed, after these exchanges, it would appear that the government's efforts to conduct an inquiry into the operation of the *qāẓī*'s office in the coastal region had failed to yield the desired results. Rather than producing an ordered system of appointments, the government inquiry into and attempt to reconfirm appointments caused nothing more than anxiety among the local inhabitants, their *qāẓī*s, and the judges attempting to implement government orders. Disputes among local claimants, their kinsmen, and supporters continued for the next several years,[103] and the effects of Shaw's failed inquiry lingered in the memory of colonial administrators for decades to come.[104] The process of administering the *qāẓī*s of the Bombay Presidency according to the bureaucratic principles of Company governance was much more difficult than the ordered language of the regulation at first made it seem.

Exercising administrative regularity

The conflicts and complications that arose in places like Ratnagiri following the assistant judge's attempts to develop a comprehensive view of the office did not prevent the government from simultaneously working to regularize its procedures of appointment. These procedures allowed Company scribes to devise and employ formulaic responses to the various forms of correspondence related to the appointment and administration of *qāẓī*s and to create uniform procedures accordingly.[105] In this way, communication pertaining to *qāẓī*s also followed the

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[103] Discussion of these appointments disappears from the proceedings in 1834 and the volume pertaining to 1835 is missing from the archive. The disputes between different *qāẓī*s return to the record in 1836 and many of the applicants are subsequently appointed in 1838. I consider some of these disputes below.

[104] MSA, Judicial Department Proceedings, 1855, Vol. 21: Letter from Assistant Judge Tucker, No. 636, dated 4 July 1854.

[105] I consider these issues in greater detail in Chapter Three. See also Martin Moir, "Kaghazi Raj: Notes on the Documentary Basis of Company Rule: 1783–1858," *Indo-British Review* 21, no. 2 (1983): 185–93; Miles Ogborn, *Indian Ink: Script and Print in the Making of the English East India Company* (Chicago: University of Chicago Press, 2007); Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India*, South Asia across the Disciplines (Chicago: The University of Chicago Press, 2012), among others.

expectations for other Company affairs. Analyzing the patterned routines of Company correspondence across the fifty years of material collated within the Bombay Presidency archives not only demonstrates the inner workings of Company bureaucracy but also illustrates the extent to which the appointment of *qāẓī*s became mechanized and bureaucratized at this time.

When a vacancy emerged following the death—or occasionally the retirement—of an incumbent *qāẓī*, the district judge would send notification of the vacancy along with his recommendation for appointing a replacement to the register of the Ṣadr Dīwānī ʿAdalat in Bombay. For example, when Muḥammad Hāshim, the *qāẓī* at Trimbak died in 1844, Judge Hunter sent a recommendation to the court at Bombay saying:

> Sir,
>
> I have the honor to recommend Moulavi Mahomed Hushum wd. Mahomed Hoossein to fill the Office of Cazee of the Trimbuck Purgunna vacated by the death of Mahomed Hushun Wd. Mahomed Kassum, and to receive a Sunnud of appointment from the Hon'ble the Governor in Council. He passed an examination on the 25th Ultimo, and was found duly qualified.
>
> Signed / Hunter, Judge
>
> Ahmednuggur, Court of Adawlut, 22nd April 1844[106]

Following the regulation, it was incumbent upon the district judge to provide a suitable candidate for the position. Here, Hunter ensures the candidate's suitability by mentioning the exam he passed the previous month. There are other instances in which district judges also cite the candidate's familial ties to the position, or to his previous service to the Company, but in most cases, reference to the *qāẓī*'s exam was sufficient to satisfy the ṣadr judges of the candidate's qualifications.

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[106] MSA, Judicial Department Proceedings, 1844, Vol. 24/973: Letter from Hunter, No. 268, dated 22 April 1844.

Upon receipt, then, Mr. Harrison, register for the court, would transcribe a copy of Hunter's message to be delivered to the Governor in Council (via the Secretary to Government in the Judicial Department) and append to it the following message expressing the *ṣadr* judges' support for the district judge's original suggestion. He would write:

> Sir,
>
> I have the honor by direction of the Judges to forward for the consideration and orders of the Hon'ble the Governor in Council the accompanying copy of a letter from the Judge of Ahmednuggur No. 268 dated the 22nd Ultimo, recommending Moulvee Mahomed Hushun Wulud Mahomed Hoossain to fill the office of Cazee of the Purgunna of Trimbuck in that Zillah.
>
> I have the honor to be &co., [Signed] Harrison[107]

Upon receiving this information, the Secretary to the Government in the Judicial Department would approve the recommendation and initiate the next steps in the process, which he would outline in his reply. For this example, the government secretary's response read:

> Sir,
>
> I am directed to acknowledge the receipt of your letter of the 6th Inst. No. 1004, with its enclosure from the Judge of Ahmednuggur, recommending the appointment of Moulve Mahmed Hushum Wulud Mahomed Hossein to the office of Cazee of the Pergunna of Trimbuck in that Zillah.
>
> 2nd. In reply I am instructed to inform you that the H.G.C [Honorable Governor in Council] is pleased to approve of this measure and to request that a Sunnud of appointment, prepared in conformity with Regulation XXVI of 1827, on a stamped papers of the value of Rs. 10, may be forwarded to Gov't for signature, and the amount recovered from the Cazee and paid into the treasury of the Collectorate of Ahmednuggur.
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> Signed / Bombay Castle, 21st May 1844[108]

The first paragraph of the response summarizes the information contained in the earlier

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[107] Ibid., Letter from Harrison, No. 1001, dated 16 May 1844.

[108] Ibid., Letter to the Register of the SDA, No. 1374, dated 21 May 1844.

correspondence and affirms the recommendation. The second paragraph then outlines the next steps in the process: preparation of the *qāẓī*'s *sanad* according to dictates of Regulation XXVI of 1827. In addition to notifying the judges of the SDA of this decision, the Secretary also sent copies of the foregoing letter to the Civil Auditor, the Accountant General, and the Collector at Aḥmednagar to ensure that all of the financial departments were informed for the purposes of ensuring the new *qāẓī*'s *sanad* was issued according to the proper financial procedures.[109] In some instances, the government sent correspondence directly to the stamp department as well, asking the stamp superintendent to prepare the appropriate paper.[110] Such oversight reflected the elaborate procedure for issuing new *sanad*s. The government issued these documents on stamp paper worth ten rupees each, for which the *qāẓī*s themselves had to pay, but because the government issued its *sanad*s—with the signature of the Governor in Council—from Bombay, it was necessary to notify the local collectors about the amount owed in order to keep the financial records up to date, and to ensure there was no malfeasance along the way.

Once the Governor in Council agreed to the appointment, the judges of the SDA prepared a *sanad* according to the format outlined in the regulation, which in this instance was addressed to Muḥammad Hāshim and read (in English):

> In conformity with the provisions of the Regulation XXVI of 1827, you, Mahomed Hushum wd. Mahomed Hoossun, are hereby appointed to the office of Cazee for Purgunna of Trimbuck in the Ahmednuggur Zillah. You will not be liable to be removed from your situation, while you discharge your duty with zeal and integrity, under the rules contained in the Regulations which now are, or hereafter may be in force.
>
> By order of the R[ight] H[onorable] the Gov[erno]r in Council.

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[109] Ibid. These copies were No. 1375 (to the Civil Auditor), No. 1376 (to the Accountant General), and No. 1374 (to the Collector of Ahmednuggur).

[110] See, e.g., MSA, Judicial Department Proceedings, 1837, Vol. 1/405, No. 27 of 1837, Appointment of Fukeer Mahomed Sar Mahomed as Cazee of the Town and Purgunnah of Gogo.

Signed/ W. Escombe, Sec'y to Gov't in the J.D.[111]

*Sanad*s copied into the departments proceedings volumes only transcribe the English text, but the actual *sanad*s issued by the Company were multilingual, the ten rupee stamp was embossed at the top of the page, and the Company's red wax seal was also included at the top.[112] From the extant examples, it is possible to see that the first language at the top of the *sanad* was English, followed by a translation of the text into Persian, after which a third version of statement appeared in the local vernacular—Gujarati, Marathi, or Konkani.[113] Multilingualism allowed the Company to create documents that were accessible to all of the parties involved, and to assert its authority along multiple planes.

After being prepared by the judges of the SDA, the *sanad* went to the Governor in Council for his signature, after which the Secretary to the Government returned it with signature to the register of the SDA, saying:

> Sir,
>
> In acknowledging the receipt of your letter No. 1790, I am directed by the Hon'ble the Governor in Council to return the sunnud which accompanied it, appointing Mahomed Huchum Wd. Mahomed Hoossein to the office of Cazee of the Purgunna of Trimbuck in the Ahmednuggur Zillah, duly signed and to request that the Judges of the Sudder Dewanee Adawlut will be pleased to cause the same to be delivered to the Cazee.

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[111] Ibid., Copy of the *sanad* for Mahomed Hashim, ND.

[112] Such details are not described in the proceedings volumes but *sanad*s returned to Bombay by the district judges for the purposes of being cancelled were occasionally bound with the proceedings. Because the paper on which the government issued the *sanad*s had dimensions wider than the pages bound in the proceedings volumes, many of the *sanad*s have since been folded, laminated, and trimmed to fit within these volumes, but the ones that are available in the volumes, reveal the Company's pragmatic embrace of multilingualism.

[113] The Persian text for a *sanad* issued to Shaikh ʿAzmatullah in January 1851 read:
شریعت نشان شیخ عظمت اللّٰه ولد شیخ نصیر اللّٰه ساکن قصبہ امرٹھہ معلوم نمایند کہ بموجب قانون بیست و ششم سنہ ۱۸۲۷ گورنر کونسل آن شریعت پناہ را بخدمت قضائی قصبہ امرٹھہ شہر و پرگنہ آن معین مقرر فرموده و مادامیکہ بہ نیک نظری و نیک عملی بدیانت و امانت بموجب قانون عمل خواہند کرد لایق عزل از آن خدمت نخواہند بود و این سند ہم بحال و قائیم خواہند ماند و این سند از حکم گورنر کونسل نوشتہ شد [فی تاریخ] ۲۷ جانوری سنہ ۱۸۵۱ عیسوی۔
(MSA, Judicial Department Proceedings, 1853, Vol. 20)

Signed/ Bombay Castle

16th August 1844[114]

From here, the judges of the SDA forwarded the *sanad*, written on ten-rupee stamp paper, and certified by the signature of the Governor in Council, to the district judge who would pass it to the *qāẓī*—ensuring that he reimbursed the government for the cost of the stamp paper first. The cycle of correspondence was now complete; the judge fulfilled his obligation to provide a new *qāẓī* for the vacancy created by the death of the incumbent, and business continued.

The administrative protocol for appointing a new *qāẓī* was necessarily detailed and required input from a range of personnel including the local district judge who liaised between the candidate and the government, the several judges of the Ṣadr Dīwānī ʿAdālat, the register to the court, the Secretary to Government for the Judicial Department, the Governor in Council, the Civil Auditor, the Accountant General, and the local collector. Correspondence circulated among these officers in an orderly, routinized, and incremental manner. The judges of the SDA could not, for instance, approve a candidate before his being selected and vetted by the local judge. Likewise, the local judge could not appoint a new candidate without receiving approval from the government. The *sanad* could not be issued without involving the judges who were responsible for having it drafted, or without the cooperation of the stamp collector who supplied the court with the necessary piece of stamped paper. In this way, the appointment of *qāẓī*s became a pan-governmental affair, confined neither to a single department nor to a single set of administrators. Rather, the process of appointment brought the office of the *qāẓī* into contact with the larger structures of government. Regularity in the process of appointment did not,

[114] MSA, Judicial Department Proceedings, 1844, Vol. 24/973: Judicial Department letter No. 2290, dated 14 August 1844.

however, provide the Company with an over-arching view of the office as it functioned in the Presidency. Accumulating this information would require several rounds of additional inquiry.

Toward an accurate survey

In its attempts to develop a systematic understanding of the office of the *qāẓī* as it functioned in the Bombay Presidency, the Company focused on two aspects: preventing the interference of unauthorized individuals and regulating the *qāẓī*s' financial affairs. Under previous governments, *qāẓī*s received remuneration in the form of *madad-i maʿāsh* (subsistence) grants and fees paid to them by individual clients or litigants.[115] The Company's interest in detaching the *qāẓī*'s station from hereditary land grants limited the extent to which appointees could benefit from existing grants-in-aid, and as the following chapter outlines, the Company's attempts to circumscribe the *qāẓī*s' documentary practices cut into this latter source of income as well.[116] Part of the administration's work, then, required converting traditional emoluments and entitlements into professional payments in the form of salaries, but converting existing incomes into new forms of payment monitored and managed by the Company necessitated—first and foremost—identifying and understanding the existing payments.

Requests from individual *qāẓī*s regarding personal payments and entitlements reached the Judicial Department in Bombay periodically, but the first systematic attempt to survey existing

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[115] On these *madad-i maʿāsh* grants, see Richard Maxwell Eaton, *The Rise of Islam and the Bengal Frontier, 1204-1760* (Berkeley: University of California Press, 1993), 263–4; J. F. Richards, *The Mughal Empire*, The New Cambridge History of India, I, 5 (Cambridge ; New York, NY: Cambridge University Press, 1993), 194; and M.P. Singh, *Town, Market, Mint, and Port in the Mughal Empire, 1556-1707: An Administrative-Cum-Economic Study* (New Delhi: Adam Publishers & Distributors, 1985), 95. References to the *qāẓī*'s fees also surfaced in earlier (more critical) reports on the *qāẓī*'s office in references to *mahrāna* and *nikāḥāna* in Chapter One. The fee structure for paying *qāẓī*s receives further attention in Chapter Three.

[116] See Chapter Three for a more detailed account of this transition.

emoluments came in 1843.[117] Following the emergence of a general consensus among the judges of the Ṣadr Dīwānī ʿAdālat not to treat the office of the *qāẓī* as a hereditary position, Secretary Escombe requested information from the judges in various districts regarding the compensation *qāẓī*s in their districts received.[118] In response, judges from nearly all of the districts sent tabulated accounts of the income earned by *qāẓī*s for 1843, comparing these figures to those from 1833.[119] The results, as compiled by the register, reveal noticeable changes in certain districts (e.g., in Ratnagiri) but surprising consistency across the presidency.[120] In total, the sums the judges returned show payments of Rs. 43,111 in cash, kind, and entitlements in 1833 and a total of Rs. 46,167 for 1843,[121] but despite the individual judges' abilities to collate and submit this information, the tabulated reports also indicate several places in which data collection was interrupted or incomplete.

The report submitted by the Judge at Aḥmedābād, for instance, provides individual remarks for nearly all of the entries. Overall, the incomes of the *qāẓī*s in Ahmedabad decreased between 1833 and 1843 by nearly two thousand rupees, down to Rs. 2,455 for the district's sixteen *qāẓī*s.[122] The most prevalent cause for the reduction in income stemmed from changes in the types of documents acting *qāẓī*s could authenticate under the government's provisions.[123] As a result of these changes, the amount Muḥammad Ḥusain-ud-dīn, *qāẓī* for the court at

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[117] MSA, Judicial Department Proceedings, 1844, Vol. No. 25/947: No. 549.

[118] Ibid., "List of Returns of the allowances of Cazees and other Mahomedan Officers," dated 5 June 1844.

[119] Ibid.

[120] Ibid.

[121] Ibid.

[122] Ibid., "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Ahmedabad in the years 1833 and 1843."

[123] Ibid. (These changes receive more attention in the following chapter.)

Ahmedabad, earned in 1843 decreased by nearly nine hundred rupees.[124] Sayyid Muḥammad, *qāẓī* for Dholka and its villages, had his income nearly halved, as a result of this procedural change.[125] Qāẓī Muḥammad Ashraf from Dhundooka also lost a considerable portion of his income, which dropped from 194 rupees and 8 annas in 1833 to 100 rupees, 8 annas, and 6 pie in 1843. In total, of the sixteen positions included in the report, eleven faced a decrease in income owing to changes in the procedures for authenticating and registering documents and deeds. By way of contrast, however, ʿAbdullah Amīr-ud-dīn's income as *qāẓī* at Thasra increased between the two years surveyed "owing," the remarks read, "to more Wukalutnamas and Mookhtyrnamas having been authenticated in the year 1843."[126] Changes affecting business in one location—even within the same district—did not affect all office-holders equally, it would seem.

The report sent from Ahmedabad was among the most detailed reports, as it included the name of each *qāẓī* along with details about changes in his income, but despite this level of detail, some pieces of the puzzle were missing. Though the judge listed sixteen offices, among the sixteen included, two offices were vacant. One of the vacancies, the report noted, had "not been filled up since the year 1838 when the late Cauzee died."[127] Another office considered "vacant" in 1843, however, indicated a substantial decrease in income amounting to 415 rupees owing to changes in collecting fees for sealing documents and a transfer of the responsibility for stamping weights to the Collector but did not indicate how information relative to the decrease came to

[124] Ibid. In the "Remarks" column, the scribe specified "This decrease is partly owing to Wukalutnamas and the Mookhtyrnamas being no longer required to be authenticated by the Cauzee, and partly to fewer deeds being drawn out and authenticated by him inconsequence of their having been registered in the Adalut."

[125] Ibid.

[126] Ibid.

[127] Ibid.

light owing to the vacancy.[128] Information gaps also appear in the context of three other positions. Qāẓī Sayyid Ḥamīd Ṣāḥib, the late *qāẓī* at Ranpūr, apparently did not keep records in 1833, therefore making comparison to his earlier income impossible.[129] Likewise, Muḥammad ʿAlī of Kapadvanj also did not keep records in 1833.[130] For Muḥammad Ḡẖulām Riẓwā, whose income was also missing for 1833, the situation was slightly different: His account books were stolen when his house was burgled.[131] Thus, despite the level of detail provided elsewhere in the account from Ahmedabad, gaps and absences were common as well.

Compared to the report submitted by the judge at Ahmedabad, the report compiled by the Judge at Surat left much to be desired. To begin with, the government at Bombay rejected the first report submitted by the Collector at Surat, explaining, as the Secretary to Government in the Judicial Department wrote that:

> [F]rom statement No. 2, the allowances of the Cazee of Surat would appear to be nothing, whereas, in a report submitted to Gov't by Mr. Andrews, the Judge of Surat, under date the 28th December 1842, they were stated to be Rs. 450 per annum; and [requested] that the Judges of the Suddur Adalut will be pleased to explain this apparent discrepancy.[132]

In his reply, the register explained to the secretary that the Judge at Surat mis-reported the information:

> [S]uch allowances only were included as were received by the Cazee from Government. No account being therein taken of his fees from Marriages.
>
> This mode of frame [for] the document in question being incorrect as it was intended that the statement in question should exhibit all the allowances of Cazees and of other Mahomedan officers from whatever source derived, the court directed the preparation of a

[128] Ibid.

[129] Ibid.

[130] Ibid.

[131] Ibid.

[132] Ibid., Letter to the Register of the SDA, No. 2001, Dated 15 July 1844.

revised list.

> Of this revised list which has now been received from the Zillah Judge, I am instructed to transmit a copy for submission to the Hon'ble the Governor in Council.[133]

This explanation and the amended report apparently satisfied the government's needs; the new information was subsequently appended to the initial report and incorporated into the summary. The revised report noted that the principal cause for the decrease in the *qāẓī*s' incomes had to do with an adjustment in the exchange rates between the Company's rupees and those of Bharuch and also mentioned the Company's decision in 1841 to discontinue the practice of presenting the *qāẓī* of Surat with a pair of honorary shawls valued at three hundred rupees as one of the causes of the decrease.[134] Thus, across the district, the *qāẓī*s' incomes went from Rs. 561 in 1833 to Rs. 247 in 1843.[135] Divided among the eight office-holders, the average *qāẓī*'s income thus amounted to roughly thirty rupees per annum, which was not very much, even in 1843, and the majority of the group's income went to the *qāẓī* of Surat; the other *qāẓī*s earned closer to ten rupees per annum.[136] Furthermore, despite the government's request for additional information, the report did not satisfy all of the government's questions about the district's *qāẓī*s: With the exception of the *qāẓī* for the city of Surat, the remaining *qāẓī*s were still listed as "Names Unknown" in the revised report.[137] Such infelicitous omissions perhaps reflect the height of bureaucratization in which officers are known by their posts rather than by their names, but in all likelihood, the lack of detail reflected carelessness in the presentation of information, rather than a truly

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[133] Ibid., Letter to the Secretary to Government in the Judicial Department, No. 2303, Dated 5 November 1844.

[134] Ibid., "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Surat in the years 1833 and 1843."

[135] Ibid.

[136] Ibid.

[137] Ibid.

bureaucratic ethos.

Like their peers in Surat, the *qāẓī*s of Bharuch also witnessed a decrease in income, but the decrease was minor (Rs. 54) and stemmed from changes in the exchange rate noted above. For this report, all of the names of the eight *qāẓī*s and *k̲h̲atīb*s were marked "unknown," even though the Company had a long-standing relationship with office holders in the district, and despite the fact that the names were supplied for all of the other districts included in the report.[138] The report compiled at the Konkan Court of ʿAdālat, for instance, named forty-three *qāẓī*s who earned fifteen hundred rupees in 1833 and nineteen hundred in 1843, who earned an average income of forty-four rupees per annum.[139] In contrast to the disparities noted in the Surat district between the urban and rural the office holders' incomes, *qāẓī*s in the Konkan all earned relatively the same amount. By comparison, the report from Ahmednagar outlined the incomes of nearly sixty *qāẓī*s and "moolnas" totaling Rs. 10,034 in 1833 and Rs. 12,285 in 1843.[140] Similarly, the register for the court at the detached station at Ratnagiri reported on the income of fifteen *qāẓī*s whose individual incomes ranged from less than ten to nearly one-thousand rupees per annum.[141] In the decade covered in the report, the overall income among *qāẓī*s increased by over two-thousand rupees but these numbers do not provide the full picture; several offices reported no income for 1833, owing perhaps to the competition and confusion in

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[138] Ibid., "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Broach in the year 1833 and 1844."

[139] Ibid., "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Conkun Adawlut in the year 1833 and 1844…forwarded agreeably to the Court's Circular No. 1558 dated 10th August 1843."

[140] Ibid. "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Ahmednuggur in the years 1833 and 1843." (The detailed report does not tally these figures, but the summary statement produced at Bombay provides these numbers.)

[141] Ibid., "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Conkan for the Detached Station at Rutnagherry, in the year 1833 and 1843."

the district noted in the previous section.[142] Judge John Warden reported income amounting to Rs. 624 for the ten *qāẓī*s working in Pune for 1843, down from Rs. 769 in 1833; and William Birdwood, Judge and Session Judge at Sholapur, detailed the income of twenty-one individuals, among them *qāẓī*s and law officers, who collectively earned Rs. 1,964 in 1833, which dropped to Rs. 1,736 in 1843.[143] When the government at Bombay compiled the data it received from the districts, it also included information from other regions, including Dharwar, Khandesh, and Belgaum, though it did not provide the detailed reports from these locations.

Setting aside some of the absences and oversights outlined above, these data, collated a decade and a half after the regulation went into effect, offer the most comprehensive overview of the qāẓīships operating in the Presidency. But aside from enumerating some of the annual salaries and providing a list of office holders (for most districts, that is), the data do not provide much information about the *qāẓī*s themselves, their backgrounds, or relations to the Company. Rather, the picture that emerges from these details lays bare the administrative *mentalité* of the British officials engaged in regulating these offices. Accounting for the appointments in this manner—that is, breaking down the monies earned into rupees, annas, and pies—provided the government of Bombay with a sense of control over the system. Furthermore, the fact that incomes in general declined across the ten-year span captured in the report affirmed the Company's interest in economizing; controlling the incomes of native agents under their employ was a means of controlling the subcontinent. Yet as the controversies described below suggest, administrative reports like these rarely captured the nuance of how the system operated in

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[142] Ibid.

[143] Ibid., "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Poona in the years 1833 and 1843," and "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Sholapoor in the years 1833 and 1843."

practice.

Monitoring qualifications

Along with monitoring the money *qāẓī*s received, the Company also wanted to ensure that individuals appointed to the office were appropriately qualified. In 1850, the judicial department decided it was time to crack down on renegade *qāẓī*s operating without proper licenses from the government and to weed out those *qāẓī*s who were incapable of holding office on account of their failure to pass the requisite examination. Because Regulation XXVI of 1827 permitted *qāẓī*s who were already in office when the regulation took effect to remain in office without being subjected to an examination, the Company lacked a proper system for administering the mandated exam.[144] When vacancies occurred, individual judges were permitted to examine candidates and to issue certificates testifying to their capabilities, but in other instances—particularly those in which family members were permitted to fill vacancies—government officials often chose lenience over exactitude in the conduct of this policy.[145] Officials routinely granted aspiring *qāẓī*s grace periods of sometimes six months, sometimes a year or more, and sometimes until they reached the age of maturity to qualify for the examination.[146] In some cases, candidates returned to the Company at the end of the allotted grace period and sat

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[144] In 1837, for instance, Goolam Moeedeen wrote to the Judicial Department requesting an opportunity to sit the exam, sine he was already performing the work of *qāẓī* and wanted to be properly certified. (MSA, Judicial Department Proceedings, 1837, Vol. 11/405, "Substance of a Petition from Goolam Moeedeen Inhabitant of Fooltumba Zillah Ahmednuggur, to the Right Hon'ble the Governor in Council, Dated in February and received 1st March 1837.")

[145] In 1838, Company officials appointed Lutfoodeen to the office of *qāẓī* in the place of his late father after a significant delay, on account of not being able to locate another candidate with "Superior qualification to Lootfoodeen desirous of obtaining the situation." (MSA, Judicial Department Proceedings, 1838, Vol. 14/458, "General No. 179 of 1838.")

[146] A note from the Acting Judge in Sholapoor, Mr. Tucker, gave aspiring candidates until May of 1854 to pass their examinations, after reporting on the state of affairs in his district in August 1853. (MSA, Judicial Department Proceedings, 1853, Vo. 20, "No. 804 of 1853.")

the exam but in many other cases, the candidate came before the court armed with a litany of excuses justifying his perceived inability to pass. In hotly contested jurisdictions, a *qāẓī*'s qualifications could also become a matter of dispute. Rival factions (and families) frequently touted the education and skills of their preferred candidate over the illicit behavior and intellectual failings of the rival. These negotiations often resulted in lapsed appointments, failed approvals, and in-between statuses that disrupted the smooth bureaucratic processes of the Company's administration. The final section of this chapter considers the effects of rivalries and questions of qualifications on the administration of the office, but first, this section on administration concludes by looking to information gathered in 1850 for the purpose of assessing —and ultimately curtailing—such acts of administrative indecision—particularly with respect to qualifications.

In response to a circular distributed by Mr. Larken, then register to the SDA, in June 1849, judges from ten districts in the Presidency forwarded memoranda explaining the state of the qāẓīships in their respective districts.[147] In his response, Mr. Spens at Ahmedabad declared that twenty-one persons hold the office of *qāẓī* "who are neither proved with sunuds nor have passed the prescribed examination."[148] He further added that at least one "sunudee qāẓī"—i.e., a *qāẓī* who holds a *sanad* from the government—resides "in each of the towns and villages of his Zillah."[149] In his report, Mr. Spens referred to these individuals as "ordained kazees" (in faint homage to church personnel) and noted that they "resist as much as in their power the assumption of office by unauthorized men, but appear to have no remedy except by bringing an

[147] MSA, Judicial Department Proceedings, 1850, Vol. 19: No. 307, "Rules respecting the qualifications of Cazees."

[148] MSA, Judicial Department Proceedings, 1850, Vol. 19: No. 307, "Summary of the replies respecting the qualifications of Kazees in the Zillas of the Bombay Presidency."

[149] Ibid.

action in the Civil Court on each occasion of their rights being usurped."[150] Despite the government's long-standing involvement in the region, it seemed to have only marginal control over who acted as *qāẓī* in the region, despite notable efforts to provide certificates of appointment for the officers it did recognize.

The situation in Surat was not much different. There, too, several *qāẓī*s acted without proper authority. In some localities, the judge noted, the *desā'i*s and *paṭēl*s carried out the *qāẓī*'s responsibilities.[151] Though they donated the income earned from this work to charity, the judge recorded such goings on with disdain. In Tannah, there were seven *qāẓī*s who had neither passed the exam nor been given *sanad*s by the government.[152] The report prepared by Mr. Keays, however, suggested that they were in office before the regulation took effect and were therefore exempt from the examination requirements.[153] If this were in fact the case at the time of this report, then these seven *qāẓī*s had all been in office for over twenty-three years, which seems unlikely, though perhaps not entirely impossible. The judge at Ratnagiri reported that only one *qāẓī* worked without a *sanad* and without having passed the exam, but he was the son of a *nā'ib qāẓī* from a small town nearby and therefore knew the trade, the judge suggested, in an attempt to cover for his lack of certification.[154] Based on this report, it would appear that Shaw's earlier efforts to organize the *qāẓī*s in Ratnagiri were rewarded, as this report places it among the most organized in the presidency.

By way of contrast, the judge at Dharwar, a district on the southeastern, interior edge of

[150] Ibid.

[151] Ibid.

[152] Ibid.

[153] Ibid.

[154] Ibid.

the presidency, mentioned the presence of fifty-eight persons working as *qāẓī*s.[155] Of these fifty-eight, only one individual, the *qāẓī* at Hubli, had passed the exam and was in possession of a *sanad* from the government.[156] Of the remaining fifty-seven, eleven reported that they could pass the examination if and when asked to sit for it. Three said they could qualify in four years' time; two said they appeared for the exam earlier and were rejected; and a whopping forty-one said they were "unable and g[a]ve no hopes of ever being able to pass an examination," the report summarized.[157] The administration of *qāẓī*s in Dharwar was a bit lax, to say the least.

Though specific details about the examination administered to *qāẓī*s are unavailable, a memorandum prepared in 1836 on the general subject of examinations provides information regarding the examination of other native candidates for various government departments.[158] The rules for examination, the report explained, specified that candidates interested in joining the judicial department be examined by a committee of individuals including a European officer, the native judge, the judge's *sheristedar*, a *mamlutdar*, and a "respectable and intelligent native gentleman, not on the Company's service."[159] In order to pass the examination, then, candidates were required (1) "To read such papers Petitions, and proceedings in Criminal & Civil suits as may come before the Court, and the Printed book of Government Regulations with tolerable fluency, explaining clearly the meaning of what they read"; (2) "To be able to take down in writing in a good plain hand any depositions or examinations of witnesses, and any orders, and

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[155] Ibid.

[156] Ibid.

[157] Ibid.

[158] MSA, Judicial Department Proceedings, 1836, Vol. 19/372, "Rules for Committee," No. 379 of the Bombay Sudr Foujdaree Adawlut, dated 19 September 1836.

[159] Ibid.

judgments that may be passed"; (3) "To answer questions on some of the most prominently useful points of the general Regulations"; and (4) to be "of respectable character".[160] In addition to being upstanding individuals, candidates for the exam also had to possess a modicum of legal literacy in their ability to comprehend, summarize, and transcribe information pertaining to individual cases and to the government's regulations. Based on the foregoing approach to the exams for entry into other departments, the *qāẓī*'s examination likely followed a similar format, with necessary modifications in the subject matter and content of the questions asked.

References to examinations in files pertaining to individual *qāẓī*s highlight legal content, personal character, and the importance of Persian (and occasionally Arabic) for the *qāẓī*'s work. When Andrew Jones, judge at Ahmedabad, suggested a new candidate to fill a vacancy at Oomrut, he mentioned specifically that "This individual has passed an examination before the Cazee of this City and 2 others who report that he is well acquainted with the Persian language and is of a respectable family."[161] Respectability and linguistic acumen were two of the most important characteristics considered in the process of assessing a candidate's capabilities, and next to Persian, Arabic was also considered a language of necessity for *qāẓī*s. When an aspiring *qāẓī* from Patoda (Ahmednagar) petitioned the Company for recognition, he wrote "I can read & write Persian & have studied the Mahomedan Law. I am now studying the Arabic languages. As soon as I have completed my study I shall submit to an examination."[162] While the petitioner's

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[160] Ibid.

[161] MSA, Judicial Department Proceedings, 1853, Vol. 20 Letter from A.W. Jones, Esq., No. 71, dated 26 February 1853. Bhavani Raman also notes that forged "character certificates" were cause for concern among Company officials. Raman, *Document Raj*, 41.

[162] MSA, Judicial Department Proceedings, 1850. Vol. 19: "Substance of a Petition from Moojrodin Wullud Nooroodin, Kazee of Kusba Poontamen Petta Kopurgaon, Talooka Patoda, Zilla Ahmednuggur, to the Right Hon'ble the Governor in Council dated 15th and received 24th August 1849."

references to knowing Persian—and to studying Arabic—are clear, what he meant by having studied "Mahomedan Law" is less apparent.

Though references to knowledge of Persian and Arabic were frequently cited among a candidate's qualifications, lack of linguistic knowledge did not preclude otherwise qualified candidates from receiving recognition. After appointing a committee for the purposes of examining a candidate for the qāẓīship at Mahableshwar, the committee produced a mediocre review. As the Acting Judge reported, "[T]he Committee in their report have stated Saiud Hasun not to be an accomplished man, nor yet deeply versed in Arabic lore, but still on the whole, competent to the duties of Cazee at the small station of Mahableshwar."[163] For a "small station" such as that at Mahableshwar, elementary knowledge of Arabic was sufficient. Judge Luard concluded:

> The emoluments being very inconsiderable I should despair of finding an abler man to take the office in question, and therefore this man being declared competent, would beg to suggest the necessary sunnud should be issued to him. I do this the more confidently as I believe he has in fact been carrying on the duties of the Office for some time past.[164]

Luard's decision not to interfere in the appointment at Mahableshwar suggests that for small positions, qualifications mattered less, and that when difficulties arose, local officials routinely pursued the path of least resistance. Allowing this *qāẓī* to remain in office, despite his shortcomings but owing to the fact that he was "on the whole, competent to the duties of Cazee," suggests that the examination was a procedural ideal, rather than a baseline requirement. On more than one occasion, then, Company officials bent the rules of examination for the purpose of appointing otherwise capable individuals, provided they could offer some reasonable

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[163] MSA, Judicial Department Proceedings, 1845, Vol. 18: Letter from R.D. Luard, No. 109, dated 29 January 1845.

[164] Ibid.

justification, but for most appointments, district judges insisted upon examining candidates.

Examinations however, only addressed the problem of testing *qāẓī*s' knowledge; it did not explain how the training of unqualified *qāẓī*s could, or should, take place. To solve the problem of under-educated *qāẓī*s, the court *muftī* at Ahmednagar thus offered the following suggestions:

> [I]n regard to the office of Cazee it is the present custom to examine the Cazees, and bestow the office upon those who best sustain the examination. But this course is attended with great injury to some poor attender Cazees. They lose their Wuttons and are obliged to beg from door to door. This should not be. Rather let them be permitted to perform the duties of the office as well as they can and enjoy their Wuttons. And in order to fit them better for their office let instruction representing their duties be prepared in the Persian, Hindoostanee, Marrathee, and Goozerathee languages, and sent to them, they paying the cost of the Instructions. In this way they will be enabled to retain the Hucks and Wuttons which have descended to them from their Ancestors.
>
> Again it is the custom to examine Cazees only in reference to their knowledge. It would be better if they were examined likewise in reference to their religion, so that they may be placed in authority only over those belonging to the same sect as themselves.
>
> For example, look at the Christian Religions. There are many sects belonging to that religion, but we no where see those belonging to one Sect exercising authority over those of another. So it should be among the Mussulmans. Cazees should be placed over those only who are of the same sect as themselves. To carry out this arrangement, when they are examined likewise in reference to their religions and their duties assigned accordingly.
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> On this subject if Government will give the order their humble servant the petitioner will prepare a Judicial Act or whatever regulations are needed and forward to Head Quarters.[165]

Not only did Muftī Ġẖiyāṣ-ud-dīn criticize the current practice of examining *qāẓī*s but he also placed the onus of educating them on the Company. Failure to pass the examination reduced many *qāẓī*s to penury, forcing them to "beg from door to door," he argued.[166] In an effort to avoid such circumstances and to preserve the candidates' "Hucks and Wuttons", Ġẖiyāṣ-ud-dīn

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[165] MSA, Judicial Department Proceedings, 1850. Vol. 19: "Petition submitted by Gayasoodeen Mooftee of the Ahmednuggur Adawlut, Ahmednuggur, 20th August 1850."

[166] Ibid.

proposed government-sponsored education in the "duties" of their office. The "present custom" of examination placed too much emphasis on "knowledge", he reasoned. Focusing on "their religion" instead of their "knowledge" would allow candidates "to be placed in authority only over those belonging to the same sect as themselves."[167] His complaint also begs for further clarification of the content or nature of the examination. The uneducated *qāẓī*'s inability to pass the exam, Ġẖiyāṣ-ud-dīn seems to suggest, stems not from his inability to perform the work of the *qāẓī* accurately and efficiently but from the exam's tendency to privilege general "knowledge".[168] Though Muftī Ġẖiyāṣ-ud-dīn's recommendations for reforming the current practice of examining candidates does not detail the content of the examination, it does point to a disjuncture between the present approach to examining and appointing *qāẓī*s and the skills, knowledge, and religious (or sectarian) conviction required for the execution of the office, while highlighting the financial difficulties placed upon those individuals who failed to perform according to EIC officials' ideas about the *qāẓī*'s office.

Lenient rules regarding the timing of the examinations and variation in the actual content of the exam, however, make the possibility of fulfilling the requirement realistic—not just for the *qāẓī*s working in urban centers but for those living in rural areas as well. The examinations were dependent upon location and as the correspondence makes clear, knowledge of Persian and Arabic and evidence of a reputable character took precedence over knowledge of legal texts like

[167] Ibid.

[168] Ibid.

the *Hidāyah* or the *Fatāwa-yi ʿĀlamgīrī*.[169] *Qāẓī*s needed to be literate enough to maintain records and have knowledge to perform their duties accurately (and in accordance with the law), but the Company's criteria for appointment were knowledge about ceremonies and services they performed, but beyond that, neither Regulation XXVI nor subsequent rules for the examination of *qāẓī*s demarcated strict guidelines for determining a candidate's qualifications. Taking these observations into account, then, Frere's comments about the impossible state of the *qāẓī*s at Dharwar seem even more preposterous.[170]

In addition to addressing the number of individuals "who claim the right to be considered Cazees and to receive fees as such in [his] Zillah," Frere's report provided additional details explaining the situation in Dharwar.[171] The majority of individuals acting as *qāẓī* without the proper government authority, he noted, "claim[ed] to hold their office under Sunnuds granted to them by the former Government."[172] To prove their claims, thirty-four of them "produced documents which they say are sanads granting them the power."[173] Frere copied out the

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[169] These were the two most frequently cited texts in discussions of a *qāẓī*'s qualifications (or lack thereof). It should be noted, however, that while the *Fatāwa-yi ʿĀlamgīrī* had its origins in South Asia, the *Hidāya* (or, *Al-Hidāya fī Sharḥ Bidāyat al-mubtadī*) was a twelfth-century text of Central Asian origins written Burhān-ud-dīn al-Marghīnānī, though it nevertheless became an important source for what became Anglo-Muslim Law, despite its foreign origins. On Charles Hamilton's translation of the *Hidāya* from Persian into English, see BL, IOR/H/207, pp. 437–438: Hedaya or Mahomedan Law; IOR/H/205, p. 271: Translation of the Medaya [*sic*, Hidaya] of Book of Mahomedan Laws, Appendix No. 57; and IOR/F/4/363/9040: Employment of Maulvis for the translation of Mukhtasar-al-Quduri; and more generally John Strawson, "Islamic Law and English Texts," *Law and Critique VI*, no. 1 (1995): 21-38; Michael R. Anderson, "Legal Scholarship and the Politics of Islam in British India," in *Perspectives on Islamic Law, Justice, and Society*, ed. Ravindra S. Khare (New York: Rowman & Littlefield, 1987), 65–92; and Arthur Mitchell Fraas, "Readers, Scribes, and Collectors: The Dissemination of Legal Knowledge in Eighteenth-Century British South Asia," (Draft paper presented at, Middle East Studies Association Annual Conference, 2012), https://works.bepress.com/mitch_fraas/14/.

[170] MSA, Judicial Department Proceedings, 1850, Vol. 19: Frere's Letter to Larken, No. 1139, dated 16 July 1850.

[171] Ibid.

[172] Ibid.

[173] Ibid.

documents, his report states, but he did not take the time to inquire into their authenticity.[174] He further added that along with these documents, many of the individuals also claimed to hold the office "as of very ancient grant" going back at least three and as many as thirteen generations.[175] Frere did not question this statement so much as he questioned the claimant's identity, though: "From the Nagoura's name, the Judges will perceive that the right is not claimed by Mussulmans alone," he wrote.[176] As in other places on the margins of imperial power, the office of the *qāẓī* at Dharwar had expanded to include Hindus (Desais, Langayats, and Reddiars, among others cited here) as well as Muslims. Furthermore, the Lingayats and Reddiars, Frere commented, "also claim to be the Gunacharee of the Lingayets as well as Cazee and the Dessaiee of Oudigeree [Udgīrī] Ragoura claims a right to performing ceremonies for the Shepherds /dungers [*dhangar*s]/ in virtue of her appointment as Cazee."[177] Indeed, religious diversity was not the only problem Frere encountered when making his report: "Nor as appears from Ragoura's name are the claims to this office confined to the male sex, for Neekajee Beebee, a Mussulman female claims the office of Cazee of Boodeelall."[178] The Dharwar district supported all manner of *qāẓī*s —non-Muslims and women among them.

For Frere, however, the candidate's qualifications for office took precedence. "Perhaps the most important question is their qualifications for it," he continued, but even among this diverse group of individuals, "four…cannot read or write any language" and "two can only write their

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[174] Ibid.

[175] Ibid. Such claims are not impossible to believe, as going back thirteen generations would place the first appointment at the end of the sixteenth century (i.e., after the annexation of the region by ʿAlī ʿĀdil Shah of Bijapur in 1573), but the possibility that the position would cleanly descend through thirteen generations is highly improbable, given the speed with which disputes arose in matters of succession.

[176] Ibid.

[177] Ibid.

[178] Ibid.

names," Frere remarked and added "that one understands only Canarese, another can only read the Koran, that seven know only Mussulmanee,[179] four understand both Mahratta and Canarese, two Mahratta, Canarese and Mussulmanee and that fourteen others tho' apparently well educated still know nothing of Arabic."[180] Ignorance of language was not the only point Frere attacked, he also pointed out that "many of the Cazees profess ignorance as to the number of their followers tho' none admit to having a smaller congregation than Krishnajee Baboorow…to whom only fourteen Moossulmans, spread over five villages, owe obedience," he added.[181] Overlooking Frere's efforts to make the *qāẓī*s of Dharwar analogous to Christian priests with followers and congregations, it is not surprising that the uncertain number of followers raised concerns. Part of the Company's interest in managing *qāẓī*s was to ensure that an adequate number of appointees served an appropriately sized population. Krishnajee Baboorow's small "congregation" of fourteen certainly did not warrant this appointment (not to mention his non-Muslim name). Religion, representation, and language were some of the faults Frere sought to remedy in his district.

Frere's description of the contemptible state of disarray in his district did not mean that all order was lost, however. Those who acted as *qāẓī*s, he noted, "all agreed that their remuneration is in the nature of fees [which] vary from Rupees five … to four pies which some receive for circumcision…while some profess to have no fixed rate but to be content to take

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[179] Frere's reference to "Mussulmanee" here likely means "Hindustanī". (See D. Lelyveld, "Colonial Knowledge and the Fate of Hindustani," *Comparative Studies in Society and History*, 1993, 665–682. On the fraught relationship between languages and registers in early colonial India, see Javed Majeed, "'The Jargon of Indostan': An Exploration of Jargon in Urdu and East India Company English," in *Languages and Jargons: Contributions to a Social HIstory of Language*, ed. Peter Burke [Cambridge: Polity Press, 1995], 182–205.)

[180] MSA, Judicial Department Proceedings, 1850, Vol. 19: Frere's Letter to Larken, No. 1139 of 1850, dated 16 July 1850.

[181] Ibid.

whatever their followers can give according to their means."[182] In some districts, regular fee structures emerged over time, but in most places, despite efforts to standardize the amount *qāẓī*s collected for the performance of certain functions and ceremonies, the rates remained unfixed.[183] Unsurprisingly, the sizes of their jurisdictions and annual incomes also varied within the corps of fifty-eight *qāẓī*s Frere counted in the district. Yet sprinkled among these condemning remarks, Frere also mentioned that "Of the several Cazees who perform the different ceremonies above mentioned, eleven only keep registers of their duties, tho' six others keep short memoranda of what duties they perform, whether they perform the duties themselves or by naibs [assistants]."[184] This statement seemed to please Frere, yet for each *qāẓī* who kept records, there were at least two or three who did not. What might be gleaned from Frere's report, then, is that the candidates at Dharwar were diverse, uneducated, unqualified, and perhaps even uninterested in the work of the *qāẓī*. As Larken noted upon its receipt,[185] Frere's report was an admirable attempt to summarize the situation, but the details it contained did little to assuage the Company's anxieties over its failure to ensure appropriate appointments and adequate qualifications.

On paper, the Bombay Presidency's interest in appointing and recognizing *qāẓī*s was clear. Regulation XXVI of 1827 provided a solid framework by which to oversee the work of these individuals. Looking beyond the regulation, however, reveals a world of appointments that was difficult to discern due to a lack of information and unwilling to be uprooted from its place within local custom that had accrued over successive generations of appointment and

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[182] Ibid.

[183] The government's failure to establish set fees play a role in several of the disputes discussed below.

[184] Ibid.

[185] Ibid., "Summary of the replies respecting the qualifications of Kazees in the Zillas of the Bombay Presidency."

inheritance. Early efforts to recognize individuals already acting as *qāẓī*s in places like Ratnagiri, for instance, resulted in an overwhelming submission of petty claims to once-, twice-, or thrice-divided jurisdictions that neither made sense to, nor fit with, the principles of scientific governance the Company promoted. Similarly, attempts to survey *qāẓī* incomes yielded promising results, but provided data that did not alway align with reality on the ground. In many places, data were missing or inaccurate, and the tabulated summaries belie the precariousness of administrators' attempts to control local practices through the act of collating information.[186] Still richer pictures of the individuals calling themselves "qāẓī" in the various districts across the presidency emerge in the discussion of qualifications. W.E. Frere's remarks for the report on qualifications compiled in 1850 are only one of many such examples in which the government's ideal understanding of the *qāẓī*, his position, and his office, failed to align with what it observed on the ground. Understanding what the EIC encountered when it attempted to regulate these appointments complicates more rudimentary understandings of legislative implementation. Building upon this framework of inconsistency and contention, the following section considers reactions to existing rivalries and the implications of allegations of impropriety brought against Company-appointed *qāẓī*s.

IV. "With Zeal and Integrity": Managing disputes between rival *Qāḍīs*

Yusuf Moorgay's trials and tribunals

Rivalries between local *qāẓī*s and local communities complicated Company efforts to manage the office. Though rooted in personal history, these rivalries also demonstrate competing understandings of the office as well as community engagement with negotiations over the

[186] See U. Kalpagam, *Rule by Numbers: Governmentality in Colonial India* (Lanham, Maryland: Lexington Books, 2014).

position. Looking at some of the major rivalries that emerged in the Bombay Presidency, this section sees rivalry and competition as evidence of the *qāẓī*'s continued relevance to local Muslims and as an indication of the ways in which British policy failed to account for local nuances and differences. These failings are not unique to the *qāẓī*s,[187] but they did have lasting effects on the way Islamic legal practitioners framed their subsequent negotiations with the Company-state and viewed their work moving forward.

Before Yusuf Moorgay, whose tumultuous career opened this chapter, could become *qāẓī* for the city of Bombay, he faced opposition to his appointment from residents of Bombay who supported other candidates and from his sister-in-law who claimed he was unfit for the office owing to his supposed involvement in a scheme to defraud her of her inheritance.[188] At the time of his appointment in 1837, Yusuf Moorgay was the Company's preferred candidate for the vacancy that emerged after the death of the city's incumbent *qāẓī*, Kazee Kootboodeen, who had passed away the previous year.[189] But when certain petitions arrived protesting his appointment, Judicial Department officials were forced to investigate the allegations against him. Eventually,

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[187] The most notable of these other offices are the *zamīndār*s, *waṭandār*s, and other land-holding groups. For an overview of the long history of these negotiations, see, e.g., Shirin Akhtar, *The Role of the Zamindars in Bengal, 1707-1772* (Dacca: Asiatic Society of Bangladesh, 1982); B. H. Baden-Powell, "The Permanent Settlement of Bengal," *The English Historical Review* 10, no. 38 (1895): 276–92; Vinay Krishin Gidwani, "'Waste' and the Permanent Settlement in Bengal," *Economic and Political Weekly* 27, no. 4 (1992): PE39–46; Ranajit Guha, *A Rule of Property for Bengal; an Essay on the Idea of Permanent Settlement* (Paris: Mouton, 1963); Sirajul Islam, *The Permanent Settlement in Bengal: A Study of Its Operation, 1790-1819*, 1st ed. (Dacca: Bangla Academy, 1979); Nilmani Mukherjee, *The Ryotwari System in Madras, 1792-1827* (Calcutta: Firma K. L. Mukhopadhyay, 1962); Chitta Panda, *The Decline of the Bengal Zamindars: Midnapore, 1870-1920* (Delhi: Oxford University Press, 1996); D. Subramanyam Reddy, "The Ryotwari Land Revenue Settlements and Peasant Resistance in the 'Northern Division of Arcot' of the Madras Presidency during Early British Rule," *Social Scientist* 16, no. 6/7 (1988): 35–50, doi:10.2307/3517274; Birendra Kishore Roychowdhury, *Permanent Settlement and After* (Calcutta: Book Co., 1942); Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights*, Cambridge Studies in Indian History and Society 21 (New York: Cambridge University Press, 2012).

[188] MSA, Judicial Department Proceedings, 1837, Vol. 11: No. 178.

[189] Ibid. Yusuf Moorgay's career with the Company began in1809 when he worked as Native Agent in Sindh. After completing twenty years of service under the political agency at Sindh, the native agent and Company translator retired to the city of Bombay, receiving a pension from the East India Company on account of his completed service.

however, whether he deserved the appointment or not, the Company managed to dispel these doubt and to appoint him to the office. Certainly, the controversy surrounding Yusuf Moorgay's appointment was necessarily heightened by his proximity to the Presidency's administrative headquarters and the ease of access this location offered to petitioners opposed to the appointment. Nevertheless, the debates his nomination prompted speak to competing understandings of the office as it moved from being a patrimonial to bureaucratic appointment and reveals the Company's double-standard in implementing this transition.[190]

One of the petitions against Yusuf Moorgay, signed by "Hussainoodeen" and others, used the importance of the office as a reason for rejecting the nomination. As the petitioners argued, "The Cazee for the Island of Bombay should be most learned and master of the principles of the Mahomedan law and of equity and who for the sake of God alone, would do what may be proper, without showing favor or regard to anyone."[191] In addition to wanting a *qāẓī* with these qualities, the community, comprised of "all the Mussulmans," should also support his nomination "unanimously."[192] By implication, then, Yusuf Moorgay did not fit the bill. A similar petition submitted to the government described the qāẓīship as a "high office," and while acknowledging the current government's right and responsibility to appoint a qualified candidate to the position, the signatories also cited Islamic legal norms governing the office by citing texts like the *Hidāyah*. They further invoked questions of reputation by pointing to the *qāẓī*'s responsibilities to the

[190] For a consideration of the "patrimonial" bureaucratic character of the Mughal empire, see Stephen P. Blake, "The Patrimonial-Bureaucratic Empire of the Mughals," *The Journal of Asian Studies* 39, no. 1 (1979): 77–94, doi: 10.2307/2053505.

[191] Ibid., "Substance of a Petition from Hossainoodeen to the Right Honorable the Governor....Dated 28th March and received April 1837."

[192] Ibid.

community.[193] For them, the *qāẓī* should be an emblem of morality *and* a bureaucratic official, a compelling personality, as well as a skilled professional. In this respect, then, the petitioners found Yusuf Moorgay to be lacking. Although his failings in personality and profession may not yet be entirely clear from these petitions, they become clearer in the choice of alternatives proffered by the petitioners put forth—particularly in light of the recognition that many of the alternatives they presented had yet to pass their exams.

In the course of rejecting Yusuf Moorgay's nomination,the petitioners also offered a number of alternative appointees. One group of petitioners suggested the current *nā'ib qāẓī* fill the position until the deceased *qāẓī*'s brother had the opportunity to pass the required examination. To aid the late *qāẓī*'s family, then, the petitioners suggested the *nā'ib* keep two-thirds of the income from the position for himself and share the remaining one-third with the old *qāẓī*'s family.[194] Another petition proposed the appointment of one or more pre-qualified *qāẓī*s, some of whom were already employed as native law officers in the colonial courts.[195] Some of these complainants even voiced a willingness to accept *any other* qualified candidate *except* Yusuf Moorgay. Beyond this concession, the petition signed by Hussainoodeen and others granted the government the ability to "assume the duties of performing marriage rites" until a person with the appropriate qualifications materialized.[196] The desperation exhibited in this proposal, which would allow British officials to perform the *qāẓī*'s duties until a suitable candidate could be found, shows the extent of these petitioners' distaste for Yusuf Moorgay, but none of these objections

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[193] Ibid., "Substance of a Petition of the Mussulman Inhabitants of Bombay to the Right Hon'ble the Governor, dated 23rd Zihuj (31 March) and received 7th April 1837."

[194] Ibid.

[195] Ibid.

[196] Ibid., "Substance of a Petition from Hossainoodeen."

caused great concern among government officials, except for the one from Yusuf Moorgay's sister-in-law and beneficiary, Rabia Beebee.

Rabia Beebee's argument against Yusuf Moorgay's nomination to the qāẓīship stemmed from the pair's prior dealings. In 1827, Rabia Beebee asked Yusuf Moorgay and his brother, her husband Yunus Moorgay, to serve as *vakīl* (or, agent) for herself and her sister K̲h̲adīja in a suit of equity to recover their rightful shares of their father's sizable estate.[197] The two sisters granted Yusuf Moorgay and his brother Yunus power of attorney, allowing them to pursue the case in court, and to incur any necessary costs or debts on their behalf. As she wrote in her petition, Rabia Beebee granted Yusuf Moorgay this power because she was "a simple honest person" and assumed Yusuf Moorgay would "act for the benefit of [her]self and [her] children" and that "he would not act deceitfully or fraudulently towards [her]."[198] This proved not to be the case, she claimed.

After extensive litigation, over the course of several years, Rabia Beebee received a five-thousand-rupee settlement and the court awarded her sister Khadija six thousand rupees, but despite this large settlement, two years after the ruling, Rabia Beebee had received "nothing whatever of it."[199] Though she claimed to have pleaded repeatedly with Yusuf Moorgay to hand over her due on more than one occasion, he had yet to do so, owing, as he claimed, to outstanding "debts due from [her] husband."[200] In turn, Rabia Beebee accused Yusuf Moorgay

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[197] Ibid., "Substance of a Petition from Rabiah Beebee, daughter of the late Gholam Moideen Nalkhandey and Widow of the late Mohommud Yoonus Moorgey to the Right Honble the Governor, Dated 27th Zilhajeh or 4th April and Received April 1837."

[198] Ibid.

[199] Ibid.

[200] Ibid.

of making "disputes and quarrels" rather than handing over the sum due to her.[201] Had she the means, Rabia Beebee vowed she would press her claims against Yusuf Moorgay in court, but because she was "a poor woman," she was instead "obliged to bring it before [the Governor in Council]" with the hope that presenting such a claim would result in "justice" being served.[202] While Rabia Beebee's reasons for submitting this petition to the government undoubtedly emerged from her own self-interest in receiving the funds she believed he owed her, she appended to her petition the claim that if "a person of this description be made Kazee of Bombay, the Moosulmans cannot expect equity, or honesty from him."[203] Her complaints thus extended beyond the scope of a simple familial dispute to imply that Yusuf Moorgay's behavior as her legal agent and representative foreshadowed his behavior as *qāẓī*: If appointed, he would cheat and misrepresent the community as he had done to her.

The government took these allegations seriously and demanded a response from Yusuf Moorgay.[204] To assuage the government's concerns, Yusuf Moorgay produced his own explanation, documentary evidence from his handling of Rabia Beebee's affairs, and letters of support from some British officials familiar with his earlier service to the Company.[205] His explanation suggested that the process of litigation resulted in the accumulation of numerous debts and that at the time of the settlement, he proposed the expenses be shared between both

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[201] Ibid.

[202] Ibid.

[203] Ibid.

[204] Ibid., "Extract from a Resolution of Government in the J[udicial] D[epartment]," No. 839, dated 12 May 1837.

[205] Ibid., "Statement respectfully submitted by Mahomed Yoosoof Moorgay for the information of the Right Honorable Governor in Council in respect to the Petition of Rabia Bebee the widow of his late Brother Mahomed Yoonoos Moorgay."

sisters.[206] Rabia Beebee rejected this proposition and as a result, lost most of her share repaying the expenses incurred.[207] Yusuf Moorgay not only supplied documentation to support his explanation but further added that at the time of his brother's death, Yunus owed him twenty-five thousand rupees, which he had not demanded of Rabia. Furthermore, Yusuf Moorgay had been generously supporting his brother and sister-in-law for the last sixteen years, paying them twelve rupees per month before Yunus's death and continuing to award Rabia Beebee six rupees per month in widowhood.[208] To clarify their relationship further, Yusuf Moorgay added that when Rabia Beebee rejected his proposal that her sister Khadija be held partially responsible for the debts accumulated while pursuing the inheritance claim in court, he discontinued his financial support to her, owing to her perceived carelessness.[209] The government accepted this explanation, adding that if Rabia Beebee had a legitimate claim against her brother-in-law, she could bring her case before the Superior Court.[210]

In the course of the debate surrounding his appointment, Yusuf Moorgay's detractors characterized his unfitness for office in a number of ways—personal and professional—but amidst these complaints, the government did not find sufficient reason to prevent his nomination. Not only was the former *qāẓī*'s brother unqualified for the position, the government reasoned, but despite the claims of his opponents, Yusuf Moorgay held a reputable position in the community, and was a loyal and zealous Company servant. At the end of the affair, Yusuf Moorgay was appointed *qāẓī* of the city of Bombay on the steps of the Town Hall at 4 p.m. on Wednesday

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[206] Ibid.

[207] Ibid.

[208] Ibid.

[209] Ibid.

[210] Ibid., "Extract from a Resolution of Gov't in JD," No. 1074, dated 14 June 1837.

June 7, 1837, receiving a *sanad* of investiture and two shawls worth four-hundred rupees.[211] Perhaps on account of the location of his appointment also being the presidency capital and the center of government for western India, Yusuf Moorgay's was the only appointment for which the records provide details of his investiture ceremony.

Over twenty years passed between Yusuf Moorgay's appointment as *qāẓī* of Bombay and the allegations of impropriety mentioned at the beginning of this chapter. During that time, there is little mention of the *qāẓī*'s work or achievements. This gap is not surprising, as the colonial archive deals primarily with appointments, filling vacancies, and managing salaries and expenses.[212] Owing to this gap in the records, then, information about the actual work he performed as the city's chief *qāẓī* must, in part, be triangulated from other sources, including reports and testimonies provided during disputes and controversies, as well as from extant records preserved by other *qāẓī*s, such as those considered in the following chapter. Instead, moments of controversy and crisis like those outlined here demonstrate how and when the system of appointing *qāẓī*s collapsed as well as how it worked—or at least was believed to work.

The trial that framed the opening of this chapter was the second in a series of three related events. The first event was a trial questioning the legitimacy of a marriage Yusuf Moorgay performed the previous year in his capacity as city *qāẓī*.[213] When the case went to court, the proceedings focused on the marriage of a young girl who was betrothed by her father to one man yet married to another man at her grandmother's request. Yusuf Moorgay solemnized the

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[211] MSA, Ibid., Letters to W.H Wathen, Esqr, Chief Secretary to Government in the Persian Department and Mahomed Yoosoof Sheb bin Mahomed Hoossain Moorgay, No. 1007.

[212] Yusuf Moogay does, however, receive occasional mention in the Bombay press for his work as a community leader and spokesmen for the city's Muslim community. (See, e.g., "Editorial," *The Bombay Times and Journal of Commerce*, 29 May 1857.)

[213] Interestingly, details from the trial come from the press, not from the Company's archive.

marriage between Khuteeza and Mahomed Syed Mahomed Ibrahim Rogay in 1858, a union he considered legal at the time he performed it.[214] The girl was present at the ceremony and claimed to have come of age previously—a point of contention her father raised in an effort to prove the illegitimacy of the union.[215] Though Yusuf Moorgay only played a small role in this case, his involvement performing this allegedly "illegal" marriage later became a matter of controversy within the local community and formed one of the reasons behind the subsequent case brought against him.[216]

In May 1859, a group of detractors brought their complaints to the government, presenting a number of charges against the *qāẓī*, including his refusal to perform legitimate unions, involvement in the performance of so-called "illegal" marriages, and other acts of immorality.[217] With the government slow to respond, the *qāẓī*'s opponents subsequently added "the *laissez faire* practice of the old Raj" to its list of complaints.[218] Since the *qāẓī* had clearly lost the support of the community, these petitioners claimed, it was the government's responsibility to remove him from office, seeing that the government was the only entity "competent" to take him out of office. As events wore on, the petitioners turned their criticisms from appointee to appointer, saying:

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[214] "Writ of Habeas Corpus," *The Bombay Times and Journal of Commerce*, 8 June 1859.

[215] Ibid.

[216] In the decision Crawford submitted to the government after the trial, he noted the irony that the incident involving Khuteeza Beebee "was alleged to have been brought to a climacy, and led the nomination by the malcontents of another Cazee to perform marriage ceremonies" was not included in the proceedings. ("Acquittal of the Cazee of Bombay," *The Bombay Times and Journal of Commerce*, 9 November 1859). Complaints against Yusuf Moorgay also accused him of performing improper marriages in 1854 for Ayeshaw [ʿĀyisha] and Ibrahim Poonjah and Marrian Beebee and Hashum Rahimoo. ("Complaints against the Cazee of Bombay," *The Bombay Times and Journal of Commerce*, 6 July 1859.)

[217] "Editorial," *The Bombay Times and Journal of Commerce*, 29 June 1859.

[218] Ibid.

> This community has now been in an uproar for the last six months about this Cazee, because Mr. Secretary this, or Mr. Secretary that, does not wish to be bothered with an investigation of the matter; or worse, because one or other of them feels kindly toward the old man, against whom these complaints are lodged. A government cannot be carried on upon such principles, without compromising the public peace, and that it should be attempted is a matter of very great regret.[219]

Such criticisms of the government's response did not, however, garner the desired response. Rather than taking up the petitioner's complaints directly, the government encouraged the complainants to seek redress in a court of law.[220] This response was typical of the government's dealings with disputes between rival factions and the government frequently followed this course of action to avoid mediating such disputes.[221] To assuage their anger, then, taking Yusuf Moorgay to trial was the only road available to the complainants.

Despite being brought before the civil courts in the city, Yusuf Moorgay's trial did not proceed in the regulation fashion. In order to assess the *qāẓī*'s ability to perform his duties adequately, the court commenced by convening a body of scholars capable of deciding the case. The judicial department ordered that Judges from elsewhere in the presidency be "instructed, immediately, to select the Cazee within their respective jurisdictions, who is most distinguished for ability and character, and to send him to Bombay to act as an assessor" in the case for the purposes of "giv[ing] confidence to the Mahomedan community."[222]

With a body of *qāẓī*s (a jury of his peers, perhaps) assembled to oversee the proceedings

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[219] Ibid.

[220] Ibid.

[221] For additional evidence of this practice, see below.

[222] "Editorial," *The Bombay Times and Journal of Commerce*, 29 June 1859. Though the Judges charged with selecting *qāẓī*s for the commission were not named here, the *qāẓī*s who participated in the proceedings were later named in the press. They included Moolvee Mahomed Sumsoodeen (*qāẓī* of Sungamnair), Moolvee Abdool Allee Peshewree (a *qāẓī* from Pune), Nooroodeen Hosein (*qāẓī* of Bharuch), and Mahomed Goolam Ruza wullud Mahomed Jumaloodeen (*qāẓī* of Matur, Ahmedabad). ("Acquittal of the Cazee of Bombay," *The Bombay Times and Journal of Commerce*, 9 November 1859.)

and to advise the Senior Magistrate in his ruling, the "trial" commenced in August 1859 and proceeded, as *The Bombay Times* reported, at "a very slow pace."[223] In the course of the proceedings, the petitioners brought seven individual charges against the *qāẓī*, which the court was obligated to consider one by one.[224] Though the *Bombay Times* did not print transcripts of the court's daily proceedings, it did periodically publish articles summarizing the proceedings, pointing to the case's relevance to the community outside the courtroom, in addition to its value for the litigants. With its coverage of the trial in full swing, then, the paper reported the emergence of a question of procedure that arose in the midst of the trial: Should the inquiry be conducted according to Anglo-Indian (British) procedure and evidence or according to the rules of Islamic legal procedure?[225]

Spurring this debate, Mr. Macfarlane, who was representing the petitioners in court, suggested that because "the whole of the charges related to matters connected with Mahomedan law and usages…The petitioners thought…that not only should this case be *decided* according to Mahomedan law, but that the enquiry ought to be *conducted* according to Mahomedan law."[226] Senior Magistrate Mr. Crawford, head of the commission judging the case, however, did not agree. He argued that because the case had been conducted according to British law thus far, the inquiry should continue in this vein. This argument did not please the original petitioners, who motioned for a postponement in order to determine whether or not to proceed with the case, if it

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[223] The press clippings refer to the action simultaneously as a "trial" and "an enquiry" and a "commission", suggesting this case was not a straightforward civil suit. However, because both parties were represented by lawyers and the inquiry took place in the courtroom and according to the evidentiary procedures of Anglo-Indian law (see below), it seems most appropriate to refer to this incident as a trial.

[224] "The Cazee Trial," *The Bombay Times and Journal of Commerce*, 24 August 1859.

[225] This question is rather out-of-character for the colonial courts, which were decidedly British in character, even though they chose to follow local custom or religious practice in its interpretation.

[226] Ibid.

were to be decided according to Anglo-Indian procedure. The *qāẓī*s recruited from the several neighboring districts to advise the magistrate, having traveled a considerable distance in order to participate in the inquiry, interjected to say that if the case were to proceed according to Islamic law, "there would be no necessity for lawyers being present."[227] They also added that if such an inquiry were to take place, it should be held at the mosque, not the Police Commissioner's office.[228] Furthermore, the *qāẓī*s' complaint continued, if the plaintiffs' application were granted to postpone the inquiry and to modify the rules of procedure, then the *qāẓī*s who resided at a distance from Bombay would be hard-pressed to remain in the city for the duration.[229] Macfarlane countered once again to suggest that the young girl Aeesha [ʿĀyisha],[230] whose marriage Yusuf Moorgay allegedly performed illegally, should be questioned about her opinion with respect to the mode of procedure. Dr. Dallas, the attorney for the defense, objected to this proposal, stating that the proceedings concerning this charge against the defendant had already closed for the prosecution and the defense, therefore it would be improper to call the witness to the stand again.[231] With this last argument, the court decided to reject the petitioners' suggestion and to continue with the inquiry following the existing rules of procedure. It then concluded its inquiry into the fifth charge (i.e., the one involving Aeesha), and adjourned for the day.[232]

The Times did not chronicle the final days of the trial, but when the commission finally arrived at a decision, the paper printed a copy Crawford's report to the government, as well as

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[227] Ibid.

[228] Ibid.

[229] Ibid.

[230] That is, "Ayeshaw" whose marriage the *qāẓī* improperly performed in 1854. ("Complaints against the Cazee of Bombay," *The Bombay Times and Journal of Commerce*, 6 July 1859.)

[231] Ibid.

[232] Ibid.

the government's response to it.[233] Yusuf Moorgay, the report read, had been "honorably acquitted of the charges preferred against him." The month-long inquiry (from 15th August to 15th September 1859) resulted in the accumulation of a "voluminous mass of evidence" for the commission to consider before reaching its final verdict, which was arrived at—primarily—on the basis of the report submitted by the *qāẓī*s, who served as assessors in the case. In his decision, Crawford wrote, "I have no hesitation in pronouncing, as far as I am able to judge, that the decision of the Assessors is correct, and that Mahomed Yusuf Moorgay stands honorably acquitted of all charges preferred against him."[234] Additionally, Crawford praised the *qāẓī*s for their participation in the proceedings, writing:

> [The *qāẓī*s] took an active part in the examination of every witness on points necessary to enable them to form their judgment on matters brought before them, and their elaborate written decision, shows their labours and research—in brining to their aid the best authorities on Mahomedan Law. They have been [put] to much [in]convenience by an absence of more than four months from their families and homes; and I feel it my duty strongly to recommend them to the favorable consideration of the Right Honorable the Governor in Council. I would also beg that they be allowed to return to their homes as early as possible.[235]

Following the submission of the Police Commissioner's report, the Government produced its own resolution, signed by Elphinstone, Malet, and Reeves. The resolution "concur[red]" with the decision expressed by the commission of *qāẓī*s and agreed that Yusuf Moorgay should be honorably acquitted.[236] The Governor in Council, who originally thought the charges should be investigated as they "gradually obtained the sympathy of a considerable portion of the Mahomedan community" was pleased with the outcome of the inquiry and praised it for being

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[233] "Acquittal of the Cazee of Bombay," *The Bombay Times and Journal of Commerce,* 9 November 1859.

[234] Ibid.

[235] Ibid.

[236] Ibid.

"full and impartial," drawing upon the expertise of four *qāẓī*s who "held the highest reputation for ability and good character in [their] *zillah*."[237] Aside from them, "[N]o better tribunal could have been suggested…which could rightly claim the confidence of all parties…and the decision of which would be entitled to general respect."[238] After Crawford's decision, all that remained was for the Senior Magistrate to announce Yusuf Moorgay's honorable acquittal and to reconfirm his position as "the lawful Cazee of Bombay."[239] This declaration—and the fact that the government did not remove Yusuf Moorgay from office during the proceedings—became an important fact in the third case that arose as part of this long-standing controversy.

Two years later, in 1861, Yusuf Moorgay sued Syed Ahmedsha Cashmere [Aḥmadshāh Kashmīrī] in the Bombay Supreme Court for "disturbing him in the Office of Cazee of Bombay, and for receiving unlawfully marriage and other fees which he (the plaintiff) [i.e., Yusuf Moorgay] was alone entitled to receive under a *sunnud* granted him by a former Governor of Bombay, Sir Robert Grant in June 1837."[240] The *sanad* he received in that year, Yusuf Moorgay argued, entitled him to "the exclusive right" in "the performance of marriages…the granting of divorces, the hearing of complaints, and [issuing] of summonses to compel parties to attend before him; and the keeping of a record or register of such official acts, for which he received … fees."[241] In presenting his case before the court, Yusuf Moorgay claimed damages of nearly five thousand rupees—the sum being the amount of fees the defendant and rival *qāẓī* Ahmedsha

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[237] Ibid.

[238] Ibid.

[239] Ibid.

[240] "Law Intelligence: Supreme Court.—Plea Side," *The Bombay Times and Journal of Commerce*, 12 March 1861. (Yusuf Moorgay likely filed these charges in 1860, shortly after the conclusion of the previous inquiry, which ended in November 1859, though the case did not come before the court until 1861.)

[241] Ibid.

Cashmere received "unlawfully"—on account of his role in the solemnization of 1,277 marriages.[242]

When testifying, Yusuf Moorgay stated that prior to Ahmedsha's interference, he earned Rs. 2.5 for the performance of a first marriage; Rs. 5 for the remarriage of widows and divorced females; Rs. 5 for granting divorces; Rs. 2.25 for issuing summonses on individuals, "besides [additional] gratuities from individuals."[243] These gratuities ranged from five rupees, "the lowest amount given by poor persons" to "the highest given by wealthy persons" totaling one hundred rupees or more; in addition to cash gratuities, he also received shawls and other non-monetary gifts.[244] In order to assist with his work, Yusuf Moogay employed three *nā'ib*s to whom he offered (monthly) salaries of six, twelve, and twenty-five rupees respectively, in exchange for all of the fees they collected in the course of business.[245] In the wake of the allegations of impropriety brought against him after he performed the marriage of Khuteeza Beebee, "an illegal opposition was then made against [his] authority," and since then "few persons applied to [him] for the performance of marriages," his complaint read.[246]

In response to these allegations, Advocate General Lewis, who represented the defense in this case, argued that Yusuf Moorgay's *sanad*, issued under the authority of the Governor in 1837, was itself invalid, as Regulation XXVI of 1827 specified that the *sanad* should be issued by the Governor General in Council.[247] "[T]he language of the sanad," the advocate claimed,

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[242] Ibid.

[243] Ibid. The suit claimed his total annual income for the year ending August 1857 to be Rs. 3,917-8 and Rs. 6,778-12 for the following year.

[244] Ibid.

[245] Ibid.

[246] Ibid.

[247] Ibid.

"showed it was an appointment made by the Governor personally and not by the Governor in Council," and because the Governor did not have the authority to issue *sanad*s personally, the advocate reasoned, the *sanad* was therefore invalid. Because the document had not been counter signed by the Chief Secretary to Government, it did not grant the plaintiff the "exclusive right whatever to recover fees."[248] Furthermore, the Advocate continued, the *sanad* itself granted Yusuf Moorgay the right "to administer all marriages, and religious, and other ceremonies, but there was not one word regarding fees, much less about conferring an exclusive right to such fees."[249] In addition to demonstrating the *sanad*'s faults, the Advocate also drew upon "[s]everal Mahomedan authorities" to argue "that either at marriages or divorces the presence of the Cazee was not indispensable" and he referred to cases "decided by the Sudder Adawluts of Bengal and Bombay…to shew[*sic*] that the [use was] voluntary."[250] In support of these assertions, the Advocate General produced "six or seven witnesses" whose marriages had been "solemnized without the presence of the Cazee…[that] were good by Mahomedan law, [and] in the general opinion of the Mahomedan community."[251] Furthermore, witnesses Advocate General Lewis produced from Kashmir and Arabia testified that *qāẓī*s in their homelands did not perform marriages, though the marriages were nonetheless legal.[252] The court, however, did not buy Lewis's reasoning. In the end, it deemed Yusuf Moorgay's complaint against the rival *qāẓī* valid and upheld his exclusive right to perform—and to collect fees from the performance of—marriages, divorces, and other ceremonies and functions. Through the process of taking his case

[248] Ibid.

[249] Ibid.

[250] Ibid.

[251] Ibid.

[252] Ibid.

in court, Yusuf Moorgay thus demonstrated himself to be more than a native informant working for the colonial state, he was also an active participant in negotiating a space for the *qāẓī*'s continued (official) function in colonial society.

Demonstrating character and competence

As the controversies surrounding Yusuf Moorgay's appointment and other aspects of his career demonstrate, judicial department officials maintained the belief that individuals appointed to the office of *qāẓī* would exhibit certain standards of behavior. Moreover, the communities in which *qāẓī*s served also expected them to behave according to certain criteria of character and respectability. Accordingly, as Regulation XXVI stipulated, those accused of impropriety—either personal or professional—were subject to investigation and could be removed from office either temporarily (during) or permanently (after) the investigation. In the case of allegations brought against Yusuf Moorgay, the investigations followed a formal course of inquiry and trial before the court. In other cases, the investigations attracted far less interest and were handled hastily and only semi-officially, yet when individuals complained of being "unjustly" deprived of their situations, the government was quick to explain their reason for dismissal as incompetence or impropriety.[253] Forgery, in particular, was a crime administrative officials could not tolerate in the office of *qāẓī*.[254] As an officer in the East India Company's service, acts of forgery ran counter to the very nature of Company administration, though this did not mean it never occurred.

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[253] BL, IOR/Z/P/3163, Bombay Judicial Consultations, 1829.

[254] On forgery, see Jane Caplan, "Illegibility: Reading and Insecurity in History, Law and Government," *History Workshop Journal* 68, no. 1 (September 21, 2009): 99–121, doi:10.1093/hwj/dbp012; Hardless and Hardless, *Forgery in India. A Practical Treatise on the Detection of Forgery dealing with the Languages of India* (Chunar: Hardless and Hardless Publishers,1920); Bhavani Raman, "The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras," *Comparative Studies in Society and History* 54, no. 2 (2012): 229–50, doi:10.1017/S0010417512000023.

In 1829, Syud Umeeroodeen [Sayyid Amīr-ud-dīn], *qāẓī* in the town of Unkleshwur in the Bharuch district sent a petition to the Governor in Council in which he accused the Company of unfairly removing him from his office as *qāẓī*.[255] As he wrote in the petition, the office of the *qāẓī* for Unkleshwur had been in his family for many generations and upon the death of his father, Sayyid Khan Jehan Kaze [Sayyid Ḵẖān Jahān Qāẓī], the government appointed the petitioner, Umeeroodeen to the office. Since then, he had served in office for twenty years before encountering some trouble. Recently, he wrote in his petition, his uncle, Sayyid Niẓāmuddīn, attempted to remove him from office out of enmity, which resulted in a decision to divide the office, which the two of them—uncle and nephew—then shared. More recently, however, "the Gentleman of the Broach adawlut took from [him] and retained in the Sirkar the seal of the kazee" and had executed "a written agreement…between Syyud Nizamoodeen and [himself] respecting the half shares."[256] As he concluded his petition, Umeeroodeen requested the Governor in Council "to write to Mr. Sutherland [at Bharuch] to enquire into the nature of [his] offence and to cause [his] seal to be restored to [him] by the Sirkar."[257] The government responded to the petitioner in a minute signed by Charles Norris, then Secretary to Government for the Bombay Presidency, saying the petitioner had been dismissed "on consequence of having been found guilty of forgery."[258] The records related to these allegations and any investigation have not been preserved in the government archive, so it remains unclear whether Syud Umeeroodeen was indeed guilty of committing forgery and if so

[255] BL, IOR/P/440/26, Bombay Judicial Consultations, 13th May to 3rd June, 1829.

[256] Ibid.

[257] Ibid.

[258] Ibid.

what the nature of that forgery was, but the Company had no tolerance for employing individuals accused of such acts. The new *qāẓī* was appointed to the situation in Unkleshwar, quickly furnished with a *sanad*, and entrusted with the office.[259]

In another instance, Mr. Hutt, then judge at Ahmednagar, alerted the government at Bombay of allegations of impropriety lodged against Qāẓī Lootfoodeen [Luṭf-ud-dīn].[260] As he explained in his letter, Hutt received a petition in which the complainant Shaik Erfan [Shaikẖ Irfān] claimed the *qāẓī* "forbade the Mussulman community to employ the Petitioner to prepare a dinner" and "prepared a forged paper" with attestations from the community.[261] Owing to the serious nature of these allegations, Hutt ordered an inquiry into the *qāẓī*'s behavior, drawing upon the expertise and influence of the *qāẓī* of the Ṣadr ʿAdālat, Tajoodeen Jahuroodeen (Tāj-ud-dīn Ẓahūr-ud-dīn) to interpret the crimes complained against.[262] In the course of his inquiry, Qāẓī Tajoodeen found Lootfoodeen's justifications for the prohibition against eating with the aggrieved Shaik Erfan to be questionable in origin, owing to the fact that he could not locate the prohibitions mentioned in the books Lootfoodeen cited (namely, "the Books called Syrajoolhooda, Futwa Juhangeeree, Hideya, Forozshaee").[263] "With the view of ascertaining whether the authorities quoted by the Quazee are such as can be relied on," Tajoodeen explained, "[he] made an enquiry regarding the above works, but [he] could not find them."[264]

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[259] Ibid.

[260] MSA, Judicial Department Proceedings, 1842, Vol. 21/798: No. 588.

[261] MSA, Judicial Department Proceedings, 1843, Vol. 23/876: "Extract of Proceedings held before B. Hutt, Esquire, of the misconduct at Ahmednuggur dated 19th March."

[262] MSA, Judicial Department Proceedings, 1842, Vol. 21/798: "Question for the Quazee of the Sudr Adawlut, dated 13th April 1842."

[263] Ibid.

[264] Ibid.

However, as Tajoodeen's report continued, "after pursuing a number of works of great note," he did ascertain that, as Lootfoodeen claimed, "eating with some of the persons enumerated in the Quazee's exposition, has been forbidden," but with respect to the specific class of *dabbāg̲h* (i.e., tanner, leather dyer) cited in the complaint against the *qāẓī*, Tajoodeen concluded "I do not find from the authorities of importance such as Abboo Hunneefa [Abū Ḥanīfa] that there exists any restrictions against eating for the Dubbag class, on the contrary the trade of dying leather seems to be consistent with the Law."[265] Offering his own textual citations to support this conclusion, Tajoodeen concluded his report by asserting that "forbidding" others to eat with someone "whose trade is the dying of leather is not consistent with the Law of Hunufee Muzub [*ḥanafī mazhab*]" and therefore the basis for Lootfoodeen's prohibition was unfounded.[266] With this information in hand, Mr. Hutt stated in his report to the Ṣadr Dīwānī ʿAdālat that Lootfoodeen "either intentionally issued an order strikingly at variance with the Law, that had for its object the ruin of a tradesman of his own faith…or he had issued it ignorantly."[267] Whether intentional or unintentional, Mr. Hutt considered Lootfoodeen's behavior inexcusable.

Having settled the question of the first allegation against Lootfoodeen, the government then proceeded to investigate the second accusation related to the production of false documents. As Mr. Hutt summarized in one of his memoranda to the Register of the SDA at Bombay, the issue revolved around an instance in which Lootfoodeen allegedly "exacted a fee of two hundred Rupees for affixing his seal to deeds, for which he took a Bond in writing."[268] In contrast to the

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[265] Ibid.

[266] Ibid.

[267] Ibid., Letter from B. Hutt, Judge, Ahmednuggur, Court of Adawlut, dated 1 April 1842.

[268] Ibid.

relatively minuscule fees the *qāẓī*s levied for the performance of other acts (i.e., two rupees for solemnizing marriages, or three rupees for granting divorces, etc.), two hundred rupees for sealing a deed was an outrageous sum to demand, but it was unclear whether or not the request actually violated the regulations governing the *qāẓī*'s appointment. Mr. Harrison, Register for the SDA in Bombay, wrote to Mr. Hutt asking "whether a Table of Fees according to Regulation XXVI of 1827, Section VII was ever laid down…for the guidance of the Cazee of Ahmednuggur" and whether such a table "was ever delivered…to that officer."[269] In response to this query, Acting Judge Birdwood, then on circuit at Dhoolia, wrote to say, "it appears from the records of my office that no Table of Fees according to Regulation XXVI of 1827 Section VII was ever laid down for the guidance of Lootfoodeen…nor was any Table of Fees whatever…ever delivered for the same purpose to that officer."[270] The absence of explicit instruction regarding the fees he could collect did not, however, exonerate Qāẓī Lootfoodeen.

In his report to the SDA, Hutt accused the dishonorable *qāẓī* of "hav[ing] taken advantage of the ignorance of the granter to exact money under false pretence totally contrary to Regulations," for he could not, Hutt explained, exact a payment on the debt without taking the matter to court.[271] Furthermore, Lootfoodeen "was not ignorant that he was acting contrary to the Regulations" because upon delivering the *qāẓī*'s *sanad* in 1838, Hutt explicitly "enjoined him…to be careful to take a copy of the XXVI Regulation of 1827."[272] Hutt further conveyed to the judges of the SDA that he instructed the *qāẓī* to "preserve an accurate register of all

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[269] Ibid., Letter to the Acting Judge, Ahmednagar, No. 1189, dated 12 July 1842.

[270] Ibid., Letter from Birdwood on Circuit at Dhoolia, No. 1, dated 26 July 1842.

[271] Ibid.

[272] Ibid., Letter from Hutt, Judge at Ahmednagar, dated 1 April 1842.

marriages and divorces in a Book to be kept for the purpose according to the provisions of Clause 1 section VII, which he has utterly disregarded."[273] For Hutt, the *qāẓī*'s failure to uphold the basic responsibilities of his office was a third strike against him. He recommended to the judges of the SDA that they expel Lootfodoeen from office and cancel his *sanad*.[274]

The judges of the SDA, however, did not agree with Hutt. Rather than cancelling Lootfoodeen's *sanad*, they recommended "that he be suspended from his office and its emoluments for twelve months, and that a person be appointed to act for that period as Cazee of the City of Ahmednuggur."[275] The following year (1843), the Governor in Council approved the recommendation to suspend the *qāẓī* and requested recommendations for a replacement.[276] In response to this request, Mr. Hunter the new Judge at Ahmednuggur recommended Syud Ebrahim for the position. The majority of the judges of the SDA agreed with the recommendation, but Mr. Bell dissented, claiming the position had already been promised to another. Eventually, however, Hunter's recommendation succeeded. Lootfoodeen passed away in October of the previous year, following his suspension, and "[a]s however the office of Cazee is not an hereditary one and as the qualifications of Seyed Ebrahim…are of a superior kind" his name rose above that of the late *qāẓī*'s cousin.[277] Despite pursuing further information about the nature and origin of the promise Bell cited in his initial objection, the government issued Seyed Ebrahim a *sanad* appointing him to the office of *qāẓī* in Ahmednagar in September 1843, and the judges of the Bombay Presidency commended themselves for detecting and punishing Qāẓī

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[273] Ibid.

[274] Ibid.

[275] Ibid., Letter to the Register of the SDA, No. 2094, dated 24 September 1842.

[276] MSA, Judicial Department Proceedings, 1843, No. 23/876: No. 116.

[277] Ibid., Letter from Hunter dated 5 April 1843.

Lootfoodeen's dishonorable behavior.[278]

Criminal acts of forgery or embezzlement were not the only ways in which the character of *qāẓī*s came into question. Knowledge of the law and adherence to it were also benchmarks against which local communities and administrators judged a *qāẓī*'s behavior. In 1846, the inhabitants of Ahmedabad, led by Miyān Pīr Nathū, launched a series of complaints against the resident *qāẓī*. Among their complaints, the petitioners highlighted the recent imposition of fees for the *qāẓī*'s performance of marriages and divorces and the *qāẓī*'s failure to act "according to the Mahomedan law, of which he knows nothing."[279] Beyond that, the *qāẓī*'s failure to behave according to the petitioners' ideas of Islamic law had spread and had caused the local population to become "unable to act according to [that] law."[280] "None are assiduous in obeying its precepts," the petitioners continued, "while some [openly] transgress them."[281] The *qāẓī*'s failure to uphold the tenets of his faith and office thus had a considerable effect on the community, depriving local Muslims of a reliable leader to follow in belief and practice.

The circumstances complained against, were not, however entirely the *qāẓī*'s fault. In fact, as the petitioners explained, the practices observed in the towns were never congruent with those observed in the cities. Therefore, by attempting to regulate and to regularize the fees collected by the local *qāẓī*s for the performance of marriages and the recognition of divorces, the "good government of the Company Sirkar" was itself responsible for placing hardships upon the local community. If the government were to examine the *qāẓī*'s registers, the petitioners implored, "it

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[278] Ibid., Sanad for Seyed Ebraem, dated 7 October 1843.

[279] MSA, Judicial Department Proceedings, 1846, Vol. 21/1169: No. 47, "Petition from Meean Peer Beg Nathoo and other inhabitants of Kusbeh Weerimgaum, Zillah Ahmedabad," dated 21 August 1845.

[280] Ibid.

[281] Ibid.

will be proved that it never was the right or the usage that the Kazees should take fees or other perquisites from the Mahomedan inhabitants of Werimgaum [Viramgam]."[282] In fact, "since the time of the Padshah it never was the right or the usage that the Kazees should receive fees for the performance of marriage and divorce."[283] The new procedure of requiring inhabitants in small towns like Viramgam to pay the *qāẓī* for the performance of marriages or the granting of divorces was therefore not only incongruous with local custom dating back to the "time of the Padshah" but also placed a considerable financial imposition upon local Muslims.

The petitioners were not shy in placing their case before the government, as their compalint continues:

> My Lord, cherisher of the poor, if inquiry is made, it will be manifested that one custom and usage has never existed among Mahomedans and that under former governments as well as from the commencement of the Sirkar's government up to the present day, whenever any fees or perquisites were paid, they were paid according to the custom of each tribe and family and in such tribes and families as this custom did not prevail no fees or perquisites were paid, that if it be the Sirkar's pleasure to make an arrangement for the Kazees we poor people have no resource. Should however, a kazee in consequence of the above mentioned proclamation make a complaint to the Sirkar, we Mahomedans would not be listened to, and we poor subjects would thus suffer much detriment even though we were unable to pay the fees. We, also, do not know any reason why this arrangement should have been made, for benefactor of the poor, though we poor people have transmitted several petitions representing our distress, we have not yet been delivered from it. That if it is the Sirkar's pleasure to injure us poor subjects and to take away our character, we have no resource. We the undersigned, however, state that the Kazee has no right amongst us Mahomedans to any other fee or perquisite for performing marriage or divorce than half a rupee and some dried dates and that from the first up to this day, no greater fee or other perquisite has been given and the Kazees never demanded more.[284]

The petition does not end here but this particular passage illustrates many of the petitioners' rhetorical devices: appealing to the Governor's ego as"cherisher of the poor", "benefactor of the

[282] Ibid.

[283] Ibid.

[284] Ibid.

poor"; deferring to the government's authority and "pleasure"; demonstrating their meekness and supplication (e.g., "we have no resource", "we poor people", "we poor subjects"; "[we] would suffer much detriment"); framing the new regulation as a form of favoritism toward the *qāẓī* ("if it be the Sirkar's pleasure to make an arrangement for the Kazees"); and demonstrating the absurdity of the new policy ("unable to pay", "Kazee has no right"), occasionally in hyperbolic terms ("from the first up to this day, no greater fee or other perquisite has been given and the Kazees never demanded more").[285] Of course, these petitioners were not the only ones to use such rhetorical devices.[286] Petitioners deployed many, if not all, of these devices when writing to the Company, ingratiating themselves to the Company's authority and expertise, claiming their own inability or incapacity to perform, and at times pointing to a disjuncture between the implementation of new policies and historically prevailing practices.

What is particularly interesting about this petition, however, is that it does not seem to be directed against the particular *qāẓī* assigned to their village (unlike the majority of petitions submitted to the Company) and that it emphasizes the distinction between practices observed in small villages and those followed in larger towns. As Miyan Pir Nathu explains, "Among the Mahomedan sepoys in this town[,] divorces do not take place and only marriages are performed among them as divorces can only occur in large towns and therefore the fee fixed for divorces is only for the benefit of the Kazee of large towns. But ours is a small and not a large town and it

[285] Ibid.

[286] On petitioning, see, Robert Eric Frykenberg, *Guntur District, 1788-1848; a History of Local Influence and Central Authority in South India* (Oxford: Clarendon Press, 1965), 81–82; Raman, *Document Raj*, 23–26; and by way of comparison, Yuval Ben-Bassat, *Petitioning the Sultan: Protests and Justice in Late Ottoman Palestine, 1865-1908*, vol. 42, Library of Ottoman Studies (London: I.B. Tauris, 2013).

was never the usage in it to give more than half a rupee."[287] The logic deployed here is somewhat circuitous in that Miyan Pir Nathu argues that divorces among sepoys only take place in larger towns meaning that the regulations requiring larger fees for the recognition of divorces by the *qāẓī* would not apply to them, but the thrust of the argument is clear: The new policy, as described in the recent proclamation issued by the *ẓila*ʿ judge, is prejudiced against the practices observed in small towns. For Miyan Pir Nathu, then, this inequality of the regulation supports his argument against higher fees, even though the distinction between the services performed in small and large towns does not necessarily make a difference to the overall complaint.

Miyan Pir Nathu's petition was not the only one submitted by the inhabitants of Viramgam to the Company's governors. Syed Mohota Meean Deevanjee [Sayyid Miyān Diwānjī] and Syud Peer Baba bin Ajim Meean [Sayyid Pīr Bābā bin Aẓīm Miyān] also sent a petition to the Governor at Bombay to protest the new fee structure.[288] In their complaint, the petitioners informed the Governor that the *qāẓī* was not the only individual responsible either for conducting marriages or collecting fees. As they explained, "it is not the usage in this town for the Kazee alone to receive fees from the Mahomedans as they are paid to different persons in different quarters of the town."[289] Thus, in the Shetwara neighborhood, where the petitioners resided, the right to perform marriages and to collect perquisites lay in the hands of the petitioners themselves "since the time of the Padshah."[290] Furthermore, "it has never been the right or usage that marriages in that quarter should be performed by the Kazee and that he

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[287] MSA, Judicial Department Proceedings, 1846, Vol. 21/1169: No. 47, "Petition from Meean Peer Beg Nathoo and other inhabitants of Kusbeh Weerimgaum, Zillah Ahmedabad," dated 21 August 1845.

[288] Ibid., "Petition from Syed Mohota Meean Deevanjee and Syud Peer Baba bin Ajim Meean, inhabitants of Kusbeh Weermgaum, Zillah Ahmedabad," dated 23 August 1845.

[289] Ibid.

[290] Ibid.

should receive the perquisites for performing them"; in their town, several individuals held the right to conduct marriages and to collect fees for the performance of such services. "[I]n the same manner as we received the fees for performing marriage in the Shetwara quarter of the town, so other persons performed marriage and divorce and received the fees in the other quarters," they explained.[291] The government's decision to place this responsibility in the hands of the *qāẓī* alone, thus violated the customary rights of the petitioners and these other individuals.

In addition to complaining about the *qāẓī*'s new monopoly over the marriage ceremonies and collection of fees, the petitioners also objected to the rate of fees assigned to the *qāẓī*'s work. Expanding these accusations, the petitioners wrote:

> When however we performed marriages in the Shetwara quarter we never received more than a half a rupee. … [D]ivorces in that quarter were not performed by us because it is inhabited by sepoys among whom divorces do not take place. When also the marriage of a poor man occurred, we performed it for the sake of God and took no perquisite but on the marriages of rich persons they voluntarily gave us more than half a rupee. The fee now fixed by the Sirkar was never before paid in Veremgaum by any Mahomedan as they never paid a greater fee than half a rupee and it never was the usage in this town for the Kazee alone to receive fees for marriage and divorce.[292]

By setting the rate at two rupees, the government quadrupled the amount residents of the Shetwara quarter were expected to pay, contravening the prevailing customary rates and placing poorer residents—for whom officiants had previously waived the fee—at an even greater disadvantage.[293] But it was beyond the government's capacity to take stock of these multiple and varied local customs and practices. Regulating the amount of fees to be collected and designating

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[291] Ibid.

[292] Ibid.

[293] Ibid.

the (official) *qāẓī* as the only individual authorized to extract these fees reflected the government's efforts to standardize administrative procedures across the presidency. Never mind that inhabitants in different areas had greater or lesser access to cash and were able to pay the stipulated fees with varying degrees of ease and ability, establishing standardized fees was one of the simplest ways for the government to regularize these types of transactions. In responding to the petitioners from Shetwara, the government simply wrote that "it does not appear that [the petitioners] have any right by Law to the fees of remarriages and divorces, [nor] the anticipated loss of which they complain."[294] By the newly issued proclamation, only appointed *qāẓī*s had the right to collect these fees. Customary recipients had no place in the EIC's more streamlined bureaucracy.

Elsewhere, when it came to the collection of fees, however, the government was less supportive of the appointed *qāẓī*s' rights and exhibited very little interest in interfering on behalf of aggrieved *qāẓī*s. Rather than settling disputes over *qāẓī*s' fees through administrative channels, the government regularly referred such disputes to the civil courts. In one such suit, Muḥammad ʿAlī, son of Muḥammad ʿUṣmān, of Dhandhuka brought a plaint against one Bura Mea (Baṛā Miyān) for performing—and collecting a fee for the performance of—a *nikāḥ* ceremony, thereby infringing upon the petitioner Muhammad ʿAlī's rights as appointed *qāẓī*.[295] In the original civil suit, the "Native Judge" ruled in the plaintiff's favor, and Mr. Grant confirmed the ruling on appeal.[296] The ruling, however, did not prevent the defendant's cousin, Ġẖulām Shāh, son of Ġẖulām Rasūl, from writing to the government to request a *sanad* for the office of *qāẓī* of

[294] Ibid., Minute dated 1 January 1846.

[295] MSA, Judicial Department Proceedings, 1836, vol. 10/363: "Translation of the Petition of Moohummud Allee Wullud Moohummud Oosman," dated 27 February 1836.

[296] Ibid.

Ranpur. Muḥammad ʿAlī challenged the claims Ġẖulām Shāh put forth in his petition by citing the civil suit he won against Ġẖulām Shāh's cousin and identifying Ranpur as one of Dhandhuka's dependent villages.[297] He concluded his petition by asking the government to reject Ġẖulām Rasūl's request and to confirm the extension of his jurisdiction as *qāẓī* to the town of Ranpur.

When the government forwarded the petitions from Ġẖulām Shāh and Muḥammad ʿAlī for inquiry, Muḥammad Ṣāliḥ, *qāẓī* at the district court at Ahmedabad, recommended the appointment of an additional *qāẓī* to the town of Ranpur, citing the distance (twelve *kōs*) between the two towns and acknowledging Ġẖulām Rasūl's hereditary claim to the position at Ranpur, stating, "The Petitioner Goolam Shah is a Seuyd and a descendant of Shah Aulum [Shāh ʿĀlam], and from the time of the Padshahs his family held Wazeefa [*waẓīfa*] land in the Dhundooka and Ranpor purgunnas. He and his ancestors have always performed all the duties of Kazee…He is learned and well acquainted with the duties of a Kazee and is quite competent to fill that office at Ranpor."[298] Muhammad Ṣāliḥ countered Muhammad ʿAlī's objections further by arguing that Ranpur and its dependent villages were not, as Muhammad ʿAlī claimed, dependent upon Dhandhooka and were therefore not included as part of Muhammad ʿAlī's jurisdiction. Along with his recommendation to issue a separate *sanad* for the *qāẓī* at Ranpur, Muḥammad Ṣāliḥ concluded, "Mahomed Alee's seal bears the impression of Kazee of Dhundooka, and he states in his report that by his sunnud he is appointed Kazee of Dhundooka and the dependant villages. But Ranpor and the villages dependent thereon are manifestly not dependent on Dhundooka. The objection stated in Moohommud Ulee[']s report appears to me

[297] Ibid.

[298] Ibid., "Translation of the Report of Mahomed Saleh Cazee of Ahmedabad."

for these reasons to be groundless."[299] After reading the *qāẓī*'s report, the Governor at Bombay decided to approve his recommendations stating, "it seems desirable that a separate Kazee should be appointed for Ranpor, distinct from the kazee of Dhundooka," and encouraging the judge at Ahmedabad to confirm before his appointment that Ġẖulām Shāh would not be absent from Ranpur for more than three months during the year, in order to ensure adequate service to the local population.[300] Despite Muhammad 'Alī's claim as victor in a civil suit over the collection of fees, the government did not support the extension of his jurisdiction to the town of Ranpur and Ġẖulām Shāh's request for a *sanad* ultimately proved successful. In this instance, then, a dispute originating over the collection of fees acted as a catalyst for the reorganization of appointments.

This approach was not the only way administrative decision-making worked in concert with—or in the case cited above, in opposition to—the civil courts. By the time the case of *Roodrageer Gosavee, deceased v. Kazee Huitoolakhan* came before the court at Bombay less than twenty years later, the government, and its judges, demonstrated far greater antagonism to and skepticism regarding hereditary claims either to the office of *qāẓī* or its emoluments. When Hyutoolakhan [Ḥyātullāh Ḵẖān] brought his suit before the SDA in September 1853, he hoped to assert and regain his hereditary right to the land grant attached to the office of the *qāẓī* of Pune. This land, Hyutoolakhan argued, had been granted by the "Kings of Dehli [*sic*]…for the maintenance of the office of Kazee in the Purgunnah of Poona" and had previously been under the management of his predecessor, Mahomed [Muḥammad] Ṣafdar.[301] When Hyutoolakhan

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[299] Ibid.

[300] Ibid., Letter to the Acting Judge at Ahmedabad, No. 639, dated 29 April 1836.

[301] BL, IOR/V/22/551, *Reports of the Selected Cases Decided by the Sudder Dewanee Adawlut, Bombay*, 95–98 (*Roodrageer Gosavee, deceased, his Disciple and Heir Vishwaeshwurgeer [Appellant] v. Kazee Hyutoolakhan wulud Kazee Mahomed Tukeeka [Respondent]*).

took over as the *qāẓī* of Pune upon the death Mahomed Ṣafdar, he expected to have access to the "3 chaoors and 90 bigas of land" in question but when he tried to put his claim into action, he faced opposition from Vishwushwurgeer, disciple and heir to Roodrageer Gosavee.[302]

As Vishweshwurgeer argued, the land attached to the *qāẓī*'s office had been mortgaged to Roodrageer for the past forty years, and Hyutoolakhan could not take it from him "without the order of Government."[303] Following Vishweshwurgeer's production of the original mortgage deeds, the court of first instance ruled in his interest and rejected Hyutoolakhan's claim. In appealing this decision, Hyutoolakhan produced the original sanad from Aurangzeb "dated 246 years" ago in which the Mughal emperor attached the land in question to the office of the *qāẓī* of Pune.[304] As such, Hyutoolakhan claimed the land could not be mortgaged and he asked the court to affirm his claim. The Zillah Judge agreed with Hyutoolakhan's claims to the land on the basis of his "right and title as Kazee," reversed the *munṣif*'s decision, and "restored" the mortgaged land to Hyutoolakhan.[305]

The Zillah Judge's decision did not resolve the dispute between Hyutoolakhan and Vishweswurgeer, however, and on special appeal, the case reached the SDA at Bombay. At issue in this appeal was the question of whether the land grant originally attached to the office of the *qāẓī* was heritable, given that the office of the *qāẓī* was not hereditary. In light of the evidence produced—including the *farmān* from Aurangzeb, which the court argued was not an original but a copy of a copy—the court argued that Qāẓī Hyutoolakhan had no claim to the land in

[302] Ibid.

[303] Ibid.

[304] Ibid.

[305] Ibid.

Mahomed Ṣafdar's possession. The land was a personal *in'ām* to which Hyutoolakhan had no legitimate claim.[306] Arguing that the validity of the original *sanad* had never been proved, the Judges of the SDA, "returned [the case] for re-trial, in order that the Judge may have the document above referred to proved."[307] Though the Judges of the SDA concluded their decision in the case by mentioning the dubious nature of the original *sanad*, the larger question in this case was the status of the *qāẓī*'s land grant. Challenging the heritable nature of the original land grant, the judges undercut the *qāẓī*'s access to income from the lands to which he claimed title and forced him to earn an income through services rendered, rather than through land-based entitlements.

Questions relating to land grants attached to the office of the *qāẓī* were central to the government's efforts to transform the office of the *qāẓī* from one rooted in the hereditary occupation of the original grantees and their successors to one defined by professional standards tied to training and education, but the government's response when such questions arose was often inconsistent. In general, Company officials worked to separate the office of the *qāẓī* from any expectation of hereditary entitlement and also sought to divorce the office from any land grants or other stipendiary emoluments. The Company was inconsistent in the implementation of its stated objectives with respect to the professionalization of these offices, however. In fact, rather than implement these directives outright, Judicial Department officials often referred complaining petitioners to the civil courts, rather than make executive decisions with respect to appointments. In multiple instances, then, judicial department officials either declined to intervene or refused to reverse earlier decisions, preferring instead to send complainants to the

[306] Ibid., 98.

[307] Ibid.

civil courts to sue their opponents for damages, rather than wade into the matter independently.[308]

Putting an end to rivalries and indecencies?

Qāẓī Yusuf Moorgay was not the only individual subjected to the pressures and challenges of his rivals. In most cases, such rivalries revealed themselves during the appointment process, when the death or demise of an incumbent officer created a vacancy. When such vacancies emerged, local judges submitted their recommendations to the judicial department at Bombay and in most cases could fill the opening fairly efficiently, as outlined above. In cases involving rivals, however, the process of filling vacancies became complicated by additional petitions, counter-petitions, and at times recommendations and examinations. Rivalries themselves only rarely went to court, but in many instances, long-standing rivals referred to prior encounters in the civil courts or in other fora to prove subsequent claims. Such rivalries were, in most cases, the product of deep-seated personal dislike between individuals or their families but in some cases, rivalries also emerged as the result of the way the Government handled appointments, making some particular offices more susceptible to on-going rivalries than others.[309] The qāẓīship in Pune is one such example.

Ten years after submitting his previous complaint mentioned above, Qāẓī Hyutoolakhan led the charge against his alleged rival *qāẓī* working in the Pune Camp. In 1847, he petitioned Henry Brown, then judge at the district court at Pune requesting to extend the limits of his

[308] It is unclear whether such referrals reflect emerging ideas about the separation of powers between executive and judicial functions or whether this administrative tendency simply reflected labor issues and gave administrators an easy way to address the flood of petitions that besieged them regularly.

[309] In the first-half of the nineteenth century, competition from up-start young *qāẓī*s does not appear to be an issue, though rivalries between established families and better-educated middle-class candidates became an issue later in the century.

jurisdiction to include not only the town of Pune but also the military camp abutting the city.[310] In his petition, Hyutoolakhan complained against a certain Shaikẖ Aḥmad who, the petitioner wrote, "has no Sunnud of Cauzee but officiates as such in the Cantonment."[311] As *qāẓī* for the city of Pune, appointed under a *sanad* granted to him by the Governor in Council on March 5, 1846, Hyutoola was appalled by the actions of the unauthorized person performing the duties of *qāẓī* in the Pune Cantonment. He therefore requested the Company to "kindly authorize [him] to conduct the duties of Cauzee for the Camp at Poona," put an end to the unauthorized *qāẓī*'s intrusion, and "give the full effect to the Sunnud granted to [him] by Government."[312]

Judge Brown, who received the original petition from Hyutoolakhan, requested further information from the military authorities at the Pune camp to confirm the accuracy of Hyutoolakhan's allegations about the unauthorized *qāẓī* operating it the military camp. In response to this inquiry, Captain Morse wrote to confirm that as the petitioner claimed, "the person performing the office of Cazee in the Poonah Cantonments has no regular sunnud according to the Government's Regulations."[313] This person, however, was not working in contravention of the government regulations. Rather, "he has been permitted to exercise those functions in succession to his father who held written authority from a former superintendent of Bazars dated 10th July 1818…and from General Smith commanding Poona Division dated July 9th 1829."[314] Admittedly, the *qāẓī* working in the camp at Pune did not possess a *sanad* granted by

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[310] MSA, Judicial Department Proceedings, 1847, Vol. 21/1284: "Translation of a Memorial from Syud Hyat Ullah Khan Cauzee and Khuteeb of Poona district to Henry Brown Esquire Judge of the Poonah Zillah."

[311] Ibid.

[312] Ibid.

[313] Ibid., Captain Morse's Letter, No. 29, dated 12 February 1847.

[314] Ibid.

the government as stipulated in the regulations, but he had been granted permission to work by the previous Superintendent of Bazaars. Along with his letter, Captain Morse also sent copies of the documents referred to in his letter, the first being a certificate granted by Thomas Ellis to "Shaik Issoof" in 1818, praising his character and confirming his appointment as "Cazee & Malna in the Poona Camp Bazar."[315] The second document, a "Hookoom Nama" from General Smith, bearing the same date as above, reconfirmed this appointment, and further added that Muslims in the camp,

> should consider Cazee Yoosoof their Cazee & spiritual guide, and should reverence by him. If any one after the proclamation of this decree would oppose Cazee Yoosoof in what he says which is inconsistent with the religion, & would quarrel with him, I will call him to account. If Cazee Yoosoof does not behave well, then complaints should be lodged against him in the Police.[316]

General Smith's "Hookoom Nama" provided the camp *qāẓī* with considerable support, but the document did not carry the same weight as a regular *sanad* of appointment granted by the Governor in Council. Recognizing this disparity, military officials at Pune thus recommended the full appointment of a *qāẓī* separately assigned to the military camp.

Whereas in some of the examples cited above, the Government referred complaining *qāẓī*s to the civil courts in order to prove their claims or to receive compensation for the damages caused to them by their rivals, in the case of Hyutoolakhan and the rival *qāẓī* of the Pune Camp, the government took a different tack. In response to questions surrounding the camp *qāẓī*, the Major General Commanding the Pune Division of the Army made the suggestion in his letter to the Adjutant General of the Army at Bombay that the government consider appointing a

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[315] Ibid., "Certificate from Thomas Ellis, Asst. Supt. of Bazar."

[316] Ibid., "Translation of Gen'l Smith's Hookoom Nama."

separate individual to act as *qāẓī* for the camp because "the inconvenience of not having the Cazee resident in the Cantonment would be found to be very great."[317] He did not dismiss the possibility of the city *qāẓī* extending his jurisdiction to cover this territory but seemed to favor the "appointment of a fresh Cazee for the cantonment."[318] The judges of the Ṣadr ʿAdālat in Bombay agreed with this suggestion but did not wish to encourage dramatic intervention, so rather than appointing a separate *qāẓī* at this time, the judges recommended "the separation of the two offices of City and Camp Cazy might take place upon a vacancy occurring in the City Cazyship." In the meantime, they suggested "the Cazy of the City of Poona should be directed to appoint a Naib for the Cantonment."[319] Following this recommendation, then, the city *qāẓī* would then recognize Shaikẖ Aḥmad not as his rival but as his assistant and permit his newly-appointed *nā'ib* to continue carrying out the duties of the *qāẓī* for the cantonment.[320] Agreeing to this course of action, the Judicial Department then communicated the resolution to the Acting Adjutant General of the Military for implementation. Reorganizing the territories included within the jurisdictions of various *qāẓī*s was one of the Judicial Department's principal means of adding bureaucratic order to the messy system it inherited. Bifurcating the office of the *qāẓī* between the *qāẓī* for the camp and the one for the city of Pune represents a rare instance in which the Government added a new position, but it was a decision that would have later consequences.

The following year, Qāẓī Shaikẖ Aḥmad, *nā'ib qāẓī* at the Pune Camp became the center

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[317] Ibid., Letter to Adjutant General of the Army, Bombay, dated 17 Feb. 1847.

[318] Ibid.

[319] Ibid., Letter to the Secretary of Government in the Judicial Department, dated 21 May 1847.

[320] Ibid.

of an administrative inquiry centered around an incident involving a woman, Sakīna, who, upon refusing to live with her husband, Karīm Bak̲h̲sh, was subjected by a group of vigilantes from the community to the horrific and humiliating punishment of having her head shaved, her face painted black, and being forced to parade through the cantonment in a state of undress on the back of an ass.[321] When news of the incident reached Henry Brown, the session judge at Pune, he ordered an inquiry into the events—and particularly into the *qāz̤ī*'s alleged involvement in approving the punishment—under Section V of Regulation XXVI of 1827.[322] The seven witnesses testifying in the case were questioned by the judge and by the accused *qāz̤ī* about the events that preceded the gathering in which the community decided Sakīna's punishment and examined the *qāz̤ī*'s role in suggesting or approving the punishment.

During the course of the investigation, it became apparent that although Shaik̲h̲ Aḥmad was present at the initial group meeting, he was not involved in the process of assigning punishment to Sakīna. As he explained in his defense:

> I never gave orders that her head should be shaved that she should be mounted on an ass, when I was summoned by the Bazar Master I and other people made the same statement before him. However my enemies instigated the woman to set up a complaint against me, the Complaint is false, and it is raised from motives of malignity[. T]he matter was discussed by the meeting and soon after they went to the adjutant.… Two or four days after, the proceedings of the meeting were reported by the Adjutant to the Commanding officer, and I heard that the woman was punished by the meeting. I was not present when they punished the woman and I never authorised them to do so. I beg that you will be good enough to take these circumstances into consideration and make a favorable report to the General Sahib, with a request that the usage, as is prevalent in the Judge[']s Court of putting questions on the Mahomedan Law to the Cauzee, and obtaining his answer in writing may be observed in the Cantonment by the Bazar Master and others, I beg in

[321] MSA, Judicial Department Proceedings, 1848, Vol. 21/1392.

[322] Ibid.

conclusion that you will view the complaint of Suckina as false and against me.[323]

Though the *qāẓī* admitted his presence at the initial meeting during which Sakīna made the complaint against her husband, he claimed no responsibility for the type of punishment she received. He asked the judge to make a "favourable report" regrading his involvement and to regard the charges brought against him by the aggrieved woman as "false."[324] Through the course of gathering testimony from witnesses involved in the incident, the *qāẓī* proved his innocence with respect to the charge of approving the cruel punishment, but the government could not drop the matter entirely. As the report made clear, the *qāẓī* was not responsible for deciding the punishment but he was responsible for participating in an unauthorized meeting in the cantonment and was generally responsible for allowing matters to get out of hand, even though he did not sanction this form of vigilante justice.[325] There were recommendations supporting the *qāẓī*'s dismissal on account of his failure to uphold the tenets of his position, but upon a sizable outpouring of support for him from *ṣūbadār*s, sepoys (*sipāhī*s), *ḥawaldār*s, and others in the cantonment, the sentence was mitigated. The government agreed to suspend the *qāẓī* for six months, and to issue him a strong warning "that in the event of any similar charge, being hereafter proved against him, he will be dismissed with disgrace from the service of Government."[326] The commanding officer at Camp Pune, who permitted the unauthorized

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[323] Ibid., "Translation of defence given by Cauzee Ahmed Wuld Mohomet Isuf of the Poonah and Purkee Cantonment."

[324] Ibid.

[325] This type of punishment is likely drawn from Hindu forms of public shaming, not from Islamic norms. As Eveline Masilamani-Meyer writes, "To be drive through the village on an ass was a punishment meted out to adulterers." See Eveline Masilamani-Meyer, "The Changing Face of Kāttavarāyan," in *Criminal Gods and Demon Devotees: Essays on the Guardians of Popular Hinduism*, ed. Alf Hiltebeitel (Albany, NY: SUNY Press, 1989), 69–104.

[326] Judicial Department Proceedings, 1848, Vol. 21/1392, Judicial Consultations, No. 1613/28 dated 4th March 1848, No. 3153/61 dated 1 May 1848, and No. 6489/6507, dated 6 September 1848.

meeting to take place and allowed the punishment to be carried out did not receive such lenience; as supervising officer he, rather than the *qāẓī*, was responsible for the events that transpired.[327] The Company could not permit such indecorous acts to take place under its watch without holding someone accountable, and he was punished.

The decision set forth at the end of this inquiry did not, however, put an end to the camp *qāẓī*'s infelicities, which brought to light the old rivalry between the *qāẓī* of Pune Camp and the *qāẓī* for Pune City again. Since the time of government's decision to assign a separate *nā'ib qāẓī* to the Pune camp, the city *qāẓī* worked tirelessly, petitioners claimed, to remove him from office and to claim for himself the fees paid by residents of the cantonment to their *qāẓī*. In 1850, the city *qāẓī* submitted complaints against the *nā'ib* to the government, claiming that Qāẓī Shaiḵẖ Aḥmad refused to follow his orders.[328] The government did not take these complaints seriously, so when Shaiḵẖ Aḥmad sent his own complaint against the "tyrannical" and "unjust" treatment of the city *qāẓī* toward him and asked for a separate *sanad*, the government replied that "the assertions of Shaik Ahmed were false, and that he [made them in order] to carry on his duties according to his own wishes, and independent of the instructions given him by the Judge and city Cazee."[329] Tiring of these petty rivalries, the government warned the two *qāẓī*s that in the future, "such improper conduct" would result in "instantaneous dismissal."[330] But the rivals did not heed this warning.

The practice of mutual critique between the *qāẓī*s at Pune continued in this fashion until

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[327] Ibid.

[328] MSA, Judicial Department Proceedings, 1855, Vol. 20: "Letter from Keays to the SDA, No. 659, dated 5 July 1855."

[329] Ibid.

[330] Ibid.

1854, when the city *qāẓī* eventually found a successful approach to ousting his rival. In a report he sent to the judge at Pune, Hyutoolakhan wrote "that the register of marriages kept by Shaik Ahmed his Camp Naib was not formal and contained a number of errors."[331] In response to this allegation, "The Register Book was accordingly sent for and referred with the City Cazee's complaint to the Mahomedan Law officer for enquiry and report. That officer reported that the irregularities complained of did exist and that much want of care in keeping the register was apparent."[332] Proving the camp *qāẓī*'s "want of care" in maintaining the register books was the proverbial straw that broke the camel's back. When the camp *qāẓī* failed the following year to submit his books to the Muslim Law Officer for review, Judge Keays decided "that the behavior of Shaik Ahmed [could] be tolerated no longer."[333] Arguing for his immediate dismissal, the judge reasoned that the camp *qāẓī* "was allowed every possible opportunity for mending his conduct, and was fully apprised…that dismissal would inevitably follow the repetition of such contumacious behavior." In conclusion, Keays asked the government for permission—if necessary—to appoint a new *nā'ib qāẓī* for the cantonment. After nearly a decade of conflict between the city *qāẓī* and his *nā'ib* at the Pune Camp, Shaikẖ Aḥmad was dismissed "for flagrant and systematic disobedience of the orders of his superior the City Cazee."[334] The Company could tolerate rivalries between *qāẓī*s, but it could not condone carelessness in the *qāẓī*'s work. Shaikẖ Aḥmad lost his position as *nā'ib qāẓī*, and Hyutoolakhan proved his mettle as the superior officer.

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[331] Ibid.

[332] Ibid.

[333] Ibid.

[334] Ibid. "Extract paras 13&14 of the Judicial Despatch, from the Bombay Government to the Hon'ble the Court of Directors, dated 2nd May 1856, No. 18."

V. Conclusion

Allegations of impropriety, acrimonious rivalries, and spurious attacks against incumbent officers challenged the bureaucratic order the East India Company sought to impose on the *qāẓī*s it appointed. Administrative checks and balances painted a veneer of order and rectitude over a complex of *qāẓī*s that was embedded deeply within intra- and inter-familial and inter-fraternal politics, but one of the features that emerges in the context of these debates concerning rivals is the extent to which even examples of fractious discord were conveyed according to hierarchical authority and bureaucratic systemization. In the case of Yusuf Moorgay's appointment, the Company could not reveal its overwhelming favor for the candidate it knew to be loyal on the basis of several decades of previous service. Proper inquiries had to be made and adequate explanations given. Where administrative procedures were not sufficient for the purposes of assessing evidence presented, the government referred rival claimants to the civil courts, as in the case of *Roodrageer Gosavee, deceased v. Kazee Huitoolakhan.* The imperial bureaucracy placed its faith in the unbiased and analytical powers of the courts to answer the complicated questions it received, and used the courts to eliminate the potential for future controversies or allegations of impropriety. But these methods did not satisfy all claimants who approached the court. In the case of Hyutoolakhan's complicated relationship with his *nā'ib qāẓī* assigned to the Pune Camp, the government took care in assessing the *nā'ib*'s behavior, owing in part to the support extended to him by the soldiers stationed there. Impropriety could not to be tolerated, but judges could still deploy certain administrative maneuvers to avoid upsetting the populous. Such dealings placed the *qāẓī*s of the Bombay Presidency between the administrative goals of the nascent colonial state and the needs of these foreign rulers, struggling to maintain their hold over a diverse population.

From the earliest legislation passed in late-eighteenth century to the administrative

inquiries undertaken in the mid-nineteenth century, the office of the *qāẓī* underwent several transformations. These changes are not always evident in the discourse centered around moments of rupture and uncertainty, but as the early decades of the nineteenth century became the middle decades, Company administrators became more certain in their understanding of the *qāẓī*'s place in colonial society and more confident in their ability to interfere in their appointments, and the early embarrassment experienced by people like Shaw at Ratnagiri was later recast as frustration and indignation in later episodes. The decision to dismiss the *qāẓī* at the Pune Camp reflects this transition; other modes of dispute resolution were indeed possible, but after dealing with the conflict for nearly a decade, Judge Keays decided instead that it was simply time to remove this thorn in the Pune Court's side for good.

Along these lines, referring disputes to the civil courts was one of the strategies Company administrators employed for the purposes of accurately assessing claims and wading through the evidence presented in their support. It resolved other disputes by calling upon the expertise of comparable officials employed in its service, such as Muslim Law Officers, or court *muftī*s. But once certain administrative precedents were established, the judicial department stopped searching elsewhere for justification and referred to its own bureaucratic procedures. Relinquishing its earlier dependence on native intermediaries, the Company state was coming into its own in a way that made *qāẓī*s—who might have earlier rejected or refused Company oversight—dependent upon the permission and authority it now granted. Though many of the examples presented above focus on instances in which conflicts threatened to disrupt the bureaucratic order, it is important to note that throughout these dealings, there was seldom any reason to flout the rules and regulations relative to these appointments. Rather, judges, registers,

and secretaries actively worked to resolve disputes within proper government frameworks. Focusing on administrative discourse thus draws attention to the strategies by which Company policies and protocols brought the *qāẓī*s into the hierarchical structure of the colonial state. The following chapters consider the ways in which *qāẓī*s responded to these changes, and worked to maintain space for their work in the new imperial bureaucracy.

CHAPTER 3: NOTARIES BY ANY OTHER NAME: WHAT *QĀẒĪ*S WROTE IN THE 19TH CENTURY

I. INTRODUCTION

Addressing the Governor in Council for the Bombay Presidency in March 1839, the *qāẓī* of Bharūch, Sayyid Aḥmad Ḥusain, enumerated several complaints against the judges of the district court. Curtailing the *qāẓī*'s right to collect fees for affixing his seal and signature to an array of important legal documents, Mr. Romer, the Judge at Surat, had reduced the *qāẓī*'s annual income by several hundred rupees.[1] Specifically, Romer's enforcement of a recent order issued by the Judges of the Ṣadr Court had stripped the *qāẓī* of the right to affix his signature and seal to all *vakālat* and *mukẖtār nāma*s[2] executed "both for the court and private use."[3] As Qāẓī Aḥmad Ḥusain explained, by signing and sealing the documents (which he did only after making strict "enquiries"), he ensured that the "Sirkar [*sarkār*, government] had nothing to fear of the peoples committing any fraud whatever" such that taking away this responsibility would "prove detrimental" not only to the *qāẓī* for his loss of income but also to "the Sirkar and Ryot [*raʿāyā,* people, public]" as well.[4]

To buttress his claim, Aḥmad Ḥusain argued that the small fee parties paid to him for affixing his seal and signature to these documents was trivial compared to the sense of trust and

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[1] Maharashtra State Archives (MSA), Judicial Department Proceedings, Vol. 20, 1839, "The Humble Petition of Kauzee Ahmed Hossein of Broach."

[2] *Vakālat* and *mukẖtār nāma*s are deeds bestowing the beholder with representative power, or power of attorney. Momin Mohiuddin describes the difference as such: "Whereas the *vakálat náma* is executed to authorise an agent (*vakil*), to present a case in the court on behalf of the executor, a *mukẖtār-náma* is a deed of attorney for representing all the interests of the latter." (Momin Mohiuddin, *The Chancellery and Persian Epistolography Under the Mughals: From Bábur to Sháh Jahán (1526–1658), A study on Inshá, Dár al-Inshá and Munshis, based on Original Documents* [Calcutta: Iran Society, 1971], 127).

[3] MSA, Ibid.

[4] Ibid.

verification they received from the *qāẓī*, since he not only examined the documents themselves but also kept a "Register Book of all the Vikalut and Mookhtyar Namehs with the names of the parties to produce proof in case of any other papers being lost or forged."[5] Abrogating the *qāẓī*'s right to collect minimal fees from the parties who executed these documents and received the verification provided by his seal made the population and the government vulnerable to the harm of potentially forged or illegally executed documents—neither of which was a desirable outcome. Despite these protestations, however, the *qāẓī*'s claim to this perquisite, earned him no reward, for the judges of the Ṣadr Courts remained firm in their decision to remove the *qāẓī*'s hand and to implement new protocols for the purposes of sealing and registering documents.[6]

Although the relationship between paper practices and the exercise of imperial power has received renewed attention in recent years,[7] the *qāẓī*'s relationship to writing and authenticating legal documents has yet to receive serious consideration. In what follows, this chapter considers the *qāẓī*'s role as a legal intermediary between the increasingly expansive reach of the Company state and the diverse population he served, focusing in particular on the transformation of a family of hereditary *qāẓī*s working in western Gujarat. Along these lines, the life and work of the *qāẓī*s of Bharuch offers a case study in the transition of legal practice that is indicative of the larger changes and transformations in aspects of legal writing and document production during the first-half of the nineteenth century, one that shows how the *qāẓī*'s work changed and how these changes buttressed British concepts of law and and legal categories. Such observations

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[5] Ibid.

[6] Ibid.

[7] Bhavani Raman's *Document Raj* and Miles Ogborn's *Indian Ink* are two exemplary works in this category. (See Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India*, South Asia across the Disciplines [Chicago: The University of Chicago Press, 2012]; and Miles Ogborn, *Indian Ink: Script and Print in the Making of the English East India Company* [Chicago: University of Chicago Press, 2007].)

contribute to the growing historiography on the evolution of legal pluralism in South Asia and the contributions—and resistance—of native document writers in the transition to colonial rule.

Despite the robust archive of materials related to the appointment and management of *qāẓī*s presented in the previous chapter, there has been little effort to understand the *qāẓī*'s presence in the production of early colonial legal culture and Company engagement with the prevailing legal cultures of local communities. Some legal histories cite the *qāẓī*'s loss of status or marginalization as a by-product of the colonial legal system's growing efforts to gain control over the exercise and interpretation of religious law under the rubrics of Anglo-Muslim and Anglo-Hindu law, but such histories rarely account for the *qāẓī*'s work facilitating the routinization and mechanization of the bureaucratic work associated with the production of legal documents and the maintenance of legal records.[8] Developments introduced within the *qāẓī*'s office across the long nineteenth century, however, suggest that individual responses to British policy were not only instrumental in expanding colonial legal bureaucracies of law but were also critical to the emergence and establishment of modern Islamic institutions. The operations of such institutions today not only reflect changes introduced during this earlier, formative moment but also signify an important means for understanding the dynamics of religio-legal institutions and their relation to secular state structures.

Following this, Aḥmad Ḥusain's complaints to Company officials suggest that in the first

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[8] On the compartmentalization of Islamic law, see, Jörg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769-1817*, Beiträge Zur Südasienforschung, Bd. 79 (Wiesbaden: F. Steiner, 1983); and Singha, *A Despotism of Law.* On Codification more generally, see Wael B. Hallaq, *An Introduction to Islamic Law* (New York: Cambridge University Press, 2009), 86–9; M.P. Jain, *Outlines in Indian Legal History*, 3rd ed. (Bombay: N.M. Tripathi, 1972); Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *Law and History Review* 23 (2005): 631–84; M.P. Singh, *Outlines of Indian Legal & Constitutional History: Including elements of the Indian Legal System* (Delhi: Universal Law Publishing, Co., 2006), 109–124; and on the lasting effects in Pakistan today, see Osama Siddique, *Pakistan's Experience with Formal Law: An Alien Justice*, Cambridge Studies in Law and Society (New York: Cambridge University Press, 2013), 92–95.

decades of the nineteenth century, the *qāẓī*'s office operated at the intersections of his public office and private agency. By providing services to private individuals—i.e., by authenticating and registering legal deeds and documents—he performed a public good, certifying the documents' authority and protecting the individuals who executed them from forgery and fraud. As in previous centuries, his authority to do this came from the imperial state (either directly, or through the local agent who appointed him) and his work found legitimacy through the abstract idioms of Islamic law. In other words, the *qāẓī*'s status within society benefitted from the letters of appointment and recognition he received from the imperial state as well as from the authority afforded to his status as an agent of divine law on earth. For Hindus as well as for Muslims, then, the *qāẓī* was a representative of the state, governed by the rules of religious law and supported by the structural authority of the central government, working between religious community and state *qānūn*.[9] Yet it was not until the nineteenth century that the office of the *qāẓī* became more bureaucratic than patrimonial, more administrative than ceremonial.[10] For the purposes of understanding these changes, the family *qāẓī*s of Bharuch offer a meaningful case study: The papers produced and preserved by this family archive some of the changes that refigured and reformulated not only the day-to-day practices of Islamic legal practice but also the everyday encounters with legal bureaucracies in locations far removed from the imperial—or even colonial

[9] For a discussion of the *qāẓī*'s intermediary role under previous administrations, see J. S. Grewal, "The Qāzi in the Pargana," in *Studies in Local and Regional History* (Amritsar: Guru Nanak University, 1974), 1–17; and Farhat Hasan, *State and Locality in Mughal India: Power Relations in Western India, C. 1572-1730*, University of Cambridge Oriental Publications 61 (Cambridge, U.K.: Cambridge University Press, 2004). Leslie Pierce also discusses the *qāẓī*'s role negotiating differences between communities for the Ottoman context. See Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003).

[10] The previous chapter highlighted the first stages in this process.

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II. Entering the Empire of Paper

Paperwork was central to the East India Company's expansion in South Asia, but as the complaints of Aḥmad Ḥusain and others make clear, Company paperwork did not always reflect Company power. For Martin Moir, former archivist and deputy director of the India Office Library, inheritor of the thousands of volumes of paper produced by the administrators of the India Office, the *Kāg̲haẓī Rāj* ("government by paper") was on the one hand a way to record the reasoning and rationale for any actions taken in the subcontinent and on the other hand a means by which to monitor the local man-on-the-spot.[12] The Company achieved these aims by implementing strict protocols for the production, transmission, and inspection of various types of documents—accounts, letters, proceedings, consultations, digests—at different levels within the Company hierarchy, in order to ensure their proper execution and organization.[13] As Moir observes, however, "the Company was seldom able to stand back and take a fresh look at the rationale behind its *Kaghazi Raj*."[14] Rather, as its empire of paper grew, the Company became, in Moir's terms, "a self-perpetuating process that demanded more and more information" to little or no additional benefit.[15] The Company produced mountains of paper that could not be read or digested properly, and "the enormous bulk of the Consultations" it amassed "makes it unsafe to

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[11] By which I mean the erstwhile Mughal capital at Delhi as well as the presidency capitals of Bombay, Calcutta, and Madras.

[12] Martin Moir, "Kaghazi Raj: Notes on the Documentary Basis of Company Rule: 1783–1858," *Indo-British Review* 21, no. 2 (1993), 185–186.

[13] Ibid., 186–187.

[14] Ibid., 187.

[15] Ibid., 187.

reach any firm conclusions about the administrative importance of the documents contained only in the Consultations," he concluded.[16] If the documents collated in the Madras Consultations are any indication, Moir suggests, there can be little expectation that what was produced was actually consulted. Thus, with respect to the volume of documents produced by the Company for the Company, it is safe to suggest that the Kaghazi Raj was subject to its own mis-readings.

Though Moir considered the Company's paper empire from a privileged position as its archivist, he has not been the only individual to survey the materials produced by the East India Company and to consider the perplexing relationship between documents and domination, paper and power, writing and ruling that emerges. In this context, Miles Ogborn's work has made a sizable contribution toward a more comprehensive understanding of the role not only writing but also printing and publishing played in the formation of the Company state. In *Indian Ink*, Ogborn considers the impact of new types of writing on the business of the Company, looking at the ways in which the publication of speeches, pamphlets, stock reports, rumors, anecdotes, and other writings infringed upon the production of official narratives and interfered with the Company's control over the intellectual output of its empire by tracing the intersections between "speech, script, and print" and the mobility—or perhaps immobility—of the written word across space, time, and culture.[17]

By demonstrating the ways in which new forms of information intruded upon and disrupted the practices of building a British empire in Asia, Ogborn points to one of the central

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[16] Ibid., 192.

[17] Ogborn, *Indian Ink*, 5.

paradoxes in the nature of what Bhavani Raman terms (in a faint homage to Moir's earlier phrasing) the "Document Raj," for in Raman's analysis, the impulses of the document raj are immediately and simultaneously constitutive of and enmeshed in various skepticisms about paper.[18] Focusing on the south Indian territories of the Madras Presidency, Raman's contribution to this literature on the role of paperwork in the exercise of imperial rule considers the way owning, producing, and mastering written records was central to the Company's establishment of power, yet such reliance on written records, she observes, also raised concerns about the accuracy of the records—and the trustworthiness of those employed to translate, interpret, and maintain those records—that formed the basis for British rule in South Asia.[19]

For the purposes of understanding Aḥmad Ḥusain's career in Gujarat, Raman's account is particularly important for the emphasis it places upon the role of the native scribe in the establishment and maintenance of the document raj in south India. Her compelling account of Company efforts first to gain "command"[20] of the Tamil *munshī* (scribe) or *karanam*'s scribal expertise and then to remold the "scribal habitus"[21] of these native intermediaries before employing them in the Company *cutcherrie*s adds rich information to the long-unfolding history of the marriage of "empire and information".[22] Though Raman focuses on Tamil scribes (*munshi*s,

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[18] Raman, *Document Raj*, 15; and Bhavani Raman, "The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras," *Comparative Studies in Society and History* 54, no. 2 (2012): 229–50, doi:10.1017/S0010417512000023.

[19] Raman, *Document Raj*, especially chapter 5, "Duplicity and Evidence,"137–160.

[20] Bernard S. Cohn, "The Command of Language and the Language of Command," in *Subaltern Studies IV: Writings on South Asian History and Society*, ed. Ranajit Guha (Delhi: Oxford University Press, 1985), 276–329.

[21] On scribal or textual habitus, see Brinkley Morris Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*. 1st. pbk. ed. Comparative Studies on Muslim Societies 16. (Berkeley: University of California Press, 1996), 19.

[22] See C.A. Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870.* 1st pbk. ed. (New York: Cambridge University Press, 1999).

*karanam*s) of the Madras Presidency, many of her astute observations could also apply to the *qāẓī*s of the Bombay Presidency as well, but the *qāẓī*'s additional position as an influential intermediary; document-writer, translator, and interpreter; arbitrator and peacekeeper; and religious leader or *imām* complicate this history.[23] Many *qāẓī*s (like Yusuf Moorgay from the previous chapter), worked as scribes, but some of them were also landholders and moneylenders; others were religious scholars, preachers and prayer leaders at local mosques. In this sense, then, the professional fate of the *qāẓī* cannot simply be equated with the fate of these other scribal intermediaries, particularly given the Company's early interest in separating spheres of religious activity from those of political life.

Within the growing body of literature on imperial intermediaries, interpreters, spies, scribes, translators, news-writers, and letter-carriers in the early nineteenth century, scholars tend to privilege the centrality of these figures to the expansion of empire,[24] rather than the larger impact of their changes in documentary practices on the everyday lives of private individuals, which is the focus here.[25] A common thread that emerges in all of these studies of information, writing, and imperial expansion, then, is the relationship between the possession of written records and the extension of imperial power into the *mufaṣṣal* (rural hinterlands). Accordingly, one could argue that the heart of the colonial knowledge-production project was first dominated by bundles, piles, and rolls of records because before British forces could attempt to control a

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[23] Yusuf Moorgay's career is a case in point. After beginning his career working for the Company as a translator-cum-spy during the Company's conquest of new territories in Sindh, he was nominated for and eventually appointed to the office of *qāẓī* of Bombay city and continued to wear many hats while occupying this office. (See Chapter Two.)

[24] See Bayly, *Empire and Information*; Michael Fisher,"The Office of Akhbār Nawīs: The Transition from Mughal to British Forms." *Modern Asian Studies* 27, no. 01 (1993): 45–82; Raman, *Document Raj;* and A. Ira Venkatacalapati, *The Province of the Book: Scholars, Scribes, and Scribblers in Colonial Tamilnadu* (Ranikhet: Permanent Black, 2012).

[25] Admittedly, the one cannot be separated from the other, but the distinction invoked here reflects differences between a political history of empire and a social history of life in an empire.

particular region, they first had to gain command of the region's administrative artifacts—land records, tax registers, and letters of appointment among them.[26] "Knowing the country" was synonymous with knowing what was written about it,[27] and acquiring, compiling, interpreting, and analyzing these records not only demanded the assistance of *munshī*s, news-writers, and interpreters who were capable of acquiring, translating, and transmitting sensitive information to the Company, but also required acquiring control over the production of new documents.

The imperial administration furthered this objective in two ways. First, it introduced protocols requiring the registration of documents and deeds, and second, it monetized the production of legally admissible documents by enforcing stamp duties. Regulations introduced following the Hastings plan of 1772—and trailing other early laws promulgated by the Company after its assumption of revenue-collecting responsibilities in Bengal—included provisions regarding the registration of wills and deeds and references to the requisite use of stamped paper, for instance.[28] These regulations were subsequently revised, amended, updated, and expanded from the late-eighteenth and into the nineteenth century.[29] In the Bombay Presidency, where Qāẓī Aḥmad Ḥusain worked, earlier piecemeal legislation relating to stamps was further consolidated and codified under Regulation XVIII of 1827. Part of the same code under which

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[26] See, among others, Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India*. Princeton Studies in Culture/power/history (Princeton, N.J: Princeton University Press, 1996).

[27] Christopher A. Bayly, "Knowing the Country: Empire and Information in India," *Modern Asian Studies* 27, no. 1 (February 1, 1993): 3–43.

[28] See, e.g., "A Plan for the Administration of Justice," in George Forrest, ed., *Selections from the State Papers of the Governors-General of India*, Volume 2, Warren Hastings (Oxford: B.H. Blackwell, 1910), 290–9, along with Regulation XXVI of 1793 on registration of Wills and Deeds in *Regulations passed by the Governor General in Council of Bengal, with an Index and Glossary. Vol. I, containing the regulations passed in the years 1793, 1794, and 1795*. (London: Printed by the Order of the Honourable Court of Directors. J.L Cox).

[29] See "Chronological Table of the Bengal Regulations" in *Regulations passed by the Governor General in Council… in the years 1793, 1794, and 1795.*

the judicial department appointed *qāẓī*s,[30] Regulation XVIII of A.D. 1827 asserted that it was "expedient to levy a tax upon bonds, and other written obligations and engagements, upon deeds, or other documents transferring or assigning property, upon plaints and other law proceedings, upon sunnuds [*sanad*s] and certain certificates, and upon copies of documents requiring to be authenticated by a public officer" in order for the offices of government to operate properly.[31] In addition to providing for the establishment of an office for the sale of stamped paper and procedures for protecting this office from the temptations of mismanagement or forgery, the regulation also dictated the size and shape of the stamps and the types of paper on which they were to be affixed.[32] The second chapter of the regulation provided a detailed inventory of the types of documents subject to the stamp regulation, including bonds; promissory notes and bills of exchange; letters of credit; deeds of contract; marriage settlements; partnerships or agreements; securities or engagements; deeds of sale, gift, devise, mortgage, and other transfers or limited assignments of property—moveable or immovable—above the value of sixteen rupees along with instructions for determining the amount of stamp duty required, which was further enumerated in a tabulated statement included in Appendix B, for stamp duties applied to bonds, contracts, deeds, goods and in Appendix C, for stamps applied to civil plaints and petitions, along with duties to be applied in more specialized cases in appendixes D through F.[33] Needless to say, the individuals responsible for the drafting of these regulations were

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[30] See Chapter Two of this dissertation.

[31] House of Lords, Parliament, Great Britain, *Accounts and Papers; Seven Volumes (6) Relating to the East India Company and East Indies*, Vol. 6 (XXIII) (London, 1829), 228.

[32] Ibid., 232.

[33] Ibid., 232. (The details of the stamp duty applied to *sanad*s issued for *qāẓī*s is included in Appendix E.) Bhavani Raman describes similar regulations in force in the Madras Presidency. (Raman, *Document Raj*, 146.)

extremely fastidious in the way they enumerated, described, and explained the regulations pertaining to the use of stamped paper, yet despite the particularity with which these regulations spelled out the rules regarding the used of stamped paper, room for more lenient interpretations of the rules remained, and questions surrounding the appropriate stamp value frequently surfaced in the course of litigation.[34] With the Indian Stamp Act of 1899, stamp regulations across the subcontinent were brought under a more uniform legislative heading, but even in the era of extreme codification, local variation remained.[35]

By way of comparison, in the Anglo-American colonies, the promulgation of the Stamp Act of 1765 prompted immediate and intense protest, leading to the repeal of the act by Parliament the following year after the success of the anti-stamp boycott.[36] In India, though they were susceptible to misinterpretation and selective application, there was little effort from the public to protest the acts' sweeping implications. The most prominent opposition to the imposition of stamp duties emerged from the city of Calcutta, following the EIC's introduction of the Stamp Act of 1828. According to the complaints compiled by local inhabitants and presented to the British Parliament, the act was "illegal" and "unconstitutional" under the terms

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[34] See, e.g., *Moosst. Umrut Munee, Appellant, (Defendant) v. Anund Mayee Daseea, Respondent (Plaintiff)* in *Decisions of the Sudder Dewanny Adawlut: recorded in English in conformity to Act XII. 1843, in 1845[-1861]: with indexes of names of parties, and the causes of action, and principal points touched upon in the decision* (Calcutta: W. Ridsdale, Bengal Military Orphan Press, 1847), 67–69; and *Musst. Surb Mongla Choudrain, Anund Maee Choudrain and Kalee Kishwur Raee, Guardian of Bhoobun Mohun Choudree, minor, Appellants (Defendants) v. Usud-o-Zuma Mahomud, Respondent (Plaintiff)*, in BL, IOR/V/22/555, *Selected Decisions of the Sudder Dewanee Adawlut of Bombay,* 127–129. For later examples, see, e.g., *Chedi Lal And Another vs. Kirath Chand And Others*, (1880) Indian Law Report (ILR) 2 Allahabad 682; and *Sheikh Akbar vs Sheikh Khan And Another,* (1881) ILR 7 Calcutta 256.

[35] BL, IOR/R/20/A/3384,"Legislation—Bill further to amend the Indian Stamp Act, 1899, and the Court fees Act 1870, in their application to the Presidency of Bombay."

[36] See, e.g., "Virginia Stamp Act Resolutions" and "Resolutions of the Stamp Act Congress" in *Documents of American Constitutional and Legal History, Vol. 1*, ed. Melvin I. Urofsky and Paul Finkelman, 2nd ed. (New York: Oxford University Press, 2002), 35–38.

of the EIC's charter with the British Government.[37] The protestors considered the act to be a greedy attempt by the EIC to recoup costs for the expenses of recent wars from the already restricted European and native population of Calcutta.[38] Like the colonists in America, the complainants in Calcutta argued that the corporate entity demanding the stamp duties did not possess the authority to do so and that stamp duties were an unfair tax on personal and commercial transactions that were already subject to other forms of licensing fees and duties.[39] Compelling as they might have been, however, such arguments were not successful in causing the Company to cancel its collection of stamp duties on an increasingly diverse array of legal-financial instruments, including, as mentioned in the previous chapter, upon the *sanad*s issued to individual *qāẓī*s.[40]

While in some contexts, Company officials were able to enforce the requirements of the stamp regulations, in others, they were less successful. As Qāẓī Aḥmad Ḥusain's complaints make apparent, despite the authors' efforts to enact a regulation that was comprehensive in scope and impervious to the risks of impropriety persistent among stamp vendors and their clients, it was difficult to meld the physical limitations of the stamped paper with the ideological aims of the stamp regulations.[41] Stamp fraud and forgery were frequent occurrences throughout the nineteenth century, and Company officials stationed in various locales often struggled to meet the

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[37] See, e.g.,[Anon.], *An Appeal to England Against the New Indian Stamp Act; with some Observations on the Condition of British Subjects in Calcutta, under the government of the East India Company* (London: James Ridgway, 1828), 19.

[38] Ibid., "Preface," vii–xvi.

[39] Ibid.

[40] See Chapter Two of this dissertation.

[41] Concern over the presence and persistence of fraud and forgery related to stamped paper was so acute that some administrators attempted to devise alternative means of organizing and storing stamped paper that would prevent fraud including the construction of a locked contraption consisting of several divided compartments "[t]o be made very strong and… clampt with Iron". (MSA, Judicial Department Proceedings, Vol. 19/372 of 1836.)

security demands of the imperial state with the material possibilities of local papers and dies. Following the failed prosecution of Govind Rughonath Gorebollay in a case of (alleged) stamp fraud in the Pune district of the Presidency, for instance, the Government issued instructions to judges and magistrates in the *zilaʿ* (district) courts, asking them to "examine the stamps brought before them with a care" to prevent similar instances of fraud in the future.[42] In addition to this general call for increased caution, the Judicial Department also requested copies of the proceedings from the case so that prosecutors could learn from the shortcomings of the Pune case in order to make future prosecutions more successful. Additionally, the Superintendent of Stamps sent suggestions for changing the material composition of the stamped paper to deter future instances of fraud or forgery. To these ends, he recommended replacing the embossed stamps with printed stamps using unique dies, requiring stamp vendors to "transcrib[e] on each stamp, at the time of sale, the entry made in the sale register" and substituting (inferior) "country paper" for (superior) English paper.[43] Fraud, the Superintendent of Stamps reasoned, could be prevented by complicating the stamps' material construction and modes of verification.

The proposed changes remained a subject of discussion for several months as the Government collected the opinions of various district judges on measures for "the more effectual prevention of frauds in the Stamp Department" and received estimates from the Mint Master, Superintendent of Stamps, and Mint Engineer on the cost of manufacturing and introducing new dies for the production of stamps.[44] Facing estimated costs of more than four thousand

[42] BL, IOR/Z/P/3178, Bombay Judicial Consultations, 1842.

[43] Ibid. However, this was not the only time the question of paper quality came to light. Even as late as 1861, superintendents of stamps complained about the shortage of supplies disrupting their work. See BL, IOR/P/407/55, March 1861, No. 42 in which the Superintendent of Bombay sent a complaint to the Government stating "the paper used in Calcutta is far Superior to any obtainable in this Presidency and that it is also water marked".

[44] BL, IOR/Z/P/3178, Bombay Judicial Consultations, 1842.

rupees to execute these changes, in the end, the Government resolved to post-pone the implementation of these recommendations.[45] This instance was not the only time in which East India Company officials confronted the novel forms of deceit and deception enabled, if not created, by the very mechanisms intended to prevent such occurrences. As the government expanded its efforts to control, contain, and regulate the production of legal documents, zones of deceit, deception, and illegibility continued to emerge on the margins of state control.[46]

The *qāẓī*s of the Bombay Presidency were uniquely poised to implement and evade the EIC's new documentary protocols, and as discussed in the previous chapter, instances of forgery and alleged impropriety involving *qāẓī*s attracted intense scrutiny. As officers of the court, the Government expected the *qāẓī*s it appointed to uphold certain standards of professional conduct, but at the same time, as the complaints proffered by Aḥmad Ḥusain suggest, the Government regularly undercut the *qāẓī*s' ability to inquire into and to authenticate documents appropriately.[47] In order to unravel the *qāẓī*'s role in extending Company control through the production of properly attested paperwork, however, it is first necessary to understand the *qāẓī*'s role as author and authenticator of legal documents in the pre- and early-colonial periods.

III. The origins of a public office: The Qāẓī of Bharuch under Company Rule

Like many *qāẓī*s of the nineteenth century, Sayyid Aḥmad Ḥusain treated his office as a

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[45] Ibid.

[46] On the contradictions between writing and state surveillance, see Veena Das, "Signature of the State: The Paradox of Illegibility," in *Anthropology in the Margins of the State*, ed. Veena Das and Deborah Poole (Santa Fe: School of American Research Press, 2004), 225–252; Radhika Singha, "Settle, Mobilize, Verify: Identification Practices in British India," *Studies in History*, 16 (2) (2000): 151–98; and more broadly, James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed.* Yale Agrarian Studies. (New Haven [Conn.]: Yale University Press, 1998).

[47] The *qāẓī*'s expertise in relation to inspecting and authenticating documents for the courts is one of the arguments presented in debates surrounding the decision to remove the native law officers from the courts. (See Chapter Four of this dissertation.)

hereditary entitlement.[48] In the numerous petitions he sent to the Judicial Department at Bombay, Aḥmad Ḥusain frequently referenced his family's long-standing connections to this position in the town of Bharuch as well as his ancestors' support for the Company at the time of its takeover in 1803. The Company archive supports this claim, as a memo forwarded to the judicial department in Bombay during an inquiry into the entitlements and emoluments of the *qāẓī*s in the Presidency refers to official correspondence from Mr. Prendergast, then Judge and Magistrate in Bharuch, relative to the *qāẓī*'s office in the wake of the Company's ousting of the Nawabs of Bharuch in 1803. According to that memo, Prendergast complained of "the difficulty there at present appear[ed] to be in procuring Native Law Officers possessing the necessary qualification[s]" to work in the Company courts, following the British takeover. The fees collected by the *qāẓī*, namely one-and-a-half rupees per marriage, were too minuscule to support the *qāẓī*. Owing to the court's pressing need to have the *qāẓī* present in court, however, Prendergast requested an allowance of one hundred rupees per month for the *qāẓī*.[49] This salary would supplement "the usual presents of a pair of Shawls" valued around 100 or 120 rupees to be given to the *qāẓī* on the occasion of the ʿĪd holidays, and together, the two incomes would "on the whole enable him to support the respectability of his station [for] which smaller income would not in [Judge Prendergast's] humble opinion be adequate."[50] Owing to Prendergast's suggestions, the Company agreed to grant the *qāẓī* a monthly salary of one hundred rupees (Rs. 100) and one

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[48] On the emergence of these hereditary offices, see Muzaffar Alam, *The Crisis of Empire in Mughal North India: Awadh and the Punjab, 1707-48.* 2nd ed. (Delhi : Oxford University Press, 2013 [1986]), 112–20.

[49] MSA, Judicial Dept., 1864, Vol. 6, "Accompaniment to the statement shewing the emoluments of Kazees &c. of the Broach Division of the Surat District dated 20th May 1864."

[50] Ibid., "Cazees—Information required by the Gov't of India, regarding the lands and emoluments enjoyed by," No. 219 of 1864.

hundred twenty rupees (Rs. 120) for the pair of shawls gifted to him on the occasions of ʿĪd al-Aẓḥa and ʿĪd al-Fiṭr.[51] With these new arrangements in place, the *qāẓī* was able to continue his work collecting fees for the authentication of documents and for the performance of marriage ceremonies and also to continue to aid the Company in its judicial business.

Sayyid Aḥmad Ḥusain's grandfather Zain-ul-ʿĀbidīn was the *qāẓī* of Bharuch when the Company made these arrangements for remuneration in 1805. Upon his death in 1822, the position passed to his son, Sayyid Murtaẓā, and Zain-ul-ʿĀbidīn's pension of one hundred rupees (Rs. 100) per month was divided between his two sons: Sayyid Murtaẓā and ʿAbbās ʿAlī.[52] Sayyid Murtaẓā, however, was not merely the passive inheritor of his father's office; rather, he actively worked to expand the office and its domain. During the course of his tenure as *qāẓī* for the town of Bhaurch, Sayyid Murtaẓā complained about certain interferences in the exercise of his duties in the surrounding *pargana* of Bharuch, which he felt also belonged to his jurisdiction. When he met the Judicial Commissioner assigned to Gujarat and the Konkan during his rounds in 1831, Sayyid Murtaẓā complained, "that under the Sunud granted to him by the Hon'ble the Governor in Council on the 26th January 1822, his jurisdiction [was] made to extend only over the Town of Broach" and as a result, "he is molested and obstructed in the discharge of his duties outside, in the Purguna, by incompetent persons."[53] The *qāẓī*, "beg[ged]" the Judicial Commissioner "that a new Sunud may be issued [to include] the Purgunna" so that he would be safe to exercise his responsibilities outside the town.[54] Respecting the *qāẓī*'s claim to this expanded

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[51] Ibid.

[52] Ibid.

[53] MSA, Judicial Department Proceedings, 1831, Vol. 3/217, "Letter to J.P. Willoughby," dated 28 February 1831.

[54] Ibid.

jurisdiction, the judicial administration agreed to remedy the situation by issuing a new *sanad* for the *qāẓī*, extending the territory of his jurisdiction and appointing him "to the office of Kazee of the Town and Purgunnah of Broach."[55] The office of the *qāẓī* of Bharuch passed to Sayyid Aḥmad Ḥusain upon the death of his uncle, Sayyid Murtaẓā, and the expanded territory remained the domain of that office until 1864.[56]

In 1849, then, Aḥmad Ḥusain passed the office of the *qāẓī* of Bharuch to his son, Muhammad Nūr-ud-dīn Ḥusain. Though official Company policy did not consider the office of *qāẓī* to be hereditary,[57] the Judicial Department in Bombay was inconsistent, to say the least, in its application of this rule: Officials routinely found ways to skirt the official prohibition on hereditary appointments by claiming the absence of other qualified candidates or by adjusting the new *qāẓī*'s jurisdiction slightly to differentiate it from that of his father, grandfather, or uncle. In response to Aḥmad Ḥusain's request to pass the position to his son, however, the Government presented no opposition.[58] Citing his own failing health and the maturity and capability of his son, Aḥmad Ḥusain petitioned the Company in October 1848 to accept his resignation from the office of *qāẓī* in exchange for his son's appointment stating, "I earnestly desire to see my son carrying on those duties during my life time, and it will be a source of gratification to me, moreover he will derive great advantage by commencing those duties under my superintendence."[59] After all, his son was qualified—"well versed in the Persian and Arabic

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[55] Ibid., "Sanad for Suyud Murtaza," dated 13 May 1831.

[56] MSA, Judicial Department Proceedings, 1864, S. No. 207, "General Statement showing the lands and emoluments now enjoyed by the Cazees in the several Districts of the Bombay Presidency."

[57] See, e.g., MSA, Judicial Department Proceedings, Vol. 23, 1843, Hunter's letter to the Sadr Dīwānī ʿAdālat, dated 5 April 1843. (Cf. earlier references to the hereditary office in, e.g., BL, IOR/Z/P/3160.)

[58] MSA, Judicial Department Proceedings, Vol. 21/1392, 1848.

[59] MSA, Judicial Department Proceedings, Vol. 25, 1849.

languages"—and his family had been "well wishers and defendants of the Government" from the time before British rule had been established in the area (a fact Aḥmad Ḥusain often included in his petitions).[60] For these reasons, Aḥmad Ḥusain was reasonably confident the Company would approve the appointment of his son and expressed gratitude for the fulfillment of his wish.[61]

After proper inquiry, Nūr-ud-dīn was found "quite competent to fill the situation," and the judge of the Ṣadr Dīwānī ʿAdālat (SDA) in Bombay subsequently accepted this request. Six weeks after the Judge at Bharuch first passed Aḥmad Ḥusain's petition up the bureaucratic hierarchy, the Judges of the SDA issued a reply, recommending Nūr-ud-dīn Ḥusain for appointment to the office of the *qāẓī* of Bharuch in place of his father, and the Governor in Council acceded to the request in December of that year. The following year, Aḥmad Ḥusain returned his *sanad* (first issued to him in January 1832) to be cancelled, and his son received a new *sanad* appointing him to the office in exchange.[62] In total, the entire process took roughly eight months, and by the end, Nūr-ud-dīn Ḥusain had effectively inherited his father's office. He remained the *qāẓī* of Bharuch until the Government of India dissolved the position with Act XI of 1864.[63] Despite the Government's decision to re-introduce the office in 1880, this is the last reference to him in judicial department records, as Nūr-ud-dīn's name is not listed in the *Government Gazette* along with the names of other *qāẓī*s reappointed under the new legislation.[64] Already by that point, however, several changes had occurred that would reshape his position as

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[60] Ibid.

[61] Ibid.

[62] Ibid.

[63] For further consideration of this act's effects, see Chapter Four.

[64] These lists were published in Part I of *Bombay Government Gazette* in May 1881 and 1882. See also, MSA: Judicial Department Proceedings, Vol 45, 1882.

qāẓī.

IV. Fees and Formalities: Investigating the *Qāẓī*'s claims

As part of the complaint presented at the chapter's opening, Qāẓī Aḥmad Ḥusain claimed to earn upwards of seven hundred rupees annually for his work signing and sealing documents like *vakālatnāma*s and *mukhtārnāma*s.[65] Although *qāẓī*s regularly cited the centrality of their fee-based incomes for their sustenance and survival, there is little additional documentation to corroborate the figure Aḥmad Ḥusain quoted in his petition.[66] Statements compiled by judicial officials tend to include only regularized sources of income such as salaries, stipends, and emoluments, rather than including income from the collection of individual fees, but a statement compiled in 1864 calculated the yearly income for the *qāẓī* of Bharuch at Rs. 786, most of which (Rs. 570) came from endowments granted by the British Government and some of which (Rs. 216) he derived from tributary *k̲hil'at*s.[67] This amount was less than what the *qāẓī* had received in previous decades,[68] but despite these relative differences, the *qāẓī* of Bharuch stood as one of the highest-paid *qāẓī*s in the Bombay Presidency, owing in part to his close relationship with

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[65] MSA, Judicial Department Proceedings, Vol. 20, 1839 "The Humble Petition of Kauzee Ahmed Hossein of Broach."

[66] Extant registers for other document types suggest the *qāẓī* recorded between one hundred and one hundred fifty transactions per year. Even if he earned one rupee per transaction, these numbers would not provide the total income indicated above. In 1847, for instance, the *qāẓī* recorded one hundred forty marriages. Earning an average fee of 8 *anna*s per entry, this would amount to less than seventy rupees per annum, and marriages were certainly among the most common transaction individuals recorded before the *qāẓī*. *Vakālat-* and *mukh̲tār-nāma*s could only earn the *qāẓī* more than this amount, if he collected a percentage on the value represented in each document. (NAI, MSS Microfilmed at Bharuch, Sl. 34, Nikāḥ Nāma, 1847–1848 CE.)

[67] MSA, Judicial Department Proceedings, Vol. 6, 1864, "Statement Showing the lands and Emoluments now enjoyed by Kuzees, Khateeb, and Naeb in the Broach Division of Surat District as Required by Govt endorsement No. 420 of 1864 in the Judicial Department dated 8th February 1864."

[68] The government calculated the *qāẓī*'s income at Rs. 840 in 1833 and Rs. 798 in 1843, citing changes in the exchange rates between the Bharuch rupee and the Company rupee as the reason for this particular decrease. MSA, Judicial Department Proceedings, Vol. 25/947, 1844, "Comparative Statement showing the value of the allowances of the Cauzees and the Mahomedan Officers in the Zillah of Broach in the year 1833 and 1844."

Company officials and in part to his effective negotiating skills.[69]

As the judicial branch of the Company state extended its reach across the growing swath of territory it controlled in western India, it gradually absorbed many of the official functions previously performed by *qāẓī*s into its ballooning list of official activities. Throughout this process, many traditional office holders, like the *qāẓī*s of Bharuch, successfully petitioned the Company to convert traditional "*lawāzim*s" and entitlements[70]—like the annual tributary shawls gifted to the *qāẓī* on the ʿĪd holidays—into cash salaries.[71] This practice benefitted both parties: It allowed Company officials to bureaucratize their administration more efficiently while subsidizing the livelihoods of the local intermediaries on whom they relied for information and support. Owing to the success of this strategy to convert former entitlements into cash salaries, Aḥmad Ḥusain expected to have similar results with respect to the signing and sealing of *vakālat*- and *mukẖtār-nāma*s. Thus, when the judges of the Ṣadr Courts decided to revoke the *qāẓī*'s right to collect fees for affixing his seal to these documents, the *qāẓī* petitioned simply to have his payment increased.[72] Pointing to a new allowance paid to the *muḥtaṣib* (comptroller) of Surat in lieu of his former incomes, the *qāẓī* proposed the possibility of receiving a similar dispensation after demonstrating his own right to the income derived from the fees now included within the Company's new documentary practices. This time, however, his request did not meet with acquiescence.[73]

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[69] For a more comprehensive analysis of these earnings across the Presidency, see Chapter Two of this dissertation.

[70] The *qāẓī*s of Bharuch list the fees they receive for recording individual transactions under the heading *lawāzim* in several of their registers.

[71] MSA, Judicial Department Proceedings, Vol. 6, 1864; Vol. 8, 1845; Vol. 21, 1842.

[72] MSA, Judicial Department Proceedings, Vol. 20/547, 1839, "The Humble Petition of Kauzee Ahmed Hossein of Broach."

[73] Ibid., "Letter to Cazee Ahmed Hussain, Cazee of Broach," dated 10 August 1839.

Before refusing the *qāẓī*'s petition, Company officials conducted an investigation by sending Aḥmad Ḥusain's request to the courts for further inquiry: "Since there is an act of the Suddur Adawlut complained against[,] it may be well to refer this Petition to that Court for their report as to any proceedings the Suddur Adawlut may have adopted by which the petitioner's endorsements have been affected."[74] The Company's bureaucratic protocols frequently employed diffusive tactics of this nature; sending requests to other departments for verification or additional information was a standard procedure among Company officials, allowing them to delay responding to enquiries and to spread the blame for any wrong-doing or inaccuracies across multiple offices.[75] For queries involving officers with judicial functions, it was also common practice among administrators to submit evidence directly to the judges for deliberation. To examine Aḥmad Ḥusain's complaint, then, judicial department officials turned to the judges of the Ṣadr Dīwānī ʿAdālat for guidance, and learned that the judges had in fact settled a similar matter several years earlier concerning the scope of the *qāẓī*'s power.[76]

Under Section VII of Regulation XXVI of 1827, *qāẓī*s were "entitled to receive such fees for performance of official acts as the Judge of the Zillah with the sanction of the Suddur Adawlut may determine; and a table of these fees [was to] be constantly fixed up in the Zillah Court, and in a conspicuous part of the building where the kazee holds his office."[77] Thus, as the original legislation stipulated, the *qāẓī* maintained the right to collect fees for the performance of

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[74] MSA, Judicial Department Proceedings, Vol. 20/547, 1839, "Minute by Mr. Anderson, subscribed to by Mr. Farish," dated 18th April 1839.

[75] On the effectiveness of these techniques for diffusing responsibility in bureaucratic contexts, see M. S Hull, "The File: Agency, Authority, and Autography in an Islamabad Bureaucracy," *Language & Communication* 23, no. 3–4 (2003): 287–314.

[76] MSA, Judicial Department Proceedings, Vol. 20/547, 1839.

[77] Ibid.

certain "official acts" associated with the courts. The regulation itself, however, did not enumerate what these "official acts" were, and the sanctioned list of acts and fees referred to in the regulation, as some of the incidents described in previous chapter show, never materialized. The absence of oversight in this regard, subsequently allowed variable rates and practices to persist across Company territories.[78] During his tenure as Acting Judge at Pune, Mr. Bell, for instance had in fact supported "the practice which has hitherto prevailed of requiring all Vakeelut and Mooktarnamahs &co. to be authenticated by the district Cazee," but such toleration was only temporary.[79] As the influence of the Company courts expanded and their retinue of officers and employees grew to include an increasingly expansive array of administrative personnel, the practice of requiring the *qāẓī*s to authenticate documents became not only unnecessary but also undesirable.

When faced with the Judicial Department's question regarding the practice of allowing *qāẓī*s to accept fees for authenticating court documents, the Judge of Pune sent a response stating explicitly that the court could no longer promote the practice recognized under Judge Bell.[80] Drawing on an earlier precedent for discontinuing this practice, the SDA reissued the following memorandum:

> [I]t is not within the competence of any Civil Court to compel all classes of persons indiscriminately to authenticate their documents in the manner prescribed [by the *qāẓī*], which is rendered more objectionable from its subjecting parties to a tax in the shape of a fee.
>
> The provisions of Regulation XXVI AD 1827 affect only persons of Mohommedan Persuasion, and them only in matters pertaining to doctrinal or religious rites. Indeed it

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[78] On efforts to understand the fees, see, e.g., MSA, Judicial Department Proceedings, Vol. 21/798, 1842.

[79] MSA, Judicial Department Proceedings, Vol. 20/547, 1839.

[80] Ibid., "[Copy of] Young's Letter, dated 12th Oct., No. 870 of 1838."

> was the express contemplation of the framers of that Regulation, that as the duties of the Kazee were therein defined to relate to doctrinal and religious rites, the authentication of deeds of all kinds which had in some places been performed by the Kazee should cease to be considered a part of his duties.[81]

Determining the court's inability to force individuals to draw upon the q*āẓī*'s office for the purpose of authenticating documents was not a question of the *qāẓī*'s competence to perform such work. Rather, it was a question of the Court's religious neutrality. As the memorandum stated, the *qāẓī*'s authority extended only to "matters pertaining to doctrinal and religious rites," meaning the *qāẓī* had no right to demand a fee from non-Muslims seeking to have documents signed and registered.[82] Though the legislation that would eventually force the *qāẓī*s and fellow Hindu native law officers out of the colonial courts was not yet on the table, even at this early date, administrators in the judicial department saw the work of the *qāẓī* as "religious" and by way of contrast, that of the courts as "secular." The fact that it took six years for this argument against the *qāẓī*'s involvement in attesting documents of a non-religious, non-doctrinal nature to impact the work of the *qāẓī* of Bharuch, however, suggests that this idea was still in its infancy and that the practice hitherto in place of having the *qāẓī*s sign and seal documents was fairly well entrenched. Correspondence from this case also shows that the *qāẓī* of Bharuch did not see his

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[81] Ibid. A similar issue also arose in the Madras Presidency around this time. A letter from Fort St. George dated 26 Jan. 1830, department officials objected to the range of activities in which the *qāẓī* could engage and proposed changes to the wording of the *sanad* in the following remarks: "We are of opinion that the form of sunnud for a Town Cauzee sent to you by the Sudder Adawlut is very objectionable inasmuch as it requires the people generally to acknowledge the authority of that Officer in the administration of the law, and to consider all bonds, records, deeds of sale, leases and other legal instruments appearing under his seal and signature to be valid. The powers assigned to Cauzees are here too peremptorily and too specifically described, and the proper functions of those officers may be much misunderstood from such a document. The Sunnud should merely certify that the person mentioned was the Officer regularly appointed for the performance of the usual duties of the place But the duties and powers of the Cauzee can be made known to the people by the customs of the place and the general regulations only, and cannot be properly defined and legalized in any other way. We desire you will make the necessary alteration in the form of the Sunnud." (BL, IOR/F/4/1507/59186, Feb 1832–May 1834.) The reader may also recall that protesters in Calcutta deployed similar language in opposition to the Company's imposition of excessive stamp fees.

[82] MSA, Judicial Department Proceedings, Vol. 20/547, 1839, "No. 3485, Memorandum by the Secretary, Approved by the Honorable Board."

office as one defined by religious of "doctrinal" matters; he saw it as one rooted in accuracy and authenticity, and the public good derived from his accountability.

Sayyid Aḥmad Ḥusain was not the only *qāẓī* to complain about changes to the practice of collecting fees for the authentication of legal documents. The *qāẓī*'s *nā'ib*, Shaikẖ Saraf-ud-dīn, also complained against the reduction in fees in 1839,[83] and in 1841, Muḥammad Ḥaẓrat Miyān, *qāẓī* in the town of Hānsot in the Ankleshwar region of the Bharuch *zila'* (district), presented similar complaints in a petition he sent to the Governor in Council at Bombay.[84] Like the *qāẓī* of Bharuch, Muḥammad Ḥaẓrat Miyān wrote in his petition that the offices of *qāẓī*, *muḥtaṣib*, and *kẖatīb* had "for a considerable length of years" been held by members of his family. The petitioner's father, Muḥammad Badr-ud-dīn was *munṣif* and *qāẓī* "up to 1828 when he died suddenly."[85] The position then passed to another individual, as the petitioner Muḥammad Ḥaẓrat Miyān, was not yet mature enough to take up the responsibilities of the office at that time. When this interim *qāẓī* died in 1839, Muḥammad Ḥaẓrat Miyān was then appointed to the office his father once held as *qāẓī*. At that time, the *qāẓī* was able to support himself with income from "various kind[s] of fees…which were quite sufficient for the support of a Kauzee [*qāẓī*]." Under the new rules, however, the *qāẓī* could no longer collect the fees to which he was previously entitled, leaving him with "no other means to support himself and his respectable families."[86] As in the case of Sayyid Aḥmad, Muḥammad Ḥaẓrat Miyān requested the

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[83] MSA, Judicial Department Proceedings, Vol. 20/547, 1839, "The Humble Petition of Shaik Surfoodeen Shak Rehmtoolah Nayeb at Broach."

[84] MSA, Judicial Department Proceedings, Vol. 21/711, 1841, "The humble petition of Mahomed Huzrut Meeyan Vullud Mohomed Budroodeen Kauzee of Hansote in the Broach Zillah."

[85] Ibid. By way of comparison, in 1813, the Company agreed to resume payment of the *qāẓī* of Bareilly's pension to the tune of Rs. 840 per annum. (BL, IOR/F/4/421/10365.)

[86] MSA, Judicial Department Proceedings, Vol. 21/711, 1841.

government either to order the "ryots" (public) to pay him the fee or to"fix any salary for him" to compensate for his loss of income from fees.[87] Barring the Government's failure to follow through on either of those demands, the *qāẓī* requested reassignment to a "respectable situation" such as that of *munṣif* (subordinate judge) so that he could "subsist…independently."[88] The government was unwilling to concede the *qāẓī*'s demands and included with its reply a copy of the response sent to the *qāẓī* of Bharuch two years earlier.[89]

Unlike Sayyid Aḥmad, Ḥaẓrat Miyān does not state the total of income he lost on account of the Government's decision to curtail the *qāẓī*'s right to collect fees from signing and sealing various legal documents, but figures provided during an earlier dispute over the office describes the fees collected by the *qāẓī* in some detail. According to a report submitted to the *ʿadālat* (court) in Bharuch in 1834, the *qāẓī* of Hānsot received fees for performing different types of marriage and divorce ceremonies, collected duties on certain agricultural items and "sundries", and demanded annual license fees or tributes from various professional groups in the city, including tanners, goldsmiths, oilmen, and druggists.[90] Though the list provided here offers details the types and amount of fees collected by the *qāẓī*, it does not, however, mention the total

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[87] Ibid.

[88] Ibid.

[89] Ibid.

[90] According to the report, the *qāẓī* demanded the following fees from different groups:
On every nikāḥ or marriage of the Kusbatī Muslims and Bhugwagurī Parganah: 2 rupees 2 annas
On every nikāḥ of pinjara kunbīs: 3 rupees
On every deed of divorce or tallāqnāma: 2 rupees 2 annas
On every release of *mahr* called "Furguttee" [dissolution of marriage]: 2 rupees 2 annas
On every "furgutee" of [*mangni*] [dissolution of engagement]: 1 rupee 1 anna
On every "nattra" or second marriage between Hindoos belonging to the qaṣbah and parganah: 3 rupees 2 anna
MSA, Judicial Department Proceedings, Vol. 6/296,1834, "Memorandum of the fees levied by the Kauzee of Hunsote."

income he earned annually,[91] but owing to the different types of fees—both in cash and kind—the *qāẓī* levied on the people of Hānsot and the relatively limited size of his perquisites, one might imagine that the *qāẓī* earned a substantial annual income from these sources.

From these and other complaints made by his peers, then, it appears that the *qāẓī* of Bharuch was not the only office-holder to suffer at the hands of the Company's policy change, but his case is one of the most compelling to consider, for in addition to having access to the *qāẓī*'s complaints, there is also archival evidence from the *qāẓī* in the form of documents, registers, and a unique *Manual for Qazi and Muftis* preserved by his son and successor, Qāẓī Nūr-ud-dīn Ḥusain. Looking through these records, in conjunction with the *qāẓī*'s more explicit statements regarding his work, provides an expansive view of local legal practices and the possible effects of changes introduced at the highest administrative levels on these local practices. Furthermore, although historians often cite the *qāẓī*'s decline in the nineteenth century (compared to his earlier status), there has, in fact, been little effort to understand *how* colonial policy marginalized the *qāẓī*s and what effects this marginalization had on either the *qāẓī*s or the communities they served. The impulse to conflate the narrowing scope of Islamic law with the marginalization of the *qāẓī* in the nineteenth century has resulted in a rather cursory treatment of the *qāẓī*'s office in scholarship on this period and has subsequently hindered the production of a more nuanced consideration of his role in the history of legal modernization—one that attends to the his engagement with bureaucracy, colonial governmentality, and the rise of formal legal

[91] A tabular statement compiled in 1864, after the reduction of the *qāẓī*'s income lists the only source of income for the *qāẓī* of Hansōṭ as seventeen rupees (Rs. 17) in "Khilluts or Dresses of Honor" from the Company. (MSA, Judicial Department Proceedings, Vol. 6, 1864.) His income in 1833 was Rs. 18, which was reduced by a little more than one rupee in 1843, on account of the variable exchange rate. (MSA, Judicial Department Proceedings, Vol. 25/947, 1844)

proceduralism. *Qāẓī* records from the nineteenth century provide an opportunity to recover some of this history.

The disruptions of the nascent colonial state infringed upon the *qāẓī*'s access to income more dramatically than conventional accounts suggest. Overlooking the role of the *qāẓī* in writing, copying, and certifying documents in the pre-colonial period not only ignores some of the particulars that make the *qāẓī* different from a British "judge" but also undermines any discussion of the *qāẓī*'s changing role in British India. As Aḥmad Ḥusain's protests—not only here but with respect to other changes introduced in the nature of the office of the *qāẓī*—suggest, the *qāẓī* performed several functions beyond the realm of what British administrators considered the "doctrinal" or "religious". Among these, the signing and attesting of documents was one of the chief occupations that has been, up to this point, largely ignored in the discussion of *qāẓī*s in Mughal and British India, and if research on notarial practices in Medieval and early modern Europe, and colonial Latin and North America are any indication, the *qāẓī qua* notary was an important agent of law that wrote lives into legal forms and made legal forms relevant to local lives. In what follows, this chapter considers the *qāẓī*'s work along these lines in the first-half of the nineteenth century.[92]

V. Disentangling Bharuch's Legal Localisms

The paucity of sources produced, or preserved by *qāẓī*s, is one of the obstacles that has hindered historians' efforts to understand the *qāẓī*'s position in pre- and early colonial society,

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[92] Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham, NC: Duke University Press, 2010); Burns, "Notaries, Truth, and Consequences," *The American Historical Review* 110, no. 2 (April 1, 2005): 350–79, doi:10.1086/ahr/110.2.350; Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, Pa.: Pennsylvania State University Press, 1998); Donna Merwick, *Death of a Notary: Conquest and Change in Colonial New York* (Ithaca: Cornell University Press, 1999); Laurie Nussdorfer, *Brokers of Public Trust: Notaries in Early Modern Rom*e (Baltimore: Johns Hopkins University Press, 2009).

especially considering the abundance of other records available in the British imperial archive. As a result, the standard narrative scholars offer refers only to the marginalization of the office under British rule.[93] This presentation does a disservice to the validity and value of the sources that do exist, which scholars have yet to consider in conjunction with the history of empire and imperial expansion. Undoubtedly it is challenging to compose narrative histories from the scattered assemblages of documents that do exist, but such records have the potential to provide two additional perspectives on the transformation of the *qāẓī*'s office in the nineteenth century, especially in the several decades prior to the transition to Crown rule and the implementation of countless law codes in the second-half of the century. First, records from the *qāẓī*'s of Bharuch capture a moment in which imperial legal categories and procedures were still in flux—that is, before the colonial state was able to impose bureaucratic uniformity and legal specificity upon its subjects. Second, these records gesture toward the *qāẓī*'s transformation from a private agent to a keeper of public records. Historicizing this transformation has much to offer the history and development of modern (scientific) governance. As a private notary, the *qāẓī* authenticated documents presented to him by private individuals,[94] but in most cases, these documents remained the property of the parties involved; the *qāẓī* was not required—nor did the facilities exist—to maintain a public archive of his records. Mughal *qāẓī*s did not, as far as anyone has been able to ascertain, produce protocols like those created and archived by notaries in late-

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[93] See, e.g., Fisch, *Cheap Lives and Dear Limb;* and Singha, *A Despotism of Law*.

[94] In treating the *qāẓī* as notary, I draw upon the frameworks provided by Kathryn Burns, "Notaries, Truth, and Consequences," *The American Historical Review* 110, no. 2 (April 1, 2005): 350–79, doi:10.1086/ahr/110.2.350; Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, Pa.: Pennsylvania State University Press, 1998); and Laurie Nussdorfer, *Brokers of Public Trust: Notaries in Early Modern Rome* (Baltimore: Johns Hopkins University Press, 2009).

medieval and early modern Europe.[95] Surviving document collections and registers from the nineteenth century demonstrate the *qāẓī*'s transition from a producer of private deeds to a creator of public records. The impact of this transition becomes even more important when considered alongside registers *qāẓī*s maintained in the late-nineteenth and early-twentieth centuries, as Chapter Four will show. But despite the nineteenth-century records' ability to elucidate many aspects of local legal practice as it intersected with emergent rule-of-law ideologies and bureaucratic accountability, the records remain far from perfect. Compared to Ottoman sources, the *qāẓī*'s records surveyed here offer sketches, rather than detailed portraits, of the individuals who visited the *qāẓī* and the types of services he performed for them. Nevertheless, it is still possible to extract considerable information from what remains.[96] Additionally, when read in conjunction with other administrative sources, fragmentary document collections and extant registers provide insights into the local practices and contexts of law that are unavailable in any other source. For these reasons, it is important to understand the records from Bharuch in relation to other collections that have been preserved and studied.

Until recently, the study of legal administration in the pre-colonial period was confined to the study of normative literature and administrative manuals.[97] In the past several years, however, scholars have begun to mine extant collections of legal documents for the evidence they

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[95] Nussdorfer, *Brokers of Public Trust*, 19–21; and Hardwick, *Practice of Patriarchy*, 17–49.

[96] For an example of such discussions, see Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003). For a discussion of the use of these sources, see Dror Ze'evi, "The Use of Ottoman Sharī'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society* 5, no. 1 (January 1, 1998): 35–56.

[97] See, Muhammad Basheer Ahmad, *Judicial System of the Mughal Empire. A Study in Outline of the Administration of Justice under the Mughal Emperors Based Mainly on Cases Decided by Muslim Courts in India* (Karachi: Pakistan Historical Society, 1978); Ibn Hasan, *The Central Structure of the Mughal Empire and Its Practical Working up to the Year 1657* (New York [etc.: Oxford University Press, H. Milford, 1936); and M. P. (Mahendra Pal) Singh, *Town, Market, Mint, and Port in the Mughal Empire, 1556-1707: An Administrative-Cum-Economic Study* (New Delhi: Adam Publishers & Distributors, 1985).

provide about the social, economic, and cultural contexts of law.[98] Of the extant document collections, the cache of documents housed in the Oriental Records section of the National Archives of India (NAI) has been particularly fruitful. These documents have been summarized in a series of published volumes,[99] but as the collection is expansive, making use of it requires the diligent work of historians willing to extract information from the hodgepodge of documents it contains. Rather than inheriting an archive of documents belonging to a pre-colonial state institution, the National Archives of India has instead inherited—or collected, collated, purchased, and preserved—documents from private family collections, many of which come from Gujarat and North India.[100] Recent work engaging with these documents demonstrates the potential for uncovering socio-legal history in boxes of loose pages and files with scattered references, particularly in the absence of narrative or expository sources like *qāẓī* court registers or works in the *ādāb al-qaẓā/qāẓī* (manners of *qāẓīs*) genre.[101] Certainly more work remains to be done on these collections.

In addition to the documents housed at NAI, there are also known collections of documents from the Baṭālā region of the Punjab, which have been nicely catalogued but only

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[98] Hasan, *State and Locality*; and Chatterjee, "*Mahzar-namas* in the Mughal and British Empires."

[99] S.A.I. Tirmizi, ed., *Calendar of Acquired Documents* (New Delhi: National Archives of India, 1982); R.K. Perti, ed., *Descriptive List of Acquired Documents* (New Delhi: National Archives of India, 1982).

[100] Farhat Hasan has been able to do this work for some of the materials relating to the *qāẓī*s of Surat. Similarly, Nandini Chatterjee has been working with this collection to piece together the legal papers of a merchant family from the Malwa region in northern India. (Hasan, *State and Locality*; Chatterjee, "*Mahzar-namas* in the Mughal and British empires.")

[101] For an introduction to this genre, see, Muhammad Khalid Masud, "Adab al-qāḍī," in *Encyclopaedia of Islam, Three* (Leiden: Brill Online, 2013), http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/adab-al-qadi-COM_0106; Masud,"Adab al-muftī ," in *Encyclopaedia of Islam, Three*, http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/adab-al-mufti-COM_26301; Ahmad ibn `Umar Khassaf, *Adab al-Qadi: Islamic Legal and Judicial System*. (New Delhi: Adam, 2004); and M. Khalid Masud, "Ādāb al-Muftī: The Muslim Understanding of Values, Characteristics, and Role of a Muftī," in *Moral Conduct and Authority: The Place of Adab in South Asian Islam* (Berkeley: University of California Press, 1984), 125–45.

superficially analyzed.[102] The first of these collections is housed in the Asia, Pacific, and Africa section of the British Library and has been catalogued by M.Z.A. Shakeb.[103] Organized chronologically, this set of seventy documents begins with a *farmān* (imperial order) from Zahīr-ud-dīn Muḥammad Bābur, the first Mughal Emperor, granting the land and revenue of a village in the Baṭālā district to Qāẓī Jalāl-ud-dīn in 933 AH / 1527 CE, but the majority of the documents contained in this collection date from the seventeenth and early-eighteenth centuries.[104] They include land grants—such as deeds of gift (*hiba*) and *madad-i maʿāsh* (subsistence) grants given to religious office holders and some women—along with other deeds of sale and bequest. These documents, which to a large extent involve affirming, confirming, and apportioning religious-service grants, provide some indication of changing documentary practices across time, such as changes in document size and paper quality, style of script, and other elements, but do not provide much insight into the operations of the *qāẓī*'s office beyond the regular renewal of his position and its attendant land grants.

The second set of documents, the Bhandārī Collection, from the Baṭālā *pargana* resides in the Punjab State Archives archives in Patiala. J.S. Grewal, who examined these documents in the 1970s, compiled a detailed record of this collection and its contents, and in some of his more analytical work, has attempted to read the documents vis-à-vis the context of their production

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[102] The discussion that follows ignores extant collections of official royal documents. For discussion of these collections, see Mohiuddin, *The Chancellery and Persian Epistolography Under the Mughals: From Bábur to Sháh Jahán (1526–1658), A study on Inshá, Dár al-Inshá and Munshis, based on Original Documents* (Calcutta: Iran Society, 1971).

[103] M. Z. A Shakeb, *A Descriptive Catalogue of the Batala Collection of Mughal Documents, 1527-1757 AD* (London: British Library, 1990); and Ursula Sims-Williams, *Handlist of Islamic Manuscripts Acquired by the India Office Library, 1838-85* (London: [British Library], 1986).

[104] BL, IO Islamic 4720(1). See also Shakeb, *Descriptive catalogue*; and Sims-Williams, *Handlist,* 10.

and in relation to other views of the *qāẓī*'s office.[105] Many of the documents in this collection are routine deeds of sale, gift, mortgage, and release, but as Grewal explains, details included within these documents, suggest "that the legal practice of the Mughal times did not always conform to the theoretical provisions of the legal texts" and indicate that Hindus, as well as Muslims, frequented the *qāẓī*'s office for the purpose of executing and authenticating documents.[106] One of the most interesting components of this collection is that it includes several document pairs in which deeds of sale stipulating the terms of exchange are accompanied by *fārigẖkẖaṭṭī*s, or deeds of release, signifying the fulfillment of those terms of exchange.[107] Such documents become more illuminating in comparison with some of those preserved by the family of the *qāẓī*s of Bharuch discussed below.

Across the hundred years of time captured in the Batāla collection of documents, there are seals from eight *qāẓī*s and three *muftī*s.[108] In addition to the official seals bearing the titles "qāẓī" and "muftī," Grewal also identifies seals from other "officials connected with the administration of 'the Law' (*sharī'at*)."[109] His analysis suggests that people other than the *qāẓī* appointed by the Mughal, and later Sikh, governments, were involved in the administration of law, perhaps pointing to the availability of multiple fora for legal action or to additional sources

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[105] See, e.g., J.S. Grewal, "The Shariat and the Non-Muslims of Batala," *Proceedings of the Punjab History Conference*, 6th Session (Patiala: Punjabi University, 1972), 152-6; and Grewal, "The *Qazi* in the *Pargana*," in J.S. Grewal, ed., *Studies in Local and Regional History* (Amritsar: Guru Nanak University, 1974), 1-17. Nandini Chatterjee offers some analysis of the document forms in this collection. See her "*Mahzar-Nama*s in the Mughal and British Empires."

[106] Grewal, "The Shariat and the Non-Muslims of Batala," 153.

[107] Ibid., 154.

[108] Ibid., *In the By-Lanes of History*, 366.

[109] Ibid., 367.

of legal authority in this relatively small region.[110] Generally, the emperor or his designated agent (e.g., a local governor) appointed an individual to the office of *qāẓī* and bestowed land grants or other forms of remuneration upon him. Following this initial appointment, however, *qāẓī*s had permission to train and to appoint their own *nā'ib*s, or assistant *qāẓī*s.[111] Records from the Bombay Presidency suggest that this practice was common across western India (including in Bharuch), and that once appointed, *nā'ib*s were not always willing to remain in subordinate positions. The diversity of *qāẓī* seals on the documents from Baṭāla could reflect the practice of appointing assistants, but it could also indicate the presence of rival or competing *qāẓī*s, another practice documented in the Bombay Presidency archive. Regardless of these possibilities, however, the Baṭāla collection of documents provides, as Grewal demonstrates, a foundation from which to survey the practice of law in rural Punjab.

Document collections such as the ones introduced here are a rich source for on-the-ground information about the work of the *qāẓī* in pre- and early colonial society, but they are not the only sources available. Historical chronicles and other narrative accounts occasionally cite disputes requiring the *qāẓī*'s opinion. *Koṭwālī* (police chief) records are another source of information about the administration of law and order, though the *koṭwāl* tended to be involved in criminal cases—such as theft and murder (i.e., crimes against public order)—and had less connection to the documentary practices involved in private property exchanges and contracts.[112] Nonetheless, other sources of narrative history could supplement the information available in extant document collections, though the references are often incomplete and require extensive

[110] Ibid., 367–70.

[111] Hasan, *State and Locality*.

[112] Singh, *Town, Market, Mint, and Port,* 53–4.

sifting. Careful attention might allow scholars to extract further insights into the social—and legal—world of the pre-colonial *qāẓī* from these sources.

In addition to the aforementioned document collections preserved in state archives, there are, by many accounts, additional sets of papers owned by families and kept in private collections, but knowledge about and access to these collections is uncertain, to say the least. The collection of papers pertaining to the *qāẓī*s of Bharuch is available today thanks to the pioneering efforts of historians like S.A. Tirmizi who, in the first decades after Indian Independence scoured the subcontinent looking for papers of historical import to add to the collection of the National Archives.[113] Many of these collections were simply noted in the *National Registry of Private Papers* but others, such as those belonging to the *qāẓī*s of Bharuch, were microfilmed or incorporated into the NAI's regular collection. This collection, which supplements evidence about the *qāẓī*s of Bharuch located into their petitions to and correspondence with Company officials in Bombay is particularly interesting because it offers a panoramic view of the family's home archive, or the professional and intellectual repository of the *qāẓī*s' work across successive generations. This archive includes copies of legal documents (see Appendix A for an overview) and a series of registers noting several types of exchanges, some of which correspond to transactions recorded in other extant document collections and others of which are unique to this particular family's records. Royal *farmān*s from emperors Jahāngīr and Aurangzeb; letters from the Nawābs of Bharuch; regional histories including manuscript copies of *Mukẖtaṣar Tārīkẖ-i Gujarat*, *Tārīkẖ-i Bharūch*, and *Makhtabāt-i Tawārikh*; well-known works of *inshāʿ* such as *Inshāʾ-yi Dilkushā*, *Inshāʾ-yi*

[113] On the Historical Records Commission and the efforts of early-Independence historians, see, "Archiving the Nation" in Dipesh Chakrabarty, *The Calling of History: Sir Jadunath Sarkar and his empire of truth* (Chicago: University of Chicago Press, 2015), 241-277; and Chakrabarty, "Bourgeois Categories Made Global: Utopian and Actual Lives of Historical Documents in India," *Economic and Political Weekly* XLIV, no. 25 (June 20, 2009): 67–75.

Islām Ḵẖānī, and *Insha-i Maḥmūdī*; miscellaneous legal documents; and registers recording marital transactions from the mid-nineteenth century are among the materials acquired as part of this collection.[114] Such a collection marks the family's historic prominence and tracks its adaptation to changing political conditions through its negotiations with EIC officials.

In addition to the items listed above, a unique manuscript item created and preserved by the *qāẓī*s of Bharuch titled *A Manual for Qazis and Muftis* was also added to the archive's collection.[115] Though catalogued among the archive's "acquired manuscripts", the provenance of this text remains somewhat obscure. The title, given on the front in Urdu and in English appears to be a later addition from the time of acquisition, rather than that of authorship.[116] Furthermore, although the body of the text is written in Persian, many of the technical legal terms—especially those drawn from Arabic—have been glossed with interlinear or marginal translations, not in Urdu as the manuscript's secondary title might suggest, but in Persian. Additionally, the colophon marks the date of completion as 4 Ramadan 1213 AH (9 February 1799), yet the cover names Nūr-ud-dīn Ḥusain, who did not become *qāẓī* of Bharuch until 1848, as the text's owner (*mālik*). Though there is evidence to suggest the presence of a *qāẓī* by that same name working in Bharuch at the end of the eighteenth century, the odd title "mālik" ascribed to Nūr-ud-dīn Ḥusain suggests that the text was later acquired directly from him (or from one of his descendants), rather than from his ancestor, along with the registers he maintained during his time in office. Despite its later acquisition, however, the relevance of the

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[114] National Archives of India (NAI), MSS Microfilmed at Bharuch, Acc. Nos. 848, 850, 851.

[115] NAI, Acquired MS. 2200.

[116] Ibid. In addition to the English title noted above, the cover also refers to the text in Urdu as *Qāẓīōñ aur muftīōñ kē liyē taḥrīrāt kē liyē fārsī musauwadat, (Persian Drafts of Documents [Writings] for Qazis and Muftis),* though the main body of the text is in Persian.

Manual to the work of earlier *qāẓī*s is evident in its compositional format.

In its arrangement, the *Manual for Qāẓīs and Muftīs* is similar to other legal and scribal formularies. The text itself is small in size and fills about fifty pages, but the arrangement of the contents and some of their interlinear and marginal glosses, support the conclusion that this manual was a reference work, which the *qāẓī* of Bharuch compiled by borrowing sample documents from existing formularies in order to make these documents readily accessible during the course of daily business. The text includes neither prefatory nor concluding remarks, as one might expect from a work of guidance or instruction—that is, like a work from the *ādāb al-qāẓī* (manners of *qāẓī*s) genre. Rather, the *Manual* simply reproduces sample documents—many of which appear to be copied from other sources—in no apparent order. Intra-linear notes and Persian glosses for some Arabic terminology appear throughout the text, but the notes do little more than translate terminology or offer alternative phraseology. There are some indications that the manuscript has been damaged or left incomplete,[117] but aside from missing a few folios, the text parallels many other works of *inshā'* in its straightforward presentation of documents. In fact, close examination of the text suggests that many (if not all) of the samples it includes, were drawn from other works of *inshā'* in circulation at the time.[118]

The *Manual* itself contains copies of nearly fifty documents, encompassing numerous types of agreements and arrangements, including documents for buying and selling houses (*baiʿ nāma-i ḥawīlī*), gardens (*tamassuk-i firūk̲ẖt-i bāg̲ẖ*), horses (*saqṭ nāma-i asp*), and slave girls (*k̲ẖaṭ-i k̲ẖarīd-*

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[117] Although the date of compilation appears on the final page of the manuscript, the final page does not follow from the previous page. The catchword at the bottom of page 56 is پوشاک and the following page, marked 57, begins with the description of property dimensions (طولِ آن).

[118] I have matched the final folios of *A Manual* to the last sections of *Inshā-yi Harkaran* with a few minor changes or deviations. I suspect that other portions of the text may have been borrowed from other works of *inshā'*, though I have not been able to match them completely.

i kanīzak); papers for renting and leasing property (*qibālah-i rahn-i ḥawīlī*; *k̲haṭ̣-i kirāyah-i ḥawīlī*); deeds for establishing heirs and dividing inheritances (*qasm nāma*; *wirāṣat nāma*); certificates for manumitting slaves (*iʿtāq nāma; āzād nāma-i g̲hulām*); along with deeds of marriage (*nikāḥ nāma*) and divorce (*ṭalāq nāma*); and documents acknowledging and dissolving financial agreements (*tamassuk-i dain maʿẓāminī*; *k̲haṭ̣-i muẓārabat*; *pārah k̲haṭṭ̣ī wa lā dʿawa*).[119] In short, the documents encompass a wide range of social, economic, and material relations that surpass the narrow definition of "doctrinal" ascribed to the *qāẓī*'s office by colonial administrators. The relationship between formularies such as the *Manual* and the everyday practices of *qāẓī*s is a question that remains largely unanswered by scholarship to date, but the presence of the *Manual* in the collection of the *qāẓī*s of Bharuch, along with other documentary remnants preserved by the family, suggest a familiarity with, if not a dependence upon, such materials during the course of the *qāẓī*'s work writing and authenticating documents.

VI. From Writing Manuals to Legal Documents

The importance of writing manuals for interpreting and understanding various types of legal artifacts in circulation in early-colonial India was not lost on Company officials. Indeed, Civil Servant-Scholars like Francis Balfour and Francis Gladwin took a particular interest in translating writing manuals for the purposes of understanding documentary forms and teaching linguistic constructs.[120] The *Inshā'-yi Harkarn* (*The Writings of Harkaran*), for instance, which was one of the texts consulted in the making of the *Manual for Qazis and Muftis*, was, as Rajeev Kinra writes, "perhaps the first didactic treatise on Indo-Persian letter writing produced by the British

[119] NAI, Acquired MS. 2200.

[120] Masud, "Adab al-qāḍī," in *Encyclopaedia of Islam.*

colonial administration, and among the first printed books ever produced in India."[121] As such, it influenced the administration's engagement with and comprehension of extant documentation considerably. Gladwin's book, *The Persian Moonshee*, was equally influential, though perhaps differently so, owing to its greater interest in the "secretarial" arts and "political conduct" in addition to outlining the rudiments of document writing.[122]

Though the *Manual for Qazis and Muftis* borrowed from texts like the *Inshā-yi Harkaran* for its sample material, the *Manual* offers a different perspective, focusing on documents belonging to the category of "private contracts"—that is, documents executed between private individuals to protect, establish, or preserve commercial, economic, or familial relations—rather than those of government orders.[123] The *Manual* does not, for instance, include samples for penning declarations of victory or peace (*fateḥ* or *ṣulḥ nāma*s), royal commands (*ḥukm/aḥkām*, *farmān/ farāmīn*), or certificates of appointment (*sanad/asnād*), which, in addition to epistolary formulations, are commonplace in most other works of *inshā*'. Whereas the *Manual* consists almost exclusively of private contracts, the *Inshā-yi Harkaran* dedicates only one of seven chapters

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[121] Rajeev Kinra, *Writing Self, Writing Empire: Chandar Bhan Brahman and the Cultural World of the Indo-Persian State Secretary* (Berkeley: University of California Press, 2015), 28–9. The *Inshā'-yi Harkaran* may have been one of the earliest texts printed by the Company press in Calcutta but it certainly was not one of the earliest printed books in India, which began with Jesuit missionaries in Goa in the sixteenth century. For a brief history of print in India, see Vinay Dharwadker, "Print Culture and Literary Markets in Colonial India," in *Language Machines: Technologies of Literary and Cultural Production*, ed. Jeffrey Masten, Peter Stallybrass, and Nancy Vickers, Essays from the English Institute (New York: Routledege, 1997), 108–36.

[122] Kinra, *Writing Self, Writing Empire*, 6.

[123] Mohiuddin seems to support this distinction, listing "Civil Contracts" under a separate section in his discussion of document types (*The Chancellery and Persian Epistolography*, 113). For document typologies in another context, see "Types of Documents" in M. T. Clanchy, *From Memory to Written Record, England, 1066-1307* (Cambridge, Mass.: Harvard, University Press, 1979), 83–115.

to these types of deeds.[124] Comparing the *Manual* to other well-known works of *inshā*' in this manner, the manuscript's approach becomes clear: Drawing upon different works from the genre of *inshā*', the *qāẓī*s of Bharuch compiled a handbook for the office, perhaps mirroring the *mutun* "or practical fiqh manuals" Brinkley Messick describes as "[some of] the least impressive works of the jurisprudence literature."[125] But unlike other works of *inshā*', the selection of materials for inclusion in the *Manual* includes only private deeds and documents relating to the *qāẓī*'s notarial practice. From his office in Bharuch, the *qāẓī* performed notarial acts for the community, not for the central imperial administration. Losing the ability to perform this work following the judicial department's intervention changed the *qāẓī*'s relationship to his community, as well as to the state.

This focus on private contracts, over government orders, supports the conclusion that the *Manual for Qazis and Muftis* was a reference work intended for everyday use, rather than a treatise following the *adāb al-qaẓā* model and that the documents it contains reflect the *qāẓī*'s primary occupation of preparing and authenticating private deeds.[126] Understanding the centrality of this type of work to the *qāẓī*'s function in pre-colonial India, then, helps illuminate the changes his office underwent in the nineteenth century—and to explain why removing certain documentary forms from his domain created so much ire among *qāẓī*s in Gujarat. In so doing, the *Manual*

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[124] Of the seven chapters in *Inshā'-yi Harkaran*, chapters 1 and 5 pertain to writing letters; chapters 2, 3, 4, and 7 pertain to writing government orders and addresses; and chapter 6 deals with private contracts. The material reproduced in *A Manual for Qazis and Muftis* comes from chapters 6 and 7. (For a discussion of document typologies in the Mughal context more generally, see Mohiuddin, *The Chancellery and Persian Epistolography,* particularly chapters 2 and 3, 45–145.) On the organization of the *Inshā'-yi Harkaran*, see also Chatterjee, "*Mahzar-Nama*s in the Mughal and British Empires," 398–400.

[125] Messick, *Calligraphic State*, 17.

[126] This distinction alone might reveal an interesting truth about the *qāẓī*'s work here. While imperial scribes were responsible for writing all manner of documents, deeds, and declarations, the *qāẓī*s of Bharuch were employed only to write or to authenticate those types of documents related to private contracts. The *qāẓī*'s public function here rested in his ability to fulfill personal, or private needs, not to demonstrate the state's authority. In the context of Gujarat's coastal mercantile and commercial communities, such an emphasis is not surprising.

provides a palatable introduction to the types of legal forms relevant to the *qāẓī*'s everyday work. Considering the registers and records the family preserved in addition to *A Manual* and other manuscripts provides an even more comprehensive picture of the *qāẓī*'s day-to-day activities and how British rule created new meanings for the practice of Islamic law by changing the nature of the *qāẓī*'s documentary work.

Record-keeping and the advent of archives

Though the introduction of colonial record-keeping has been the subject of keen interest among historians,[127] the accounts produced thus far tend to miss the lively textures of pre-colonial documentation.[128] Despite the Company's dependence upon these documents for the purposes of establishing law and order on the subcontinent, few accounts attend to regional variation, graphic diversity, multilingual remains, or material particularities embedded in these earlier practices. Yet paper was ever-present in the Company's early forays into the *mufaṣṣil*. Through various forms of inquiry, Company officials investigated tenured land rights,

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[127] See, e.g., Antoinette M. Burton, ed., *Archive Stories: Facts, Fictions, and the Writing of History* (Durham NC: Duke University Press, 2005); and Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham, NC: Duke University Press, 2010); Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2009); Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2 (2002): 87–109. On the archives of decolonization, see the recent roundtable in *AHR*, including Farina Mir, "Introduction," *The American Historical Review* (*AHR*) 120, no. 3 (June 1, 2015): 844–51, doi:10.1093/ahr/120.3.844; Caroline Elkins, "Looking beyond Mau Mau: Archiving Violence in the Era of Decolonization," *AHR* 120, no. 3 (June 1, 2015): 852–68, doi:10.1093/ahr/120.3.852; Todd Shepard, "'Of Sovereignty': Disputed Archives, 'Wholly Modern' Archives, and the Post-Decolonization French and Algerian Republics, 1962–2012," *AHR* 120, no. 3 (June 1, 2015): 869–83, doi:10.1093/ahr/120.3.869; Jordanna Bailkin, "Where Did the Empire Go? Archives and Decolonization in Britain," *AHR* 120, no. 3 (June 1, 2015): 884–99, doi:10.1093/ahr/120.3.884; Omnia El Shakry, "'History without Documents': The Vexed Archives of Decolonization in the Middle East," *AHR* 120, no. 3 (June 1, 2015): 920–34, doi:10.1093/ahr/120.3.920; Sarah Abrevaya Stein, "Black Holes, Dark Matter, and Buried Troves: Decolonization and the Multi-Sited Archives of Algerian Jewish History," *AHR* 120, no. 3 (June 1, 2015): 900–919, doi:10.1093/ahr/120.3.900; H. Reuben Neptune, "The Irony of Un-American Historiography: Daniel J. Boorstin and the Rediscovery of a U.S. Archive of Decolonization," *AHR* 120, no. 3 (June 1, 2015): 935–50, doi:10.1093/ahr/120.3.935.

[128] Where scholars have examined continuities, they have produced interesting results. See, e.g., Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (Cambridge, UK: Cambridge University Press, 1999), esp. pages 103–108; and Norbert Peabody, "Cents, Sense, Census: Human Inventories in Late Precolonial and Early Colonial India," *Comparative Studies in Society and History* 43, no. 04 (2001): 819–50.

acknowledged honorary entitlements, and upheld personal rights (or, *ḥaqq*s) and hereditary claims, and judging from the clamor of the native document-bearers who approached Company officials to demonstrate, claim, or provide their entitlements, this apparent interest in establishing and fixing the Company's reign of paper was mutual.[129] The process of moving from one (pre-colonial) form of documentation to another (colonial, Anglo-Indian), however, was not straightforward. Form, language, veracity, and other obstacles constantly interfered with British attempts to bestow their vision of bureaucratic order upon the subcontinent.[130] Bhavani Raman has done tremendous work in describing how these processes played out in the Madras Presidency, but questions remain about the effects new colonial modes of record-keeping had on local legal practices beyond the Company's primary interest in land tenures and tax collection. Answering these questions is quite difficult, even in contexts where documentary evidence is prevalent,[131] and in British India, these questions are further complicated by the subcontinent's multiplicity of scripts, differing degrees of literacy, and range of preservation techniques. Such diversity and inconsistency, however, does not mean that documentation mattered only in the context of European contact.

With the expansion of print and the proliferation of printed material (books, pamphlets, newspapers, and journals) in the latter-half of the nineteenth century, more people came into contact with written and printed material than before, but mass publication and the growth of literacy—(often effected through the expansion of elementary education)—is not the only route by which people came to encounter or to grapple with documented (that is, written or printed)

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[129] Raman, *Document Raj*, 16–7; 54–7.

[130] Ibid., 83–85.

[131] Clanchy, *Memory to Written Record*, 48–53.

information. While general rates of literacy were quite low throughout the nineteenth century,[132] Indian society was nonetheless, in Chris Bayly's formulation, an acutely "literacy aware" society, in which people had "access to literate people and [knowledge of] the meaning and power of writing."[133] Though literacy levels in British India trailed those of contemporary Europe and East Asia, it would be a mistake to treat illiteracy as evidence of documentary ignorance. In most societies, the transition from "memory to written record", as Michael Clanchy frames it, is a complex process, involving several shifts not only in the practices of writing and recording information but also in modes of reading and preserving documents.[134] The Indian subcontinent is no exception to these general observations, and despite the emphasis on oral recitation and learning by rote within certain religious communities,[135] forms of record keeping, particularly among the mercantile classes, were widespread even before European trading companies established their factories.[136]

Furthermore, as formularies like the *Inshā'-yi Harkaran* suggest, documentation was also central to Mughal diplomatic relations, statecraft, and administration. Within certain areas of the administration—particularly those for revenue collection and military labor—Mughal record-

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[132] Bayly estimates these figures to be around twenty percent male literacy (here defined by the ability to read and write one's name) in large cities, ten percent in smaller towns, and closer to five percent in rural areas. (Bayly, *Empire and Information*, 39).

[133] Ibid., 36.

[134] Clanchy, *From Memory to Written Record*, 3.

[135] On issue of oral learning in Islam, see, e.g., Francis Robinson, "Technology and Religious Change: Islam and the Impact of Print," *Modern Asian Studies* 27, no. 1 (February 1993): 229–51. On the emphasis of oral learning in Hinduism, see, e.g., C. J. Fuller, "Orality, Literacy and Memorization: Priestly Education in Contemporary South India," *Modern Asian Studies* 35, no. 1 (2001): 1–31. On the importance of orality for religious education more generally, see, William A. Graham, *Beyond the Written Word: Oral Aspects of Scripture in the History of Religion* (Cambridge [Cambridgeshire]: Cambridge University Press, 1987). For a more elaborate consideration of the effects of print, see Chapter Five of this dissertation.

[136] Om Prakash, "The Indian Maritime Merchant, 1500-1800," *Journal of the Economic and Social History of the Orient* 47, no. 3 (2004): 435–57.

keeping practices were extremely robust, and comparisons between these and later colonial practices like census-taking have revealed countless similarities and overlaps.[137] Despite these similarities, however, the EIC's bureaucratic practices and policies introduced changes in scale, if not also in kind. While scholars like Chris Bayly and Michael Fisher emphasize continuities in pre- and early-colonial forms of information-gathering and surveillance,[138] others like Bernard Cohn and Arjun Appadurai point to the ways in which the emphasis on enumeration and quantification altered the relationship between data collection and interpretation—sometimes to nefarious ends.[139] The extent to which administrative and antiquarian knowledge acquisition and production shaped Indian society is still open to debate, but scholars tend to agree that early-colonial documentary practices borrowed from and relied heavily upon the work of intermediary "scholars, scribes, and scribblers".[140] While these observations are apt, attention to such borrowings and attendance to Bayly's idea of "literacy awareness", however, tends to gloss the multiple layers of translation and reformulation documents—and document writers—underwent in the course of their preparation for European use.[141] Terms, concepts, and ideas were

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[137] Peabody, "Cents, Sense, Census."

[138] Bayly, *Empire and Information*, 56–96; and Fisher, "The Office of Akhbār Nawīs." See also, more generally, Muzaffar Alam and Sanjay Subrahmanyam, "The Making of a Munshi," *Comparative Studies of South Asia, Africa and the Middle East* 24, no. 2 (January 1, 2004): 61–72, doi:10.1215/1089201X-24-2-61.

[139] Arjun Appadurai, "Number in the Colonial Imagination," in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, ed. Carol Appadurai Breckenridge and Peter van der Veer, South Asia Seminar Series (Philadelphia: University of Pennsylvania Press, 1993), 314–39; Bernard S. Cohn, "The Census, Social Structure and Objectification in South Asia," in his *An Anthropologist Among the Historians* (New Delhi: Oxford University Press, 1987); Cohn, "From Indian Status to British Contract," *The Journal of Economic History* 21, no. 4 (December 1961): 613–28; and U. Kalpagam, *Rule by Numbers: Governmentality in Colonial India* (Lanham, Maryland: Lexington Books, 2014).

[140] In addition to the works cited above on scribes, see also A. Ira Venkatacalapati, *The Province of the Book*; Raman, *Document Raj*; and Thomas R. Trautmann, ed., *The Madras School of Orientalism: Producing Knowledge in Colonial South India* (Oxford University Press, 2009) on the relationship between indigenous practice and colonial knowledge-production in South India.

[141] Raman, *Document Raj,* 85–87.

constantly translated through multiple linguistic—and cultural—lenses.

Within the context of law and legal history, attention to these processes focuses on explicit acts of codification and the writing of law, yet the process of codification itself elided the multiple moments of translation that went into the production of a text. Likewise, far less attention has been given to the process of arriving at conceptual equivalences. Philologists were quick to offer dictionary definitions, and administrators were anxious to employ familiar terminology, but as Rachel Sturman's work highlights, complications arose when administrators encountered concepts—like *waṭan*—that could not be easily translated into English legal categories.[142] More work remains to understand the ways in which the translation of political concepts and ideas affected the outcomes of colonial encounters.[143] But aside from concepts of power and sovereignty, more mundane categories of law were also susceptible to mis-interpretation. As evidence from *qāẓī* registers suggests, neither Anglo-European ideas of "marriage" and "divorce" nor Islamic ideas of "nikāḥ" and "ṭalāq" captured the texture of the transactions recorded in mid-nineteenth-century Gujarat, for instance, but as adjudication via translation became the modus operandi among British administrators and judges, the nuances of different legal transactions—inflected by linguistic variation and by local customary practices—were often lost in translation.[144]

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[142] Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights*, Cambridge Studies in Indian History and Society 21 (New York: Cambridge University Press, 2012).

[143] For examples of this approach in the context of royal idioms, see, Iza Hussin, "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State," *Law & Social Inquiry* 32, no. 3 (July 1, 2007): 759–88; and Barbara Metcalf, "Islam and Power in Colonial India: The Making and Unmaking of a Muslim Princess," *The American Historical Review* 116, no. 1 (February 1, 2011): 1–30.

[144] The need to move beyond basic equivalencies to arrive at more nuanced understandings may not yet be apparent, but initial forays into this arena have already begun to yield promising results. See, e.g., Fahad Ahmad Bishara, "Paper Routes: Inscribing Islamic Law Across the Nineteenth-Century Western Indian Ocean," *Law and History Review* 32, no. 04 (November 2014): 797–820, doi:10.1017/S0738248014000431.

Problematic terminology was not the only vexation to plague the early-colonial bureaucratic encounter. As the Company expanded its reliance on documentation, it also produced a frenzied interest and trade in documents.[145] Thriving "document bazaars" developed in and around administrative headquarters and outside courtroom buildings, making it possible for petitioners, supplicants, and litigants to render their requests in documentary forms legible to the Company state.[146] The trade in documents that grew in response to the Company's own efforts first to standardize (and then to monetize) documentary practices, however, prompted anxieties over the possibility of forged and fraudulent documents.[147] The inherent "duplicity of paper", as Raman terms it, meant that as the Company relied more heavily on written documentation, the risk of forgery also increased. Though Raman primarily reads evidence of falsified documentation from the European perspective, which she herself classes as a "racialized" interpretation,[148] the process of teasing apart the various viewpoints that contributed to the construction of the colonial-bureaucratic treatment of records is complicated by the imprecise archival practices of the pre-colonial state. Reading "false" documents as acts of forgery, privileges the colonial state's attitude toward documentation, but as evidence from the contemporary state suggests, much may be lost if one refers only to "paper truths" and "paperality".[149]

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[145] In what follows, I draw upon Bhavani Raman's observations in *Document Raj*.

[146] Ibid., 161–182.

[147] Ibid., 74.

[148] Ibid., 145.

[149] Emma Tarlo, *Unsettling Memories: Narratives of the Emergency in Delhi* (London: C. Hurst, 2003), 74; David Dery, "'Papereality' and Learning in Bureaucratic Organizations," *Administration & Society* 29, no. 6 (January 1, 1998): 677–89, doi:10.1177/009539979802900608. On the problems of state-oriented documentation more broadly, see, Veena Das, "The Signature of the State: the Paradox of Illegibility," in *Anthropology in the Margins*; and James C. Scott, *The Art of Not Being Governed: An anarchist history of upland Southeast Asia* (New Haven: Yale University Press, 2009).

While the trade in documents certainly shaped early-colonial perceptions of local legal mentalities, record-keeping and preservation—counterparts to the process of document-production—also deserve attention, as the processes of producing and preserving documents are not synonymous let alone synchronous. As Clanchy makes apparent, the development of archival practices in medieval England, for instance, was often "inconsistent and perplexing".[150] In most cases (medieval and modern), astute record-keeping, does not automatically follow document production; rather, it emerges separately, out of particular needs to cross-check or to reference earlier documents. Thus, it is only after the process of producing documents becomes routinized that the maintenance of regular records then becomes possible.[151] Evidence from extant document collections in India suggests that the relationship between documents and records is rarely straightforward, and in the case of early-modern document-production, what is now preserved represents only a fraction of what was produced. Understanding the attendant relationship between production and preservation in the context of the *qāẓī*s of Bharuch therefore provides some insight into subtle changes in documentary protocols and in the relationship between legal forms and the social worlds of coastal Gujarat.

The scribal worlds of pre-colonial India were resilient, polyglot, and proficient, but the widespread presence of "script-mercantilism", to use Sheldon Pollock's expression,[152] did not necessarily inspire robust archival practices.[153] For these reasons, the best-preserved collections

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[150] Clanchy, *From Memory to Written Record*, 164.

[151] Ibid., 147–186. On Company procedures for consultations to cross-check references, see Ogborn, *Indian Ink*, 77–83.

[152] On manuscript culture, see Sheldon Pollock, *The Language of the Gods in the World of Men Sanskrit, Culture, and Power in Premodern India* (Berkeley: University of California Press, 2006), 558–562.

[153] The largely uncatalogued "Inayat Jung" collection of Mughal documents housed at NAI is indicative of this pattern.

often come from endowments assigned to scholarly families and religious shrines.[154] Such patterns are not surprising, given the trajectory of documentary practices elsewhere: In the context Clanchy considers, monasteries were the earliest institutions to build archives, and despite various efforts to bring the state's archives under a single roof, this feat was not accomplished in Great Britain until the passage of the Public Records Act in 1838.[155] Similarly, it was not until the height of the Ottoman Empire that the bureaucracy reached its apotheosis, and even then, regional variation remained.[156] Record-keeping practices in the Mughal Empire were equally complex: Marred by the complexities of language, script, and local custom, records that exist in one location are often fragmentary or entirely absent in another.

When record-keeping does develop, it often emerges as a response to the accumulation of documentation and from the need to cite or to access existing records. Preservation only becomes necessary after a critical mass of documents has accrued.[157] As documentary practices evolved in medieval England, for instance, the first organizations to invest in the process of keeping and maintaining institutional records were Christian monasteries which collated title deeds and other grants into cartularies (registers of records) for preservation, but the preservation of records was

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[154] See, e.g., the royal *farmān*s granted to the Firangi Maḥal family in Lucknow. (NAI, Misc. Microfilm Collection, Acc. No. 1863; and Francis Robinson, *The 'ulama of Farangi Mahall and Islamic Culture in South Asia* [New Delhi: Permanent Black, 2001], 44–46).

[155] Clanchy, *From Memory to Written Record*, 148–151; 168

[156] On the development of the Ottoman bureaucracy in the sixteenth century, see Cornell H. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Âlî (1541-1600)* (Princeton, N.J.: Princeton University Press, 1986). On the further development (and successful deployment) of bureaucratic structures in the seventeenth century, see Karen Barkey, *Bandits and Bureaucrats: The Ottoman Route to State Centralization* (Ithaca, N.Y.: Cornell University Press, 1994). For a survey of more recent work assessing the modernizing reforms of the nineteenth century, see, e.g., Cem Emrence, *Remapping the Ottoman Middle East: Modernity, Imperial Bureaucracy, and the Islamic State*, vol. v. 31, Library of Ottoman Studies (London: I.B. Tauris, 2012); Carter V. Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922, Princeton Studies on the Near East* (Princeton, N.J.: Princeton University Press, 1980); Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), 144–154.

[157] This was certainly the case in the development of the East India Company's archive.

not as straightforward as one might assume. During the process of transcription, Clanchy notes, deeds were occasionally "improved" or even forged by the copyists hoping to bolster the monastery's fortunes through documentary embellishment.[158] In other contexts such as courts of law, record-keeping evolved along several divergent lines as new forms of compilation and collation emerged.[159] Many of the East India Company's early modes of inquiry were aimed at producing this type of information—that is, information about people and places made accessible and legible to the state—but creating these types of records involved acts of interpretation and translation in which certain nuances were either lost or deemed inadmissible.[160] It is within the context of *ad hoc* efforts to preserve documents that the family papers of the *qāẓī*s of Bharuch approach the status of an archive, but complaints to the Company *sarkār* about the types and numbers of documents they authenticated and (allegedly) made records of do not square with the extant evidence, suggesting that many of the documents the *qāẓī*s produced were never incorporated into the records of the family "archive" examined here. The documents that do remain, however, reveal complex documentary practices from the eighteenth century and underscore the fraught relationship between documentation, evidence, preservation, and authentication.[161]

Surveying the Bharuch Collection

Before the *qāẓī*s of Bharuch began to maintain registers under the directives of

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[158] Clanchy, *From Memory to Written Record*, 103–4.

[159] Ibid., 105.

[160] These differences become apparent when one compares the Persian letters Company officials received to their official translations, not to mention the practice of "summarizing" or "extracting" this correspondence in English, rather than creating translations.

[161] Indeed, plentiful documentation often belies the tenuousness of a claim, and the family collection at Bharuch no doubt conforms to this trend.

Regulation XXVI of 1827, they dealt in individual documents. The family's collection includes a dozen individual documents, dating from 1670 CE (1080 AH) to 1816 CE (1231 AH).[162] The majority of these documents are deeds of sale for single-story houses, and the small parcels of land connected to them. As a corpus, the documents detail social relations tied to property ownership, and the legal activity in and around the city of Bharuch. There are references to property being under under security bonds (*tamassuk*) certified by the *qāẓī* (*ba-mohar-i īn khādim-i shar'-i sharīf*); to the acknowledgement of rights of inheritance involved in the sale of different parcels; to the existence of joint ownership, incorporation (*mushārakat*), or the lack thereof in some cases; and references to self-representation (*aṣālatāñ*) or representations performed by an agent (*vakālatāñ*). Though the documents cover a range of years from the height of the Mughal empire under Aurangzeb to the early-colonial period, after British entry into Bharuch, they exhibit many consistencies as a collection. Compared to extant documents from the early Mughal period, such as *farmān*s and *sanad*s issued under Babur, the documents are smaller and the text denser.[163] Whereas early Mughal *farmān*s often included noticeable blank space between the individual lines of text, the documents produced in Bhaurch give little extra space between each line of text, with the exception of the mid-section of the property deed in which the scribe elongates his script to mark a property's boundaries.[164] Despite their less oppulent formatting, the

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[162] Documents M and C, respectively. Miscellaneous documents microfilmed at Bharuch, NAI Acc. No. 851. (See Appendix A for further document details.)

[163] The microfilmed reproductions do not indicate scale, but it it appears that most of the documents are smaller than the standard A4 size background on which they were scanned.

[164] For two examples from Babur and Shah Jahan, see Mohiuddin, *The Chancellery and Persian Epistolography under the Mughals*, Illustrations 1 and 2 (between pages 76 and 77). The use of extra space between lines of text in royal documents might illustrate prestige and the ability to "waste" paper, while private parties would have less opportunity to do so. Examining these documents relative to collections found elsewhere suggests that more work remains to understand local variation within the framework of Islamic legal norms. Nandini Chatterjee's current work makes great strides in this direction. (See, e.g., Chatterjee, "*Mahzar-nama*s in the Mughal and British Empires.")

documents preserve the traditional layout for Islamic legal documents, leaving the upper third and right-hand margin of the page open for the application of attestations and attributions, but at the same time also demonstrate a greater awareness of graphic presentation than some of the Mughal documents in their relative arrangement of these elements.[165] The documents preserved at Bhaurch are thus important remnants from this period of documentary transition.

As Company policies worked to specify the exact sizes, shapes, and location of different documentary elements, precisely following the protocols in the production of paperwork became central to the Company's anti-corruption measures.[166] These interests carried over into the production of writing manuals as well. Texts like the *Inshāʾ-yi Harkaran* and the *Badaʿī al-Inshā* emphasized document content over the page's layout by allowing the text from multiple documents to occupy a single folio. Furthermore, in some manuscript editions, the individual headings for the documents were never inserted, thus making it all the more difficult for the reader to identify or to separate the individual documents.[167] As the nineteenth century progressed, however, attention to layout received greater attention from the authors of writing manuals and bureaucratic guides. Whereas manuscript models presented uniform lines of text across each of their folios, with lithography, document manuals published in the late-nineteenth and early-twentieth centuries could illustrate the precise arrangement of each element. Using newly available print technologies, these books began to illustrate the placement of seals,

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[165] For a discussion of these formal aspects, see Christoph Werner, "Formal Aspects of Qajar Deeds of Sale," in *Persian Documents: Social History of Iran and Turan in the Fifteenth to Nineteenth Centuries*, ed. Kondo Nobuaki (New York: RoutledgeCurzon, 2003), 13–49.

[166] East India Company, *Rules, Orders, and Directions*; Hull, *Government of Paper,* 9–10; Master, *Diaries of Streynsham Master*; Ogborn, *Indian Ink,* 67-103; Raman, *Document Raj,* 23–52; Saumarez Smith, "Rule-by-Records and Rule-by-Reports"; and Samuarez Smith, *Rule by Records.*

[167] See, e.g., Bodleian, Ms.Pers.e.98.

government stamps, and other graphic emblems more explicitly.[168] In this regard, the documents from Bharuch occupy an intermediary stage between the rigid specifications of late-nineteenth century (printed and lithographed) forms and more spacious layouts observed in earlier examples.

Likewise, the documents from Bharuch all bear the seal of the *qāẓī*, or, as in one example, that of the *muftī*.[169] Some documents also include seals within the attestations, but the majority of the signatories write, rather than stamp, their consent. Persian is the language of documentation, but the attestations are in several scripts—Perso-Arabic, Gujarati, Modi, and Devanagari—highlighting their heterographic, if not heteroglossic, context of production. While witness attestations crowd the text of the main document, often filling the entire right-hand margin with a dozen or more statements, in many instances, the parties involved mark their assent with the placement of a simple "sign" (or, *ʿalāmāt*), rather than with a signature. In other instances, the parties insert decorative objects (e.g., flowers) in the place of the signature, capturing the visual representation of the seal and the written element of the signature in a single mark. From the handwriting demonstrated in the signatures and "signs", it is evident that individuals possessing varying degrees of familiarity with writing participated in the process of legal documentation, and these diverse literacy levels suggest that legal documentation was not the exclusive domain of literate merchant communities but that agriculturalists and artisans also participated.[170]

In addition to being more densely written, the sale deeds preserved in this collection are

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[168] For manuscript examples, see, e.g., BL, OMS/Add. 26,140 (*Inshāʾ-yi Harkaran, rōz marra*) and OMS/Add. 22,706 (*Manẓar al-Inshāʾ*). By way of comparison, see, Sayyid Bāqir ʿAlī, *Majmūʿa-i Kāghiẓāt-i Karravāʾī,* which added new formal elements but retained the *shikasta* script, in the lithographed book.

[169] Most of the seals refer to the *qāẓī* as "*k̲h̲ādim-i sharʿ*" (servant of the divine law) others also include the title "*qāẓī*" explicitly. The seal for Muftī ʿAbdul Raḥīm, identifies him as "*k̲h̲ādim-i sharʿ muftī*". (Document J, Miscellaneous documents microfilmed at Bharuch, NAI Acc. No. 851, Appendix A.)

[170] Such observations are supported by explicit mention of community membership *(qaum)* as well. Many of the entries refer to agricultural classes and artisan occupations.

also more detailed than those contained in works like the *Manual for Qazis and Muftis*. Deeds of sale exemplified in that compilation describe the property, its environs and boundaries, and the process of sale briefly. Documents preserved in the collection from Bharuch provide two additional sets of details. First, the documents routinely include explicit reference to the entire group of individuals involved in the sale, in front of whom (*qabl az*) the attestations being committed to paper are performed. For instance, one particular document involving the sale of a house belonging to the descendants of "Jhīla", lists the names and relations of seven individuals with a stake in the property. In the course of listing these individuals, before whom the sale takes place, the deed indicates their relationships to one another and to the original property-owner, who is now deceased.[171] Such details not only complicate the straight-forward models provided in didactic literature but also point to the realities of on-the-ground legal activity. The clean models provided in instructive manuals rarely correspond to the complex familial-financial relations manifested in reality. Second, the documents add a secondary statement and affirmation of ownership following the description of the property. In these statements, the vendor indicates that the aforementioned property belongs to him, constituting his "right and property" (*ḥaqq ō milk*), and that two individuals—whose names he provides in the document—testify to that fact (*a<u>kh</u>bār kardand*).[172] Though the generic form given in these documents complies with the models provided in extant writing manuals, they also reveal that even in the eighteenth century,

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[171] Though these particular documents do not draw out the family tree connecting the individuals involved, the documents do provide sufficient information for such representations. (The inclusion of family trees arrives later, in printed case proceedings as well as in complicated inheritance cases sent to the *muftī* in Hyderabad. See Chapters Five and Six.)

[172] This statement belongs to part (b), as described in Mohiuddin's discussion of the bai'-nama, though it does not appear in the sale deeds included in the *Manual for Qazis and Muftis* or other didactic works consulted. (Mohiuddin, *The Chancellery*, 116.)

contracting parties recognized the expediency of including sufficient detail and adequate confirmation of the information described therein.

In substance, the Bharuch collection does not diverge qualitatively from those of Baṭāla or elsewhere, but examining these eighteenth-century specimens from the family's collection demonstrates the ways in which nineteenth-century innovations modified the *qāẕī*'s work and impacted local populations. In this respect, the family's collection becomes even more illuminating in relation to the bound registers that emerge in the mid-nineteenth century, for although evidence from the family's papers and the manuscript edition of the *Manual for Qazis and Muftis* provide insight into the family's history and legacy working in the Bharuch region, registers bearing the signatures of Aḥmad Ḥusain, Nūr-ud-dīn Ḥusain, and their *nā'ib* (assistant) Ġ̱ulām Muṣṭafá offer yet another perspective from which to survey the documentary practices of Islamic law in nineteenth-century British India.

VII. From Private Agreements to Public Records

One of the most illuminating ways to trace developments in the practice of law is to observe the ways in which a particular legal form—in this case, the deed of release or dissolution—moves through and across different legal fora. Though Aḥmad Ḥusain's complaints surrounding the production and authentication of *vakālat* and *mukẖtār nāma*s provided a point of entry for understanding the *qāẕī*'s professional world, few examples of these types of documents exist and tracing their development over the course of the eighteenth and nineteenth centuries, though potentially illuminating, remains beyond the scope of this project. However, registers preserved by the *qāẕī*s do provide some perspective on the *qāẕī*'s work for the period under discussion—that is, from roughly 1830 to 1860. Of these, the majority of the registers preserved

in the *qāẓī*'s collection at NAI record marriage ceremonies (*nikāḥ*s) performed by the *qāẓī* and his *nā'ib*,[173] but three of these registers record not the solemnization but rather the termination of marriages. Two of these registers in particular contain documents categorized as "*fārigẖkẖaṭṭī*s" or "*fārigẖkẖaṭṭī ṭallāq nāmas*," and one of these registers is dedicated to "*barkẖāst nāma*s." Tracing the evolution of these documentary forms reveals some the ways in which the office of the *qāẓī* shifted from that of private notary to public record-keeper over the course of the nineteenth century.

One of the best-known works of *inshā*' to include a sample *fārigẖkẖaṭṭī* is indeed the well-known *Inshā'-yi Harkaran.*[174] and Francis Balfour's well-known edition and parallel translation of this text, which he published with the encouragement of Governor-General Warren Hastings for the purposes of aiding the study of Persian in late-eighteenth-century Calcutta, reveals the ways in which Company-sponsored projects looked for and found legal equivalences in texts such as Harkaran's.[175] The *fārigẖkẖaṭṭī* Balfour copies from Harkaran commemorates the (unnamed) author-executor's release of a certain Ḵẖwāja Karīmdād, son of Aḥmad from any and all claims against him.[176] The nature of the author-executor's claim on Karīmdād is left unspecified, but

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[173] These registers receive more consideration alongside later marriage registers from Meerut in Chapter Four.

[174] On the author, Harkaran Das Kambuh, see Kinra, *Writing Self, Writing Empire*, 28–29; Alam and Subrahmanyam, "The Making of a Munshi," 61; and S.H. Qasemi, "Harkarn Dās Kanbōh," *Encyclopædia Iranica* (December 15, 2003), http://www.iranicaonline.org/articles/harkarn-das-kanboh.

[175] Francis Balfour, M.D. tr. and editor, *Inshā-yi Harkaran. The Forms of Herkern. Corrected from a Variety of Manuscripts, Supplied with Distinguishing marks of construction and Translated into English with an Index of Arabic Words Explained and Arranged under their Proper Roots.* (Calcutta: [n.p.], 1781), 172. Though the document does not use the term "*fārigẖ*" or "*fārigẖkẖaṭṭī*," Balfour identifies this document as a "خط فارغگی معاملہ" and printed editions of the *Inshā'-yi Harkaran* call this text a "*fārigẖkẖaṭṭī*." The term used within manuscripts of this work is "خط لادعوی" meaning deed of acquittance. Contemporary dictionaries such as Fallon's *Law and Commercial Dictionary* provide nearly identical definitions for these two terms—فارغخطی and لادعوی. (S. W. Fallon, *A Hindustani-English Law and Commercial Dictionary* [Banaras: Medical Hall Press, 1879].)

[176] Ibid. (Balfour uses "A.B." to identify the executor of the document. Other versions of the text do, in fact, name the executor.)

the author-executor is explicit in stating that should he (the author-executor) proffer any claim in the future, such claim will be false and this certificate (Balfour's translation for "*sanad*") should serve as evidence of Karīmdād's release in such circumstances.[177] Though the wording of the text provided in other manuscript copies differs from the version Balfour provides, what is important for understanding the legal formulae of the *fārigẖkẖaṭṭī* is the arrangement of information within the text and the way in which the author-executor certifies the release of the deed's recipient. Here the author-executor identifies himself, mentions the existence of a certain claim against the recipient, and then states that the document now provided certifies the termination of that claim and marks the release of the recipient.[178] In this particular document, the author-executor adds an additional phrase of surety before closing the document stating, "If I make any other claim, it will be false" (*agar d'ava namāyam, darōgẖ bāshad*),[179] but aside from this addition, the form of the document is consistent with later examples.

The *Manual for Qazis and Muftis* does not include a *fārigẖkẖaṭṭī* under that name, but it does include a document marked "*pārah kẖaṭṭī*." As a past participle of the Persian verb *pāridan*, *pārah* can mean a piece or fragment but when duplicated, as in *pārah pārah kardan*, it means to tear to pieces or to divide into portions. Reading the name literally, then, *pārahkẖaṭṭī* could easily refer to the termination or dissolution of an agreement. The name, given here, however, could also be the product of mis-reading. In some hands, the *fā* in fārigẖ and the *pā* in pārah may look similar. Furthermore, in Persian manuscripts (especially those characterized as *masauwadāt,* or drafts, as is the case here), the scribe may misplace, abbreviate, or altogether omit the distinguishing *nuqṭa*,

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[177] Francis Balfour, M.D. tr. and editor, *Inshā'-yi Harkaran. The Forms of Herkern*, 172–175.

[178] Ibid.

[179] Balfour, *Insha-yi Harkaran. The Forms of Herkern,* 172.

such that reading *pa* in the place of *fa* might be improbable but such a reading is not impossible. Handwriting could indeed be the cause for misspelling here. A more likely possibility, however, is that the *qāẓī*, accustomed to working simultaneously in both Persian and Gujarati scripts transposed the aspirated *pha* sound from Gujarati in place of the *fa* sound in Persian because the sound is common in Gujarati words borrowed from other languages but does not have its own character in the Gujarati script. This interpretation becomes more likely when compared to the registers themselves, which use the word *phāregh* (ફારેઘ) in Gujarati script on the cover.[180] Regardless of the linguistic origins of the document's name, there is no question about the document's identity, however, as the text is nearly identical to the one from the *Inshā'-yi Harkaran* in which Fateḥ Allah acknowledges the settling of his accounts with Karīmdād and releases him from future claims.[181]

With the exception of subtle changes in wording and the translation of the text from Persian to Urdu, document writing manuals published in the late-nineteenth century follow this model for the *fārigẖkẖaṭṭī*. The *Inshā'-yi Ḵẖirdafrūz*, a work published in multiple editions throughout the nineteenth century, includes the *fārigẖkẖaṭṭī* nestled on a single page between a *rasīd* (an acknowledgement or receipt) and a *rāẓī nāma* (deed of satisfaction [of a debt], or agreement).[182] The document, here written in Urdu, begins with a generic opening, "I, who am so-and-so, resident of such-and-such city." Then, omitting the typical statement of attestation and affirmation, it states that the executor of the deed and Mīr ʿIzzat ʿAlī had an agreement,

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[180] Sl. No. 41, NAI, MSS from Bharuch, Acc. No. 851.

[181] Balfour, *Insha-yi Harkaran,* 175–177; *Manual*, 37.

[182] Munshī Qamar-ud-dīn Ḵẖān, *Inshā'-yi Ḵẖirdafrūz* (Akbarabad [Agra]: Asʿad-ul-Akẖbār, 1852), 23.

connected with "some matter" (*falān amr*) and that today, having settled their accounts (*sāra ḥisāb ṭai hō kar*), the entire amount owed to the author-executor had been repaid such that nothing additional remained (*kuchh bāqī nahīñ rahā*) between them.[183] "For this reason," the speaker concludes, "[I have] written this *fārigẖkẖaṭṭī* on such-and-such a day."[184] The deed excerpted here follows the same format as the Persian texts described above, using words like *ḥisāb* and *kitāb* to refer to the account books, for instance. Despite these similarities, however, the Urdu text omits the formal phrases that frame the legal utterance in the earlier Persian text. There are no statements of affirmation or correctness (e.g., *iqrār*, *muʿatabar, ṣaḥīḥ*) at the beginning of the document, nor does the text conclude with a statement of purpose (e.g., *ʿand al-ḥājat*) at the end. The substance of the document remains the same in these later Urdu renderings, though some of its Islamic legal trappings have been excised.

Other works from this genre also provide examples of the *fārigẖkẖaṭṭī*. The widely published *Inshāʾ-yi Urdu*, for instance, has a sample *fārigẖkẖaṭṭī* in which a certain Badhānal, resident of Lahore, acknowledges the repayment of the debt Bihārī Lāl owed him. The *fārigẖkẖaṭṭī*, dated 3 January 1863, states that after repaying the debt, Bihārī Lāl bore him no responsibility and their agreement was complete.[185] Though the *Inshāʾ-yi Urdū* presents many of the same document types as the *Inshāʾ-yi Kẖirdafrūz*, the text itself is a product of the colonial context. As the cover page explains, Deputy Inspector Maulvi Karīm-ud-dīn wrote *Inshā-yi Urdū* at the behest of Captain Fuller, Director of Public Instruction in the Punjab for the purpose of its

[183] Ibid.

[184] Ibid.

[185] Maulvi Karīm-ud-dīn, *Inshāʾ-yi Urdū.* 4th edition. (Lucknow: Nawal Kishore Press, 1880). The document continues to appear as a "deed of release" or "release deed" in schedules of stamp tax throughout this period.

use in educating children (*taʿlīm-i itfāl*) in the schools of Hindustan, and unlike documents marked as "*sābiq*" or "former" in other writing manuals, the *fārigẖkẖaṭṭī* here receives no special treatment. Its relevance remains, at least for educational purposes, if not in the wider world of litigation. Furthermore, although examples found in older manuscript editions tend to involve Muslim parties, later examples from nineteenth century printed books address situations in which both parties are Hindu (by name) as well as situations in which parties have different religious affiliations. Such diversity suggests that even though manuscript versions of the document invoke ideas of Islamic law through the deployment of the *sharʿī* affirmation at the opening, later versions of the document, especially those in Urdu, reflect that its fundamental use was not, in fact, tied to a particular religious or communal purpose.

Dictionaries compiled by civil servants in the Company's employ also support this usage, while at the same time revealing slight (regional) variations in usage. Duncan Forbes identifies the "fārigẖkẖaṭṭī" as "a written deed of release, or full acquittance."[186] Joseph Thompson gives a slightly more prosaic definition, calling the "farigh khuttee…a deed of release or discharge."[187] For John Gilchrist, the "farigh-khuttee" is a form of "quittance", "release", or "discharge" and is synonymous with other documents like the "khutt i lawda'uwee,"[188] similar to its classification in *Inshāʾ-yi Harkarn* noted above. Henry Elliot, whose intellectual influence is evident in some of these other works, repeats the more common definition but also suggests a somewhat different usage. In the supplemental glossary to his *Memoirs on the History, Folk-lore, and Distribution of the Races*

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[186] Duncan Forbes, *A Dictionary, Hindustani & English: Accompanied by a Reversed Dictionary, English and Hindustani*, Vol. 2 (London: W.H. Allen & Co., 1866), 378.

[187] Joseph P. Thompson, *A Dictionary in Oordoo and English. Arranged according to the Order of the English Alphabet* (Serampore: Mission Press, 1838), 129.

[188] John Borthwick Gilchrist, *Hindoostanee Philology Comprising a Dictionary, English and Hindoostanee; with a Grammatical Introduction* (London: Kingsbury, Parbury, and Allen, 1825), 520.

of the Northwestern Provinces of India, he nests "*fārigẖkẖaṭṭī*" under the term *fārigẖkẖatāna*[189] and provides two complementary definitions: First, he glosses the term as "a written release or acquittance," repeating the standard definition given in other dictionaries. He then adds, however, that the *fārigẖkẖaṭṭī* is "a receipt given at the close of the year by the Zamīndār to the ryot, stating that all rent and demands of all sorts have been paid for that year."[190] While the former definition fits with the sample documents outlined above, the latter definition offers new information regarding the context for issuing *fārigẖkẖaṭṭī*s.

This more particular definition, however, might hold a certain regional significance, for it appears to have been the prevailing definition in some of the Company's earlier dealings with the Rajahs of Benares, for instance. When the Company expanded its administration of revenue collection in the Benares region in 1794, it struck an agreement with the Zamīndār of Benares, Rajah Mehipnarain, in which existing practices of record keeping were "to remain in force." These records included "the Potahs[,] receipts, and Farigh Kuttiees, or acquittances."[191] Here *fārigẖkẖaṭṭī* appears to carry the definition Elliot attributed to it above, meaning the annual acknowledgement or deed of acquittance issued by the *zamīndār* to recognize the fulfillment of all demands of rent for the year. Whether or not this was a common practice among *zamīndār*s, is unclear, however, for most of the other examples suggest a private a document passed between partners or relative equals.

Examples drawn from extant document collections further support this interpretation. In

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[189] That is, a term designating the fee paid for the writing of the *fārigẖkẖaṭṭī*.

[190] H.M. Elliot, *Memoirs on the History, Folk-Lore, and Distribution of the Races of the North Western Provinces of India: Being an Amplified Edition of the Original Supplemental Glossary of Indian Terms,* ed. John Beames (London: Trübner & co., 1869), 157.

[191] Great Britain. *Second Report from the Select Committee on the Affairs of the East India Company* (Calcutta: [Cambray], [1810]), 154

the Bhandārī Collection of documents from Baṭāla in Punjāb, *fārigẖkẖaṭṭī*s appear in connection to *baiʿnāmas*, or deeds of sale. Surveying this collection, Grewal notes that *fārigẖkẖaṭṭī*s were issued as receipts in sale agreements. He writes that "Such a receipt….was prepared simultaneously with the *baiʿnāma*, to be handed over to the vendee by the vendor in the court, with the *qāẓī*'s seal on this 'written release'."[192] Within the Bhandārī Collection, then, "a formal *baiʿnāma* was invariably accompanied by a *fārigẖkhatī*" such that the documents constitute pairs and the text of the *fārigẖkẖaṭṭī* "contains nothing in addition to what is found in the related *baiʿnāma*".[193] Document pairs such as those Grewal notes in the Bhandārī collection thus provide another example of this document's flexible, and practical usage, which is not altogether evident in the normative literature.

Along these lines, *fārigẖkẖaṭṭī*s recorded in the registers of the *qāẓī* of Bharuch mimic the form observed in normative texts considered above, with the statement: "I, who am so-and-so, son of so-and-so, born of so-and-so, state and legally affirm that I release so-and-so from any obligation to me." The difference with the *fārigẖkẖaṭṭī*s presented here, however, is that the contractual arrangement between the two parties is primarily one of marriage. Rather than mentioning an "account" (*ḥisāb*) or "property" (*māl*), the deed of release now refers to "marital affection/relations" (*ʿilāqah-i zōjīat*) and the "bondage of marriage" (*qaid-i nikāḥ*). Though it is tempting to read these documents as evidence of the *qāẓī*'s forced turn to family affairs, the documents themselves remain infused with the language of contracts and mutually constitutive obligations and expectations that reflect the *qāẓī*'s wider, pre-colonial sphere of activity,

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[192] Grewal, *In the By-Lanes of History*, 43.

[193] Ibid. (Grewal notes that the *fārigẖkẖaṭṭī*s actually omit some of the sureties and other details provided in the *baiʿnāma*s.)

suggesting a more expansive use and recognition of the document's circulation. The copy of a particular *fārigẖkẖaṭṭī ṭallāq nāma* contained in the *qāẓī*'s register thus reads:

> I who am named Shaikẖ Mīr Muḥammad son of Kālū, of the weaver community [*qaum*], … residing at Bharuch, state and legally affirm to this effect that I release one Zainab, daughter of Khaisā Bhāʾī, who is my lawfully wedded wife [*zōj-i mankūḥa-i man ast*] from the confines of marriage after which there will not be, nor will remain, any marital connection between myself and the aforementioned Zainab.[194]

In the sample *fārigẖkẖaṭṭī*s copied from normative literature above, the declaration ends here with one party releasing the other. In the case of this deed of separation, however, the other party also makes an affirmation:

> I, who am called Zainab, am also present [*nīz ḥāẓir shudah*] and state and affirm that I abstain from *mahr* and the expense of *ʿiddat* owed to me and forgive [these debts].[195]

After Zainab relinquishes her claim to *mahr* (dower pledged by the husband at the time of the wedding ceremony) and to *ʿiddat* (maintenance paid by the husband during the [three-month] waiting period following the divorce), the parties finalize their mutual release:

> After this statement, there is no claim, admission, request, or demand nor will any remain [between us]. Consequently, I have written [*nawishtah*] and given these few words [*īn chand kalimah*] so that when required, they may serve as proof. Written on the 3rd of Rabīʿ al-awwal 1259 Hijrī, corresponding to 4th April 1843 CE.[196]

The parties sign the document—Mīr Muḥammad signing in Perso-Arabic script; Zainab writing in Gujarati—and the witnesses affix their signatures or signs, attesting to their presence at the execution of this deed and acquiescence to the pledges contained therein. For this document,

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[194] NAI, MSS microfilmed at Bharuch, Acc. No. 851, Sl. 41, Entry No. 2.

[195] Ibid.

[196] Ibid.

there are four witness signatures, all of which are completed in the Gujarati script.[197] Though this document does not mention *k̲h̲ul'*, or female-initiated divorce, many of the separations recorded by the *qāẓī*s of Bharuch reflect this type of separation, and in many instances, the wife relinquishes her claims to *mahr* as well as to her post-marital maintenance. In other cases, particularly ones in which the deponent explicitly mentions *k̲h̲ul'*, the husband may refer to cash payments or gifts he gave to his wife earlier in their marriage which she now returns to him. In the majority of the cases recorded, however, no money changes hands, suggesting that separation by mutual consent was a common, if not preferred, practice in this region.

Not all of the *fārig̲h̲kahttī*s recorded in the *qāẓī*'s register are deeds of divorce. Some of them are for the termination of engagements instead. On February 5, 1844, Shaik̲h̲ Rasūl Bhā'ī entered the *qāẓī*'s court to register the termination of his betrothal to Fāṭima, the daughter of one Ḥusain Bhā'ī, demanding the return of the twenty rupees he had pledged at the time of the engagement and asking for the nullification of the documents executed at that time.[198] In the following year, Shaik̲h̲ Ḥusain terminated an engagement (*mangnī*) he had previously contracted between his son 'Abdul Qādir and Zainab, the daughter of 'Umar K̲h̲ān. Owing to the emergence of a state of disagreement between himself and the girl's father, Shaik̲h̲ Ḥusain nullified the engagement and took back the three rupees he had given toward its expenses, stating that following the execution of this document, no relationship or connection would remain between them.[199] Though terminating engagements, rather than marriages, these records follow the same format of the *fārig̲h̲k̲haṭṭī ṭalāq nāma*s contained in the *qāẓī*'s register and that of the debt

[197] Ibid.

[198] Ibid., Entry No. 7.

[199] Ibid., Entry No. 21.

release documents found in prescriptive works, reflecting the flexible application of this documentary form and the importance of written documentation for the maintenance of social relationship across multiple socio-economic strata.

In the first volume from the Bharuch collection, each *fārigẖkẖaṭṭī* appears on a separate page in the *qāẓī*'s register. The text begins at the upper-right-hand corner of the page and follows in smooth succession from the opening attestation by the man to the accompanying statement by the woman, to the closing passage at the end. Following this arrangement, the main text of the document fills the top half of the page, followed by the signatures or "signs" of the two parties and those of witnesses. In most cases, the witnesses sign in Gujarati script, creating a noticeable break between the main text of the document written from right to left in the Persian script above and the attestations written from left to right in the Gujarati script below.[200] This narrative format, however, only exists in one of the two registers that contain *fārigẖkẖaṭṭī*s. In the second register, the format for the statement changes dramatically. To complete these entries, the *qāẓī* created columns on the page and placed the information pertaining to the individual parties into these individual columns.[201] The first two columns of the record gave the entry a serial number and date (according to the Hijri and Gregorian calendars) of the transaction. The next column—moving from right to left—then recorded the man's statement: "I who am Shaiḵẖ Ġẖulām Ḥusain, son of Shaiḵẖ Chand, son of Ġẖulām Bhā'ī, resident of Bharuch…swear and solemnly affirm that I grant one named Subḥān, daughter of Nathū Bhā'ī, who is my lawfully wedded wife, a divorce and release her from the confines of marriage, after which there will not be, nor

[200] NAI, MSS microfilmed at Bharuch, Acc. No. 851, Sl. 41. (The register includes 86 entries, dating from April 1844 to July 1849.)

[201] NAI, MSS microfilmed at Bharuch, Acc. No. 851, Sl. 42, Ibid. (This register includes approximately 175 entries, dating from September 1849 to June 1862.)

will remain, any marital relation [between us]."[202] Two of the witnesses then placed their signatures in the column beneath Ghulām Ḥusain's statement—Shaikh Hājjī Miyān (in Persian) and Sayyid Shams-ud-dīn (in Gujarati). Subḥān's statement follows in the next column to the right of her husband's:

> And I who am named Subḥān daughter of Nathū Bhā'ī resident of the merchant's area of Bharuch, approximately of the age of 16, am present and state and affirm that in exchange for *mahr* and my expense of maintenance, I grant him *khul'* and release him from any claims, after which no claim, or right, or demand will exist nor will remain between one another.[203]

The two parties add their signatures beneath Subḥān's statement, Shaikh Ghulām signing first, followed by Subḥān, both signing in Gujarati script. The *qāẕī* indicates the receipt of his standard fee in the column farthest to the left of the page and signs the document in a separate box drawn across the bottom of the page: *Ṣaḥīḥ Shaikh Ghulām Muṣṭafá Nā[']ib dār-ul-qaẕā Bandar Bharūch*.[204] The next document in the register follows the same format, dividing the statement across the columns drawn on the page, with signatures entered into the space below. Not only do these entries from the mid-1840s reconfirm the familial focus of the *qāẕī*'s records at this point but they also demonstrate the reconfiguration of the information presented on the page, from the single narrative presented in the entries of the first register to the tabulated form presented in the second register. But they also defy easy classification and retain clear remnants of Bharuch's mercantile, contract-oriented environs.[205]

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[202] NAI, MSS microfilmed at Bharuch, Acc. No. 851, Sl. 41, Entry No. 8.

[203] Ibid.

[204] Ibid.

[205] For a novel treatment of how law and writing shaped mercantile activity around the Indian Ocean littoral, see Fahad Bishara's *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780-1950,* Asian Connections (Cambridge, UK: Cambridge University Press, 2017).

Within the context of Islamic law, there are several types of divorce, including *ṭalāq*, *k͟hul‘*, and *mubār'a*. Of these, *ṭalāq* is the most common. *K͟hul‘* is more difficult to achieve because it requires financial sacrifice on the woman's behalf and willing acceptance on the part of her husband. *Mubār'a*, or divorce by mutual consent, is the most rare, and surfaces only occasionally in literature on marriage and divorce in British India.[206] By creating a generic register in which to record all forms of separation or termination of nuptial agreements, the *qāẓī*s used their register to record a variety of personal and familial arrangements and agreements, but in so doing, they also contributed to the proliferation of novel legal categories by employing an umbrella term to encompass a variety of legal arrangements. The *fārig͟hk͟haṭṭī* was flexible and efficient, capable of accommodating a range of personal and inter-familial arrangements. Looking at the circulation of the idea of "*fārig͟h*" more broadly, this is not surprising. Gazetteers from the region describe forms of divorce recognized among non-Muslim groups using similar terms, and references to actual (or forged) *fārig͟hk͟haṭṭī*s in the courts of law, suggest the inherent flexibility and imprecision of this document form.[207] Though the actual agreements recorded in the *qāẓī*s register do not themselves diverge from accepted practices within (the Ḥanafī school of) Islamic law, the act of recording them in the register reveals the *qāẓī*'s ability to convert specific socio-familial circumstances into generic legal acts.

This process of turning individual details into a generic legal device sits at the heart of the *qāẓī*'s role as notary. In Roman Law contexts in which the notary acts as the first point of

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[206] Asaf A. A. Fyzee, *Outlines of Muhammadan Law*, fourth edition (Delhi: Oxford University Press, 1974 [1949]), 149-188. Fyzee includes several other kinds of dissolution as well, and places *ṭalāq-i tadwīd* alone under the heading "by the wife," placing *k͟hul‘* and *mubār'a* under the category of "mutual consent."

[207] R. E. Enthoven, *The Tribes and Castes of Bombay*, vol. 1 (Delhi: Cosmo Publications, 1975), 330–334. (See further explanation below.)

contact litigants have with the legal system, his principle aim in writing and authenticating documents is to turn the messiness of real life into neat, legally recognizable forms.[208] By producing registers under the rubric "fārig̲h̲k̲h̲aṭṭī ṭalāq nāma" the *qāẓī*s of Bharuch were engaged in a similar activity, taking the details of everyday life and rendering them legible within the legal devices under which they were recorded. At this stage in the process of bureaucratizing Islamic legal procedure, such practices were acceptable, but in later decades, as the colonial government sought to separate further the civil-contractual basis of Muslim marriages from its religious-doctrinal elements, the flexibility still present in the *qāẓī*'s register was removed.[209] This transition is already evident across the two registers, with the first one based in narrative attestations and the latter one transformed into tabulated accounts in which individual pieces of information were slotted into designated boxes. As the purported rules surrounding the practice of (Sunni) Muslim marriage became more regulated in the latter-half of the nineteenth century, the differences and divergences recorded in the *qāẓī*'s registers were further erased, and the regulated registers *qāẓī*s maintained in later decades worked to impose even greater procedural—and by extension substantive—uniformity over the transactions they recorded. In so doing, such bureaucratic procedures privileged normative-scripturalist forms of legal action over the more flexible, permissible forms observed in Bharuch.[210]

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[208] Hardwick, *Practice of Patriarchy*, 18.

[209] For a discussion of marriage contracts and colonial efforts to limit the range of their stipulations, see Lucy Carroll, "Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife," *Modern Asian Studies* 16, no. 2 (1982): 277–309. For a discussion of marriage contracts in another context, see Hardwick, *Practice of Patriarchy*, 53–75.

[210] This reading departs from Cohn's arguments about writing by asserting that written contractural agreements were indeed part of pre- and early colonial legal expressions but that procedural changes introduced in response to colonial rule reduced the *qāẓī*'s ability to accommodate alternative social contracts in writing. (Cf., Bernard S. Cohn, "From Indian Status to British Contract," *The Journal of Economic History* 21, no. 4 [December 1961]: 613–28.)

VIII. Conclusion

Less than twenty years separate the execution of the documents entered into the first register of *fārigẖkẖaṭṭī*s and those found in the second volume, but differences in the format of these two registers trace a more extensive transformation in the *qāẓī*'s work in the first-half of the nineteenth century. Whereas documents bearing the seals of the *qāẓī*s of Bharuch could include deeds of sale, gift, mortgage, and rent, the transactions recorded in the *qāẓī*'s register revolve around the establishment and dissolution of contractual relations related to marriage. This transformation coincides with general observations about the narrowing of the *qāẓī*'s authority and the confinement of Islamic law to personal matters, such as marriage and divorce, but there is more at stake in the transformation of the entry in the *qāẓī*'s register from that of a *fārigẖkẖaṭṭī* to that of a *ṭalāqnāma*.

As intimated above, the term "fārigẖkẖaṭṭī" for divorce was not exclusive to the use of Muslims. In fact, early-colonial ethnographic accounts of the local populations, tribes, and castes of western India, indicate that certain non-Muslim groups, such as the Dhodias in Surat, also acknowledged a form of divorce termed "fargut".[211] The use of this term—a bastardization of the term "fārigẖkẖaṭṭī"—to describe divorce outside the context of Muslim marriages not only suggests a flexibility of legal categories in and around Bharuch but also demonstrates the circulation of legal ideas, from the context of commercial contracts, to those of marriage contracts, to those of non-Muslim divorce practices. If the terms employed in the *qāẓī*'s registers were simply derived from the Islamic idea of divorce by mutual consent (*mubār'a*), one would not expect the idea of the "fārigẖkẖaṭṭī", or deed of separation, to appear among non-Muslim

[211] Enthoven, *The Tribes and Castes of Bombay*, vol. 1, 330–334. (Dhodias are a tribal group. Enthoven describes their religion as "animistic" but their inheritance procedures as "Hindu". Today, their beliefs are classified as primarily Hindu, with some members of the tribe professing Christian beliefs owing to missionary influences.)

communities, as Enthoven's classification suggests.[212] A more detailed analysis of the specific terms employed and their circulation within local contexts thus points to the existence of diverse, multi-layered legal forms operating beyond the confines of classical categories.

Furthermore, as some of the examples cited above suggest, not all divorces recorded under the head "fārig̲ẖk̲ẖaṯṯī"—or even under that of "fārig̲ẖk̲ẖaṯṯī ṭalāqnāma"—belong to the category of "divorce by mutual consent". Some of the entries stipulate the wife's return of money and gifts to her (former) husband (e.g., with *k̲ẖul'*); other cases, acknowledge the husband's payments in the form of *'iddat* (maintenance) or in fulfillment of his delayed *mahr* obligations (*mahr-e mu'ajjal*) (in the case of *ṭalāq*). As these instances make clear, the *qāẓī*'s register emerged in tandem with the shifting categories of legal (and marital) activity and captured a particular moment in the process of legal codification when formal processes of marriage and divorce were still (somewhat) fluid.

Particularly in port cities like Bharuch, it was not uncommon for men and women to create informal arrangements mimicking those of marriage but free from its legalistic constraints.[213] The following chapter considers the larger threat, or fear, of late-nineteenth-century mobility on the maintenance of social stability within the marital union, which was neither unique to Muslims nor to British India. In the context of the *qāẓī*'s records, however, it seems evident that in places like Bharuch, processes of marriage and divorce were themselves formalized to a certain extent through the very process of maintaining records, and within the wider context of the history of Muslim marriages in British India, the significance of this

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[212] Ibid.

[213] This arrangements might be comparable to *mut'a* marriage in Shi'ī Islam. (See, e.g., Michael H. Fisher, "Political Marriage Alliances at the Shi'i Court of Awadh," *Comparative Studies in Society and History* 25, no. 4 (1983): 593–616.

observation becomes even more apparent.

In the latter-half of the nineteenth century, as Lucy Carroll explains, the civil-contractual basis of Muslim marriages was subject to increasing scrutiny from colonial judges, and intrepid spouses often advocated legal change in the institution of marriage by inserting novel clauses into these contracts, which were both disputed and upheld by the colonial courts.[214] The *fārigẖkẖaṭṭī*s recorded in the registers belonging to the *qāẓī*s of Bharuch reflect a time when legal categories were still in flux, and the local *qāẓī* was able to provide women with greater access to divorce and remarriage than other legal fora, before hierarchies of gender of ossified through colonial contact and familial relations were rendered public concerns through missionary reform efforts. Aside from the social value of these records for understanding the connections between the *qāẓī* and the maintenance and dissolution of marital contracts in the city and environs of Bharuch, these registers also capture the *qāẓī*'s transformation from a private officer to a keeper of public records. Such a transformation reflects a crucial phase of bureaucratization in the history of Islamic legal practice in South Asia that will become ever more apparent in the next chapter.

Petitions from the *qāẓī*s of Bharuch and elsewhere in western India demonstrate that document production was central to the *qāẓī*'s status and livelihood, but as Company intervention began to limit the types of documents to which the *qāẓī* had access and the procedure for obtaining fees from the authentication of these documents, some *qāẓī*s, like those in Bharuch, successfully modified their occupation to fit these changing regulations. Indeed, this transformation parallels the methods by which notaries in other contexts established professional practices to assure the public authority of their office. In her work on notaries in early-modern

[214] Carroll, "Talaq-i-Tafwid."

Rome, for instance, Laurie Nussdorfer charts the process by which Capitoline notaries carefully wedded the categories of "persona publica" (public person), "manus publica" (public hand), and "scriptura publica" (public writing) to create the idea of a legal text, authored by a knowledgeable hand, backed by a reputable professional.[215] The *qāẓī*s of Bharuch likewise engaged in these efforts of reform and restraint. Prior to British involvement, the *qāẓī*'s status as public person derived from his connection to the central imperial authority and his status as a religious figure. As the shape of the state shifted from one based in patrimony to one defined by bureaucratic practices, the *qāẓī*'s personal authority vis-à-vis that of government officials began to wane accordingly. In order to maintain his authority as a public person and as a public hand, the *qāẓī* had to modify his work to reflect these changes. Attaching official registers to the office—and replacing the earlier practice of authenticating private documents preserved in personal collections—was one of the ways in which the *qāẓī* implemented these changes, bringing his work in line with the needs of the imperial-bureaucratic project.

Narratives outlining the *qāẓī*'s marginalization in the nineteenth century and growing limitations to the scope of Islamic legal authority marked by the colonial conception of Anglo-Muslim law often overlook the importance of the *qāẓī*'s transition from an officer employed to authenticate private documents to a public official charged with the production and maintenance of public records. Records produced under these auspices are critical not just for the purposes of studying social history and local interactions with law but also for tracing later developments in the emergence of institutional legal practices. In these ways, registers from the *qāẓī*s of Bharuch thus provide crucial details about this transition which have been hitherto overlooked in the

[215] Nussdorfer, *Brokers of Public Trust*, 15.

dominant histories of law and colonialism and highlight the attendant tensions between the *qāẓī*'s office and the bureaucratic impulses of the colonial state. As the foregoing analysis shows, writing was a critical component of the *qāẓī*'s work in pre- and early colonial India. Flexible document forms and a reputation for scribal equality and equanimity allowed the *qāẓī*s of Bharuch to serve their local community of merchants, traders, artisans, and agriculturalists, but as pressure from Company officials began to limit the type of work *qāẓī*s could perform and to threaten their access to income, the *qāẓī* shifted his attention from serving the needs of the local community to proving his value to the burgeoning colonial state. In so doing, local *qāẓī*s in places like Bharuch restricted their work to legal categories Company officials recognized as legitimate and foreclosed their clients' access to alternative contractural arrangements and diverse legal forms. These changes are evident in the types of paperwork *qāẓī*s began to produce in the first-half of the nineteenth century but were greatly accelerated by changes that took place around the turn of the twentieth century, as the next chapter shows.

CHAPTER 4: THE MAKING OF A MARITAL FACT: DOCUMENTARY PRACTICES OF A NORTH INDIAN QĀẒĪ (C. 1880–1950)

I. INTRODUCTION

On the 1st of February 1910, a young Muslim couple—In'ām Allāh K̲h̲ān and Shāh Jahān Bēgum—approached their local *qāẓī* in the small North Indian town of Meerut with a request. Like hundreds of couples before them, In'ām Allāh K̲h̲ān and Shāh Jahān Bēgum wanted the *qāẓī* to perform their *nikāḥ*, or Muslim marriage rite, and to record it in the register of marriages he maintained under the authority of Act XII of 1880, also known as the Kazis' Act. As requested, the *qāẓī* Sayyid Aḥmad performed the couple's ceremony and recorded it in his notebook.[1] In'ām Allāh K̲h̲ān and Shāh Jahān Bēgum were now legally married, in the eyes of Islamic law and those of the colonial government, or so the register's entry would lead one to believe. But there was a problem the entry he created that cast doubt upon the union: Knowingly or unknowingly, Sayyid Aḥmad had entered the couple's ceremony under the date of January 31st, rather than that of February 1st. Ordinarily, such a small mistake might not be cause for concern, but in this case it was because by having the *qāẓī* antedate the record of their marriage, In'ām Allāh K̲h̲ān and Shāh Jahān Bēgum were attempting to override Shāh Jahān Bēgum's earlier marriage to another man named Nathē.[2] When word of the conflict between these rival suitors reached the police, it became clear that the marriage the couple had contracted before the *qāẓī* was in fact invalid. As a result, the two grooms were then forced to produce legal statements (or *iqrār-nāma*s) nullifying Shāh Jahān Bēgum's marriage to In'ām Allāh K̲h̲ān and affirming her

[1] The National Archives (UK) (TNA), Family History Centre (FHC), Microfilm Reel No. 1307222, Volume 15 (1 January 1909 to 5 November 1910), Entry dated 31 January 1910.

[2] Ibid., Microfilm Reel No. 1307221, Documents contained in the *qāẓī*'s register. Volume 4 (10 May 1881–14 April 1914) (Unpaginated).

union with Nathē.[3] For his involvement, the *qāẓī* copied these statements into his notebook, and added an emendation to the entry in his register.[4]

Evidence surrounding this socio-familial conflict is fragmentary, but according to statements preserved in the *qāẓī*'s notebook, Shāh Jahān Bēgum and Nathē, son of ʿAbdūl Ḥakīm, first had their *nikāḥ* read on January 31st. The union was legal, legitimate, and clearly established (*qā'im aur bar qarār*) on this day, meaning the bride's second marriage, contracted the following day (February 1) was impermissible (*sharʿīāñ jā'iz nahīñ*).[5] The only solution to this conflict was to demand that each bridegroom produce a legal statement (on government-issued stamp paper valued at one rupee a piece) describing the situation, affirming or relinquishing his claim to Shāh Jahān Bēgum, and recognizing the first marriage as proper. Inʿām Allāh K̲h̲ān executed his *iqrār-nāma* on February 3, after the complaint reached the police, and four witnesses signed the statement.[6] On that same day, Nathē made a similar statement in which he confirmed Inʿām Allāh K̲h̲ān's account, and stated that in fact, his marriage to Shāh Jahān Bēgum had taken place on January 31, with the permission of her guardian and father Muḥammad K̲h̲alīl.[7] This marriage was legally valid; therefore, the second marriage could not be valid. Nathē accepted Inʿām Allāh K̲h̲ān's statement and reasserted his rightful claim to Shāh Jahān Bēgum.[8] The qāẓī then diligently copied these statements into his notebook, acknowledging the authorial apparatus of the government's stamped paper but reasserting, for the purposes of his own legal

[3] Ibid., Statement written by Inʿām Allāh K̲h̲ān.

[4] Ibid., Statements written by Inʿām Allāh K̲h̲ān and Nathē.

[5] Ibid., Statement written by Inʿām Allāh K̲h̲ān.

[6] Ibid.

[7] Ibid.

[8] Ibid., Statement written by Nathē.

authority, the relevance of the deeds to his documentary practice.[9] The conflict between In'ām Allāh K̲h̲ān and Nathē over taking Shāh Jahān Bēgum's hand in marriage ended, as far as the register relates, amicably and with little penal intervention.

The *iqrār-namā*s cited here are only two of the countless documents cited, copied, and contained within the marriage registers of the *qāẓī*s of Meerut. The statements are not sophisticated. They do not use complex legal language, nor do they make use of the formal layouts found in other types of legal writings,[10] but even in their most basic form, these documents are relics of the layered, overlapping, and competing jurisdictions legal artifacts inhabited in late-colonial India.[11] Here, the statements are not only supported by a marginal note in register entry for the now illegal *nikāḥ* between In'ām Allāh K̲h̲ān and Shāh Jahān Bēgum but also authenticated by their reference to government-issued stamp paper.[12] In other instances, *qāẓī*s and *nikāḥ k̲h̲wān*s (i.e., those who read the marriage rite) only included a marginal note describing the contents of legal documents written elsewhere, affirmed through the presence of stamped paper and other forms of registration, and used in conjunction with oral testimony to support or confirm the legitimacy of or to describe the socio-legal context surrounding a particular union. Yet these annotations, marginal notes, and witness statements mattered and

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[9] Ibid.

[10] For a discussion of these aspects, see Chapter Two of this dissertation; and Christoph Werner, "Formal Aspects of Qajar Deeds of Sale." In *Persian Documents: Social History of Iran and Turan in the Fifteenth to Nineteenth Centuries*, edited by Kondo Nobuaki, 13–49 (New York, N.Y.: RoutledgeCurzon, 2003).

[11] By drawing attention to documentary forms that resisted the hegemony of the colonial bureaucracy, this dissertation contributes to the complex relationship between empires and their bureaucracies. As Crooks and Parsons write in their introduction to their recent edited volume, "[I]mperial bureaucracies were authoritarian, extractive and backed by violence. But, for all that, their capacity to rule directly was often limited by the tiny numbers of bureaucratic personnel, by the problem of communications and, most of all, by the difficulty of ruling 'different' peoples who do not want to be ruled." (Peter Crooks and Timothy Parsons, "Introduction: Empires, Bureaucracy and the Paradox of Power," in *Empires and Bureaucracy in World History: From Late Antiquity to the Twentieth Century*, ed. Peter Crooks and Timothy Parsons [Cambridge: Cambridge University Press, 2016], 4–5).

[12] For a discussion of stamp paper, see Chapter Three.

reveal the register's documentary entanglements with other types of legal truths and "paperalities".[13] In this way, the *qāẓī*'s register evolved not as a separate form but rather as part of an elaborate web of late-colonial legal documentation that cluttered and complicated local understandings of law and legal practice during this period of increasing colonial codification and centralization. This web of documents, in which the *qāẓī*'s register formed only one of many strands, included a range of documents, authored under a variety of circumstances, and preserved in public records and private collections, but in the course of its participation, the *qāẓī*'s register challenged the colonial state's hegemony over the production of legal documents and by extension legal truths. The *qāẓī*'s register not only recorded marriages but also included external references to, summaries and (re)affirmations of, and attestations confirming the existence and accuracy of other legal documents that were neither directly connected to nor free from the *qāẓī*'s authority and played a part in the execution of his duties as marriage registrar and officiant, despite the admittedly limited range of transactions he now supervised directly. References to the police or civil courts surface in the records only rarely, but in the context of documenting and proving marriages, the *qāẓī*'s register represented a key site through which individuals mapped their legal lives and used the mode of documentation available in his register to affirm and confirm other elements of their legal identities as well.

Here the register entry for the false marriage and its accompanying statements of nullification present a single version of this story.[14] The complete picture, however, is likely more

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[13] This term is David Dery's. See David Dery, "'Papereality' and Learning in Bureaucratic Organizations," *Administration & Society* 29, no. 6 (January 1, 1998): 677–89, doi:10.1177/009539979802900608.

[14] TNA, Family History Center, Microfilm Reel No. 1307222, Volume 15 (1 January 1909 to 5 November 1910), Entry dated 31 January 1910; and Microfilm Reel No. 1307221, Documents contained in the *qāẓī*'s register. Volume 4 (10 May 1881–14 April 1914) (Unpaginated).

complex, as most cases involving marriage are, but without additional information about the parties involved and their backgrounds or legal motivations, the full picture remains elusive. What is clear from these statements, however, is that in the first decades of the twentieth century, different modes of documentation, different forms of writing and recording, and different ideas about what constituted written proof—and what such written evidence could accomplish—competed with one another for authority. Registers, documents, and reports all played a role in constructing the narrative surrounding these conflicting *nikāḥ*s, yet in this case, none of these documentary forms—nor the individuals responsible for their production—could answer all of the legal questions involved. Unwrapping these layers of documentary authority thus provides an alternative perspective on the history of colonial bureaucracy, one that challenges the documentary authority of the state and affords greater influence to these more marginal forms of writing.

Under Act XII of 1880, the *qāẓī*s of Meerut and those from other towns across the subcontinent, had the authority to perform and record marriages and divorces among Muslims, but in many instances, the *qāẓī*'s register was only one of the documentary forms required in the process of demonstrating and documenting a legitimate union. Witness statements, extant deeds, and evidence from prior divorce decrees all contributed to the production of the legal lives written onto the pages of the *qāẓī*'s register and captured in the grids on his page. The entanglement of these forms necessarily complicated the documentary status of the *qāẓī*'s records but in so doing also joined the *qāẓī*'s documentary work to that of the state. These entanglements are evident in the dispute over In'ām Allāh K̲h̲ān and Shāh Jahān Bēgum's marriage, as well as on the pages of the *qāẓī*'s register for the thousands of other legitimate marriages he oversaw. But

what this case highlights is that the *qāẓī*'s register was not always given the final say. Certainly, in the absence of the two grooms' official statements, the legal record presented in the *qāẓī*'s register would remain on the books, and yet, it was only after the police became involved that the parties found remedy in the parallel production of legal statements that would be recognized across these legal fora. The *qāẓī*'s register certainly had a role to play in the construction of some legal facts but the colonial state did not grant it absolute authority over the perhaps undocumented first *nikāḥ*, nor could it bypass the fiscal authority of the government-issued stamp paper, yet its mere presence in this conflict points to the *qāẓī*'s compliance with and challenge to the Government of India's hegemony of the production of legal documents.[15] As a single example drawn from the *qāẓī*'s records, the incident involving Shāh Jahān Bēgum and Inʿām Allāh K̲h̲ān is illustrative in that it stems from a moment of rupture—an instance in which the documentary authority and authenticity of the *qāẓī*'s register came into question over the matter of an incorrect date—but as an exemplary instance, it also speaks to the competition that persisted between these other modes of documentation beginning in the nineteenth and continuing into the twentieth century. Such contests demonstrate how the *qāẓī*'s register worked in concert with and in opposition to conventional modes of colonial documentation and raise questions about the historiographical tendency to read documentation as evidence and writing as action. In these ways, late-colonial registers of marriage and divorce demonstrate the interwoven histories of colonial legislation, adjudication, and local legal practice at the level of documenting marriages and divorces and challenges the historian's tendency to take colonial record-keeping at face

[15] See Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India*, Convergences (Cambridge, Mass.: Harvard University Press, 1997).

value.[16]

The late colonial period is rife with records of this kind, with cases in which documents compete in their claims to truth, with instances in which papers produce contradictory statements, yet in the history of colonial legal change, these moments are often swallowed by the sheer volume of paperwork that proliferates at this time. With administrative proceedings ballooning into indigestible copies of circulated reports and court proceedings finding constant reproduction in published law reports and their attendant translations, digests, notes, and summaries,[17] small stories about the "jurisdictional jockeying" of different documentary forms are often lost among the overwhelming clamor of the colonial bureaucracy.[18] Yet the records of local *qāẓī*s—many of which are invoked by but few of which receive substantive attention from the colonial state—suggest that the traditional narrative in which colonial court proceedings privileged written documents over oral testimony, and gave preference to colonial forms over indigenous modes of documentation is more complicated and less straightforward than previously envisioned. As such disputes show, despite decades of efforts to control the production

[16] There has been a tendency among historians to ascribe ideological agency to various forms of colonial record-keeping, particularly those involving religious identity. Analysis of the *qāẓī*'s register of marriages not only reveals fractures, frictions, and fictions within normative categories of "Hindu" and "Muslim", "marriage" and "divorce" but also challenges the relationship between written information and identitarian prescriptions. For a reassessment of the historian's "extractive" reading of the colonial archive, see Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2009); and Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2 (2002): 87–109.

[17] The proliferation of administrative paperwork caused some officials to propose reducing the preservation of duplicates and translations. See, e.g., UPSA: Proceedings, Judicial Criminal Department, Box No. 5, File No. 398C, 1894, Abolition of the system of keeping double records of evidence. Others complained about not receiving copies of law reports in a timely fashion. See, e.g., UPSA: Proceedings, Judicial Civil Division, Box 7, File 322B/298, Regarding Supply of Indian Law Report series to Secretary to legislative Council Punjab and Lahore.

[18] The term "jurisdictional jockeying" comes from Lauren Benton's analysis of layered legal contexts. See Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (New York, NY: Cambridge University Press, 2002). Documentary tussles at times reveal legal pluralism but the experiences of legal clients like Shāh Jahān Bēgum and Inʿām Allāh K̲h̲ān point to overlapping and embedded jurisdictions, rather than to formal legal pluralism (although that also existed).

and registration of legal documents, the colonial courts still struggled to dominate the market for documentation.[19] In this context, small-scale officials, like the *qāẓī*, continued to play an important role as local agents of imperial authority. Through the employment of their unique documentary forms, their writings shaped official identities and placed individuals in legal categories reminiscent of and administratively parallel to those of the colonial state. Furthermore, documents like the *qāẓī*'s register (which were in many instances the first and only form of legal documentation available to certain lower classes) played an important role recording and constructing recognizable legal identities and legal pasts.[20] Statements like the two *iqrār-nāma*s cited above reflect this tension between the production and representation of legal truths within different documentary forms.[21] As an accessible, affordable, and locally available form, the *qāẓī*'s register played an important yet previously unacknowledged role in creating

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[19] This observation pushes the idea of the document bazaar into the late nineteenth century. Raman, *Document Raj,* 16–17, 38–43.

[20] The class angle evident in the debates considered below raises questions about the law's compliance with rule-of-law ideologies, but in the second-half of the nineteenth century, legal universalism often gave way to the rule of colonial difference and exception. See Nasser Hussain, *The Jurisprudence of Emergency Colonialism and the Rule of Law*, Law, Meaning, and Violence (Ann Arbor: University of Michigan Press, 2003); Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *Law and History Review* 23 (2005): 631–84; and Karuna Mantena, *Alibis of Empire Henry Maine and the Ends of Liberal Imperialism* (Princeton, N.J.: Princeton University Press, 2010); and Radhika Singha, "Colonial Law and Infrastructural Power: Reconstructing Community, Locating the Female Subject," *Studies in History* 19, no. 1 (2003): 87–126, among others.

[21] Historiography on legal claims and truth statements in British India often to revolve around fears and allegations of Indian mendacity and ignore the inherent dynamics of power involved in the government's tendency to privilege certain statements of fact over others. This view also tends to privilege the application of "universal" legal concepts to colonial contexts. On "native mendacity," see, e.g., Dilip Ahuja, "Mendacity in Our Midst: Treatments in Ramanujan, Max Muller and in Ancient Indian Behaviour Codes," *Economic and Political Weekly* 38, no. 18 (2003): 1795–99; James Gregory, *Victorians against the Gallows: Capital Punishment and the Abolitionist Movement in Nineteenth Century Britain*, vol. 5, Library of Victorian Studies (London: I.B. Tauris, 2012); Will Jackson and Emily J. Manktelow, *Subverting Empire: Deviance and Disorder in the British Colonial World*, Cambridge Imperial and Post-Colonial Studies Series (Basingstoke, Hampshire: Palgrave Macmillan, 2015); Vinay Lal, "Everyday Crime, Native Mendacity and the Cultural Psychology of Justice in Colonial India," *Studies in History* 15, no. 1 (February 1, 1999): 145–66, doi: 10.1177/025764309901500105; and Wendie Ellen Schneider, *Engines of Truth: Producing Veracity in the Victorian Courtroom* (New Haven: Yale University Press, 2015). See Martin Chanock, *The Making of South African Legal Culture, 1902-1936: Fear, Favour, and Prejudice* (Cambridge: Cambridge University Press, 2001) for a discussion of legal universals and the complexities of colonial law in South Africa and Karuna Mantena, *Alibis of Empire Henry Maine and the Ends of Liberal Imperialism* (Princeton, N.J.: Princeton University Press, 2010) for India.

modern subjects for the "coercive apparatus" of the colonial state to manage, while at the same time resisting the exclusive legitimacy of the state's records.[22]

Where the previous chapter examined the *qāẓī* of Bharuch's efforts to retain control over the process of recording certain legal transactions and the family's efforts to resist the Company's reification of categories like marriage and divorce, the current chapter considers the outcomes—social, legal, governmental—of the *qāẓī*'s engagement with the areas of law granted to him under later acts of legislation following the transition to Crown rule. Along these lines, the chapter explores the *qāẓī*'s re-employment as a registrar for Muslim marriages at the end of the nineteenth century and examines the consequences of marriage registration for the construction of legal identities and the larger implications of the register's extension of colonial bureaucracy into the domestic and social lives of its registrants. In order to understand how documents like the statements cited above, which refer inwardly to the marriage record and outwardly to the authority of stamp-paper and police, came to inhabit the *qāẓī*'s register, the chapter begins by contextualizing these records within the colonial-documentary framework for civil and criminal law and the legislative debates surrounding their origin. Indeed, understanding how a little-known *qāẓī* in Meerut came to produce a statement nullifying a marriage recorded elsewhere in his records after the matter reached the police requires one to peel back the layers that cover and cloak the routinely overlooked practices with which they engaged, transforming everyday affairs

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[22] Guha, *Dominance Without Hegemony*, 25. For a more general discussion of the coercive technologies of the modern state, see, e.g., Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (Berkeley: University of California Press, 2002), especially pages 140–156; Michel Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality, with Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 87–104; Sally Engle Merry, "Spatial Govemmentality and the New Urban Social Order: Controlling Gender Violence through Law," *American Anthropologist* 103, no. 1 (March 1, 2001): 16–29, doi:10.1525/aa.2001.103.1.16; and David Scott, "Colonial Governmentality," *Social Text*, no. 43 (1995): 191–220, doi:10.2307/466631.

into legal transactions, converting statements scribbled in notebooks into pieces of legal evidence, and making administrative procedures desired by the colonial state work in conjunction with the records and writings (and begrudgingly acknowledged legal authority) of Muslim *qāẓī*s. To develop this understanding, the chapter surveys earlier legislative debates about the role of registration in the context of producing legal (Muslim) marriages and treats larger debates about the role of Islamic legal practitioners in upholding the bureaucratic agency of the colonial state. The chapter then traces the evolution of the register from an *ad hoc* bundle of pages to a sophisticated—and increasingly detailed—document with lithographed headings and space for several dozen pieces of information. The chapter concludes by outlining some of the ways in which the *qāẓī*'s register brought new legal subjects under the administrative umbrella of the state and strengthened the mutually constitutive relationship between Islamic legal practice and the enumerative authority of the colonial state.

II. The Inadequate Efforts of Voluntary Registration

The *qāẓī* of Meerut's authority, as his register proclaims, came from his appointment under Act XII of 1880, the Kazis' Act. More than any other piece of legislation affecting the *qāẓī*'s legacy, Act XII of 1880 has been the most vexed. Where it has been treated in scholarship on this period, the act appears as proof of the *qāẓī*'s diminished status, from that of judge with wide-ranging judicial powers in the pre-colonial period, to that of marriage registrar, charged with a singular (and seemingly insignificant) task under British rule.[23] This tendency to take

[23] See, e.g., Jörg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769-1817* (Beiträge Zur Südasienforschung, Bd. 79 (Wiesbaden: F. Steiner, 1983); Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press Delhi, 1998); and Akiko Suehiro, "The Office of the Qazi in the Deccan: An Analysis of British Records," *The Icfai University Journal of History and Culture*, Vol. II, No. 3 (2008): 77–88; Uma Yaduvansh, "The Decline of the Role of the Qāḍīs in India—1793–1876." *Studies in Islam* 6, no. 2–4 (October 1969): 155–171.

articulations of the colonial archive at face value not only simplifies the social history of legislative enactments but also overlooks the history of legislation in action.[24] Furthermore, the absence of evidence from the registers maintained by individuals appointed under this act has led scholars to treat the act as a dead-letter provision, subsequently vacated by the Shariat Application Act (1937) and the Dissolution of Muslim Marriages Act (1939).[25] But as scholars have demonstrated with respect to other pieces of legislation, adoption does not always imply judicial compliance or implementation.[26] This observation holds for the Kazis' Act as well. Here again, as in earlier periods, legislation did not create judicial compliance; judges, litigants, and lawyers all found—and exploited—room to maneuver when pursuing cases.[27] Furthermore, legislative homogeneity did not prevent the continuation of regional heterogeneity from continuing. Implementation, even in the era of extreme codification was uneven, unequal, and unpredictable.[28] For these reasons, the more complex history of marriage registration requires

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[24] Along these lines, Janaki Nair emphasizes the necessity of looking beyond the introduction of legislative acts, to understand their implementation. Janaki Nair, *Women and Law in Colonial India: A Social History* (New Delhi: Kali for Women in collaboration with the National Law School of India University, 1996).

[25] These enactments did not nullify the Kazis' Act, which remains in on the books in India today. These acts did, however, change the relationship between the colonial state and the practice of Islamic law, but the records produced by the family *qāẓī*s of Meerut remain virtually unchanged from the early twentieth century to the 1980s, when the records were microfilmed.

[26] For judicial discretion, see Mitra Sharafi, "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism Meets Anglo-Islamic Dower and Divorce Law," *The Indian Economic and Social History Review* 46, no. 1 (January 1, 2009): 57–81. For the maneuvering of litigants, see Mitra Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda," *Law and History Review* 28, no. 4 (2010): 979–1009. doi:10.1017/S073824801000074X. Sharafi's work also builds upon Benton's more wide-reaching concept of jurisdictional jockeying. Benton, *Law and Colonial Cultures*, 13; and Benton, "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State," *Comparative Studies in Society and History* 41, no. 3 (1999): 563–88.

[27] On the role of judges in extending imperial judicial authority and connected laws to legal archives, see George L. Haskins, "Law and Colonial Society," in *Essays in the History of Early American Law* (University of North Carolina Press, 1969), 41–52; and John McLaren, *Dewigged, Bothered, and Bewildered: British Colonial Judges on Trial, 1800-1900* (University of Toronto Press, 2011).

[28] In a parallel context, Ashwini Tambe describes the failures of colonial policy toward women and sex workers in Bombay. See Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in Late Colonial Bombay*, NED-New edition (University of Minnesota Press, 2009).

further examination. Not only did marriage registration provide the first—and in some instances only—encounter many registrants had with legal documentation, but this relatively minor form of document drew participants into a matrix of material, documentary culture that increasingly came to define understandings and access to law.

Certainly, the scope of the *qāẓī*'s authority, as granted by colonial legislation, decreased as the nineteenth century progressed, but moving away from the tendency to read Act XII of 1880 as proof of the *qāẓī*'s downfall under British rule, this chapter offers an alternative reading of this act as a piece of "permissive" legislation, one that provided, rather than foreclosed, an avenue through which the *qāẓī* could operate and one that prompted, rather than answered, questions about the status of the *qāẓī* and other religio-legal figures in relation to concurrent ideas of religious interpretation and the interference of the colonial state in private life.[29] Following this reading, then, the Kazis' Act becomes a redemptive measure, which carved a space for the work of the *qāẓī* in the administration of civil law that obtains into the present. Taking this mechanism seriously also explains how the register worked to define the terms of registrants' legal identities and to mediate their relationship with the state through those terms. But before the chapter can address the social history of the register, it must first trace the debates surrounding the Kazis' Act and its legislative predecessors and then consider the documentary trajectory of the records produced by individual *qāẓī*s appointed under the act.

The bill that eventually became the Kazis' Act (Act XII of 1880) began with efforts to provide for the voluntary registration of Muslim marriages first in the Madras Presidency and later in the

[29] For a consideration of the limits of legislative intervention, see Dipesh Chakrabarty, *Habitations of Modernity: Essays in the Wake of Subaltern Studies* (Chicago: University of Chicago Press, 2002), particularly his comments on the difficulties (and shortcomings) of lawmaking in the context of social intervention (108–114).

Bengal Presidency. The problem, as framed in these initial debates, revolved around what one official described as "the inconvenience which the Muhamadan community has sustained since the abolition of the office of Kazi for the want of proper machinery for registering marriages and divorces."[30] To address this "inconvenience", the Lieutenant-Governor at Bengal began his legislative crusade by first introducing a bill "to provide for the voluntary registration of Muhammadan marriages and divorces" to remedy the problem.[31] The proposed measure allowed for the government to appoint a "Mahomedan Registrar" authorized "to register Mahomedan marriages and divorces which have been effected within certain limits, on application being made to him for such registration."[32] The government would provide appointees with "the seal and books necessary for the purposes" of registering marriages.[33] Appointees would then maintain three separate registers: (1) a register of marriages, (2) a register of divorces "other than those of the kind known as *khula*," and (3) a register of divorces "of the kind known as *khula*."[34] Embracing established protocols for good governance, the regulation instructed the registrar to number each entry consecutively, and to include in each entry the types of information required for the completion of each transaction, which the proposal articulated in forms A, B, and C.[35] In exchange for keeping these records, the appointed registrar could collect a "gratuity" or "fee of one rupee" if and when offered by the contracting parties.[36] In

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[30] NAI, Home Dept., Judicial Branch, July 1876, No. 371: Appointment of Kazis, Letter No. 22 to the Marquis of Salisbury, Her Majesty's Secretary of State for India, dated 31 July 1876.

[31] Ibid.

[32] NAI, Home Dept., Judicial, January 1876, No. 92-102 (B): Bill to provide for the voluntary registration of Mohammedan Marriages and Divorces, Amended Bill to Provide for the Voluntary Registration of Mahomedan Marriages and Divorces. (See also, UPSA: Judicial (Civil) Department Proceedings, SL. no. 10, Box no. 6B, File No. 245B, Legislation to provide for the registration of certain domestic events in the Muḥammadan and Hindu families.)

[33] NAI, Home Dept., Judicial, January 1876, No. 92-102 (B): Bill to provide for the voluntary registration of Mohammedan Marriages and Divorces.

[34] Ibid. (*Khul'* refers to female-initiated divorce.)

[35] Ibid.

[36] Ibid.

this initial version, the proposed legislation offered little more than a designated person to record marriages. The measure offered nothing for the purposes of authenticating or validating unions, nor did it assign him any religious authority.

In addition to registering marriages and divorces, the proposed regulation also required the registrar to "deliver to each of the applicants for registration an attested copy of the entry."[37] There was no charge for the first copy, but the registrar could charge four *anna*s "for every search or permission to search in any index or register under his charge" and one rupee "for every certified copy of any entry in a register other than the first copy."[38] Such copies would then support a litigant's legal claims in instances of divorce, domestic dispute, or inheritance. Along with recording marriages, it was also incumbent upon the registrar to maintain an up-to-date index of the entries in the various registers he maintained in order to aid later searches in and government oversight of the records.[39] The index would include "the name, place of residence, and father's name of each party to every marriage or divorce, and the date of registration," along with any other information the Lieutenant-Governor requested. In addition to easing the process of government oversight, the index would also be open to anyone willing to pay the prescribed fee for the privilege of searching the records.[40] Following these formulae, registration was designed to aid the parties at the time of the event and offer a remedy for future disputes as well. It would also create a public, verifiable record of personal relations, accessible to judges, administrators, and members of the public.

During the Council's proceedings, Moulvie Abdool Luteef [ʿAbd-ul-Laṭīf], council

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[37] Ibid.

[38] Ibid.

[39] Indices were an important aspect of Company record-keeping and are also reminiscent of other modes of double-entry book-keeping. See Miles Ogborn, *Indian Ink: Script and Print in the Making of the English East India Company* (Chicago: University of Chicago Press, 2007); and Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: University of Chicago Press, 1998).

[40] NAI, Home Dept., Judicial, January 1876, No. 92-102 (B): Bill to provide for the voluntary registration of Mohammedan Marriages and Divorces.

member and Secretary to the Mahomedan Literary Society of Calcutta, expressed his views on the proposed measure to provide for the voluntary registration of Muslim marriages. In his remarks, Abdool Luteef considered it his "duty to speak a few words in regard to the proposed Bill" and to bring "to the notice of the authorities the evils" caused by "the absence of the old system of registration of Mahomedan marriages and divorces."[41] Not only had he "heard" of these evils "from all parts of the country", but he had also "bec[o]me personally cognizant" of them "in [his] capacity of a Magistrate."[42] The "evils" created by the absence of proper measures for registering marriages, he observed, "pressed upon the poorer classes only", and the "higher classes" of Muslims "were comparatively indifferent."[43] "Unfortunately," he continued, "few were conversant with matters purely Mahomedan, or cared much about them," and the government had done little to keep these wayward marriages in check.[44] A new measure to ensure the roper registration of these marriages would go to great lengths to help the poorer

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[41] Ibid., "Abstract of the Proceedings of the Council of the Lt-Gov of Bengal for the purpose of making Laws and Regulations—Saturday, 9th January 1875."

[42] Ibid.

[43] Ibid. The idea of public reputation to support legal claims was one elites frequently made. The lower classes, however, lacked access to documentation and to status that could support or substantiate their claims. Nick Abbott notes claimants in Awadh's frequent reference to status to excuse them from the constraints of legal documentation. Likewise, under colonial rule, many royals, former royals, and prominent figures applied to the government for exemption from personal appearance in colonial courtrooms. Other legal fora, like the Parsi Chief Matrimonial Court in Bombay, for instance, catered to poorer litigants. (See, Nicholas J. Abbott, "Household, Family, and State: Negotiating Sovereignty and *Sarkār* in the Awadh Nawābī, c. 1775–1840" [Ph.D. Dissertation, University of Wisconsin–Madison, 2017]; UPSA: Proceedings, Judicial (Civil) Dept., Box 35, No. 21 1910, Exemption from Personal Appearance in Civil Courts; UPSA: Proceedings, Judicial Civil, Box No. 5, File No. 7B, Exemption of Ranis Kamla Kunwar and Dharm Kunwar of Landhawa in Saharanpur district from personal attendance in court; UPSA: Proceedings, Judicial (Civil) Department: Box 63, File 69, 1913, Exemption from personal appearance in civil court of Raja Bhagwan Bakhsh Singh of Amethi; UPSA: Proceedings, Judicial (Civil) Department, Box 48, File 215, 1911, Exemption of the Raja of Marwar from personal appearance in civil courts; UPSA: Proceedings, Judicial (Civil) Department, File No. 521 of 1914: [Proposal for the] exemption from the personal appearance in Civil Courts of two of the leading Shia Maulvies and two of the leading Sunni maulvis in Lucknow; and Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947* [New York, NY: Cambridge University Press, 2016].)

[44] NAI, Home Dept., Judicial, January 1876, No. 92-102 (B): Bill to provide for the voluntary registration of Mohammedan Marriages and Divorces, "Abstract of the Proceedings of the Council of the Lt-Gov of Bengal for the purpose of making Laws and Regulations—Saturday, 9th January 1875."

classes. Despite his sound arguments, Abdool Luteef, however, feared his appeals to the government would fall on deaf ears.[45]

The "evils" legislators and administrators like Abdool Luteef described were manifold, but the basic tenor these complaints went as follows: After the passages of Act XI of 1864 and the termination of the government's involvement in the appointment and recognition of *qāẓī*s, Muslims were left with no proper facility for the registration of their marriages and divorces, which made it difficult to prove marital statuses in the courts of law.[46] Bringing cases before the courts required proper forms of documentation that parties could not produce in order to support their claims—or to disprove those of their rivals or opponents. As a result, the courts heard many unnecessary suits and failed to resolve adequately those that came before it. The introduction of "permissive" legislation, such as the proposed measure for voluntary registration, would fix these evils by "offer[ing] the Mahomedan community a facility for proving its marriages."[47] Such a measure would not only reduce the number of civil and criminal suits cropping up on account of the trouble of "proving" marriages but would also restore "public peace and public morals."[48] Abdul Luteef then added:

> The mere record of the marriage would be but an infinitesimal boon to the Mahomedan community, which the omission to record the dower would leave the door wide open to all that domestic misery and social demoralization which it is, and ought to be, the object of

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[45] Iibd. As he complained, Abdool Luteef's voice was "perhaps the only [one] that reached the proper ears,…no wonder that it failed."

[46] For a discussion of marriage registration in comparative religious contexts, see Nandini Chatterjee, "Religious Change, Social Conflict and Legal Competition: The Emergence of Christian Personal Law in Colonial India," *Modern Asian Studies* 44, no. 6 (2010): 1147–95; and Chatterjee, "English Law, Brahmo Marriage, and the Problem of Religious Difference: Civil Marriage Laws in Britain and India," *Comparative Studies in Society and History* 52, no. 3 (2010): 524–52, doi:10.1017/S0010417510000290.

[47] Ibid.

[48] Ibid.

the State to prevent, so far as it is preventible in accordance with Mahomedan law[49]

The gains of registration might be small, he suggested, but the problems created by failure to register dower amounts had already proved to be a great burden on the courts. A permissive bill, such as the one proposed would remedy "all the social evils of uncertainty" without causing any objections.[50]

Abdool Luteef was not the only member of the Council, nor the only Muslim, to make an argument in favor of such legislation, but his remarks are emblematic and resonate with many of the central themes that surfaced in these debates, which began as early as 1859 (with early discussions about removing native law officers from the courts) and continued through the passage of the Kazis' Act in 1880.[51] These themes point to the government's growing reluctance to "interfere" in religious affairs, the courts' increasing insistence on properly attested evidence, and the increasing concern among Muslim social groups to curtail certain forms of immoral or indecent behavior, located within the "lower classes" of Muslim society.[52] Debate over legislative initiatives to provide for the proper registration of Muslim marriages thus speak to much larger themes in colonial legal history: the role of liberal government in regulating personal lives; the

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[49] Ibid. It is interesting to note Abdul Luteef's simultaneous references to the state's power to prevent domestic misery and the idea of what is permissible "in accordance with Mahomedan law".

[50] Ibid. Unlike other administrators, Abdul Luteef here places the needs of the community above those of the colonial state.

[51] Later reflections on these debates summarize these phases in the law's evolution. UPSA: Proceedings, Judicial (Civil) Department, SL. no. 10, Box no. 6B, File No. 245B, Legislation to provide for the registration of certain domestic events in the Muḥammadan and Hindu families.

[52] Iza Hussin's recent work places elites at the center of the law-making process. See Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The University of Chicago Press, 2016). On elites, social reform, and social stratification more generally, see, e.g., William R. Pinch, *Peasants and Monks in British India* (Chicago: University of California Press, 1996), especially chapter 4, "Culture, Conflict, and Violence in Gangetic India," 115–138; Lal, "Everyday Crime"; and Ahuja, "Mendacity in Our Midst." For a discussion of social reform ad issues of morality, see, e.g., Qamar Hasan, *Muslims in India: Attitudes, Adjustments, and Reactions* (New Delhi: Northern Book Centre, 1987); and Krupa Shandilya, *Intimate Relations: Social Reform and the Late Nineteenth-Century South Asian Novel* (Evanston, IL: Northwestern University Press, 2017).

ability of the colonial state to enforce certain measures pertaining to religious affairs; and the legal status of Muslim marriages vis-à-vis those of other civil contracts.[53] At the same time, interest in registering marriages and divorces—i.e., recording incidents of union and separation among Muslims—also encompassed the governing logics of the colonial state, for in registering marriages, the colonial government uncovered a potential means for disciplining Muslim society, and bringing the disordered world of multiple, uncertain, and temporary marital relations in line with the governmental needs of the colonial state for fixed unions, set addresses, and legible identities.

In the years leading up to the passage of Act XI of 1864, the *qāẓī*'s utility had come under increasing scrutiny, and his counter-part in the law courts, the native law officer, had become redundant in the judges' eyes. Yet the government's decision to end its involvement in appointing and recognizing *qāẓī*s sparked feelings of panic among colonial officials and leading Muslims across the subcontinent. The majority of these feelings originated in fears about the anxieties and uncertainties of unregistered marriages and divorces. Civil suits surrounding questions of martial status and property rights were plentiful, and criminal suits filed under sections 497 (adultery) and 498 (enticement) of the Indian Penal Code were also becoming

[53] Again, Chakrabarty's analysis of the relationship between the social, emotional, and legal proves useful here. See Chakrabarty, *Habitations of Modernity*. On law, religion, and domestic space, see also Chatterjee, "Religious change, social conflict and legal competition"; Chatterjee, "English Law, Brahmo Marriage, and the Problem of Religious Difference"; Lucy Carroll, "Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife," *Modern Asian Studies* 16, no. 2 (1982): 277–309; Durba Ghosh, *Sex and the Family in Colonial India: The Making of Empire* (Cambridge [Engand]: Cambridge University Press, 2006); Chandra Mallampalli, *Race, Religion, and Law in Colonial India: Trials of an Interracial Family*, Cambridge Studies in Indian History and Society, no. 19 (New York: Cambridge University Press, 2011); Radhika Singha, "Colonial Law and Infrastructural Power: Reconstructing Community, Locating the Female Subject," *Studies in History* 19, no. 1 (2003): 87–126; Tambe, *Codes of Misconduct*.

routine.[54] The government's decision to dissolve the *qāẓī*'s office and to vacate his ability to create legal records contributed to the rising moral, legal, and social disorder that Abdool Luteef and others now called upon the government to remedy, but finding a solution amenable to all interested parties was more difficult than one might imagine.

Following the introduction of this proposal in Bengal, the government forwarded inquiries to the local governments at Bombay and Madras to determine whether the introduction of measures similar to the one proposed in Bengal would benefit their constituencies.[55] In response to the government's communication, the government at Bombay concluded the introduction of a similar measure in its territories was not "desirable" because "[i]n some quarters…the proposal is regarded as objectionable."[56] Negative responses from Bombay led the government at Calcutta to believe that the current system of selective appointment was sufficient. The government at Madras, however, expressed a different opinion, echoing the fears and anxieties evident in Bengal and resolved "on receipt of [local opinions]…to bring into the local Legislature a Bill for the registration of Muhammadan marriages and divorces in terms somewhat similar to those of Bengal Act I of 1876."[57] Yet despite the care put into these initial

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[54] NAI, Home Dept., Judicial Branch, January 1876, No. 92-102 (B): Bill to provide for the voluntary registration of Mohammedan Marriages and Divorces; MSA: Judicial Department Proceedings, 1865, Vol. 22: Hindu & Muslim Law Officers. There were also proposals around this time to reduce the number of cases in general. See, e.g., UPSA: Proceedings, Judicial Civil Department, Box 17, File No. 862B, 1898, Proposal for reducing the number of civil appeals; and UPSA: Proceedings, Judicial Civil Department, Box 71, File 351, 1913, Measures to be taken to prevent the institution of groundless civil suits.

[55] NAI, Home Dept., Judicial Branch, July 1876, No. 371: Appointment of Kazis, Letter No. 22 to the Marquis of Salisbury, Her Majesty's Secretary of State for India, dated 31 July 1876.

[56] NAI, Home Dept., Judicial Branch, June 1877, No. 361-366 (A): Registration of Muslim Marriages, Letter from Her Majesty's Secretary of State for India, No. 33, dated 28th September 1876. (In 1864, the Judicial Department at Bombay catalogued approximately 250 individuals holding the office of *qāẓī.* MSA, Judicial Department Proceedings, 1864, Vol. 6, S. No. 207, "General Statement showing the lands and emoluments now enjoyed by the Cazees in the several Districts of the Bombay Presidency.")

[57] Ibid.

efforts to fill the void created by the discontinuance of *qāẓī* appointments after 1864, the first round of legislative proposals proved unsatisfactory.

A few years after the introduction of Bengal Act I of 1876, C.G. Masters, Esq., Acting Chief Secretary to the Government of Madras sent a letter to the Officiating Secretary to the Government of India in the Home Department in which he concluded the current measure borrowed from Bengal did not in fact resolve the "evils" created by the "abolition of the office of Kazi."[58] Masters explained:

> [I]t seems highly inexpedient to this Government that, in lieu of the presence of a recognized officer at a marriage or divorce, with power to prescribe the forms and ceremonial necessary to make it valid, and whose decision is final and record conclusive, the Bill should provide for the substitution of a machinery of registration by an officer whose decision as to registry is not final, and whose registry is not conclusive; and also, that it should make this latter officer, though chosen for his knowledge of customs and laws, subject to an appeal to an officer whose qualifications will invariably be in no way judicial, and who will in most cases be a European or Hindu.[59]

Masters's complaint picked up on the idea of the registrar who was appointed to record marriages for the government but who did not hold the proper credentials to actually perform a legal marriage under Islamic law. In his remarks, Masters suggested that by appointing a registrar of marriages, the government created an officer with none of the capabilities necessary to remedy the apparent evils created by the dissolution of the *qāẓī*'s office.[60] The registrar's office retained neither the ceremonial nor the magisterial authority to oversee either the ceremony or its registration and was made subject to the authority of the Deputy Registrar—most likely "a

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[58] NAI, Home Dept., Judicial Branch, Dec. 1879, No. 185–189: KAZIS. Re-establishment of the office of [Kazis] in the Madras Presidency for the purposes of Muhammadan marriages and divorces, No. 1221 from C.G. Masters, Esq., Acting Chief Secretary to the Government of Madras, to the Officiating Secretary to Government of India in the Home Department, dated 24 May 1879.

[59] Ibid.

[60] Ibid.

European or a Hindu"—who would be responsible for checking, verifying, and later searching the registers for information as needed. If questions or complaints were sent for inquiry, Masters reasoned, an appellate tribunal overseeing the procedure would "be no fit authority to determine the many intricate questions which must arise in connexion with the nature of its duties."[61] In light of these shortcomings, Masters suggested that the government, "in order to avoid any interference with the customs and manners of Muhammadans…re-establis[h] the office of the Kazi by Government nomination for the purpose of marriages and divorces."[62] He continued:

> The office, as is well known, was not abolished because its holders were unfit, or because the discharge of the duties were in any [way] prejudicial to the State, but ceased to exist merely from the circumstance that by Muhammadan law it needed the confirmation of the sovereign power, viz., that power of confirming or appointing which was formerly vested in the Governor in Council, and which had been repealed without any substituted provision.[63]

Masters considered it the government's duty to appoint persons to the office of the *qāẓī*, and rather than see these appointments as a form of government interference in religious life, he considered it interference *not* to fulfill these appointments. After all, he argued, the decision to curtail government appointments did not stem from any perceived shortcomings among the practitioners, but that by failing to provide these appointments the government was, in essence, "withholding from [the Muslims] a benefit which the Government might confer on them without means of influence."[64] It was thus incumbent upon the government to fulfill its responsibilities to the Muslim population and to resume the appointments. Failure to do so, he concluded, might even provide "some sort of color to disaffected classes of Muhammadans that the British

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[61] Ibid.

[62] Ibid.

[63] Ibid.

[64] Ibid.

Government is hostile to their religion."[65] In the wake of the events of 1857–8, the government was cautious about sowing seeds of disaffection among Muslims,[66] so such arguments remained persuasive in the context of legislative affairs.

Masters was not the only administrator to cite the "evils" created by the government's decision to stop appointing individuals to the office of *qāẓī*. After receiving communication from the government of Madras noting its revised position on the appropriateness of introducing legislation comparable to Bengal Act I of 1876 into its territories, the Legislative Council at Calcutta wrote to Viscount Cranbrook, then Secretary of State for India, suggesting the government resume its role in the appointment of individuals to the office of *qāẓī*.[67] After summarizing the arguments Masters and the government of Madras presented, the Legislative Council suggested to Secretary of State Cranbrook "that sufficient reasons have been adduced for restoring to Government the power, which was taken away by Act XI of 1864, of [appointing] Kazis for the discharge of certain duties connected with Muhammadan marriages and divorces."[68] In its first iteration, the Council suggested that the "operation of the law…be confined to the Madras Presidency" but added the caveat that the provision "will be extendible to

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[65] Ibid. There was also some confusion among Muslims over what had happened to *qāẓī*s formerly supported by the Government of India. Leading figures, like Muḥammad ʿAlī Rogay, vice president of the Anjuman-i Islam in Bombay, for instance, wrote the government at Bombay in 1879 with a series of questions about the *qāẓī*'s office and current condition. (MSA, Judicial Department Proceedings, 1879, Vol. 91, No. 1075, Certain information relative to the Office of [Kazi] Required by Mr. M. A. Rogay.)

[66] On 1857 and its aftermath, see Peter Hardy, *The Muslims of British India*, Cambridge South Asian Studies, no. 13 (London: Cambridge University Press, 1972), 61–91. On the evolution of British security concerns, particularly in the context of anti-Wahhabism, see, e.g., Seema Alavi, *Muslim Cosmopolitanism in the Age of Empire* (Cambridge, MA: Harvard University Press, 2015); Charles Allen, "The Hidden Roots of Wahhabism in British India," *World Policy Journal* 22, no. 2 (July 1, 2005): 87–93; Richard James Popplewell, *Intelligence and Imperial Defence: British Intelligence and the Defence of the Indian Empire, 1904-1924* (London: Frank Cass, 1995), 15–18; and Julia Stephens, "The Phantom Wahhabi: Liberalism and the Muslim Fanatic in Mid-Victorian India," *Modern Asian Studies* 47, no. 1 (2013): 22–52.

[67] NAI, Home Dept., Judicial Branch, Dec. 1879, No. 185–189: KAZIS. Re-establishment of the office of — in the Madras Presidency for the purposes of Muhammadan marriages and divorces, No. 31, Letter to the Right Honourable Viscount Cranbrook, Her Majesty's Secretary of State for India, dated 19 December 1879.

[68] Ibid.

any part of British India by any Local Government at its discretion."[69] Presenting the proposed legislation in this manner, the members of the Legislative Council hoped to respond to the anxieties expressed by Muslims living in Madras without over-extending the Council's reach.

Before turning the proposed bill into an act of legislation, however, the Legislative Council dutifully gathered the opinions of several judicial and administrative officials from across British India, requesting their opinions on the usefulness and appropriateness of the proposed legislation. It also received input from a number of interested individuals, societies, and institutions, as an indication of public opinion. The opinions the government received are too numerous to recount in detail, but what is interesting about the responses is the manner in which they almost unanimously interpreted the measure as a useful antidote to present evils. For government officials, interest curtailing criminality and enabling public surveillance of marital (and domestic) relations remained paramount.[70] For social reformers and civic leaders, the measure addressed the evils they observed, which revolved around the problems of loose marital ties and uncertain social unions—uncertainties that threatened the strength of the community's moral fabric.[71] If considered as one of the government's efforts to restrict religious law to the realm of the personal, the bill certainly signals the *qāẓī*'s reduction to the status of a simple registrar of marriages, but such an interpretation overlooks the importance of registration for

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[69] Ibid.

[70] See, e.g., Temple's remarks in support of the earlier legislation (NAI, Home Dept., Judicial, January 1876, No. 92-102 (B): Bill to provide for the voluntary registration of Mohammedan Marriages and Divorces) and BL, IOR/L/PJ/6/2, File 76: Re-establishment of office of Kazi for registration of Muslim marriages in Madras Presidency, No. 77, dated 10th March 1880, Remarks from G.C. Trevor, Secretary for Birár to Resident, Haidarábád, to Secretary to Government of India, Legislative Department; and No. 36, dated 28th February 1880, from Town Magistrate, to Secretary to Chief Commissioner, Mysore and Coorg.

[71] See, e.g., Ibid., No. 88, From Mahomed Yusuf Sahib, Esq., Presidency Magistrate to the Chief Secretary to Government, dated Madras, 26th February 1880, No. 28; No. 19, dated 28th February 1880, From Editor and Proprietor, *Khasim-ul-Akhbar*, to Secretary to Chief Commissioner, Coorg.

establishing relationships between the state and its subjects and also misses the importance of the registrar for facilitating that relationship.

Placing the bill within the broader context of late-nineteenth century legislation also draws other concerns to the surface. In the first-half of the nineteenth century, administrative discourse surrounding the office of the *qāẓī* considered it within the context of the government's efforts to regulate and to monitor its employees and appointees, as illustrated in the *qāẓī* of Bharuch's dialogs with Judicial Department employees in Bombay over the shape and scope the records he maintained.[72] As the twentieth century approached, however, the government's emphasis shifted from monitoring the behavior of its agents to governing its subject populations.[73] As Weberian bureaucracy gave way to Foucauldian governmentality, and the state's managerial ambit expanded, the *qāẓī*'s register came to represent more than a mere record; it came to embody the process of "seeing like a state."[74] Though such regulatory impulses of the state were evident earlier in the century, a palpable shift in scale occurred as the nineteenth century progressed. This shift is evident in later debates surrounding the bill for *qāẓī*s.

III. The Introduction of a Permissive Act

Once the judicial department decided that "sufficient reasons ha[d] been shown…for

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[72] See Chapter Three for a longer discussion of these negotiations.

[73] On different forms of surveillance, see Mark Brown, "Ethnology and Colonial Administration in Nineteenth-Century British India: The Question of Native Crime and Criminality," *The British Journal for the History of Science* 36, no. 2 (2003): 201-19; Robert Darnton, "Literary Surveillance in the British Raj: The Contradictions of Liberal Imperialism," *Book History* 4 (2001): 133-76; Michael Christopher Low, "Empire and the Hajj: Pilgrims, Plagues, and Pan-Islam under British Surveillance, 1865-1908," *International Journal of Middle East Studies* 40, no. 2 (2008): 269-90.

[74] This transition requires further consideration, but evidence of this transition are available in Max Weber, "Bureaucracy" in *From Max Weber: Essays in Sociology*, translated and edited by H.H. Garth and C. Wright Mills (New York: Oxford University Press, 1946), 196–245; Michel Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality, with Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 87–104; and James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed*. Yale Agrarian Studies (New Haven [Conn.]: Yale University Press, 1998).

restoring to government the power of appointing kazis," C. Bernard, Officiating Secretary to Government offered the suggestion that the Honourable Sir Sayyid Ahmed Khan "take charge of the bill."[75] Following this suggestion, Sir Sayyid introduced a bill for the appointment of persons to the office of Kazi to the Legislative Council in January 1880. Sir Sayyid, who was the only Muslim member of the Legislative Council at the time, stated in his address that the government had little reason to worry, as the proposal would "do no more than meet a long-felt want of the Muhammadan subjects of Her Imperial Majesty in some parts of the Empire."[76] In his remarks, Sir Sayyid reiterated many of the ideas presented in earlier debates over the proposals to provide for voluntary registration, but framed those debates as a prelude to his bolder proposal: Given recent agitation in Madras, Sir Sayyid argued that the government needed to take a more definitive stance in its approach. The Council could not simply provide for the voluntary (civil) registration of marriages; it had to reassume its authority to appoint *qāẓī*s.[77]

Sir Sayyid's introduction to the bill began with a brief history of the *qāẓī* in pre-British times. He acknowledged the officer's role in "the performance of certain ceremonial duties" and argued that his "ultimate connection" with these duties "arose from his recognised credit as the nominee of the Government, and from his supposed knowledge of the Muhammadan law."[78] Sir Sayyid outlined some of the difficulties and complications arising from the government's decision

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[75] NAI, Home Dept., Judicial Branch, Dec. 1879, No. 185–189: KAZIS. Re-establishment of the office of [Kazis] in the Madras Presidency for the purposes of Muhammadan marriages and divorces, "Office Memorandum No. 1073, dated Simla, the 20th September 1879." As public reactions to his proposals make clear, Sir Sayyid's reputation among Muslims was mixed, to say the least.

[76] BL, IOR/L/PJ/6/21, File 1229: Act No. XII of 1880. The Kazis Act, "Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of Act of Parliament 24 & 25 Vic., cap. 67."

[77] Ibid.

[78] Ibid.

to end its involvement in the appointment of *qāẓī*s but stated that although Act XI of 1864 did not prevent any *qāẓī*s from performing their duties, nonetheless, "when the State divested itself of the power of appointment, it was felt that no duly appointed Kazi could be found for the performance of those rites and ceremonies."[79] The solution, Sir Sayyid proposed, was for the government to resume its appointment of *qāẓī*s and to enable "the creation of duly appointed Kazis to satisfy the social and ceremonial wants of the Muhammadan population."[80] After introducing his bill, the Council agreed to consider the matter, and adjourned for the day. The Council then referred the proposal to the Select Committee for inquiry and heeded Sir Sayyid's suggestion to publish a copy of the proposed bill in the local government gazettes.

Shortly after introducing his bill for the appointment of *qāẓī*s, Sir Sayyid introduced two additional pieces of legislation to the Council. Of the three, the Kazis' Bill was the only one to receive widespread public support. The other two, the Vaccination Bill and the Muhammadan Family Endowment Bill, were instead subjected to widespread repudiation—the vaccination bill for its illiberal and untrustworthy intrusion upon the sanctity of native bodies and the other for its putative interference in Muslim affairs in opposition to the dictates of Islamic law.[81] The objections these critics voiced in opposition to Sir Sayyid's other proposals situate the Kazis' Bill

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[79] Ibid.

[80] Ibid.

[81] Both of these measures remained the subject of debate for decades to come and remain unresolved even today. Indeed, the status of family endowments continues to be the site of extensive litigation and the issue of compulsory vaccination continues to cause rancor among civic and religious organizations. To contextualize Sir Sayyid's proposal for endowments, see, e.g., Eleanor Newbigin, "The Codification of Personal Law and Secular Citizenship: Revisiting the History of Law Reform in Late Colonial India," *The Indian Economic & Social History Review* 46, no. 1 (January 1, 2009): 83–104, doi:10.1177/001946460804600105, 89–93; and David S. Powers, "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31, no. 3 (July 1989): 554–63. On vaccination and public health initiatives in British India, see David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India* (Berkeley: University of California Press, 1993).

within the context of public debate over legislation more generally and at the same time recast the measure as one of permission rather than restriction. By contrast, the Muhammadan Family Endowments Bill received sharp criticism from self-identified Muslim voices on the grounds that it interfered with their religious property rights.[82] Likewise, the Vaccination Bill received criticism from a number of sources, which took issue with the illiberal element of compulsion included in the proposal.[83] Compared to these other proposals, response to the Kazis' Bill was all but glowing.

In February 1880, the *Agra Akhbar* suggested that if Sir Sayyid Ahmed Khan's followers desired a bill such as the one he proposed for family endowments, then they could have their bill, but they would first have to "prove to Government that their number is so large that they can be recognized as a distinct class of the community, and that Sayyad Ahmad is their leader." The "Orthodox Muslims," the paper contended, did not consider Sir Sayyid to be Muslim; "[o]n the contrary they look upon him as an enemy of Islam."[84] The paper's criticisms continued, saying:

> [Sir Sayyid's] audacity in publishing the bill in question, and that of his followers in falsely declaring that the Musalmans approve of it, is really wonderful. The Government cannot pass it and force it upon us against our wishes. Sayyad Ahmad has aggrieved the hearts of the Musalmans by publishing it. Is it his object that they should abuse him, from which

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[82] On the debate over *waqf*s in British India, see Eric Lewis Beverley, "Property, Authority and Personal Law: Waqf In Colonial South Asia," *South Asia Research* 31, no. 2 (July 1, 2011): 155–82, doi:10.1177/026272801103100204. On recent waqf-related legislation and litigation, see, e.g., Wakf Act, 1995 and "Discussion on the motion for consideration of the Amendments made by Rajya Sabha to the Wakf (Amendment) Bill, 2010" in Lok Sabha Debates (5 September 2013); *Ashfaq Ahmed vs. The MP State Waqf Board* (Madhya Pradesh High Court 2016); *Haryana Waqf Board vs Shanti Sarup & Ors* on 16 July, 2008; *Gulam Abbas & Ors vs. State of U.P. & Ors,* 1981 All India Reporter 2198 (Supreme Court of India 1981); *Ramjas Foundation & Ors vs Union of India & Ors* (Supreme Court of India 2010).

[83] On debates over compulsory vaccinations, see, e.g., Mark A Largent, *Vaccine: The Debate in Modern America* (Baltimore: Johns Hopkins University Press, 2012); and on the history of compulsory vaccination, see, e.g., Arnold, *Colonizing the Body*; Sanjoy Bhattacharya, Mark Harrison, and Michael Worboys, *Fractured States: Smallpox, Public Health and Vaccination Policy in British India 1800-1947* (New Delhi: Orient Longman, 2005); and Atsuko Naono, *State of Vaccination: The Fight against Smallpox in Colonial Burma* (Hyderabad: Orient Blackswan, 2009).

[84] UPSA, *Selections from the Vernacular Newspapers Published in the Punjab, N.W.P. & Oudh, Central Provinces and Berar for the Year 1880*, Vol. 13, *Agra Akhbar*, 26 February 1880.

they have hitherto refrained?[85]

The newspaper writer's vitriol is certainly evident in these remarks. Not only was the proposed measure opposed to the wishes of the "Orthodox Muslims" for whom the paper spoke but it was also offensive to see Sir Sayyid claim to have "Muslim" support for the measure. The reporter thus critiqued the measure itself and the spokesman's presumptive claims to speak on behalf of the wider Muslim community.

The *Awadh Akhbar* echoed these sentiments, publishing an article by Maulvi Hasan Ali in which he stated that the proposed measure was "opposed to the Muhammadan law of inheritance and [was] calculated to prevent the Musalmans from improving their condition."[86] The author took issue with the bill's approach to primogeniture, declaring, "the proposed law would undoubtedly excite hatred and enmity among brothers" and would lead to poisoning, as that was common "[i]n England, where such a law is already in force, [and] the eldest son who inherits all his father's estates, is hated by his younger brothers, and is sometimes even poisoned."[87] In a subsequent issue, the paper continued its attack on Sir Sayyid's proposal by publishing a "*fatwa* given by Maulvi Zulfikar Haidar against the Hon'ble Sayyad Ahmad Khan's Muhammadan Family Endowment Bill."[88] By publishing a *fatwā* issued in opposition to the proposed legislation, the paper took a decisive stance against the proposal, claiming its illegitimacy—if not illegality—in the eyes of learned Muslims.[89] The *Mashīr-i Qaisar* reiterated these sentiments, arguing:

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[85] Ibid.

[86] Ibid., *Oudh Akhbar*, 26 February 1880.

[87] Ibid.

[88] Ibid., *Oudh Akhbar*, 4 March 1880.

[89] The *fatwā* appears on page 754 of the March 3, 1880 issue of *Awadh Akhbar*. (BL, OP 285)

> All thoughtful and experienced men are of opinion that evil instead of good will accrue from it, if it is passed, few Musalmans consider Sayyad Ahmad Khan a Musalman. He has even been declared an unbeliever. In these circumstances, if all the learned and influential Musalmans do not approve of the Bill, the Government should not pass it.[90]

The paper objected to the measure claiming it would cause "evil" instead of "good" but also called the reputation of the bill's sponsor into question. Sir Sayyid was not a good Muslim; few considered him a Muslim, and some had even gone so far as to declare him an "unbeliever."[91] True believers did not support the bill, the article reasoned, so "the Government should not pass it."[92] In their objections to the bill, the Urdu-language press from across North India attacked the measure as well as its author and challenged Sir Sayyid's ability to represent Muslim perspectives on the Council. From these reports, it is not entirely clear whether it was the bill or the bill's sponsor that elicited more enmity; the two appeared side by side in most of the critiques. Certainly the proposal touched a nerve among landed Muslims, but if personal animosity were the entire cause for these criticisms, one would expect similar opposition to surface in response to the other measures Sir Sayyid proposed, and this was not the case.

Responses to the vaccination bill were mixed. The *Awadh Akhbar*, for instance, praised the general usefulness of inoculation but took issue with the "compulsory" aspects of the proposal. On February 17, 1880, for instance, the paper carried an article in which it "strongly protest[ed] against the passing of the Vaccination Bill." In it the author argued "that compulsion in vaccination would be considered by ignorant persons as a kind of religious interference on the

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[90] UPSA, *Selections from the Vernacular Newspapers Published in the Punjab, N.W.P. & Oudh, Central Provinces and Berar for the Year 1880*, Vol. 13, *Mashír i Qaisar,* 27 February 1880.

[91] Ibid.

[92] Ibid.

part of the Government, and would be productive of great popular discontent."[93] Voicing general support for the idea of vaccination, the author expressed hope that the use of vaccination "will become general without the use of compulsion," especially considering the fact that "educated natives already voluntarily vaccinate their children."[94] Thus, the author's objections did not stem from general questions about the utility of vaccination but rather grew from the question of "compulsion," which made the measure undesirable. Educated persons already took advantage of the benefits of vaccination, but uneducated people, the author suggested, might take issue with the proposal's element of compulsion.

A reporter for the *Arya Mitra* expressed similar feelings in an article published the following month. Praising the utility of vaccination for the purpose of "sav[ing] lives," the writer suggested that "[o]nly ignorant people are prejudiced against vaccination, but their prejudices should not prevent the Government from putting a stop to a great evil."[95] The article agreed that some individuals objected to the idea of "compulsion" embedded within the bill "on the ground that it would be an unjust interference with the liberty of the people," but diverged from the opinion expressed in the *Awadh Akhbar* to conclude that the loss of liberty was not a sufficient reason to oppose this life-saving measure.[96] Other papers (like the *Kashi Patrika* on 27 February 1880) supported the expanded use of vaccination, referring to the use of vaccination as "the best preventive of small-pox," but even despite extolling the virtues of vaccination these voices remained silent on the question of Sir Sayyid's proposed bill.

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[93] Ibid., *Oudh Akhbar*, 17 February 1880.

[94] Ibid.

[95] Ibid., *Arya Mitra*, 19 March 1880.

[96] Ibid.

The most damming criticism of the vaccination measure, however, came in an article printed in *The Prince of Wales Gazette* of Meerut. "Sayyad Ahmad Khan has taken a lancet in hand and stands ready to bleed children," the article warned, "May Heaven protect them."[97] In his assessment, the vaccination bill was an illiberal attack on children. By proposing a compulsory measure for vaccination, Sir Sayyid "has lifted his sharp lancet against helpless children who can neither speak nor cry," the article continued.[98] The idea of Sir Sayyid with a scalpel in hand, ready to cut India's unprotected children was a rather crude approximation of the act of vaccination by injection, but invoking this image transformed Sir Sayyid's health-minded proposal into an act of medical aggression.[99] Continuing in this vein, the author continued his attack by addressing Sir Sayyid directly:

> I am surprised to see you [Sir Sayyid] with your sleeves turned and with a lancet in your hand. It is difficult to realize why you are so anxious to make vaccination compulsory. Compulsion is opposed to the principles of good government. The blood of children is calculated to excite the people. It is my earnest prayer that Heaven may dissuade you from your present intentions, and save children from the pain of bleeding. I hope that you will sympathize with them, and throw away the lancet from your hand.[100]

Addressing the council member directly, the author placed "[t]he blood of children" in opposition to "the principles of good government."[101] Not only was Sir Sayyid's proposal an attack on young children, one that would result in the bloodletting of the young and unprotected, but as a compulsory measure, it also represented an act of bad governance. The paper could not

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[97] Ibid., *The Prince of Wales Gazette*, 12 March 1880.

[98] Ibid.

[99] On the violence of colonial medicine, see Nancy Rose Hunt's recent work on Congo. (Hunt, *A Nervous State: Violence, Remedies, and Reverie in Colonial Congo* [Durham: Duke University Press, 2016].)

[100] UPSA, *Selections from the Vernacular Newspapers Published in the Punjab, N.W.P. & Oudh, Central Provinces and Berar for the Year 1880*, Vol. 13, *The Prince of Wales Gazette*, 12 March 1880.

[101] Ibid.

sit by silently while this "so-called well-wisher" of the Raj perpetrated such acts.

Most newspapers addressed Sir Sayyid's three proposals individually, under separate headings, but in March 1880, the well-known *Koh-i Nur* brought consideration for all three measures together. Referring to Sir Sayyid as "a representative of the Musalman community in the Legislative Council," the article framed its critique of Sir Sayyid's proposals as thwarted hopes. "It was expected that great good would accrue to the country from his admission to the Council," the article began but continued to say that "he has up to this time done nothing which could be approved of by the people."[102] The people were against the Vaccination Bill, the article suggested, on the grounds that the vaccine did not in fact prevent small pox: "It appears from the Rangoon papers that even those children who had been vaccinated have been attacked by small-pox, and that many of them have died."[103] Not to mention the fact that the proposal "clashes with the religious prejudices of a large class of the community" and therefore should not be made compulsory, the paper reasoned.[104] Furthermore, large segments of the population objected to the proposed endowment bill on the grounds that it was "opposed to the teaching of the Quran."[105] The article concluded that "if it is not in accordance with the tenets of the Muhammadan religion, it should not be passed."[106] The article's tenor changed with respect to the *qāẓī*s' bill. In response to this measure, the paper confirmed that "[t]he appointment of Qazis would be undoubtedly very useful in accordance with the old Muhammadan custom," but the author could not fully support the proposal because the bill did not provide the *qāẓī*s with

[102] Ibid., *Koh-i Nur*, 13 March 1880.

[103] Ibid.

[104] Ibid.

[105] Ibid.

[106] Ibid.

sufficient "civil or magisterial power" to make the measure worthwhile.[107] Given its opposition to the other two proposals, this critique was minor and marked a slight departure from the paper's earlier praise for the Kazis' Bill. In January, the paper had claimed it "highly approved" of Sir Sayyid's proposal, saying "the appointment of Qazis will largely reduce the number of suits among Muhammadans, and that the court will be able to decide their cases easily with the assistance of Qazis."[108] Overall, the paper's support was not without reservations (the article expressed questions about the appointed *qāẓīs*' education levels), but it nonetheless supported the motivation behind the measure.

Other publications reiterated the *Koh-i Nur*'s support for the proposed Kazis' Bill. The *Aftab-i Punjab* stated that it "approves of the proposed appointment of Qazis, and remarks that they can decide all suits relating to marriage and divorce among Musalmans better than the regular courts, which are not well acquainted with the Muhammadan law."[109] Not only did the paper support the proposal to appoint *qāẓīs* but it also suggested such appointments might remedy the problems regularly arising in the "regular courts."[110] The *Anjuman-i Punjab* supported a similar arrangement. Drawing upon remarks composed by Maulvi Abdul Kadir [ʿAbd-ul-Qādir], the second Arabic teacher of the Lahore college, Qazi Muḥammad Shams-ud-dīn, and Muhammad Niṣār ʿAlī, the editor of the paper, the *Anjuman-i Pinjab* presented the following statement:

> In regard to the powers of Qazis the editor is of opinion that they should be empowered to decide all suits relating to marriage and divorce. Moreover, the courts should consult

[107] Ibid.

[108] Ibid., *Koh-i Nur*, 31 January 1880.

[109] Ibid., *Aftab-i Punjab*, 12 March 1880.

[110] Ibid.

> them in suits of inheritance. They should keep a register of marriages and divorces. Besides a fixed marriage fee they should receive a fee at the rate of three rupees per cent on the value of *mihirs* [*mahr*s] from bride-grooms, one third of which they should pay to Government. Moreover, they should get a fee at the same rate in suits of inheritance in which the court calls for their opinion. At the headquarters of districts, able and influential maulvis should be appointed qazis, whether they are the descendants of qazis or not. However, the claims of the descendants of qazis should not be overlooked. They should be appointed qazis in the interior districts, but should be required to pass an examination.[111]

In addition to supporting the widespread appointment of (qualified) *qāẓī*s, the editor and his colleagues also supported a tax on the *mahr* amounts recorded by the *qāẓī*. After fixing the amount and recording it in his register, the *qāẓī* would then collect three percent of the amount pledged, keep two-thirds of that amount for himself and pay the remaining one-third to the government, their modified proposal suggested. The *qāẓī* should treat inheritance matters in a similar fashion, collecting a portion of the settlement, and passing the profits on to government, the *Anjuman-i Punjab* reasoned.[112] As far as the legislative reports are concerned, these ideas never made their way into the Council's proposals, but the paper's advocacy for greater interactions between *qāẓī*s and the colonial state resonates with entangled documentary (and now revenue-earning) practices presented at the opening of this chapter.

In the context of the public sphere, then, the Kazis' Bill was the only proposal of Sir Sayyid's three that received favorable consideration. The press dismissed the other two measures, rejecting them as emblematic of bad governance, illiberalism, unnecessary compulsion, and unwanted interference, but public support for the Kazis' Bill was nearly unanimous. It would seem from these critiques, then, that the only measure the public approved of was the measure involving registration and documentation. Indeed, when writers criticized the Kazis' Bill, they did

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[111] Ibid., *Anjuman-i Punjab,* 12 March 1880.

[112] Ibid.

so on the grounds that the bill did not go far enough: it did not provide the *qāẓī* with sufficient power or authority to do his work. Additionally, some writers voiced concerns about ensuring only sufficiently educated individuals were appointed to the office, but such concerns merely advocated increased regulation and greater government oversight. Though public sentiment rejected legislative interference in the spheres of public health and religious charity, when it came to registration and documentation, the public supported changes that would strengthen, rather than to weaken, the proposed Kazis' Bill.

In order for Sir Sayyid's proposal to succeed in the Legislative Council, however, the government had two lingering uncertainties to answer. The first revolved around the question of whether it was necessary for the government to participate in the appointment of persons to the office of the *qāẓī*. As Sir Sayyid expressed in his introductory remarks to the bill, Act XI of 1864 did not dissolve the *qāẓī*'s office but rather removed the government's involvement in the appointment process.[113] Before resuming this role, the British Government of India wished to confirm that it had the authority to make appointments and that the public supported its involvement in these appointments. To answer this question, the government turned to leading Muslim intellectuals for their opinions and interpretations.[114] The other issue the Council needed to settle before approving the measure revolved around the putative benefits of the plan. Answering this question required first identifying the preponderance of "evils" resulting from the changes introduced after the passage of Act XI of 1864 and then demonstrating the ways in which the *qāẓī*'s role producing certified registrations of marriages and divorces would fix these

[113] BL, IOR/L/PJ/6/21, File 1229: Act No. XII of 1880. The Kazis Act. "Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of Act of Parliament 24 & 25 Vic., cap. 76."

[114] BL, IOR/L/PJ/6/17, File 954: Papers relative to the Bill for appointment of persons to the office of Kází.

problems.

To satisfy the first question regarding the government's involvement in the appointment of *qāẓī*s, commentators turned to Book XX of the *Hidāyah*, on the "Duties of the Kazi," which detailed the terms of the government's involvement.[115] According to the translation submitted to the Legislative Council, "It is the duty of the sovereign to appoint fit persons to that office," and "[i]t is lawful to accept the office of Kazi from a tyrannical Sultan, in the same manner as from a just Sultan…Hence the acceptance of the office of Kazi from a tyrant is lawful;—provided however, the tyrant do not put it out of the power of the Kazi to render right to the people."[116] In addition to accepting an appointment from a tyrant, it was also necessary for the *qāẓī* to accept an appointment from non-Muslim rulers. This aspect of the question was of particular importance to the Legislative Council, as it determined the government's authority to make such appointments and reanimated long-standing uncertainties over this issue and its division of secular and religious authority. When the Home Department in the Punjab took up the issue of *qāẓī* appointments in 1872, for instance, it sought the opinions of "Sunni Maulvis" on the issue.[117] The first question the Home Department asked was "If the Government of a country (be it either Muhammadan Government or not) wishes to appoint a Kazí, can it do so according to your law?" In response to this question, one set of answers offered the following explanation: "Yes; any Government, of whatever religion or faith it may be, can make the appointment of Kazi, and it is lawful for the latter to accept the appointment when offered."[118] Another

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[115] On the *Hidāyah* in British India, see Gregory C. Kozlowski, *Muslim Endowments and Society in British India* (New York: Cambridge University Press, 1985), 125-126.

[116] BL, IOR/L/PJ/6/17, File 954, Appendix I. (The punctuation here follows the original.)

[117] Ibid.

[118] Ibid.

responded: "The reigning king, whether he be just, oppressive, a believer or not, has the power to appoint a Qadi; and whoever is fit for the task can accept the dignity under him, provided there be no improper interference in the discharge of his duties."[119] A third set of answers presented the following response: "It is legal and even meritorious for a Non-Muhammadan Government to appoint Qadis with full or limited power if there be no unjust interference in the matters that are entrusted to them."[120] All three sets of answers the government solicited thus replied in the affirmative, recognizing and supporting the its role in the appointment of *qāẓī*s.

In response to a subsequent question on the issue of whether "the presence of a Kazi [is] considered of essential importance among the Muhammadans on occasions of marriage &c." and "to what extent…such affairs [have] suffered where there are no Kazis," the first respondent answered:

> A Government will much oblige the people if it appoints Kazis who are able to decide according to the Muhammadan Law. Although it is very easy to read a (نکاح), *Nikah*, and any person able to read a Nikah can perform the marriage ceremonies as provided in the *Shera'*, yet the appointment of Kazis will much facilitate the decision of questions relating to matrimony, divorce, gifts, bequests, inheritance, &c. The Courts would get material assistance in deciding such cases, should Kazis be appointed; and these cases would then be disposed of without the slightest difficulty. What is there now except perplexity and embarrassment in such cases where there are no Kazis?[121]

By appointing individuals to the office of *qāẓī*, the government would be performing a service for the people, the respondent argued. Having a responsible individual perform marriage ceremonies would further ease the workload of the courts. *Qāẓī*s would be able to facilitate decisions pertaining to marriage and other areas of law and would be able to remedy some of the

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[119] Ibid.

[120] Ibid.

[121] Ibid. (Arabic in the original)

"perplexity" and "embarrassment" that currently features in the courts, the explanation implied. In response to the same question, then, the second respondent offered the following answer:

> Although the celebration of nuptials and the proclamation of divorce can be done without a Qadi, yet in disputed cases and on questions regarding the nullity of marriage, and the separation of parties joined by matrimony, his presence is indispensably required.[122]

Though it was not necessary for the *qāẓī* to oversee marriage ceremonies, his presence would greatly reduce the number of disputes arising over questions of "nullity," the respondent contended. Echoing the first respondent, the second argued that the *qāẓī* would provide an "indispensabl[e]" service in cases of dispute.[123] The third respondent took a slightly different tack, arguing "It *is* necessary to have a Qadi to celebrate the nuptials of minors who have no heirs,"[124] and added:

> [I]t is also proper and advisable to have one in the other cases of marriage, and in those of divorce and in the distribution of property left. In this country and in these days most nuptials and the division of property take place contrary to the dictates of the Muhammadan Law, and thus occasion disputes and hostilities. When a Qadi will be appointed, and it will be proclaimed that the above description of cases will be considered null, if performed without his knowledge, then these grievances will at once be put a stop to. The Qadi shall decide according to the letter of the law even where opposed by custom and to such custom he shall not be bound at all.[125]

Referring to the current state of affairs in "this country," the respondent suggested that countless disputes arise owing to the fact that "most nuptials and the division of property" occur in

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[122] Ibid.

[123] Ibid.

[124] Traditionally, *qāẓī*s acted as guardians for the marriage of orphaned minors. Without *qāẓī*s the marital status of minors was open to uncertainty.

[125] Ibid. For recent views on the negotiations of law and custom, see e.g., Chandra Mallampalli, "Escaping the Grip of Personal Law in Colonial India: Proving Custom, Negotiating Hindu-Ness," *Law and History Review* 28, no. 4 (November 2010): 1043–65, doi:10.1017/S0738248010000763; William R. Roff, "Customary Law, Islamic Law, and Colonial Authority: Three Contrasting Case Studies and Their Aftermath," *Islamic Studies* 49, no. 4 (December 1, 2010): 455–62; Andrew Sartori, "A Liberal Discourse of Custom in Colonial Bengal," *Past & Present* 212, no. 1 (2011): 163–97, doi:10.1093/pastj/gtr007.

contradiction to the "Muhammadan Law." Resuming the appointment of *qāẓī*s would not only bring these practices back in line with religious law but would also reduce the number of needless suits and disputes arising as a result. The *qāẓī* would have the ability to return "to the letter of the law" and to obliterate customary practices occurring in opposition to the law.

An application submitted to the government of the Punjab on behalf "of the whole (Muhammadan) community…with the remarks of the Kazi-i-Islam (Lahore)" voiced similar concerns about current practices among the community and the need to appoint educated and knowledgeable persons to the office of the *qāẓī* in order to curtail illegal practices and "certain evils in connection with marriage ceremonies, divorce, and other matters."[126] The marriages of divorced women, for instance, the statement explained, "must in no case take place before the period of probation…is at an end."[127] Yet, as the petitioners explained, "those who conduct the marriage ceremonies do not take this into consideration at the time of marriage," meaning women are often remarried before the end of the required waiting period.[128] Another evil pervading these problematic marriages was the practice of allowing women without guardians to marry without proving "the fact of her being divorced or a widow…beyond doubt."[129] Furthermore, the application explained, an individual tasked with writing a deed of divorce (*ṭalāq-nāma*) "must be a person fully acquainted with the doctrines on the point, and not a person, as is the custom in these days, who, in express contravention of the law, be a Hindu or any other

[126] BL, IOR/L/PJ/6/17, File 954, Appendix II.

[127] Ibid.

[128] Ibid. (The matter of eligibility for remarriage after divorce could cause problems in determining the legitimacy of children born to divorced or remarried women.)

[129] Ibid. (As the analysis of marriages registers below demonstrates, determining—and recording—a woman's eligibility for marriage was a central part of the *qāẓī*'s work.)

person wholly unacquainted with the law, and even the orthography of the word Talaq (طلاق)."[130] When issuing the deeds and documents associated with divorce, such as the *ṭalāq-nāma*, authors of such documents should be able to write the document properly and according to the dictates of Islamic law, the petitioners reasoned. Such oversights in the execution of these duties were unforgivable evils, in the eyes of Qāẓī Shams-ud-dīn and the 246 Muslims of Lahore whose names graced the application submitted to government.

Colonial administrators echoed these sentiments in their remarks on the proposed legislation. Ghulām Nabī Khān, Judicial Assistant at Gujarat reported that Muslims "no doubt require Kazís, and the creation of such appointments seems desirable."[131] The Kazi Khel Family from Peshawar City presented a lengthy statement to the government explaining that after analyzing the permissibility of a marriage, based on the age and marital status of the parties, the *qāẓī* then creates a record in his register, including "the amount of dowry fixed" and that the *qāẓī*'s register "will serve as a bar against future disputes about bigamy and amounts of dowry, and if they do occur his evidence will be decisive."[132] According to this argument the *qāẓī* not only determined whether certain unions were permissible but also maintained registers to serve as evidence if disputes arose in the future. This principle of registration applied to divorces as well: "Such conditions are settled before the Kázi and registered, and the deed of the divorce signed by him. So such disputes will be lessened, and in case they occur, the Kází's register will be useful as an evidence in the judicial court."[133] The *qāẓī* could prevent disputes by settling matters

[130] Ibid. (Arabic in the original.)

[131] Ibid., letter from Ghulam Nabi Khan, Extra Judicial Assistant Commissioner, Gujrát, dated 29 February 1880.

[132] Ibid., Opinion of the Kazi Khel Family of the Peshawar City, dated 13 March 1880.

[133] Ibid.

at the time of the divorce, while at the same time, the records he produced could help to settle disputes if and when they later went to court. As arbiter and record-keeper, the *qāẓī* wouyld serve the local community and the colonial courts, by verifying, deciding, and settling personal affairs. Thus, with ample arguments in its favor, Sir Sayyid's proposed Kazis' Bill passed into law and became the Kazis' Act (Act XII) of 1880.

IV. The Disciplinary Technology of the Register

In the debates surrounding the *qāẓī*'s place in solemnizing and recording muslim marriages, the *qāẓī*'s register came to represent a disciplinary technology that fit with the other surveillance schemes implemented by the state but was at the same time autonomous and maintained under separate authority. Without the taint of the colonial bureaucrat's hands, the *qāẓī*'s register presented an opportunity for the government to monitor, regulate, and oversee the private lives of India's Muslims without rousing suspicions. Not only was the *qāẓī*'s participation vital to the solemnization of the *nikāḥ* ceremony, but as a member of the community he was also familiar with the parties being wed. In this way, late-Victorian fears about unknown identities, itinerant populations, and disrupted social networks could be overcome by having the *qāẓī* act as intermediary, giving order to the disordered masses and their many—and nefarious—marriages.[134] In the context of surveying and surveilling, counting and categorizing, the *qāẓī*'s register met several needs in a single device, yet even in this context there were constant questions about the validity of the register. The sections that follow first consider the registers, as they

[134] In this way, debates over the *qāẓī*'s register reflected fears about marriage in other contexts as well. For consideration of the uses of registration in the context of Parsi marriages, see Sharafi, *Law and Identity in Colonial South Asia,* 58–61; and Sharafi, "The Marital Patchwork of Colonial South Asia," 1005. In Britain, the Marriage Act of 1836 extended registration to civil unions and took marriage registration outside the church. For a brief introduction to the history of marriage registration in North America, see Elizabeth Abbott, "Weddings and the Married State," in her *A History of Marriage: From Same Sex Unions to Private Vows and Common Law, the Surprising Diversity of a Tradition* (New York: Seven Stories Press, 2015), 47–80.

evolved over time and as they operated to determine and support the validity of certain marriages, then analyze the effects of such bureaucratic record-keeping on the social history of marriage as well as on the relationship between colonial governance and the production of (accessible and legible) marital records.[135]

The technology of the register as a means for recording marital transactions evolved over time. Though the first extant examples are rather crude, consisting of hand-drawn grids on blank pieces of paper, by 1881, lithographed headings marked the tops of each page and tabular columns provided space for the insertion of individual pieces of information. Later incarnations of the register extended the use of lithography further and added to the formality of the entries by encouraging the inclusion of increasingly specific information and placing each entry on its own page. By the time the records begin to take this form in the second decade of the twentieth century, the entries are framed in precise, consistent, detailed language, meaning that if the principles of bureaucratic record-keeping hold, they are equally accurate by extension. Tracing this transformation in record-keeping practices not only draws attention to the changing role of bureaucracy in the everyday lives of ordinary individuals but also points to increased professionalization in the practice of Islamic law.[136] Intellectual lineages and doctrinal affinities had a minor place in the world of the bureaucratic *qāẓī*. Such interests were matters of politics,

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[135] The benefits of registration for establishing legal status and subject-hood should not be overlooked, especially in relation to the problems surrounding the construction of legally recognizable marriages among enslaved Africans and Native Americans in antebellum and reconstruction America. See Abbott, *A history of marriage*, 69–72; Laura F. Edwards, "'The Marriage Covenant Is at the Foundation of All Our Rights': The Politics of Slave Marriages in North Carolina after Emancipation," *Law and History Review* 14, no. 1 (April 1996): 81–124, doi:10.2307/827614; Edwards, "Enslaved Women and the Law: Paradoxes of Subordination in the Post-Revolutionary Carolinas," *Slavery & Abolition* 26, no. 2 (August 1, 2005): 305–23, doi:10.1080/01440390500176665; Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *The American Historical Review* 112, no. 2 (2007): 365–93.

[136] This methodological move heeds Sumit Guha's encouragement to look beyond the rhetoric of enumeration and identity formation to consider the actual evidence of documentation. Sumit Guha, "The Politics of Identity and Enumeration in India C. 1600-1990," *Comparative Studies in Society and History* 45, no. 1 (January 2003): 148–67.

and the local *qāẓī*'s work was interested record-keeping routines more than the doctrinal disputes that permeated the public sphere.[137] Thus, as the registers became more formalized, the registers at the same time lost some of the markings that made them quintessentially "Islamic" and became little more than bureaucratic books, but is was in this process of transformation, in their ability to become bureaucratic records—regularized, regulated, and reproducible—that the *qāẓī*'s records claimed a place within the bureaucratic apparatus of the modern state.

Qāẓī registers from South Asia do not survive from the pre-colonial period. It is only in the family collection of *qāẓī* of Bharuch that these records survive from the first-half of the nineteenth century.[138] These early examples of marriage registers are inelegant attempts to convert the information contained in a *nikāḥ nāma* into a tabular record, yet nevertheless, they provide a starting place for analyzing the register's nineteenth-century transformation. By way of example, an entry from 1846 contains five columns of information.[139] The first column gives the date according to the Hijri and Gregorian calendars (28 Shawwāl 1262 AH; 20 October 1846 CE). In the second column (moving from right to left), the recorder identifies the bridegroom (*nākiḥ*) by giving his name, father's and grandfather's names, *qaum* (occupation, community),[140] and age as follows: Qā'im Ḵẖān, son of Muḥammad Ḵẖān, son of Shajā'at Ḵẖān, of the Sipāhī

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[137] In this way, local registration (and even the *fatwā* questions and answers considered in the next chapter) challenges the grand narrative of opposition and unrest.

[138] NAI, Miscellaneous Manuscripts Microfilmed at Bharuch, Acc. No. 851, S. No. 33, Nikah Nama II.

[139] Ibid., Entry Number 16.

[140] In these registers, "*qaum*" includes aspects of employment and community. These categories become more distinct in the registers I consider below. On qaum/qawm more generally, see Faisal Devji, "Qawm," in *Key Concepts in Modern Indian Studies,* edited by Gita Dharampal, Monika Kirloskar-Steinbach, Rachel Dwyer, and Jahnavi Phalkey, 217-219 (Washington Square, New York: New York University Press, 2015); and more generally Faisal Devji, "Muslim Nationalism: Founding Identity in Colonial India." (Ph.D. Dissertation, University of Chicago, 1993); John Roosa, "The Quandary of the Qaum: Indian Nationalism in a Muslim State, Hyderabad 1850-1948," (Ph.D. Dissertation, University of Wisconsin–Madison, 1998); and S. Akbar Zaidi, "Contested Identities and the Muslim *Qaum* in Northern India: C. 1860-1900" (DPhil., University of Cambridge, 2009).

community, approximately (*takẖmīnan*) thirty years in age.[141] The register records parallel information for his bride, the *mankūḥa*, including her name, father's name, grandfather's name, and age: Musammāt Rasūl K̲h̲ātūn, daughter of Ḥabīb K̲h̲ān, son of ʿAbdul Nabī K̲h̲ān, approximately seventeen years old.[142] The following column gives the amount of *mahr* pledged (here given as the amount of Ḥaẓrat Fāṭima),[143] followed by columns for the *vakīl*, or agent responsible for arranging and approving the union—in this case a certain Malik Sardār, son of Malik ʿAbdū, resident of the Bandar Bharūch—who offers his "sign" (*ʿalāmat*) in lieu of a signature below his name, followed in the next column by the names of two witnesses (*shāhidain*): Miyān Shaik̲h̲ū, son of Shaik̲h̲ Rustam, resident of Bharuch and Miyān Aḥmad, son of Shaik̲h̲ Amīn, resident of Bharuch, both of whom sign in Gujarati script.[144] The *qāẓī* then notes the collection of his regular fee for the performance of the marriage in the left-most column of the entry, and the record is complete.

Below the first entry, the *qāẓī* has drawn a line, dividing the page into two entries horizontally. Beneath the first entry there is the record for a second *nikāḥ*, which took place on the same day. The *nākiḥ* for this ceremony is one Sayyid Amīr, son of Sayyid Ḥasan, son of Sayyid Raḥmān, of the Sipāhī community, approximately forty years in age.[145] On this day in 1846, he married a Bī Nathū Bānū, daughter of Karīm Bhā'i, son of K̲h̲airū, who was approximately

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[141] NAI, Miscellaneous Manuscripts Microfilmed at Bharuch, Acc. No. 851, S. No. 33, Nikah Nama II, Entry Number 16.

[142] Ibid.

[143] *Mahr* in the amount of Ḥaẓrat Fāṭimah is a customary amount based on the amount Ali ibn Abi Talib gave to Fatimah bint Muḥammad in 623 CE. For an analysis of *mahr* amounts in post-Independence Pakistan, see, J. Henry Korson, "Some Aspects of Social Change in the Muslim Family in West Pakistan," *Contributions to Asian Studies* 3 (January 1, 1973): 138–155. In February 2016, the Darul iftaa wal Irshaad calculated this amount to be $996.90 (Canadian).

[144] NAI, Miscellaneous Manuscripts Microfilmed at Bharuch, Acc. No. 851, S. No. 33, Nikah Nama II, Number 16.

[145] Ibid., Number 17.

twenty-five years in age.[146] Beneath the names of the two parties, the bridegroom made a sign by his own hand (*ba-dast-i k̲hud*) to indicate his assent. Again, the *mahr* is recorded in the amount of Haẓrat Faṭima, and the *vakīl* is Mulla Aʿẓam, son of Mulla Imām-ud-dīn of Bharuch, who also places an *ʿalāmat* beneath his name. The two witnesses, Miyān Amīn Bak̲h̲sh, son of Bashīran Shah, resident of Bharuch and Ġ̲h̲ulām Rasūl, son of Shaik̲h̲ Miyān, also resident of Bharuch respectively affix their sign and signature to the document, and the *qāẓī* indicates the receipt of his customary fee.[147] The entry is complete, and this page in the *qāẓī*'s register is full; turning the page, the *qāẓī* records two more entries on the back side.

There is no heading on the page, and no indication of the *qāẓī*'s responsibility either in reading the *nikāḥ* rite or writing the entry, as there are in some of the other registers, but it is clear from glancing at the register that the page contains two entries. Though the paper began as a blank sheet, the *qāẓī* has drawn a border around the page with which to contain the information. He has further divided the page into five columns. The page begins with a narrow column to the right in which the *qāẓī* records the date, followed by a column two or three times wider in which he writes the names of and other details about the bride and the bridegroom side-by-side.[148] In this way, each of the substantive columns contains multiple sets of information such that the *qāẓī* must write the information clearly enough to show where one person's information ends and the other's begins. The register does not have separate columns for these parties; rather, the *qāẓī* must write their details in such a way to to keep them separate. At the bottom of the entry, the *qāẓī* has the bridegroom place either his "sign" or signature in the space beneath both parties' names.

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[146] Ibid.

[147] Ibid.

[148] Ibid.

After this, a narrow column follows, in which the *qāẓī* indicates the amount of *mahr* pledged by the bridegroom. After noting this number, the *qāẓī* moves on to the next column—which has a width comparable to that of the one containing the bride and bridegroom's information—to list the names of the parties' *vakīl*s, which is followed by a slightly broader column for the names and signatures of the two witnesses. Like the column for the names of the bride and bridegroom, this column also encloses information about two individuals listed side-by-side in a single box. Again, without a line to separate them, the *qāẓī* must be careful to keep the names and details for each individual separate.[149] Outside the main box he has drawn on the page, then, the *qāẓī* notes the receipt of his fee (his *lawāzim*) on the left-hand margin of the page.

Image 4.1: Page documenting two marriages from the Qāẓī of Bharuch's register.[150]

[149] Ibid.

[150] Ibid., Folio 29b.

Records such as these from the mid-nineteenth century come from a time when the *qāẓī*'s work was still moving from that of document-writer to that of record-keeper. The tabular layout separates the information into discrete pieces—the bride and bridegroom, for instance, are separated from the date by a line drawn on the page—but the arrangement is sloppy. Although the registers recording these *nikāḥ*s are more numerous than those containing other types of transactions, they nevertheless remain bureaucratically uncertain. The headings for the columns blend into the contents of the columns, and many of the columns contain multiple types of information: Ḥijrī Dates are written on top of Gregorian dates; the names of bride and bridegroom blend into one another; and the names of witnesses at times overlap. The entires include the *mahr* amount but do not specify whether it is immediate or deferred. Other details seem to originate simply from habit. The *qāẓī* gives the ages of the participants, for instance, but the numbers have no bearing on the legitimacy of the records. The *qāẓī* records nuptials in which young children are pledged to one another by parents, and old men are permitted to take young brides. The *qāẓī* does little to verify or authorize these ceremonies. He records but does not comment upon practices. His work is simply to record the transactions and collect his fees. Only occasionally in cases of widow remarriage does he demand statements from witnesses about the bride's eligibility for remarriage, but for the most part, he recorded these attestations of eligibility in separate registers, without referencing or correlating the records, allowing for the possibility of discrepancy or oversight to intervene.[151] There is no effort to cross-check the identity of participants, nor to update records upon separation, divorce, or death, which undermines the

[151] The tension between internal and external references is one that surfaces in all versions of the register and marks the *qāẓī*'s intermediary position between officiant and record-keeper. In Bharuch, a separate register records statements of eligibility for widow remarriage, though occasionally the *qāẓī* also included a note in the marriage register itself. Entry Number 13, for example, contains a statement by Miriam in which she legally affirms that she is currently of age, is not currently married, and has no one looking after her. (Ibid., Entry Number 13, Folio 28a.)

register's ability to eliminate the possibility for illegal marriages or marriages between parties already committed to others. Furthermore, though the pages in the register are foliated, the entries themselves are only cursorily numbered. Dates help to order the entries, but there are no additional apparatuses to situate, locate, or otherwise quantify or cross-check the entires. In a word, some elements of bureaucratic record-keeping are clearly present in these records, but many have yet to be added.

By 1880, record-keeping practices across the sub-continent had expanded extensively, and the *qāẓī*'s register was no exception. Lithographic printing, in particular, aided the production of uniform and informative registers that could match the systematic records of the colonial state. Even though the first set of registers from Meerut were not too dissimilar from those found in Bharūch, the addition of certain features brought them closer in line with other types of government records. To begin with, the orientation of the page changed. Whereas the *qāẓī* of Bharuch arranged his pages vertically (in portrait), the *qāẓī* of Meerut now arranged his pages horizontally (in landscape) and added a bold header to the top of the page that read "Copy of the register of marriages pertaining to the Qazi of the City and the Camp and the District of Meerut (*naql-i regiṣtar-i nikāḥ mutaʿallaq-i qāẓī-i shahr ō kaimp ō parganah-i Mērūṭh*)."[152] Where the *qāẓī* of Bharuch divided his registers into five columns, the *qāẓī* of Meerut separated the page into nine main columns, several of which are further divided into two subordinate columns to provide one for the "*mard*" (man) and one for the "*ʿaurat*" (woman).[153] In addition to changing the register's format, the *qāẓī* of Meerut also made the language less technical. Where the *qāẓī* of

[152] The following descriptions come from the registers of the *qāẓī*s of Meerut, available at London Family History Centre (FHC) of the The UK National Archives (TNA). See Image 4.2 below, for an example.

[153] Ibid., Image 4.2.

Bharuch used the Arabic terms "*nākiḥ*" and "*mankūḥa*" for the bride and groom, the *qāẓī* of Meerut now employed the language of ordinary records—*mard* and *ʿaurat*, man and woman—and used these terms for their guardians (v*alī-i mard*, v*alī-i ʿaurat*), and agent (*vakīl minjānab-i mard ō ʿaurat*).[154] Witnesses are no longer *shāhidain* but *gawāhān*, with the Persian plural (*gawāhān*) replacing the Arabic dual. In addition to adding space for the man's guardian and agent (i.e., details that were absent from the register's earlier arrangement), the register now also includes separate columns for immediate (*muʿajjal*) and deferred (*muwajjal*) *mahr* under the heading "amount and kind of mahr" (*taʿdād ō qism-i mahr*).[155]

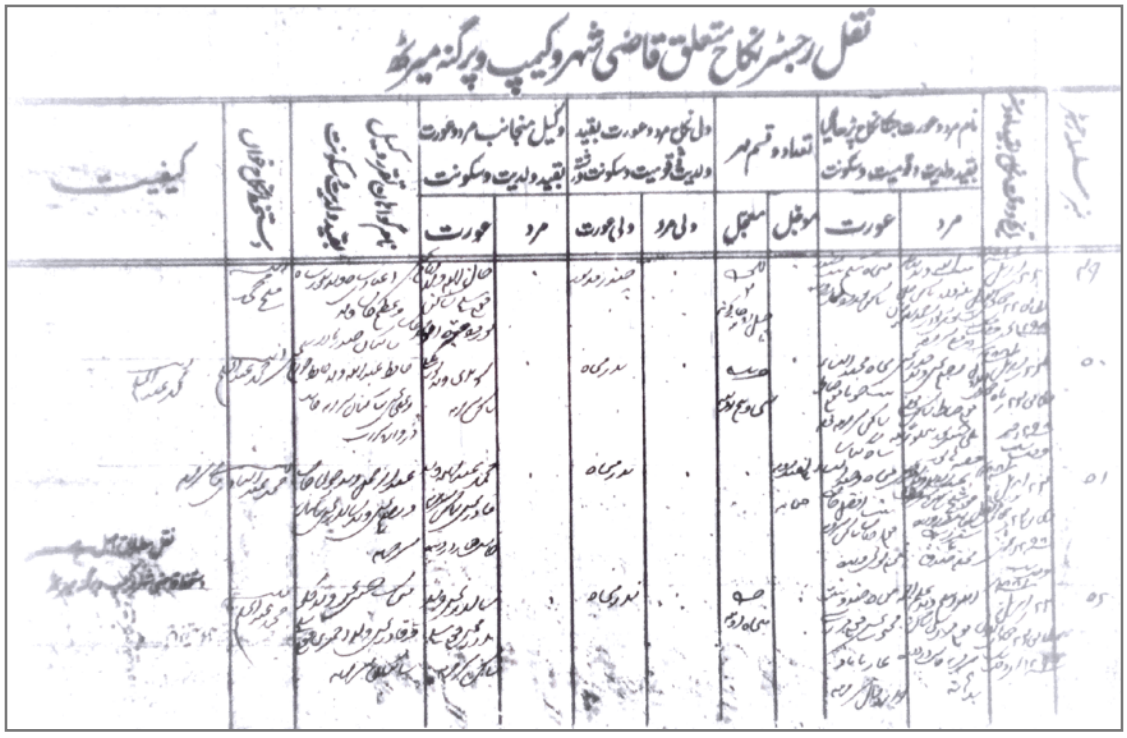

Image 4.2: Page from the 1881 version of the *qāẓī*'s register at Meerut.[156]

The lithographed heading not only allows the reader to identify the type and source of

[154] The use of terms like "*mard*" and "'*aruat*" also signal the move toward government categories.

[155] TNA, FHC, Microfilm Reel No. 1307221. Vol. 1 (17 Jan. 1881–17 Aug. 1881).

[156] Ibid.

the information contained on the page quickly by reading the words *regiṣṭar-i nikāḥ* at the top of the page, but the headings also begin to arrange the information hierarchically by placing items under shared headings. For instance, the register provides separate columns, one for the *mard* and one for the *ʿaurat* under the major heading "*nām-i mard-ō-ʿaurat jinkā nikāḥ paṛhā gayā, baqaid-i valadiyat ō qaumiyat ō sakūnat*" (name of the man and the woman whose *nikāḥ* was read along with paternity, community, and place of residence) and follows this pattern for subsequent columns as well, dividing each major category into two separate minor categories.[157] The register imposes similar regularity and order on the information provided by including the specific instructions "along with paternity, community, and place of residence" for each of the participants (i.e., bride and bridegroom, guardians, agents, and witnesses). In addition to including detailed information about the many persons involved in making the *nikāḥ*, the register also ordered the entries numerically by including a separate column for sequential counting. The register also included a column for the date (according to the Gregorian calendar) and the time of day, along with a column for the signature of the *nikāḥ k̲h̲wān* and one for any additional comments relevant to the circumstances of the marriage, the *kaifīyat*.[158] The lithographed form makes each entry easier to read in a glance and places the entry's components in hierarchical relation to one another with the use of super- and sub-headings. Yet the lithographed form only divided the page into vertical columns; it does did divide the entries horizontally. Here again, the *qāẓī* was responsible for drawing horizontal lines to separate the entries.[159] With this version, lithography imposed greater order on the records and by extension on the marriage it recorded, but there was still room for

[157] Ibid.

[158] Ibid.

[159] Ibid.

variation across several pages of the register.

On the first page of the register from 1881, the *qāẕī* recorded four marriages. The first took place on January 17, 1881 between Muḥammad Yār K̲h̲ān, son of Niẓām K̲h̲ān, and Bashīrāñ, daughter of Buland K̲h̲ān. The bridegroom pledged five hundred thirty rupees (Rs. 530) in immediate *mahr*.[160] The bridegroom did not have a *valī* and Bashīr K̲h̲ān, the bride's brother, acted as her guardian. Jahāngīr K̲h̲ān, son of Mīr K̲h̲ān, was the agent (*vakīl*) and Bashīr K̲h̲ān (son of Gulāb K̲h̲ān) and Anwar K̲h̲ān were the witnesses. Muḥammad ʿAbdul Hādī read the *nikāḥ* and recorded no other notes about the union.[161] The second entry records the *nikāḥ* between Buniyād ʿAli and Sabīn-un-nisā' on the night of January 22, 1881, in which the bridegroom pledged one hundred fifty rupees (Rs. 150) in *mahr-i muʿajjal*. The girl's father, K̲h̲ādim ʿAli acted as *valī* and Shaik̲h̲ K̲h̲udā Bak̲h̲sh acted as *vakīl*.[162] The third entry records a marriage between the bride's sister, Ḥamīd-un-nisā' and Amjad ʿAli on the same day. Ajmad ʿAli pledged the same amount—one hundred fifty rupees (Rs. 150)—in immediate *mahr*, and the bride's father K̲h̲ādim ʿAli again acted as valī while Shaik̲h̲ K̲h̲uda Bak̲h̲sh was *vakīl*. The same witnesses—Shaik̲h̲ Salīm-ud-dīn and Rā'i Bak̲h̲sh—observed both ceremonies.[163] The final entry on the page records the *nikāḥ* of ʿAlī Bak̲h̲sh and Maqbūl-un-nisā' on January 25, 1881. The bridegroom pledged one thousand rupees (Rs. 1,000) in *mahr-i muʿajjal*. The girl's father, Ra'i Bak̲h̲sh acted as *valī* and Imām-ud-dīn served as *vakīl*. The entry is incomplete in that it only includes the name of one witness, but without further information, it is unclear why this is the

[160] Ibid., Entry No. 1.

[161] Ibid., Entry No. 1.

[162] Ibid., Entry No. 2.

[163] Ibid., Entry No. 3.

case.[164] To complete these entries, the *qāẓī* placed his signature in the *kaifīyat* column after the words "*naql muṭābiq-i aṣl hai*" (the copy is according to the original), though the authority of this statement is open.[165] On these forms, the *qāẓī*'s signature is not signed, but printed, lithographed in the same location on each and every page of the register. If there was any question about the *qāẓī*'s transformation from individual to bureaucrat, the lithographed "signature" provides a strong indication that the transformation was underway, if not already complete.[166]

The *qāẓī* of Meerut continued to use registers arranged in this way for the next couple of decades. There are some subtle changes (such as the addition of clearer and more uniform horizontal lines for separating the entries and the move toward a two-page layout in which one header operated across the two pages stacked vertically, following the register's landscape layout), but the contents and format remain relatively the same until 1915 when the format changes to include a longer list of personal identifying information.[167] Under the new arrangement, each page recorded a single *nikāḥ* on a grid consisting of ninety-one boxes, thirteen for each of the potential seven individuals involved in the making of a *nikāḥ*—*zauj*, *zauja*, *valī-i zauj*, *valī-i zauja*, *vakīl*, *gawāh-i awwal*, *gawāh-i duwum*—along with additional columns for numbering each entry sequentially (column 1), indicating the date and time of the ceremony (column 2), and noting the location of the ceremony (*maqām-i nikāḥ,* column three), to the right of the individuals' information and a additional columns for the signatures of the *nikāḥ k̲h̲wān* and *qāẓī* (column

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[164] Ibid., Entry No. 4.

[165] Ibid.

[166] On signatures, seals, and the authority they held, see M. T. Clanchy, *From Memory to Written Record, England, 1066-1307* (Cambridge, Mass.: Harvard, University Press, 1979), 303–313; Brinkley Messick, "Evidence: From Memory to Archive," *Islamic Law and Society* 9, no. 2 [January 1, 2002] 263–4; and Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1996), 222–4.

[167] TNA, FHC, Microfilm Reel No. 130722, Vol. 19 (29 Oct. 1915–14 April 1916).

twelve) and one for any related notes or circumstances (*kaifīyat*, column thirteen).[168] By placing each entry on a single page of the register book, the new layout arranged categories of information across the register's horizontal axis and itemized information related to particular individuals vertically.[169] This change not only rearranged the *qāẓī*'s the use of paper but also altered the way one could read the records. Rather than reading entries linearly, from beginning to end, the tabular arrangement now forced one to read simultaneously horizontally and vertically across the record, skimming across and down, rather than reading through them. In this layout, the marriage register did not record events but rather captured discrete data-points that together contributed to the making of a marital fact.

The transition from narrative documentary forms to abstract, grid-based records was already evident in the registers of *nikāḥ*s found in the *qāẓī* of Bharūch's collection from the 1840s and 1850s and in the original format the *qāẓī* of Meerut followed around the turn of the twentieth century.[170] The new format furthered this mode of abstraction by turning individuals whose identities were previously unified in a single box into fragments spread across an entire column of information, each dedicated to a separate part of his/her identity—name, age, father, community, profession, etc.—and this arrangement followed the general trajectory of the colonial

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[168] Ibid.

[169] This arrangement sets up the *qāẓī*'s register for multiple modes of record-keeping, though if some form of double-entry book-keeping or indexing existed, those records have been lost. Instead, it is interesting to note how the record referred to other sources of legal authority internally and externally and with the production of other copy-books, such as the one involved in the opening vignette. For a discussion of multiple modes of record-keeping in comparative contexts, see, Poovey, *A History of the Modern Fact*; Basil Yamey, "Some Seventeenth and Eighteenth Century Double-Entry Ledgers," *The Accounting Review* 34, no. 4 (1959): 534–46; Melanie R. Benson, "The Fetish of Surplus Value; Or, What the Ledgers Say," in *Global Faulkner*, ed. Annette Trefzer and Ann J. Abadie (University Press of Mississippi, 2009), 43–58; Cynthia Jones Brokaw, ed., "Preserving the Social Hierarchy in the Seventeenth and Eighteenth Centuries," in *The Ledgers of Merit and Demerit*, Social Change and Moral Order in Late Imperial China (Princeton, N.J.: Princeton University Press, 1991), 157–228; Geoffrey A. Lee, "The Coming of the Age of Double Entry: The Giovanni Farolfi Ledger of 1299–1300," *The Accounting Historians Journal* 4, no. 2 (1977): 79–95.

[170] For an extended discussion of the records from Bharuch, see Chapter Three.

bureaucracy. As interest in grouping, categorizing, and enumerating individuals expanded from the pre-colonial instrument of the gazetteer, through the institution of the All-India Census beginning in the 1870s,[171] into efforts to track human migrations and movements through the empire by issuing and tracking passports, a practice that began during the First World War but expanded considerably after the passing of the Indian Passport Act in 1920,[172] the level of detail included in routine forms of record-keeping also expanded. Though the register of *nikāḥ*s did not include references to individuals' physical descriptions as documents like the passport did, it did aspire to produce authenticity through the accumulation of detail. These details allowed the *qāẓī* to participate in the late-colonial scramble for population data while simultaneously resisting the state's authority as the sole producer of such data.

In addition to expanding to the record's list of information pertaining to the *nikāḥ's* time and place of occurrence, and dividing the information about the individuals involved into thirteen separate data points, the new register arrangement introduced in 1915 also included space for the addition of the participating parties' signatures or fingertip impressions.[173] Presumably, this addition was meant to strengthen the record's accuracy and authenticity by

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[171] On the legacy of census, see Ram Bhagat, "Census and Caste Enumeration: British Legacy and Contemporary Practice in India," *Genus* LXII, no. 2 (n.d.): 119–35; Kenneth W. Jones, "Religious Identity and the Indian Census," in *The Census in British India: New Perspectives*, ed. N. Gerald Barrier (New Delhi: Manohar, 1981), 73–102; Bernard S Cohn, "The Census, Social Structure and Objectification in South Asia," in *An Anthropologist among the Historians*, ed. Bernard S. Cohn (New Delhi: Oxford University Press, 1987); Gloria Goodwin Raheja, "Caste, Colonialism, and the Speech of the Colonized: Entextualization and Disciplinary Control in India," *American Ethnologist* 23, no. 3 (August 1996): 494–513.

[172] On the history of the passport in British India, see Nile Green, "The Hajj as Its Own Undoing: Infrastructure and Integration on the Muslim Journey to Mecca," *Past & Present* 226, no. 1 (February 1, 2015): 193–226. doi: 10.1093/pastj/gtu041; Prem Poddar, "Passports, Empire, Subjecthood," in *Empire and After: Englishness in Postcolonial Perspective*, ed. Graham MacPhee and Prem Poddar (New York: Berghahn Books, 2007): 73–86; Radhika Singha,"The Great War and a 'Proper' Passport for the Colony: Border-Crossing in British India, c.1882–1922," *Indian Economic & Social History Review* 50, no. 3 (July 1, 2013): 289–315. doi:10.1177/0019464613494621.

[173] See Image 4.3. The discussion of the finger-tip impression and its use in forensic science follows Chandak Sengoopta's *Imprint of the Raj: How Fingerprinting Was Born in Colonial India* (London: Pan, 2003).

returning to the earlier practice of having participants and witnesses sign and seal their documents.[174] This addition resembles older forms of documentary practice but recasts them in a modern, scientific light.[175] The signature or thumb-tip impression added to these records does not carry the same authority as earlier forms of attestation. Here, the signatory is not a voluntary participant documenting his approval of the transaction with a sign. Rather, the signature or thumb-print here removes the registrant of his agentive power and uses biology as a sign of his legal authority.[176] Compared to a signature, which allows the registrant to craft an expression of his identity, the thumb-tip impression confirms a registrant's presence at the ceremony through the physical impression his body makes on the page.[177] If the attachment of multiple, layered signatures on a single administrative file is a form of bureaucratic evasion, following Matthew Hull's formulation, then the thumb-tip impression affixed to these records works in another way to detach the signer from what is being signed.[178] It marks the individual's presence at the ceremony but only to the extent that his being can be catalogued and indexed in the register.

The addition of the finger- or thumb-tip impression to these documents thus added another layer of objectification to the process of registration. If signatures convey authority,

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[174] This addition reflects developments in criminal investigation and police intelligence at this time. See below for further discussion.

[175] See Messick, *Calligraphic State*, 222–30.

[176] With the addition of the thumb-tip impression, the document's forensic function comes to the fore. For a discussion of the signature and its paradoxes, see Jane Caplan, "Illegibility: Reading and Insecurity in History, Law and Government," *History Workshop Journal* 68, no. 1 (September 21, 2009): 99–121, doi:10.1093/hwj/dbp012; and Veena Das, "Signature of the State: The Paradox of Illegibility," in *Anthropology in the Margins of the State*, ed. Veena Das and Deborah Poole (Santa Fe: School of American Research Press, 2004), 225–252. On the "forensic" function of documentation, see also, Carlo Ginzburg, "Clues: Roots of an Evidential Paradigm," in *Clues, Myths, and the Historical Method*, tran. John and Anne C. Tedeschi, 96–125 (Baltimore: Johns Hopkins University Press, 1989); and Raman, *Document Raj*, 54–55.

[177] On the semiotics of the signature and the problem of entextualization, see Derrida's essay "Signature Event Context" in Jacques Derrida, *Limited Inc* (Evanston, IL: Northwestern University Press, 1988), 1–23.

[178] Matthew S. Hull,"The File: Agency, Authority, and Autography in an Islamabad Bureaucracy," *Language & Communication* 23, no. 3–4 (2003): 287–314.

agency, and individuality, then fingerprints strip registrants of that literate agency and call upon the physicality of their bodies to execute the register's contractual terms.[179] Following the discovery of the fingerprint's unique patterning, it became a part of forensic investigation, which encouraged its incorporation into other government papers, contracts, and legal documents.[180] More than signatures—which could be faulty, forged, or impossible for illiterate registrant's to make—fingerprints could not be fabricated. Thus, as the science of taking and reading finger-tip impressions became more common within police departments across the empire, the use and interpretation of finger-tip impressions was also made its way into other types of bureaucratic record-keeping.[181] This anthropometric technology even gained currency in the princely state, as members of the Ecclesiastical Department in the princely state of Hyderabad began to consider the benefits of affixing thumb impressions to deeds of marriage.[182] In the first decades of the twentieth century, then, the finger-tip impressions decorated all forms of paperwork, from passports and identity cards to criminal records and marriage contracts.[183] Records kept by the

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[179] In South Asia, the finger- or thumb-tip impression often replaces the signature for illiterate registrants. While granting them legal identity, such allowances, and the reliance on biometric markers, also relieve the state of any pressure to enable these registrants to read the very documents onto which their lives and identities have been inscribed. The finger-tip impression necessarily implies inequality between the registrant and the form of registration.

[180] Though many consider the finger- or thumb-tip impression as the default signature for illiterate persons, the finger- or thumb-tip impression was a modern invention. Earlier documents show semi-literate individuals appending squiggles, lines, and decorative signs to documents in place of the signature. These practices are reminiscent of the ceremonial touching of the pen that obtained in land settlements involving Native Americans in the Upper Midwest and Plains and also reflected the sate's transition toward managing individual subjects as bodies. On "touching the pen," see, Raymond J. DeMallie, "Touching the Pen: Plains Indian Treaty Councils in Ethnohistorical Perspective," in *Ethnicity on the Great Plains*, ed. Frederick C. Luebcke (Lincoln, NE: University of Nebraska Press, 1980), 38–53.

[181] There were central offices for reading and analyzing fingerprints, but regional branches of the police also received training. See, e.g., MSA, Judicial Department Proceedings, Vol. 114 of 1900.

[182] As part of this measure, *nā'ib qāzī*s received explicit training in the art of capturing finger-tip impressions from the Anthropometry Branch of the office of the Director-General of District Police. (APSA, Administrative Report for 1334 F.; see also Chapter Six below.)

[183] Sengoopta, *Imprint of the Raj*.

*qāẓī*s of Meerut were no exception to this pattern of imprinting biometric data on paper documents, rather than relying on signatures. This transition from collaborative information-gathering to extractive indexing parallels the larger colonial knowledge-production project, but as with all technologies of authenticity, the thumb-tip impression was not a foolproof means for certifying documents.[184] It is unclear from these records at least, whether *qāẓī*s ever called upon these thumb-tip impressions to verify their records later, but the addition of the thumb-tip impression certainly changed their sentiment from one of marital affection to one of forensic domination.

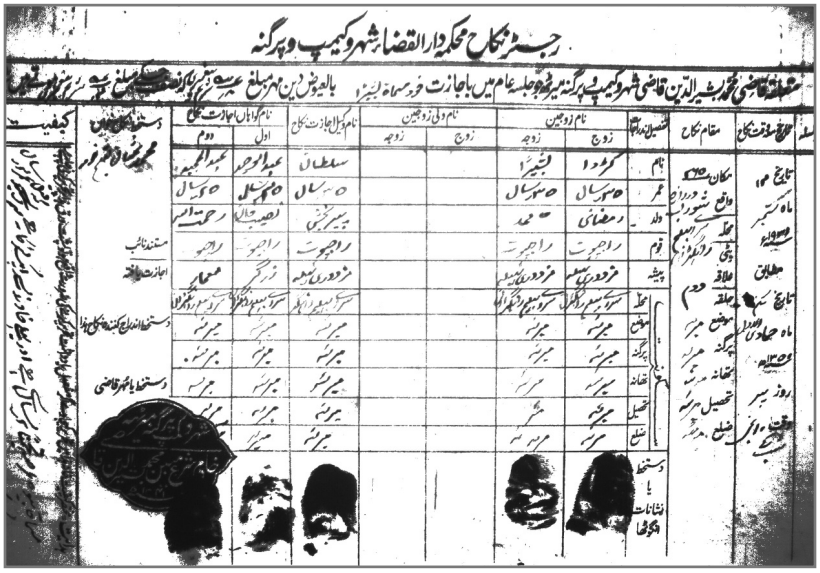

Image 4.3: Detailed register layout from in Meerut.

The registers of Muslim marriages from Meerut retained this complex grid-like form up to the 1980s, when access to the records ends. Over the years, successive generations of *qāẓī*s and their assistants introduced subtle changes to individual sets of registers, but the overall form

[184] In one case, a man looking to charge another with adultery swore the thumb-tip impression affixed to the *ṭalāq-nāma* his wife produced was not his; the other witnesses to the deed were dead and could not testify to support (or to refute) him, nor could he otherwise disprove the deed's authority. He did not win this argument. (NAI, Central India Agency, 19 Feb. 1910, No. 144.)

remained remarkably consistent. In the 1920s, for instance, the blank space intended for the *qāẕī*'s signature was filled with a printed copy of his seal.[185] The oblong figure with scalloped edges thus read, "*k̲h̲ādim-i shar'ī-yi matīn* Muḥammad Bashīr-ud-dīn, *Qāẕī-yi shahr ō kaimp ō parganah-i Mēruṭh*," with white letters on a black background.[186] Also around this time, the press hired to print the *qāẕī*'s notebooks, the Nishkām Press of Meerut, began to include its name at the bottom of the page.[187] The practice of having the press name—along with the form number—printed at the bottom of the page was already a common practice for government papers. Adding this detail to the *qāẕī*'s registers makes these registers even more similar to other government forms, but at the same time gestures toward the role of private trade in the production and reproduction of these registers.[188]

Over the course of the nineteenth and twentieth centuries, the *qāẕī* of Meerut and his *nā'ib*s filled several hundred notebooks with marriages recorded under their supervision.[189] These

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[185] See Image 4.3.

[186] TNA, Family History Centre, Microfilm Reel No. 1307224, Vol. 51 (19 April 1920–2 March 1921).

[187] The Nishkām Press appears to be in business today, though I have no evidence about their involvement in the printing of these registers. Later versions of the register do include an announcement outlining the *qāẕī*'s legal authority to perform and record marriages.

[188] For further consideration of the parallels between private business and public governmental bureaucracies, see Chapter Six.

[189] After the Act's implementation, there were only a handful of attempts to report on the working of the Act, many of which decried the Act as a failure on the basis of its failure to record marriages compulsively. As the statement summarized, the *qāẕī*s in Bengal recorded only 7,252 ceremonies in the year 1886–7, "which was the smallest number recorded to date." Placing this figure in perspective, the statement continued, "It is nevertheless no benefit that within the last 11 years 94,707 ceremonies should have been registered in 14 selected districts in Bengal, advancing the peace and security of twice that number of households? Relatively speaking the boon may be small, but absolutely the number is by no means insignificant. And if this good is obtained without any burden upon the public funds, and without in any way affecting the interests of the public peace and prosperity, why should the opportunity be given up? If more good can be done by the same innocuous method, by all means let it be brought about. But to my humble apprehension [is that] it is not at all a wise policy to give up this certain benefit and embark upon another course which, whilst promising better results in this direction, is most certainly calculated to produce greater evils and hardships in other directions." (UPSA: Proceedings, Judicial (Civil) Department, SL. no. 10, Box no. 6B / File No. 245B, Legislation to provide for the registration of certain domestic events in the Muḥammadan and Hindu families.)

records provide extensive information about the lives of Muslims living in Meerut, as well as the history of marriage across the colonial and post-colonial periods. What is interesting about these records in the context of late-colonial bureaucracy is the relative durability of the form and the consistency of the records across a period of significant social, legal, and political change. Despite changes in government, the introduction of new legislation relative to Muslim marriages and divorces, and the end of British rule in South Asia, the *qāẓī* of Meerut's records remain relatively unchanged. Such consistency in the execution of the registers points to the enduring legacy of the bureaucratic measures introduced in the late-colonial period. Regularity, however, is not universally synonymous with authenticity or authority. The final section of this chapter turns to the contents of these registers in order to understand how elements of accuracy and accountability intersected with the *qāẓī*'s authority to maintain these registers.

V. The Making of a Marital Fact

By expanding the documentary sophistication of their records, *qāẓī*s appointed under Act XII of 1880 contributed to the late-colonial knowledge-production project, gathering, compiling, collating, and preserving information about local populations with the understanding that such information would help to order, organize, and reform local society. Admittedly, this project remained incomplete not only in the context of the *qāẓī*'s registers of Muslims marriages but in the larger context of colonial record-keeping and social control as well. The *qāẓī*'s register contributed to this larger history by recording marriages according to the terms and categories of state surveillance, but by producing and maintaining these records independently, outside of the main offices of government record-keeping and administrative control, *qāẓī*s like those employed in Meerut also resisted the documentary authority of the colonial state. That is, by registering

marital facts under their own, autonomous authority, *qāẓī*s cast doubt upon the very accuracy and authority of these and other types of records, which allowed the *qāẓī*'s register to travel beyond the confines of Muslim marriage to address other forms of documentary fact-making and truth production in the context of domestic, commercial, and economic relations more broadly. The final two sections of this chapter consider these documentary entanglements first by considering the register's role in the production of individual identities and the recognition of marital "facts" and then by considering the register as an instrument for the creation of legal subjectivities in contradistinction to the objectifying tendencies of the register's enumerative technological capacity.

Even, or perhaps especially, in the context of financial records, facts are abstractions.[190] What account books quantify has little relation to what actually exists, but in the context of the *qāẓī*'s marriage register, the question of fact is also one of origin: Does the marital record make the marriage a "fact" or does the register simply record a "fact" that already exists? If the latter, then the register need not concern itself with the most minute details, as the record will not produce but will simply record an occurrence for which its proof of existence lies elsewhere. If the former, however, the register must take considerable care in recording the necessary details with precision. Error in the production of the record would, in turn, produce a different legal "fact". In this manner, the written product would not simply represent the relationship created by

[190] The idea of the "marital fact" draws upon Mary Poovey's discussion of accountancy and fact-making in the context of financial records. See Mary Poovey, *A History of the Modern Fact*; and Poovey, "The Limits of the Universal Knowledge Project: British India and the East Indiamen," *Critical Inquiry* 31, no. 1 (2004): 183–202, doi: 10.1086/427307. On the history of double-entry book-keeping more generally, see Basil Yamey, "Some Seventeenth and Eighteenth Century Double-Entry Ledgers," *The Accounting Review* 34, no. 4 (1959): 534–46; Geoffrey A. Lee, "The Coming of the Age of Double Entry: The Giovanni Farolfi Ledger of 1299–1300," *The Accounting Historians Journal* 4, no. 2 (1977): 79–95.

the *nikāḥ* but would constitute the very existence of that *nikāḥ*.[191] As the document of government record, then, the *qāẓī*'s register created marriages, marital facts, and legal identities as much as it recorded them.

In these ways, then, the register's constitutive properties placed it in line with the project of colonial record keeping, especially to the extent that such record-keeping claimed to represent multiple dimensions of human existence in two-dimensional documents that were transferrable, reproducible, and manageable. Along these lines, bureaucratic records were transferrable in that they could go from one office to another without losing their relevance; they were not dependent upon the record-keeper's interpretation but where legible to other readers as well, nor was their validity dependent upon pieces of information located outside the bounds of the register. Each entry contained all of the information necessary to make that particular entry valid. Entries in the *qāẓī*'s register followed these criteria in that (1) once written, they could be copied again and (2) each *nikāḥ* event would produce a singular record, regardless of the record-keeper's inclinations or predilections.[192] By extension, then, and according to the scientific principles of bureaucratic record-keeping, each *nikāḥ* "event" would produce a unique register entry. Imagining each *nikāḥ* as a chemical reaction, conducted on a particular day, involving specified amounts of two chemicals (i.e., the *zauj* and *zauja*), under particular circumstances (e.g., with the right *valī*, *vakīl*, *gawāhān*, and *nikāḥ khwān*), the resulting register entry (i.e., the product of that reaction) would be the same regardless of who performed the particular test. Reproducibility was not the only standard for bureaucratic organization but it certainly contributed to the scientific

[191] For consideration of a similar problem with documentation, see, e.g., Dipesh Chakrabarty, "Of Conditions and Culture," in Dipesh Chakrabarty, The "Working Class" in a Pre-Capitalist Culture: A Study of the Jute Workers of Calcutta, 1890-1940 (Ph.D Dissertation, Australian National University, [Canberra], 1983), 95–171.

[192] Abstracted data could also be transported to other departments or to the colonial courts for analysis and debate.

specificity of bureaucratic governance.[193]

In addition to being transferable and reproducible, the *qāẓī*'s records also turned the messiness of domestic relations and the preponderance of Muslim marriages into manageable "information".[194] By nature of their discrete, categorical construction, the *qāẓī*'s marriage registers turned complicated social relations into manageable sets of data, abstracted from the uncertainty and multiplicity of human experience.[195] As the format for each entry became more complex, however, it also rendered each entry more abstract. From an entry's origin in personal name and paternity, to the fragmented puzzle of name, age, paternity, community, profession, neighborhood, address, and house number found in later versions, the addition of more (sets of) detail in later iterations made each entry less concrete, even as it became seemingly more precise. That is, the proliferation of data points rendered the portrait it provided less realistic, disaggregating people from their everyday lives. Yet by including a growing list of personal information, the register's format also reinforced the idea of government oversight it was designed to represent. In so doing, the register produced quantifiable data about Muslims

[193] As abstractions, as "facts" produced from messy realities, policy makers subjected registered data to scientific scrutiny. The *qāẓī*'s register thus prompts a return to the act of registration and a consideration of the lives and circumstances it encoded to interrogate the relationship between the theory of governmentality and the social history of Muslim marriage and bureaucratic governance. On governmentality—or the science of government—see Michel Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality, with Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 87–104; David Scott, "Colonial Governmentality," *Social Text*, no. 43 (1995): 191–220. doi:10.2307/466631; and James C. Scott, *Seeing like a State.*

[194] For an introduction to the production of "information" see Ronald E. Day, *The Modern Invention of Information: Discourse, History, and Power* (Carbondale: Southern Illinois University Press, 2001).

[195] In addition to the examples for British Indian mentioned above, the United States also adopted similar policies toward gathering and analyzing population data around this time. The U.S. Census Bureau became a permanent office around 1902 and by 1929, every U.S. state required couples to apply for a marriage license.

marriages that the colonial state could see, quantify, and govern.[196] Under this rubric, the government could not only observe but also manage the registers *qāẓī*s produced and by extension, the population of marriage registrants they contained. Yet this is not what happened.

Despite the clear objective for producing and accumulating of (quantifiable) information, only a handful of the registers' entries are complete in the sense that they include information in each and every available box. In many instances, entire columns are blank, such as the column for the *nām-i valī-i zauj* (name of the bridegroom's guardian). The record from December 29, 1915 for the marriage between the thirty-five year-old Niyāz Muḥammad K̲h̲ān and the thirty-year-old Kulṣūm there were no details under the heading for *valī-i zaujain*, nor was there any in the column for the *vakīl*.[197] Yet these absences were not signs of the entry's invalidity. Instead of providing these details, the *qāẓī* entered a note in the left-most margin under the *kaifīyat* heading indicating that at the time of her *nikāḥ* to Niyāz Muḥammad, Kulṣūm showed the *nikāḥ k̲h̲wān* her *ṭalāq-nāma* written on August 22, 1915 on stamp paper valued at eight annas with the seal from her husband's ring and the signatures of two witnesses, Sundar Laʿl and Ibrahīm K̲h̲ān.[198] Owing to the evidence provided in this document and supported by witness testimony, the *nikāḥ k̲h̲wān* deemed Kulṣūm eligible to marry Niyāz Muḥammad. In this particular instance, rather than rely on assurances from their guardian/s and agent (*valī* and *vakīl*), the couple presented documentary evidence that Kulṣūm's husband had lawfully terminated her previous marriage,

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[196] The register's inability to produce as much information as colonial officials originally hoped sparked some of the criticisms cited in reports produced a decade after Act XII's introduction and the cost-benefit analysis presented in these complaints further underscores the state's interest in information as the currency of (good?) governance. See UPSA: Proceedings, Judicial (Civil) Department, SL. no. 10, Box no. 6B, File No. 245B, Legislation to provide for the registration of certain domestic events in the Muḥammadan and Hindu families.

[197] TNA, Family History Centre, Microfilm Reel No. 1307222, Vol. 19 (29 October 1915–14 April 1916), Entry No. 13.

[198] Ibid.

leaving her free to marry again.[199] For this entry, then, the *qāẓī* recorded evidence from supplementary documentation to account for the fifty-six boxes he left empty in the register. Thus, by recording the presence and confirming the legitimacy of other documents, the *qāẓī*'s register participated in the larger culture of late-colonial legal documentation and also documented the existence and legal validity of the other documentary forms that entered his office. Such documentary history was essential when litigants took their cases to court.[200]

In other instances, the entry itself would provide all of the all of the information that was necessary. For an entry recorded on December 31, 1915, the *qāẓī* completed all of the boxes on his form—including those for the names of the bride's and bridegroom's guardians—to record the *nikāḥ* between ʿAli Aḥmad and Ḥamīd-un-nisāʾ.[201] ʿAlī Aḥmad, who was only fifteen at the time of the marriage and still in school (*zīr-i taʿlīm*) had his father's support in the ceremony.[202] Likewise, Ḥamīd-un-nisāʾ, who was thirteen at the time of her marriage, received support from her father, ʿAbdul Waḥīd.[203] Guardianship, and its proper attestation, was tied to age as well as to sex. Yet the *qāẓī*'s register of Muslim marriages could not record these details independent of other documentary forms; complete entries required references to other documents, deeds, and past legal events.

Looking at the records more broadly, of the first thirty-one entries from the first extant register of 1881, the bride was represented by a guardian in twenty-seven instances (i.e., eighty-

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[199] In other instances, the *qāẓī* noted the bride's ability to represent herself, as in the example from Bharuch cited above.

[200] See below for further evidence of this practice.

[201] Ibid., Entry No. 21.

[202] Ibid.

[203] Ibid.

seven percent of the ceremonies) while the groom's guardian was present in only eight instances (i.e., twenty-six percent). Of the twenty-seven guardians found in these records, twenty-four of them where fathers of the bride; four of them were brothers to the bride (generally indicated as *ḥaqīqī*); one was the bride's mother; and a handful of others (four) were either other relations or of unspecified relation to the bride.[204] These records do not mention the participant's ages, so it is difficult to reconcile the guardian's presence according to age.[205] By way of comparison, in another set of twenty-five entries from October 1915 to January 1916, the bride's guardian is mentioned in only twelve of the entries (i.e., forty-eight percent), and the groom has a *valī* listed in only four entries (i.e., sixteen percent).[206] As these statistics further illustrate, few of the *qāẓī*'s records made use of all of the boxes available on the form. The authenticity of a particular record, then, lay in the completion of all of the *necessary* boxes on the form, not all of the *possible* spaces.

Determining which boxes were necessary and to which degree of detail they required completion was the *qāẓī*'s responsibility, and the extent to which he completed the entries reflected—perhaps inversely—the complexity of the circumstances. For instance, it was not uncommon for entire columns to remain unused for many of the entires, including columns relative to items of personal choice, such as *mahr* amount and kind. In the simpler grid format found in the registers from 1881 to 1915, the *qāẓī* commonly entered information into only one

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[204] TNA, Family History Centre, Microfilm Reel No. 1307221, Vol. 1 (17 Jan. 1881–27 August 1881), Entry Nos. 1–31.

[205] Ibid.

[206] TNA, Family History Centre, Microfilm Reel No. 1307222, Vol. 19 (29 October 1915–14 April 1916), Entry Nos. 1–25. It should be noted, however, that the new register layout employed a header that specified under whose authority, by whose permission the marriage took place and the person whose name was written in this blank space was often the girl's father, though the columns dedicated to this person remained blank.

of the boxes for *mahr.* Incompleteness here indicated the couple's (or their guardians') preference for immediate or deferred payment. If the couple agreed to the payment of deferred *mahr* (*marh-i muwajjal*), then the *qāẓī* would leave the box for immediate *mahr* (*mahr-i muʿajjal*) empty. Likewise, if the couple agreed to the payment of a particular amount of *mahr-i muʿajjal*, then the accompanying box tied to deferred *mahr* would remain empty, as was the case in many of the marriages recorded here.[207] The new register layout introduced in 1915 alleviated this apparent redundancy by moving the statement regarding *mahr* to the document's heading where *qāẓī* could write out the entire amount followed by the amount corresponding to its half (a practice common to most forms of documentation) as part of the record's upper-most statement.[208] By employing these devices, the register's layout accounted for the *possibility* rather than the *necessity* of certain pieces of information. Relying on the qāẓī's expertise in completing the register entry required placing one's trust in the *qāẓī*'s knowledge and marked the limits of the *qāẓī*'s transformation as a bureaucrat.

Even with the new register design, certain boxes remained empty in most of the records. Many of these boxes were connected to location. Because over half of the details requested from each individual pertained to location, many of these particular details were redundant or unnecessary. For marriages between two local residents, the *qāẓī* felt no compunction to identify the *ḥalqa* (mail circle), *mauzaʿ*, *pargana*, *thāna*, *teḥsīl*, and *ẓilaʿ* in succession. In most of these cases, *maḥalla* (quarter, neighborhood) and district were sufficient, and the registrar left the other boxes

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[207] Disputes over *mahr* amounts were the most common cause for the *qāẓī*'s register to enter the civil courts. In many of these cases, questions over family inheritance were at stake, not questions about the terms of divorce, though dower also played a role in the court's decision-making. (See, e.g., Sharafi, "The semi-autonomous judge in colonial India.")

[208] Along with the name of the person who granted permission for the *nikāḥ* to take place, *mahr* amount was the only other detail provided in the upper-most heading.

empty. In other instances, the registrar scribbled the same place name in multiple boxes: *Pargana*: Meerut; *Thāna*: Meerut; *Teḥsīl*: Meerut; *Ẓila'*: Meerut.[209] For individuals who came from outside the city, who might be less familiar to the *qāẓī* (and who might be more likely to draw on the *qāẓī*'s records for nefarious purposes), the *qāẓī* might insist on including additional details within the entry, such as detailed information about the neighborhood or name of the specific house of residence, rather than simply referring to the city as a whole.[210] Employing his judgment this way, the *qāẓī* was responsible for determining and deciding how many and to what degree he needed to complete the boxes associated with each entry. In this respect, the *qāẓī* was an extension of the colonial state's systems of surveillance—seeking and recording pieces of information according to the government's interest in certain codes and understandings of identity—but as a member of the local community, adequately familiar with local place names and points of reference, he could also record an individual's participation in the ceremony without drilling him/her for district and place-name details *ad nauseam*. Though proper records required complete location information, for most marriages, these details were known, even fi they were not documented. The selective completion of the register entry highlights the *qāẓī*'s authority as record-keeper as well as the record's connection to other documentary, social, and legal contexts.

This discussion about the relative degrees of completion across multiple entries raises the question of the register's relationship to the construction of information and identity. Scholars tend to credit other documentary products, like the census or identification cards, with the

[209] TNA, Family History Centre, Microfilm Reel No. 1307222, Vol. 19 (29 October 1915–14 April 1916), Entry No. 4, 31 October 1915.

[210] A similar practice appeared in colonial records with the use of "ditto" or the em-dash to avoid repeating terms.

construction of communal identities and caste consciousness.[211] By requesting information such as *qaum* and *pēsha*, the *qāẓī*'s register employed a similar vocabulary of categorization, but at the same time, the register was open to self-identification and the development of new categories.[212] After surveying successive sets of records, it remains unclear whether the register constructed categories of community and profession or whether it simply reflected information participants reported themselves.[213] A survey of some of the responses might provide some means for answering this question. Looking first to the concept of community, a subset of records from October 1915 to January 1916 lists Paṭhān, Shaikẖ, Sayyid, Muslim Rajpūt, Mugẖal, Water-carrier (*suqqa*), and Weaver (*nūrbāf*) under the *qaum* category[214] Not surprisingly, Shaikẖ and Pathan are the most numerous, followed by Sayyid and Mugẖal. Other communities have one or two representatives and a larger sample set would add additional communities to the list. Furthermore, with the exception of those identified as *suqqa* and *nūrbāf*, all of the groups

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[211] On the legacy of the census in relation to the study of religious community and caste, see, e.g., Arjun Appadurai, "Number in the Colonial Imagination," in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, edited by Carol Appadurai Breckenridge and Peter van der Veer, 314–39. South Asia Seminar Series. (Philadelphia: University of Pennsylvania Press, 1993); N. Gerald Barrier, "Introduction," in *The Census in British India: New Perspectives*, edited by N. Gerald Barrier, v – xiv (New Delhi: Manohar, 1981); Ram Bhagat, "Census and Caste Enumeration: British Legacy and Contemporary Practice in India," *Genus LXII*, no. 2 (n.d.): 119–35; Bernard S. Cohn, "The Census, Social Structure and Objectification in South Asia," in *An Anthropologist among the Historians*, edited by Bernard S. Cohn (New Delhi: Oxford University Press, 1987); Frank F. Conlon,"The Census of India as a Source for the Historical Study of Religion and Caste," in *The Census in British India: New Perspectives*, 103–17; Satish Deshpande, and Nandini Sundar, "Caste and the Census: Implications for Society and the Social Sciences," *Economic and Political Weekly* 33, no. 32 (August 8, 1998): 2157–59; Nicholas B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton, N.J.: Princeton University Press, 2001); Kenneth Jones,"Religious Identity and the Indian Census," in *The Census in British India: New Perspectives*, edited by N. Gerald Barrier, 73–102 (New Delhi: Manohar, 1981); Ravivarma Kumar, "Caste Enumeration in Census: Constitutional Imperative," *Economic and Political Weekly* 35, no. 35/36 (September 26, 2000): 3100–3102; Norbert Peabody, "Cents, Sense, Census: Human Inventories in Late Precolonial and Early Colonial India," *Comparative Studies in Society and History* 43, no. 04 (2001): 819–50; and Gloria Goodwin Raheja, "Caste, Colonialism, and the Speech of the Colonized: Entextualization and Disciplinary Control in India," *American Ethnologist* 23, no. 3 (August 1996): 494–513

[212] For an example, see the discussion of the categories "pensioner" and "under tutelage" below.

[213] Indeed, some of the categories (e.g., shaikẖ, sayyid) are written so cursorily as to suggest that they did not really matter.

[214] TNA, Family History Centre, Microfilm Reel No. 1307222, Vol. 19 (29 October 1915–14 April 1916), Entry Nos. 1–25.

mentioned here are also enumerated in the district gazetteer and are categories one might expect to find in records pertaining to Muslim marriages.[215]

A more amorphous set of possibilities emerges under the heading of "profession". For this same set of records, the professions listed include *mulāzimat*, *naukarī, zamīn-dārī*, *dūkān-dārī* (e.g., *dūkān-dārī-i pān*, *dūkān-dārī-i ʿaṃbarī)*, *rozgārī*, *k̲haiyāṭī*, *sang-tarāshī*, *naʿl-bandī*, pensioner, *mīwa-farosh*, *zargarī*, *sāqī*, *kāshtkarī*, and *zīr-i taʿlīm.*[216] Not only do these terms suggest a strong and apparent differentiation between the categories of *qaum* and *pēsha,* but they also indicate the amount of variety found within each category. Though a more extensive, longitudinal study could reveal certain patterns of community affiliation and profession, such a survey will have to await a further analysis of the records. Instead, what is useful to note here is the multiplicity of categories each register includes and the use of community as one term among several other pieces of information. In other words, these records employ the categories of state enumeration but resist the urge to group people exclusively according to those terms. The records produce individual, rather than group, community, or even family identities, and this production is evidence in the register's use in civil court.

Whereas answers to the *qaum* question fell into four or five broad categories (Sayyid, Shaik̲h̲, Paṭhān, Mug̲h̲al), participants' professions reflect a much wider range of possiblities. From service (*mulāzimat*, *naukarī*) to ownership (*zamīn-dārī*, *dūkān-dārī*) to arts, crafts, and trades (*k̲haiyāṭī*, *sang-tarāshī*, *naʿl-bandī*), the professions listed in these records span multiple social,

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[215] H.R. Nevill, *Meerut: A Gazetteer, Being Volume IV of the District Gazetteers of the United Provinces of Agra and Oudh* (Allahabad: Government Press, United Provinces, 1904): 83–88. There are references to populations of "weavers" and to "water-carriers" in Meerut, but "nūrbāf" and "suqqa" are not mentioned as significant groups along with the others.

[216] TNA, Family History Centre, Microfilm Reel No. 1307222, Vol. 19 (29 October 1915–14 April 1916), Entry Nos. 1–25.

economic, and educational levels. Of particular note might be the rather novel categories of "pensioner" and "under tutelage" (*zīr-i ta'līm*), the former representing a father who gave two of his daughters in marriage in succession and the latter being applied to a young groom entering into an agreement with a similarly young bride. These terms demonstrate growing flexibility in the interpretation of this term and reveal the emergence of a new understanding of profession as *what* one *does* rather than *who* one *is*.[217] While some of these answers are rather specific with reference to age and station in life (that is, with someone who is under tutelage being pre-professional and a pensioner being post-professional), other answers are generically vague: *Mulāzimat*, *naukarī*, and *rōzgārī* all refer to some form of labor or service but the generic response leaves the nature and location of the employment unspecified. Again, a longitudinal survey of the responses listed under this heading might provide a more satisfying understanding of the types of people who made use of the *qāẓī*'s register as well as of their understanding of the categories of "*qaum*" and "*pēsha*" over time, but from the examples provided in this small subset of responses it is interesting to note the differentiation between *qaum* and *pesha* as identificatory categories as well as to note the range of possible responses under the *pēsha* heading, ones that might reflect a modern understanding of flexibility in employment over hardened ideas of identity. All of these interpretations, however, rely upon an understanding of the registers as reflective rather than constitutive of identity, following the prevailing interpretation of the All-India Census as an enumerative technology that produced the categories it recorded. If this distinction holds, then there must be further examination of the register's agentive potential—i.e., its potential to

[217] Indeed court cases that called upon the register rarely cited community as evidence of economic or social standing. Witness testimony and family reputation provided these details, leaving open the ultimate value of including these details in the register.

produce the very identities it inscribes. Leaving aside the possibility of deliberately or accidentally incomplete records (such as the fifth entry recorded in the first extant register from Meerut), the vignette that opened this chapter thus draws attention to the fact that in producing putatively authoritative records, the *qāẓī*'s register could also be complicit in the construction of fabrication.[218]

Accordingly, if identification by way of community was a key element in the register's production of truth, then it was also possible to use the register to construct, support, or build one's position in society by way of fashioning one's legal identity. In the *qāẓī*'s register (as perhaps in the census as well) everyone could be a Shaikẖ or a Sayyid. What the *qāẓī* wrote in the register had the potential to become truth, even if the specific facts were not already in evidence. The register could also confirm, affirm, or invent one's claims while simultaneously glossing over or erasing unpalatable pieces of information. Indebtedness, ill-health, precarious employment, landlessness, itinerancy, even criminality and lawlessness could be erased from one's written record by the *qāẓī*'s decision (or willingness) to overlook certain pieces of information in the writing of the record.[219] At the same time, the record could mark existing family relations, document connections between siblings, annotate exigent circumstances leading to marriage, or contribute to complications that might arise from the *qāẓī*'s willingness to record one particular union under an incorrect date rather than recognizing the more legitimate union sanctified by family members, as happened in the case involving Shāh Jahān Bēgum and In'ām Allāh Ḵẖān

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[218] This open question speaks to the duplicity of paper Raman highlights. See Bhavani Raman, "The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras," *Comparative Studies in Society and History* 54, no. 2 (2012): 229–50, doi:10.1017/S0010417512000023; and Raman, *Document Raj*.

[219] M. S Hull, "The File: Agency, Authority, and Autography in an Islamabad Bureaucracy," *Language & Communication* 23, no. 3–4 (2003), 296; and Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2012), 116–117.

outlined at the beginning of the chapter. In these and other ways, the *qāẓī* as registrar of marriages recorded facts as much as he produced them, and the uncertainty that arose from this potential cast doubt not only upon the *qāẓī*'s register but upon documentary records more generally.

Unfortunately for our purposes, there is very little opportunity to check the information recorded in the register against other pieces of information that might allow us to judge whether the *qāẓī*'s register excelled in recording or producing facts, but thinking about the *qāẓī*'s registers in relation to the larger project of producing and recording legally admissible information provides an alternative avenue for addressing questions of colonial knowledge production and social change.[220] This method also allows one to trace the filtration of colonial policy into the private lives of hundreds of individuals who went to the *qāẓī* of Meerut and his *nā'ib*s to have their *nikāḥ*s recorded.[221] At a time when the need to prove (or in some cases to disprove) one's relationship produced widespread social fears linked to the growing problems of mobile populations, uncertain identities, unstable social hierarchies, and the possibility for illicit entanglements, the *qāẓī*'s register became an answer for worried social reformers to impose some documentary order on amorphous and indiscernible social groups as well as for segments of the population with less amenable access to other legal instruments (e.g., women) to achieve a modicum of legal certainty. Yet the register's consistently uncertain status meant the project of documentation remained perpetually at odds with the reformers' vision for an orderly society.

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[220] Admittedly the tension between documentary facts and extra-textual realities remains an incomplete project. This chapter attempts to broaden our treatment of documents to understand the social life of registration and its effects on facilitating the first expression of legal identity.

[221] The Meerut records, for instance, span over 700 registers and contain thousands of entries for nearly one hundred years. Registration on this scale was not insignificant.

VI. Registers and Colonial Claims-Making

In this regard, registration like that exemplified in the *qāẓī*'s register, fulfills two purposes. On the one hand, it makes the people seeking registration legible to the registering authority—in this case the *qāẓī*, or by extension the colonial state. Access to such information in turn facilitates the state's ability to govern, rule, control, or contain the recorded population. Mandatory registration of births in the United States around this time, for example, made it easier for the government to restrict and control child labor, through the document of the birth certificate.[222] But the effects of registration are not always so positive. For Native Americans and freed blacks, registration could restrict mobility, limit settlement in certain places, and attenuate one's access to the same rights and privileges granted to white Americans.[223] In British India, the registration of so-called criminal tribes rendered people guilty by association and produced quicker convictions, harsher sentences, and restricted these groups' movements.[224] The registration of Muslim marriages did not have such detrimental effects but it did reify the lines demarcating community. As the nineteenth century progressed, registration became an extension of religio-legal identity. The nebulous multiplicity noted in the registers from Bharuch, for instance, disappears from the registers at Meerut. Partaking in the act of registration became a marker of community membership, one that originated in voluntary compliance but later

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[222] Susan Pearson, "'Age Ought to Be a Fact': The Campaign against Child Labor and the Rise of the Birth Certificate," *Journal of American History* 101 (2015): 1144-1165.

[223] See., e.g., Paul Moreno, "Racial Classifications and Reconstruction Legislation," *The Journal of Southern History* 61, no. 2 (1995): 271-304; and Jerrell H. Shofner, "Custom, Law, and History: The Enduring Influence of Florida's 'Black Code'," *The Florida Historical Quarterly* 55, no. 3 (1977): 277-98; and Lauren L. Fuller, "Alaska Native Claims Settlement Act: Analysis of the Protective Clauses of the Act through a Comparison with the Dawes Act of 1887," *American Indian Law Review* 4, no. 2 (1976): 269–78, doi:10.2307/20067993; Ross R. Cotroneo and Jack Dozier, "A Time of Disintegration: The Coeur d'Alene and the Dawes Act," *The Western Historical Quarterly* 5, no. 4 (1974): 405–19, doi:10.2307/967306.

[224] See, e.g., Radhika Singha, "Punished by Surveillance: Policing 'dangerousness' in Colonial India, 1872–1918," Modern Asian Studies 49, no. 02 (March 2015): 241–69, doi:10.1017/S0026749X13000462; Susan Abraham, "Steal or I'll Call You a Thief: 'Criminal' Tribes of India," *Economic and Political Weekly* 34, no. 27 (1999): 1751–53; Andrew J. Major, "State and Criminal Tribes in Colonial Punjab: Surveillance, Control and Reclamation of the 'Dangerous Classes,'" *Modern Asian Studies* 33, no. 3 (1999): 657–88; Birinder Pal Singh, "Ex-Criminal Tribes of Punjab," *Economic and Political Weekly* 43, no. 51 (2008): 58–65; Rachel J. Tolen, "Colonizing and Transforming the Criminal Tribesman: The Salvation Army in British India," *American Ethnologist* 18, no. 1 (1991): 106–25; and Anand A. Yang, *Crime and Criminality in British India* (Tucson, Ariz: University of Arizona, 1985).

became an object of legal status. Such markers of identity would become increasingly prominent—and important—as the public sphere became a space for legal debate and display, but at the same time, the register did more than simply mark religious status.[225]

If one effect of registration was state control, then on the other hand, registration also provided registrants with a documentary basis for making legal claims as members of the political body. Registration in this context confers status upon legal individuals such that the ability to render one's marriage legal through the process of registration gives one the power to stand before the state and to make claims for recognition, compensation, or access to justice.[226] in this way, the *qāẓī*'s register contributed to the construction of legal identities individuals could leverage to make claims in court. This status-making potential is evident in more than one court case. For many Muslims, registration prevented the need to go to court. For others, however, the register provided a means for establishing legal status and subjectivity in court, and many Muslim litigants—especially women—used evidence documented in the *qāẓī*'s register to make claims for what they were owed under the terms of the marriage contracts.[227] Though the colonial courts were not uniformly willing to accept the *qāẓī*'s register as written documentation (not withstanding the legislative debates preceding the Kazis' Act, which made documentation the cornerstone of the *qāẓī*'s administrative usefulness). The fact of registration gave litigants a

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[225] I discuss this development in Chapter Five.

[226] This argument contributes to on-going considerations of law as a tool of the state or a weapon of the weak. The Government's failure to surveil the *qāẓī*'s registers after creating legislation for this purpose, I contend, allowed the register to eschew some of its former and contribute to its use at the latter. For a consideration of these issues, see Upendra Baxi, "'The State's Emissary': The Place of Law in Subaltern Studies," in *Subaltern Studies: Writings on South Asian History and Society*, ed. Partha Chatterjee and Gyanendra Pandey, vol. VII (Delhi: Oxford University Press, 1992), 247–64; E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane, 1975); Jonathan Saha, "A Mockery of Justice? Colonial Law, the Everyday State and Village Politics in the Burma Delta, c.1890–1910," *Past & Present* 217, no. 1 (November 1, 2012): 187–212, doi:10.1093/pastj/gts019.

[227] For a similar perspective on women's role as legal subjects, see D. Ghosh, "Legal and Liberal Subjects: Women's Crimes in Early Colonial India," *Journal of Women's History* 22, no. 2 (2010): 153–156.

baseline from which to pursue their claims in court. In the context of late-colonial society, this is how the *qāẓī*'s fact-making aided the extension of colonial power at the local level and reflected the extension of legal consciousness into the *mufaṣṣal*.[228] Following this interpretation, the register of marriages was a form of documentary status-making and legal self-fashioning that turned the amalgam of personal information into a set of recognizable facts and identities, complete with additional documentation to certify registrants' complicated legal pasts.[229]

As a form of legal self-fashioning, the *qāẓī*'s register converted individuals into manageable pieces of legal data. Marriage registration thus strengthened the *qāẓī*'s role as an intermediary: between the community he served and the law (i.e., the *qānūn*) of the colonial state.[230] By giving local Muslims the opportunity to record—and by extension to create—their legal pasts, the *qāẓī* provided them with a mode of access to the formal legal system, through the expression of the marital legal rights, socio-legal statuses, and by extension material-legal claims. In this way, the incident involving In'ām Allāh K̲h̲ān and Shāh Jahān Bēgum with which the chapter began is compelling precisely because it demonstrates the *qāẓī*'s potential to disrupt the normal legal order. When the *qāẓī* chose to record the young couple's marriage, despite knowing —or perhaps not knowing—about the other arranged union, he gave them an opportunity to

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[228] On experts and fact-making, see Poovey, *A History of the Modern Fact*, 3–4; also 8–9.

[229] The idea of legal self-fashioning draws upon Stephen Greenblatt's work in Renaissance studies. Stephen Greenblatt, *Renaissance Self-Fashioning* (Chicago: University Of Chicago Press, 2005 [1983]). For an application of these ideas to legal identities, see, e.g., Guyora Binder, "Aesthetic Judgment and Legal Justification," in *Law and Literature Reconsidered*, ed. Austin Sarat (Bingley, UK: Emerald Group Publishing, 2008), 79–112; Jay R. Berkovitz, "The Persona of a Poseq: Law and Self-Fashioning in Seventeenth-Century Ashkenaz," *Modern Judaism - A Journal of Jewish Ideas and Experience* 32, no. 3 (October 1, 2012): 251–69, doi:10.1093/mj/kjs019; Zita Rohr, "Lessons for My Daughter: Self-Fashioning Stateswomanship in the Late Medieval Crown of Aragon," in *Self-Fashioning and Assumptions of Identity in Medieval and Early Modern Iberia*, ed. Larry J Simon et al., vol. 59, The Medieval and Early modern Iberian World (Leiden: Brill, 2015), 46–115.

[230] On "facts" and law, see, e.g., Poovey, *A History of the Modern Fact*, 25–6.

take control of their legal lives.[231] Unfortunately in this instance, the *qāẓī*'s documentary power was subsequently challenged and superseded by the police, but the documentary evidence that perdures stems from the *qāẓī*'s importance in the process of making and establishing legal claims.

Along these lines, the *qāẓī*'s register could and did create legal pasts for the registrants it encountered, by including notes testifying to previous engagements, estrangements, divorces, and deaths relevant to the given record. In many instances, entries attested to the validity, recorded the contents, and re-articulated the meaning of other legal acts written on government stamp paper or issued in other cities.[232] The records noted the deaths of women's former husbands;[233] testified to the occurrence of prior divorces;[234] noted women's conversion to Islam; documented name changes resulting from such acts of conversion;[235] recorded the amount of *mahr* (or dower) to which women were entitled upon divorce; and indicated that in some cases women were to receive immovable property—half a house in one particular case—in lieu of a standard cash payment.[236] Such testimonies placed the *qāẓī*'s register within the web of documentary evidence that formed the bulwark of the colonial legal system's procedural apparatus, and did so in connection with the other responsibilities delegated to him by Act XII of 1880. Testamentary evidence was not only critical to the *qāẓī*'s responsibility for ensuring that he solemnized only legal unions but also allowed his register to participate in a wider range of documentary practices. By accepting and attesting to the presence or existence of other forms of documentary

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[231] TNA, Family History Centre, Microfilm Reel No. 1307222, Vol. 15, Entry dated 31 January 1910.

[232] See, e.g., TNA, Family History Centre, Microfilm Reel No. 1356704, Vol. 119 (10 April 1936–25 September 1936), Entry No. 70.

[233] See, e.g., Ibid., Entry No. 33.

[234] See, e.g., Ibid., Entry Nos. 36, 44, 79.

[235] See., e.g., Ibid., Entry No. 59.

[236] See, e.g., Ibid., Entry No. 42.

evidence, the *qāẓī* resisted the colonial compartmentalization of legal processes. Marriage could not be severed from other forms of attestation and documentation; sales, gifts, endowments, and bequests were all pulled into in the *qāẓī*'s documentary ambit. Proving that women's husbands were, in fact, deceased or that women claiming to be divorced were, in fact, divorced and eligible for re-marriage were critical components of the *qāẓī*'s work. If he could not verify the legitimacy of the union, he could not recognize the marriage. But doing so required drawing upon other forms of statements, deeds, and documents that belonged tother documentary authorities and were otherwise certified by the colonial state. To accept these documents meant to participate in the larger sphere of colonial legal documentation, and by extension colonial law.

Extending this intermediary position, the *qāẓī*'s register not only provided legally recognized and recognizable identities for the parties involved in the unions it preserved, but it also affirmed their legal pasts—noting the termination of older marriages, recording the deaths of former husbands, and testifying to the legitimacy and legality of the present union. Such documented legal pasts (and presents) is precisely what the colonial courts sought when deciding cases, and it is precisely what the Kazis' Act was intended to provide for the poorer classes of Muslims who could not otherwise access the types of legal documentation that could make their lives more secure. Thus, by documenting a woman's legal past,[237] the *qāẓī* not only satisfied his own obligations with respect to the legitimacy of the union but also certified her legal status as

[237] Questions of eligibility tended to revolve around women's marital status. Polygyny and the availability of (male-initiated) *ṭalāq* lessened the constraints surrounding men, and social circumstances in India (and elsewhere!) at this time perhaps made registration a greater benefit to women than to men.

such.[238] In an era of documentary uncertainty and overlap, the *qāẓī*'s register provided some degree of certainty about the authenticity of a particular union and the legal maneuvers leading up to it. Ultimately, the success of the *qāẓī*'s register lay in its ability to establish legal relationships with enough clarity and certainty to render going to court was unnecessary—the way Julie Hardwick and others have described successful notarial acts in European contexts.[239] For some transactions, the *qāẓī*'s register likely produced these effects and prevented claims from entering the courts of law, as the legislators who envisioned the *qāẓī*'s work imagined, but in other instances, that was not the case.

When cases did go to court, proving one's claims and documenting one's entitlements was central to the success of the case, particularly for those involving women requesting payment from husbands. Sample cases will provide some indication of the ways documentary evidence from the *qāẓī* could support these claims in court. In the case of *Hamira Bibi, Amina Bibi & Others vs. Zubaida Bibi & Others*, for instance, the *qāẓī*'s register provided proof of a widow's entitlement to the large dower amount pledged to her at the time of her marriage.[240] Likewise, in *Jaitunbi Fatrubhai vs. Fatrubhai,* a case from Bombay, evidence from the *qāẓī*'s register proved the plaintiff's right to property her husband recently sold to alleviate his personal debts. He had pledged the

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[238] In contradistinction to the Common-law principle of coverture, registration reflected the production and articulation of individual, rather than collective, identities, which marks a departure from prevailing legal practices in Britain and America at this time. Lucy Carroll makes this point clear in her work on gifts to minors. See Carroll, "Definition and Interpretation of Muslim Law in South Asia." On the circulation of coverture in India, see Indrani Chatterjee, "Women, Monastic Commerce, and Coverture in Eastern India 1600–1800 CE," *Modern Asian Studies* 50, no. 1 (January 2016): 175–216, doi:10.1017/S0026749X15000062; Timur Kuran and Anantdeep Singh, "Economic Modernization in Late British India: Hindu-Muslim Differences," *Economic Development and Cultural Change* 61, no. 3 (2013): 503–38, doi:10.1086/669259; Upendra Nath Mitra, *The Law of Limitation and Prescription in British India: Including Easements with an Appendix of Acts, and a Full Commentary of Act 15, 1877* (Calcutta: Calcutta Central Press, 1889), 209; and Sharafi, *Law and Identity in Colonial South Asia*, 127–9.

[239] Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, Pa.: Pennsylvania State University Press, 1998).

[240] Hamira Bibi, Amina Bibi And Ors. vs Zubaida Bibi And Ors. on 1 August, 1916. *Indian Law Reports* 38 Allahabad 581.

property to her, and therefore had no right to its sale. When she sued in court, evidence from the *qāẓī*'s register allowed her to regain possession of the property.[241] In a third example, for the case of *Banoo Begum vs. Mir Aun Ali*, the *qāẓī*'s register supported a widow's claim to a substantial *mahr* amount following her husband's death. Though meddling in-laws attempted to argue in court that the widow had graciously freed her husband from his marital debt after his death, oral testimony presented on the respondent's behalf could not overcome the written evidence presented in the *qāẓī*'s register, which verified the widow's claim.[242] These are only a few cases that entered the appellate courts and were recorded in the law reports; countless other claims presented at the level of the local courts would no doubt add to the available evidence of woman's claims-making in court on the basis of legal status and economic rights attributed to evidence recorded in the *qāẓī*'s register at the time of marriage. Nonetheless, these examples demonstrate some of the ways in which the *qāẓī* bridged the gap between community and *qānūn* and encouraged the production of new legal subjects with the potential to make new legal claims.

VII. Conclusion

As it developed over the course of the nineteenth and into the twentieth century, the *qāẓī*'s register of Muslim marriages brought the narrative document of the marriage contract (*nikāḥ nāma*) in line with the tabulated accounts of population data produced by the colonial state. This format converted the marriage rite into an abstract, administrative fact, changing the narrative of the *nikāḥ nāma* into an assemblage of data points. In this regard, the tabular register does not include the performative element present in the *nāma* document, rather it renders the composite experience into discrete bits of data, and turns the singular experience of the marriage into a

[241] Jaitunbi Fatrubhai vs Fatrubhai Kasambhai And Ors. on 27 February, 1946. *All India Report* 1948 Bombay 114.

[242] Banoo Begum vs Mir Aun Ali on 10 January, 1907. 9 *Bombay Law Report* 188.

reproducible documentary form. The record itself does not perform any (speech-)actions nor does it complete any work the way individual legal documents state, affirm, swear, attest, and indicate.[243] The register does not describe the parties' presence before the *qāẓī* or *nikāḥ k͟hwān*. It does not narrate the promise or payment of *mahr*. It does not tell the reader what happened at the ceremony. Rather, in its division of information across numerous boxes and frames, the record transforms the *nikāḥ* ceremony into a series of abstractions. The bride and bridegroom who are brought together by the rite of marriage are placed in separate boxes, the meaning of which is only evident through the organizational logic of the form.

One does not—indeed cannot—read the register entry the way one might read a contract or a *nāma.* One must scan the entry, moving simultaneously from right to left and from top to bottom. As the grid becomes more complex, this process becomes even more difficult; the reader's eyes must move across the form, keeping the header column on the right in mind while moving through the various personages distributed across the top of the page. Each piece of data now has multiple points of reference—one on the right, marking different parts of the person's identity and one at the top, which positions the individual according to the particular role he/she played in the ceremony. With this development in the record's layout, the information it contains becomes one step further removed from the referent. Not only does the register entry render the *nikāḥ* ceremony in an abstract form by placing individuals in geometric rather than narrative (or biological) relation to one another, but the more complex register layout introduced in 1915 also turns the abstracted individual into a fragmented individual, transforming each piece of the participant's identity into a separate, knowable (and hence recordable) "fact." But the effects of

[243] See Chapter Three.

this abstraction were not necessarily straightforward.

Marriage registration created legal pasts for individuals who otherwise lacked documented legal lives. It gave them a point of entry into the colonial courts by providing a paper platform from which they could present their arguments and establish their rights in relation to neglectful husbands, interfering in-laws, greedy siblings and co-inheritors, and other claimants, but the courts did not universally respect the *qāẓī*'s register as absolute evidence of one's marital status. Unevenness in local attention to the documentary demands of the *qāẓī*'s register meant that not all *qāẓī*s responded to the challenges of the colonial state with equal agility. For every *qāẓī* like those found in Meerut and Bharuch who responded to the challenge of colonialism by bringing their records in line with other documentary practices of the colonial state, there were likely several others who continued to see the office of the *qāẓī* as a hereditary entitlement.[244] Such inconsistencies cannot be read a proof of the *qāẓī*'s failure or his lack of utility to late-colonial litigants. Where *qāẓī*s responded to the challenge of colonial rule by reforming their work and making their records "speak" to the colonial state in the idioms of bureaucratic record-keeping, standardization, and regularization, the records afforded local registrants with the opportunity to write their own legal lives, to note the end of unfavorable relationships, to secure the establishment of new relations, to document the relationship between family members through the inscription of kinship terms, and to place individuals within a network of witnesses, agents, and family members who saw and approved of a given union. The creation of legal pasts not only brought registrants into the structures of state governance; it also gave them the opportunity to take their new legal status to court to sue for the recognition of

[244] Inklings of these (unprofessional) *qāẓī*s appear in later petitions that allege money-lending and other nefarious behaviors among the descendants of hereditary *qāẓī*s.

their rights and to demand the compensation owed to them. Such a facility was necessary for colonial law to reach new segments of the population that would be otherwise prohibited from participation on the basis of class. The *qāẓī*'s register performed this work and in so doing, the *qāẓī*'s register brought the facts of legal marriage before the colonial courts.

Arranging the information in this manner, along the cartesian axes of the record's twin vertical and horizontal planes certainly made the process of aggregating and summarizing the information easier. Flipping through the records, one could quickly tally the number of brides under the age of twenty, or the number of marriages involving Paṭhāns, Shaikẖs, or Sayyids.[245] Comparing these data across several months or years might then yield interesting information about changing patterns in marital practices within or between communities.[246] Similar comparisons could also provide evidence about the *qāẓī*'s changing position in society in terms of whose marriages he records and which communities, professional groups, and income brackets they represent. Enumerative records of this kind are designed to facilitate the tabulation of information across time (as these particular records might lend themselves), or across space (as district reports and "all-India" surveys did). Looking through the records today, however, it is unclear whether the records were ever subjected to processes of aggregation or analysis along these (or other) lines, and the register's potential to fill a colonial knowledge-gap remained an incomplete project.

As the history of colonial record-keeping suggests, tabulation and enumeration were the

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[245] Barbara Metcalf offers another perspective on the tallying of these communities. See *Islamic Revival in British India: Deoband, 1860–1900* (Delhi: Oxford University Press, 2002 [1982]), 29–30, n. 28.

[246] For a consideration of the historical relationship between enumeration and identity that challenges conventional accounts of the census, see Sumit Guha, "The Politics of Identity and Enumeration in India c. 1600-1990"; and alternatively, Lucy Carroll, "Caste, Social Change, and the Social Scientist: A Note on the Ahistorical Approach to Indian Social History," *The Journal of Asian Studies* 35, no. 1 (November 1975): 63–84.

cornerstones not only of colonial bureaucracy but of bureaucratic governance more generally, and it was through the processes of tabulation, aggregation, and calculation that observations and occurrences could become quantifiable pieces of evidence, facts accessible to experts with the ability to analyze and assess the relationship between knowable information and effective governance.[247] Analyzing calculable, quantifiable facts lent authority to the authorship of reports, grounded memos in evidence weightier than anecdotal observations, and provided reports with analyzable evidence. By providing the basis for quantification in a mode bureaucrats could render according to different degrees of scale, the *qāẓī*'s register thus had the potential to participate in larger and longer-term projects of social regulation, yet neither within the registers themselves nor within the records of the colonial government is there any evidence that the *qāẓī*s or their supervisors in the district ever subjected these registers to such acts of oversight, accumulation, or analysis.

Knowing that the colonial government did not fully exploit the administrative, governmental potential presented in the *qāẓī*'s registers does not, however, mean that this mode of record keeping did not have an impact on the social practices attached to marriage and the experience of bureaucratic intervention into those practices. By transforming the *nikāḥ* ceremony into an assemblage of discrete data points, the *qāẓī*'s register turned marriage into a fact, something that could be known, demonstrated, and proved. Such a change may seem inconsequential, but by contributing to the transformation of marriage from a socially embedded entity to an administrative fact, the *qāẓī*'s register contributed to the procedural basis for modern

[247] There is a large and growing literature on the production of "expert" information in colonial contexts. For an introduction to this scholarship, see Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (Berkeley: University of California Press, 2002); and Mitchell, *Colonising Egypt* (Berkeley: University of California Press, 1991).

legal practice and made Muslim marriages subject to state management in a way they had not yet been. Even in the absence of aggregation and calculation from these registers, the process of turning narrative *nikāḥ nāma*s into grids of discrete data points made the act of marriage more legible to the state bureaucracy and as a result, more susceptible to intervention and management from the state. The full extent of this transformation has yet to be acknowledged, even today. Considering the relationship between bureaucratic practice and legal substance demonstrated in the context of the *qāẓī*'s register here, the next chapter considers the construction and interpretation of Islamic law in another medium: printed books and published *fatwā*s. If the qāẓī's register turned private marriages into administrative facts, then vernacular publishing took the public culture of law in another direction, turning private questions and concerns into public debates that circulated in and around the subcontinent. Such circulations again challenge the colonial state's authority in the production of legal writing and also take up the question of what happened to other areas of legal action and interpretation that fell beyond the narrow scope of Anglo-Muslim personal law.

CHAPTER 5: GEOGRAPHIES OF INFLUENCE: FATWĀ-WRITING AND THE PUBLIC DISCOURSES OF "LAW"

I. INTRODUCTION

In 1881, Muḥammad ʿAbdul Ḥayy, a leading figure of the renowned scholarly Farangi Maḥall family of Lucknow, received an *istiftā'* (*fatwā* question) from one of his colleagues in the Kanaṛa region of what is now northern Karnataka.[1] Maulvī Amīr K̲h̲ān, lecturer (*mudarris*) at the local Madrasa Muḥammadīya, wanted to know whether some of the local residents were Muslims or whether it was permissible to treat them as blasphemers (*ūn par kufr jārī karnā jā'iz hai yā nahīñ*). As Amīr K̲h̲ān explained in his letter, these locals were employed as government butchers (*sulṭ̲ānī qaṣṣāb*), they called themselves Muslim (*muslimān kehlātē haiñ*), and participated in the same activities as the other local Muslims—which included saying the *kalima-yi shahādat* (the profession of faith); reading Friday prayers, celebrating ʿĪd, and praying five times days; keeping the fast during the holy month of Ramadan, and having their *k̲h̲utna* (circumcision) performed and *nikāḥ* (marriage rite) read—but these Muslims would not share the food or drink of other Muslims (*Muslimānōñ kē āb ō ṭaʿām sē parhez kartē haiñ*), nor would they use the water at the mosque to perform their ablutions before praying (*masjid kē pānī sē wuẓū tak nahīñ kartē*). Under these circumstances, Amīr K̲h̲ān asked, should he and other residents of Haliyāl consider this group of butchers Muslims or blasphemers?[2]

The type of question Amīr K̲h̲ān presented to *muftī* ʿAbdul Ḥayy was certainly not new,

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[1] Muḥammad ʿAbdul Ḥayy, *Majmūʿa-yi Fatāwa*, vol. 2 ([Lucknow]: Shaukat-i Islām, 1886), 13–15. On ʿAbdul Ḥayy and the Firangī Maḥall family, see Muftī ʿInāyatullāh, Muḥammad Ḥāmid. Anṣārī, and Muḥammad Shāhid Anṣārī, *ʿUlamāʾe Firangī Maḥall: mabnī bar Taẕkirah-yi ʿUlamāʾe Firangī Maḥall* (Lakhnaʾū: Muḥammad Shāhid Anṣārī, 1988); Muḥammad K̲h̲alīlullāh Anṣārī *Farangī Maḥallī and Shāh ʿAbdussalām, Tuḥfat al-ʾaḥbāb fī bayān al-aʾnsāb* (Lakhnaʾū: Amīruddaulah Pablik Lāʾibrerī, 2000); Irshādulḥaq Aṣ̲arī, *Maslak-i aḥnāf aur Maulānā ʿAbdulḥaʾī Lakhnavī raḥmatulláh ʿalaih* (Maʾūnāth Bhanjan: Maktabah al-Fahīm, 2013); and Francis Robinson, *The ʿulama of Farangi Mahall and Islamic Culture in South Asia* (New Delhi: Permanent Black, 2001).

[2] Muḥammad ʿAbdul Ḥayy, *Majmūʿa-yi Fatāwa*, vol. 2 ([Lucknow]: Shaukat-i Islām, 1886), 13–15.

nor was it unusual for the times, as questions about differentiating between Muslims and blasphemers, between community members and outsiders, between local congregants and members of the wider *umma* are as old as Islam and remained current at this time, especially in relation to the status of India's European rulers.[3] Instead, what is interesting about Amīr K̲h̲ān's *istiftā'* (*fatwā* question) is that despite his standing as a "maulvi" and *mudarris*, he neither attempted to answer this question on the basis of his own authority, nor to find a local *muftī* who could give him an answer.[4] Rather, he used the postal networks available to him to send his inquiry to to a *muftī* living over fourteen-hundred kilometers away, allowing his question to travel from a remote *qaṣbah* in Kanaṛa, not far from the western Goan coast, to Lucknow in North India's Indo-Gangetic heartland. And Maulvī Amīr K̲h̲ān was not the only *'ālim* to engage in such long-distance exchanges.

Moving through different modes of seeking and receiving *fatwā*s in the late-nineteenth and early-twentieth centuries, this chapter turns from the construction and creation of "law" at the level of legislation and statutes to the discussion of "law" at the level of public discourse.[5] The proliferation and expansion of vernacular publishing across the subcontinent throughout the second-half of the nineteenth century created new avenues for the consideration of legal

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[3] This question took several forms, many of which revolved around the permissibility of certain foods and social activities. The question also surfaced in the context of concerns over whether British India was a *dār-ul-ḥarb* or *dār-ul-Islām*. On this debate, see, e.g., Rajarshi Ghose, "Islamic Law and Imperial Space: British India as 'domain of Islam' circa 1803–1870," *Journal of Colonialism and Colonial History* 15, no. 1 (2014), doi:10.1353/cch.2014.0020; and Ghosh, "Politics for Faith: Karamat Ali Jaunpuri and Islamic Revivalist Movements in British India circa 1800–73" (Ph.D., The University of Chicago, 2012), especially chapter four, 187–226.

[4] 'Abdul Ḥayy treats this question simply. In his response, he explains that if the residents call themselves Muslims and say the profession of faith, then they are Muslims, though this designation does not justify their otherwise heterodox behavior. 'Abdul Ḥayy, *Majmū'a-yi Fatāwa*, 13–15.

[5] The idea of constructing law through discourse derives from Habermas's conceptualization of the bourgeois public sphere, private law, and market governance. See Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society, Studies in Contemporary German Social Thought* (Cambridge, Mass: MIT Press, 1989), 73–79.

questions and allowed new voices to enter the conversation.[6] While the relationship between vernacular publishing and late-colonial politics has received significant attention over the past several decades,[7] the relationship between Islamic legal discourses and the circulatory mechanisms of vernacular publishing have only recently begun to receive attention.[8] Certainly, print challenged traditional intellectual hierarchies at first, but it later found widespread support within traditional intellectual circles.[9] This chapter considers the voices, perspectives, and objectives represented in this later stage, when the benefits of print technology extended to members of established scholarly families whose writings (and reputations) could now move across the subcontinent (such as that of ʿAbdul Ḥayy of the Firangī Maḥall family); to *madrasa* graduates whose social and political status improved upon the completion of their training at

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[6] Anindita Ghosh's exploration of popular book markets in Bengal illustrates some of the ways in which print culture popularized a range of voices. See her "Revisiting the 'Bengal Renaissance': Literary Bengali and Low-Life Print in Colonial Calcutta," *Economic and Political Weekly* 37, no. 42 (October 19, 2002): 4329–38; Ghosh, "An Uncertain 'Coming of the Book': Early Print Cultures in Colonial India," *Book History* 6 (September 2003): 23–55; and Ghosh, *Power in Print: Popular Publishing and the Politics of Language and Culture in a Colonial Society, 1778-1905* (New Delhi: Oxford University Press, 2006).

[7] See, e.g., Stuart H. Blackburn, *Print, Folklore, and Nationalism in Colonial South India* (Delhi: Permanent Black, 2003) (Chapter three "Pundits, Publishing and Protest, 1800–1850" in particular provides interesting parallels between the responses of Hindu and Muslim scholarly classes to print technology); Brahmānanda, *Bhāratīya svatantratā āndolana aura Uttara Pradeśa kī Hindī patrakāritā* (Dillī: Vāṇī Prakāśana, 1986); Madan Gopal, *Freedom Movement and the Press: The Role of Hindi Newspapers* (New Delhi: Criterion Publications, 1990); Prakāśa Purohita, *Rājasthāna meṃ svatantratā saṅgrāmakālīna patrakāritā* (Jayapura: Rājasthāna Hindī Grantha Akādamī, 2007); Arjuna Tivārī, *Svatantratā saṅgrāma kī patrakāritā aura Paṃ. Daśaratha Prasāda Dvivedī* (Vārāṇasī: Viśvavidyālaya Prakāśana, 1998); Tivārī, *Svatantratā āndolana aura Hindī patrakāritā: pūrvī Uttarapradeśa ke sandarbha meṃ* (Vārāṇasī: Viśvavidyālaya Prakāśana, 1982).

[8] The life and career of Ashraf ʿAlī Thānwī is one of the areas in which scholars have begun to connect Islamic revival and reform to the opportunities of vernacular publishing. See, e.g., Fareeha Khan, "Traditionalist Approaches to Shari`ah Reform: Mawlana Ashraf `Ali Thanawi's Fatwa on Women's Right to Divorce" (Ph.D., University of Michigan, 2008); Khan, "Maulana Thanawi's Fatwa on the Limits of Parental Rights over Children," in *Islam in South Asia in Practice*, ed. Barbara Daly Metcalf (Princeton: Princeton University Press, 2009), 305–16; Barbara Daly Metcalf, *Perfecting Women: Maulana Ashraf ʿAli Thanawi's Bihishti Zewar, A Partial Translation with Commentary* (Berkeley: University of California Press, 1990); and Muhammad Qasim Zaman, *Ashraf 'Ali Thanawi: Islam in Modern South Asia*, Makers of the Muslim World (Oxford: Oneworld, 2008).

[9] Francis Robinson, "Technology and Religious Change: Islam and the Impact of Print," *Modern Asian Studies* 27, no. 1 (February 1993): 229–51. (Cf. Ian Proudfoot, "Mass Producing Houri's Moles: Or Aesthetics and Choice of Technology in Early Muslim Book Publishing," in *Islam: Essays on Scripture, Thought and Society: A Festschrift in Honour of Anthony H. Johns*, ed. Peter G. Riddell and Tony Street, vol. 28, Islamic Philosophy, Theology, and Science [Leiden: Brill, 1997], 161–84.)

institutions like the *dār-ul-ʿulūm* of Deoband;[10] to civil servants, merchants, and other professionals who participated, as the examples presented below demonstrate, in the public construction of an Islamic legal discourse as members of the Muslim religious community but not necessarily as scholars of Islam—though vernacular publishing often blurred the lines between scholarly and lay opinions.[11] In addition to questioning the proper execution of religious practices and interrogating the lines separating believers from non-believers, these discourses also challenged the areas of life to which Islamic law could be applied and pushed Islamic law to stand for—and contribute to—areas of life that fell beyond the narrow scope of ideas and circumstances defined by the Anglo-Indian legal system.[12] The process of seeking and receiving *fatwā*s contributed to the development of law within the community, through the facilitation of a public legal discourse, embedded within associational culture and other forms of civic activity, which was constituted by the collective recognition and acceptance of non-state sources of expertise and the public interpolation of what constituted the legal.[13] The writings considered here look to Islamic law as

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[10] Barbara Daly Metcalf, *Islamic Revival in British India: Deoband, 1860–1900* (Princeton, N.J: Princeton University Press, 1982), 87–100; 108–111.

[11] Not all voices were welcomed into these debates and colonial restrictions meant who could enter or what could be said in the public sphere was limited. For an example of restrictions in action, see Julia Stephens, "The Politics of Muslim Rage: Secular Law and Religious Sentiment in Late Colonial India," *History Workshop Journal* 77, no. 1 (April 1, 2014): 45–64, doi:10.1093/hwj/dbt032. For a consideration of the "public" as a category, see Francesca Orsini, "What Did They Mean by 'Public'? Language, Literature and the Politics of Nationalism," *Economic and Political Weekly* 34, no. 7 (February 13, 1999): 409–16; and Orsini, *The Hindi Public Sphere 1920-1940: Language and Literature in the Age of Nationalism* (New Delhi: Oxford University Press, 2002).On the emergence of new cultural patterns along with new genres in the context of Arabic book publishing, see Muhsin Mahdi, "From the Manuscript Age to the Age of Printed Books," in *The Book in the Islamic World : The Written Word and Communication in the Middle East*, ed. George N. Atiyeh (New York: State University of New York Press, 1995), 5–7.

[12] Following the Hastings Plan of 1772, these categories included marriage, divorce, inheritance, adoption, and religious rites. For a historical account of the formation of the categories of personal law, see Julia Anne Stephens, "Governing Islam: Law and Religion in Colonial India" (Ph.D. Dissertation, Harvard University, 2013), especially Chapter One, "Historicizing Personal Law," 37–88.

[13] On associational culture, see Benjamin B. Cohen, *In the Club: Associational Life in Colonial South Asia*, Studies in Imperialism MUP (New York: Manchester University Press, 2015); and Ulrike Stark, "Associational Culture and Civic Engagement in Colonial Lucknow," *Indian Economic & Social History Review* 48, no. 1 (January 2011): 1–33, doi: 10.1177/001946461004800101.

it was applied to other areas of everyday life and as it was interpreted by other legal actors. These voices and interpretations offered another set of responses to questions of what Islamic law was or could be, responses that challenged the Anglo-Indian legal system's and the colonial courts' authority as chief arbiter and interpreter of Islamic legal questions.

In particular, then, this chapter considers the influence of affordable, vernacular (here primarily Urdu- and Persian-language) publishing on the circulation of Islamic legal discourse in the form of *fatwā* questions and responses. In recent decades, scholars of British India have flocked to the repositories of nineteenth-century print culture and other ephemera to explore the relationship between print, politics, language, religion, nationalism, mass education, women's education, and Westernization.[14] The role of language, translation, and publishing in the foundation and operation of the colonial legal system has received far less attention, even though anecdotal evidence suggests that the availability of law books was central to the effective operation of the legal system.[15] This chapter brings together the history of vernacular publishing

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[14] For examples of these considerations, see, e.g., Robert Darnton, "Literary Surveillance in the British Raj: The Contradictions of Liberal Imperialism," *Book History* 4, no. 1 (2001): 133–76, doi:10.1353/bh.2001.0007. Kavita Datla, "A Worldly Vernacular: Urdu at Osmania University," *Modern Asian Studies* 43, no. 5 (September 2009): 1117–48; Kavita Saraswathi Datla, *The Language of Secular Islam: Urdu Nationalism and Colonial India* (Honolulu: University of Hawai'i Press, 2013); Smita Gandotra, "In Search of a Subject; Stri Upayogi Sahitya, 1870–1930" (Ph.D., The University of Chicago, 2013); Priya Joshi, "Culture and Consumption: Fiction, the Reading Public, and the British Novel in Colonial India," *Book History* 1 (January 1, 1998): 196–220; Christopher Rolland King, *One Language, Two Scripts: The Hindi Movement in the Nineteenth Century North India* (Bombay: Oxford University Press, 1994); Ulrike Stark, "Politics, Public Issues and the Promotion of Urdu Literature: Avadh Akhbar, the First Urdu Daily in Northern India," *Annual of Urdu Studies* 18, no. 1 (2003): 66–94; Gauri Viswanathan, *Masks of Conquest: Literary Study and British Rule in India*, The Social Foundations of Aesthetic Forms Series (New York: Columbia University Press, 1989); and Judith E. Walsh, "What Women Learned When Men Gave Them Advice: Rewriting Patriarchy in Late-Nineteenth-Century Bengal," *The Journal of Asian Studies* 56, no. 3 (August 1997): 641–77, doi: 10.2307/2659604.

[15] Elizabeth Kolsky cites anecdotes about British judges lacking access to law reports and other sources when making decisions. Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law*, 1st ed., Cambridge Studies in Indian History and Society 17 (New York: Cambridge University Press, 2010), 117. Mitch Fraas also discusses the history of law books and their role in the dissemination of legal knowledge. Arthur Mitchell Fraas, "Readers, Scribes, and Collectors: The Dissemination of Legal Knowledge in Eighteenth-Century British South Asia," (Draft paper presented at the Middle East Studies Association Annual Conference, 2012), https://works.bepress.com/mitch_fraas/14/. Certainly, additional work remains on the relationship between legal knowledge and the effective operation of the legal system.

with the history of religious discourse and debate to consider the ways in which public—and published—exchanges contributed to the construction of legal, social, and ethical norms and other ideas of what the law was and how it could be applied to Muslim lives. The collections of *fatwā* questions and responses considered in this chapter represent a mode of legal discourse that circulated locally, regionally, and trans-regionally with increasing speed, multiplicity, and competition throughout the second-half of the nineteenth and into the twentieth century.[16] These dynamics and networks of circulation changed the public's perception of the *fatwā* and made these writings a key site for religious expression that was simultaneously open to and encouraging of disputation, refutation, challenge, and critique.[17]

At the same time, *fatwā* literature was only one type of discourse—Islamic, legal, or otherwise—in circulation at this time and remained in competition with other forms of religious, miraculous, other-worldly, and secular literature as well.[18] Despite growing interest in the relationship between Islamic revival and reform and vernacular print culture, however, the publication and circulation of *fatwā* literature has yet to receive attention befitting its

[16] This acceleration undoubtedly continued into the twenty-first century as well.

[17] This consideration of the *fatwā*'s transformation from response to law follows Hallaq's formulation. See Wael B. Hallaq, "From Fatwās to Furū': Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1, no. 1 (1994): 29–65. For a similar analysis of the transformation from *responsa* to "law" from South Asia, see Donald R. Davis, "Responsa in Hindu Law: Consultation and Lawmaking in Medieval India," *Oxford Journal of Law and Religion*, July 26, 2013, 1–19, doi:10.1093/ojlr/rwt028.

[18] For a discussion of this-worldly and other-worldly Islam, see Francis Robinson, "Other-Worldly and This-Worldly Islam and the Islamic Revival. A Memorial Lecture for Wilfred Cantwell Smith," *Journal of the Royal Asiatic Society*, Third Series, 14, no. 1 (April 1, 2004): 47–58. Nile Green's recent work provides a good overview of other forms of religious literature in circulation and competition at this time. See Nile Green, *Bombay Islam: The Religious Economy of the West Indian Ocean, 1840-1915* (New York: Cambridge University Press, 2011).

prevalence.[19] What is more, where scholars have considered the production of *fatwā*-writings in this period, such considerations have emphasized the *fatwā* as a political tool, as in debates over whether British India was a *dār-ul-ḥarb* or *dār-ul-Islām,* or highlighted its place in the making of an intellectual biography of an individual *ʿālim,* as in those of Ashraf ʿAli Thānwī, Rashīd Aḥmad Gangōhī, Aḥmād Raẓā Ḵẖān Barēlvī, and others.[20] While *fatwā* writings are useful for understanding how leading figures responded to the crises of colonial rule and other challenges of modernity, the presentation of *fatwā*s in periodicals, newspapers, small chapbooks, and other formats highlights the materiality of print production and necessitates further inquiry into the reception and response such writings provoked, which were augmented by their ephemeral nature and the contingency of their contents. Furthermore, the discursive nature of the *fatwā*—with its question-and-answer, *jawāb-ō-sawāl* format—reveals the importance of the relationship between the author and the reader, the respondent and the petitioner, the *muftī* and the *mustaftī.*[21]

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[19] See, e.g., Barbara Daly Metcalf, *Islamic Revival in British India: Deoband, 1860–1900* (Princeton, N.J: Princeton University Press, 1982); Francesca Orsini, *Print and Pleasure: Poplar Literature and Entertaining Fictions in Colonial North India* (New Delhi: Permanent Black, 2009); Ulrike Stark, *An Empire of Books: The Naval Kishore Press and the Diffusion of the Printed Word in Colonial India* (Ranikhet: Permanent Black, 2007); and Stark, "A Qur'an for Every Household: Mass Printing and the Commercialization of Islamic Sacred Texts in Nineteenth-Century Lucknow," in *Sacred Texts and Print Culture: The Case of the Qur'an and the Bible of the Eastern Churches, 18th and 19th Centuries,* eds. Nadia al-Bagdadi and Mushirul Hasan (Budapest: Central European University Press, forthcoming).

[20] The relevance of the *dār-ul-Islām* question should not be overlooked, but it has, perhaps, received a disproportionate amount of attention, owing to its presence in the colonial English-language archive. See, British Library, IOR/L/PJ/6/924, File 774, "Fatwa or judicial opinion regarding the duties and obligations of Muhammedans towards the British in India" for an example of one such statement. On the construction of intellectual biographies and sectarian profiles, see Brannon D. Ingram, "Deobandis Abroad: Sufism, Ethics and Polemics in a Global Islamic Movement" (Ph.D., The University of North Carolina at Chapel Hill, 2011); and Ingram, "Sufis, Scholars and Scapegoats: Rashīd Aḥmad Gangohī (d. 1905) and the Deobandi Critique of Sufism," *The Muslim World* 99, no. 3 (2009): 478-501; Usha Sanyal, *Devotional Islam and Politics in British India: Ahmad Riza Khan Barelwi and His Movement, 1870-1920* (New York: Oxford University Press, 1996); Muhammad Qasim Zaman, *Ashraf 'Ali* Thanawi; and Zaman, *The Ulama in Contemporary Islam Custodians of Change* (Princeton: Princeton University Press, 2010).

[21] On the question and answer genre in Islam, see Kirsten M. Yoder Wesselhoeft, "Making Muslim Minds: Question and Answer as a Genre of Moral Reasoning in an Urban French Mosque," *Journal of the American Academy of Religion* 78, no. 3 (September 1, 2010): 790–823, doi:10.1093/jaarel/lfq051; Ronit Ricci, *Islam Translated Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago, IL: University of Chicago Press, 2011); and Ricci, "Conversion to Islam on Java and the Book of One Thousand Questions," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 165, no. 1 (May 11, 2009): 8–31.

This chapter thus treats this lacunae in the history of late-colonial religious life by attending to the relationship between the production, dissemination, and interpretation of these *fatāwa* through an exploration of textual markers of their circulation and reception.

II. The fatwā as a source for social history

Moving away from the intellectual and biographical history of late-colonial *fatwā*-writing toward the social history of the *fatwā* and its reception, this chapter considers to the circulation and reception of *fatwā*-writings across and beyond the South Asian subcontinent around the turn of the twentieth century and looks at the way the production and circulation of these texts (1) contributed to the definition of local communities of believers against growing awareness of the existence of a global *umma*, (2) dovetailed with the emergence of civil society organizations that made Islamic legal discourse normative, rather than exceptional, in the public sphere, and (3) allowed international travelers to take the ties of their local religious community with them when traveling abroad.[22] The first part of the chapter examines *fatwā* questions and responses concerned with sources of authority, communications technology, and the relationship between the (secular) transmission of information and the (religious) interpretation of that information. Focusing on questions related to the sighting of the *hilāl* (crescent) moon at the beginning and end of the holy month of Ramadan, these writings raise questions about accuracy and authority, origin and reliability, and technology and transmission in the creation and production of reliable information. Such questions draw attention to the possibilities of global communications networks to unite the Muslim *umma*, but the answers that arose in response to these questions,

[22] These travels have implications for ideas of personal status law versus territorial law, which were central to the imperial project.

often reinforced, rather than challenged, the presence of local variation.[23] In this context, eye witness testimony took precedence over unverified news reports and promoted difference in religious practice across space and time.

The telegraph sits at the center of these debates, as its development in the nineteenth century and the extension of telegraph lines and networks altered the nature of communication across the subcontinent throughout the latter-half of the nineteenth century.[24] Though the telegraph's place in the transmission of this information may now seem antiquated, ideas surrounding the origin of information and its transmission remain relevant—especially in light of the prevalence of transnational networks now fueled by the ubiquity of the internet.[25] Beneath the surface, these questions reveal a growing interest in—and anxieties over—the relationship between local observation and universal knowledge, communal uniformity and geographic particularity, and religious prohibitions and modern practicalities. That is, *istiftā*s framed around

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[23] For a good introduction to these changes, see James L. Gelvin and Nile Green, eds., *Global Muslims in the Age of Steam and Print* (Berkeley: University of California Press, 2014).

[24] By the end of 1856, there were over four-thousand lines of telegraph wire, linking nearly fifty stations. David Arnold, *Science, Technology, and Medicine in Colonial India* (New York: Cambridge University Press, 2000), 113 cited in Ulrike Stark, *An Empire of Books: The Naval Kishore Press and the Diffusion of the Printed Word in Colonial India* (Ranikhet: Permanent Black, 2007), 364. On the history of the telegraph and its legacy in British India, see Deep Kanta Lahiri Choudhury, *Telegraphic Imperialism: Crisis and Panic in the Indian Empire, c.1830-1920*, The Palgrave Macmillan Transnational History Series (Basingstoke, Hampshire: Palgrave Macmillan UK, 2010); Michaela Hampf and Simone Müller-Pohl, *Global Communication Electric: Business, News and Politics in the World of Telegraphy*, vol. v. 15, Global History (Frankfurt-on-Main: Campus, 2013); Daniel Headrick, "A Double-Edged Sword: Communications and Imperial Control in British India," *Historical Social Research / Historische Sozialforschung* 35, no. 1 (131) (2010): 51–65; Simone M. Müller, *Wiring the World: The Social and Cultural Creation of Global Telegraph Networks* (New York: Columbia University Press, 2016); and William J. Phalen, *How the Telegraph Changed the World* (Jefferson, North Carolina: McFarland & Company, 2015).

[25] James Gleick offers a digestible description of the effects of telegraphic communication on the public's conception of information. See James Gleick, *The Information: A History, a Theory, a Flood*, 1st ed. (New York: Pantheon Books, 2011), 145–158. On the Islamic information networks in the internet age, see Gary R. Bunt, *iMuslims: Rewiring the House of Islam, Islamic Civilization and Muslim Networks* (Chapel Hill: University of North Carolina Press, 2009); Jon W Anderson, "The Internet and Islam's New Interpreters," in *New Media in the Muslim World: The Emerging Public Sphere*, ed. Dale F Eickelman and Jon W. Anderson, 2nd ed, Indiana Series in Middle East Studies (Bloomington: Indiana University Press, 2003), 46–60; and Gary Bunt and Jon Anderson's contributions to Miriam Cooke and Bruce B. Lawrence, eds., *Muslim Networks from Hajj to Hip Hop,* Islamic Civilization & Muslim Networks (Chapel Hill: University of North Carolina Press, 2005).

the issue of sighting the new moon's first sliver at the beginning of the month brought into relief serious questions concerning the limits of uniformity and the permissibility of diversity within Islam.[26] Moreover, though these questions focus on a specific point of law relating to the transmission of information surrounding the sighting of the moon at the beginning and the end of the month of Ramadan, these writings reflect much larger issues about the nature of communication, concerns about local practice and trans-regional knowledge, and notions about the role of technology in disrupting local observation.[27] In their attention to detail and concern with geographic distance and proximity, these questions demonstrate the ways in which circulation, transmission, and the production of knowledge filtered into anxieties over orthodoxy and heterodoxy among Muslims from across the subcontinent.

The second set of examples comes from the Anjuman-i Mustashār-ul-ʿulamā of Lahore. Founded in 1887, the Anjuman-i Mustashār-ul-ʿūlamā was one of several civic associations that emerged in the Lahore area in the last decades of the nineteenth century for the purpose of

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[26] These concerns correspond to the "little" and "great" traditions of Geertz and Redfield. See Clifford Geertz, The *Religion of Java*, Phoenix ed., vol. P658, A Phoenix Book (Chicago: University of Chicago Press, 1976); Robert Redfield, *The Little Community: And Peasant Society and Culture* (Chicago: The University of Chicago Press, 1960), as well as Stanley Jeyaraja Tambiah, *Magic, Science, Religion, and the Scope of Rationality* (Cambridge [England]: Cambridge University Press, 1990); and Dale F. Eickelman, *Knowledge and Power in Morocco: The Education of a Twentieth-Century Notable* (Princeton, N.J.: Princeton University Press, 1985) for an extension of these discussions. More recent studies of Islamic societies have continued to consider the relationship between unity and diversity in Islam. See, e.g., John J. Donohue and John L. Esposito, *Islam in Transition: Muslim Perspectives* (New York: Oxford University Press, 1982); Shireen Hunter, *The Politics of Islamic Revivalism: Diversity and Unity*, A Midland Book (Bloomington: Indiana University Press, 1988); Herbert L. Bodman and Nayereh Esfahlani Tohidi, *Women in Muslim Societies: Diversity within Unity* (Boulder, Colo.: Lynne Rienner Publishers, 1998); Gustave E. von. Grunebaum, *Unity and Variety in Muslim Civilization, Comparative Studies of Cultures and Civilizations* (Chicago: University of Chicago Press, 1955); Zulfikar A. Hirji, *Diversity and Pluralism in Islam: Historical and Contemporary Discourses amongst Muslims* (London: I.B. Tauris, 2010); Leif O. Manger, *Muslim Diversity: Local Islam in Global Contexts,* vol. 26, NIAS Studies in Asian Topics ; (Richmond, Surrey: Curzon, 1999); Abdul Aziz Said and Meena Sharify-Funk, *Cultural Diversity and Islam* (Lanham, MD: University Press of America, 2003); Ralph Grillo, "Islam and Transnationalism," *Journal of Ethnic and Migration Studies* 30, no. 5 (September 1, 2004): 861–78, doi:10.1080/1369183042000245589.

[27] For another approach to this issue, see Daniel A. Stolz, "Positioning the Watch Hand: ʿUlama and the Practice of Mechanical Timekeeping in Cairo, 1737–1874," *International Journal of Middle East Studies* 47, no. 3 (August 2015): 489–510, doi:10.1017/S0020743815000513.

promoting, protecting, and preserving the teachings of Islam.[28] The Anjuman-i Mustashār-ul-ʿulamā embraced this project by brining together *ʿulamā* (scholars of Islam) representing various factional and sectarian perspectives for the purpose of issuing legal opinions (*fatwā*s) that would unite, rather than divide the Muslim community.[29] The Anjuman's approach to this task, however, represented another objective as well: In addition to embracing the popularity of vernacular publishing and following the model of other civic associations, the Anjuman brought the idea and practice of *iftā'* into the the context of late-colonial associational culture. Of course the Anjuman was not the only organization to bridge the gap between Islamic legal interpretation and the democratic objectives of late-colonial committee work, but its approach to collective authorship, accessible interpretation, and legal disputation through social networking makes it an exemplary organization to consider in the context of community, *qānūn*, and the discursive possibilities of vernacular publishing.

The Anjuman's accomplishments ultimately fell short of the organization's idealistic aims, but the small volume of *fatwā*s it eventually produced with the editorial guidance of Muftī Muḥammad ʿAbdullāh Ṣāḥib Ṭōnkī stands as a testament to the Anjuman's interest in bringing together the organization's possibilities of civic associational life with the diversity and flexibility of Islamic legal interpretation.[30] The Anjuman not only printed its responses alongside the names of over a dozen Muslim intellectuals, scholars, and practitioners of Islamic law, but it also

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[28] Muftī Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, introduction to *Fatāwa-yi Ṣābriya* (Lahore: Maṭbaʿ Faiẓī, [1907]), [i]; and K.K. Aziz, *Public Life in Muslim India, 1850–1947: A Compendium of Basic Information on Political, Social, Religious, Cultural, and Educational Organizations Active in Pre-Partition India* (Lahore: Vanguard, 1992), 87. (Aziz provides a brief sketch of this Anjuman, along with several other related organizations.) For a brief overview of Muslim organizations in and around Lahore, see and Ikram Ali Malik, "Muslim Anjumans and Communitarian Politics, 1906–1923," in *Five Punjabi Centuries: Polity, Economy, Society, and Culture, c. 1500-1990, Essays for J.S. Grewal*, ed. Indu Banga (Delhi: Manohar, 1997), 112–125.

[29] Muftī Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, introduction to *Fatāwa-yi Ṣābriya*, [i].

[30] Ibid.

located its petitioners within the Anjuman's larger social network, providing the names, addresses, professions, and personal associations of the *dār-ul-iftā*'s patrons. Of the seventy *fatwā*s presented in the Anjuman's volume, the *mustaftī*'s (i.e., *fatwā*-seeker's) personal information accompanies over two-thirds of the questions. Furthermore, in addition to offering their names and places of residence, the *Majmū'a* also connected unfamiliar or distant correspondents with local—and known—individuals, generally those who held official positions within Lahore's many Muslim organizations.[31] Such details presented the Anjuman's *fatāwa* not as "laws", orders, or dictates, but as part of a larger conversation on how to live in the changing moral and legal landscape.

The final set of examples builds upon the idea of the social network presented in the Anjuman-i Mustashār-ul-'ulamā's volume but expands the discussion to include two larger collections of *fatwā*s. These volumes present an opportunity to examine the ways in which identity, geography, and affiliation played a role in the circulation of Islamic legal knowledge through the authorship and publication of *fatwā* literature. In particular, this section examines the two-volume *Majmu'a-yi Fatāwa* containing the *fatāwa* of Muḥammad 'Abdul Ḥayy and the capacious nine-volume collection of *fatwā*s authored by Muftī Kifāyatullāh in the early twentieth century. Evidence from these volumes demonstrates the ways in which *fatwā*s traveled in late-colonial society as well as the ways in which affordable publishing encouraged two-way conversations between the *muftī* and his *mustaftī*, between the advisor and the advice-column

[31] Lahore and the Punjab more broadly were home to many literary societies and civic associations including the Sat Sabha, the Anjuman-i Islāmiya, the Guru Singh Sabha, the Arya Samāj, the Khalsa Diwān, the Indian Association, the Punjab Association, the Anjuman-i Himayat-i Islam, the Punjab Science Institute, the Sanatan Dharm Sabha, the Anjuman-i Khadim-i 'Ulūm-i Islāmiya, the Anjuman-i Islāmiya (Amritsar), Hindu Sabha (Amritsar), The Khasla Tract Society (Amritsar), the Sanatan Dharm Sabha (Hoshiarpur), the Delhi Literary Society (Delhi), and the Arya Samaj (Rawalpindi). (*Report on the Administration of the Punjab and Its Dependencies for 1901–1902* [Lahore: Punjab Government Press, 1902], 183–185.) K.K. Aziz's *Public Life in Muslim India* covers all of British India, and Malik, whose interest centers around Lahore and the Punjab lists fewer organizations than Aziz but both name more organizations than those presented in the official *Report*. Aziz, *Public Life*; and Malik, "Muslim Anjumans."

reader.[32] Kifāyatullāh and ʿAbdul Ḥayy both received *istiftā'* from locations beyond their hometowns and places of employment, yet the two *muftī*s participated in different forms of knowledge-production. Whereas ʿAbdul Ḥayy's *Majmūʿa* sat at the top of his hierarchy, Muftī Kifāyatullāh's network was more diffuse. By the time Kifāyatullāh began his career—only a few decades after ʿAbdul Ḥayy's death—the nature of religious authority and the circulation of religious opinions had shifted noticeably.

Whereas ʿAbdul Ḥayy's influence extended across a network of his peers, who were unified by the *muftī*'s authoritative presence at the center of the network, Kifāyatullāh's network of readers extended beyond the subcontinent and his interlocutors interpreted his authority as one source among many. Kifāyatullāh's interlocutors, for instance, read the *fatwā*s he published in *Al-Jamiʿat* and wrote personally to ask follow-up questions; they encountered *fatwā*s written by other *muftī*s and asked Kifāyatullāh to verify the accuracy of those responses; they wrote to double-check their own interpretations of Qur'ānic verses and *ḥadith;* and they likely took the responses they received from Kifāyatullāh to other *ʿulamā*, checked the answers against the writings of others, and employed their own faculties of textual interpretation to verify what Kifāyatullāh wrote. Kifāyatullāh's position in Delhi made him an authority, but his authority was steeped in training, professional experience, and personal accomplishments, not lineage or charisma. He was one node in a larger constellation of Islamic authorities, and readers placed

[32] On newspaper advice columns, see W. Clark Hendley, "Dear Abby, Miss Lonelyhearts, and the Eighteenth Century: The Origins of the Newspaper Advice Column," The Journal of Popular Culture 11, no. 2 (September 1, 1977): 345–52, doi:10.1111/j.0022-3840.1977.00345.x; David Gudelunas, "Talking Taboo: Newspaper Advice Columns and Sexual Discourse," Sexuality & Culture 9, no. 1 (December 1, 2005): 62–87, doi:10.1007/BF02908763; and Gundelunas, *Confidential to America: Newspaper Advice Columns and Sexual Education* (New Brunswisck, NJ: Transaction Publishers, 2011). See also Judith E. Walsh, "What Women Learned When Men Gave Them Advice: Rewriting Patriarchy in Late-Nineteenth-Century Bengal," *The Journal of Asian Studies* 56, no. 3 (August 1997): 641–77, doi:10.2307/2659604.

him within, rather than at the top of, this network. Comparing the *fatwā* collections authored by ʿAbdul Ḥayy and Kifāyatullāh not only highlights the importance of geography and social connections for the process of seeking and receiving *fatwā*s but also demonstrates the ways in which institutional affiliation influenced the authority and altered the structure of these networks.

Together, the three parts of this chapter consider the relationship between vernacular publishing and the circulation of legal discourse in the public sphere and consider the relationship between vernacular publishing, public debates, and networks of authority in the construction and definition of law and Islam.[33] Vernacular publishing gave the process of seeking and receiving *fatwā*s a public dimension, bringing individual concerns before a larger audience of literate Muslims. By presenting common and uncommon legal questions and their (sometimes multiple) answers in this fashion, *fatwā* publishing created a public legal discourse that brought ideas of law and legality into the public sphere and offered an alternative definition of what Islamic law was in late-colonial society, in direct competition with the modes of interpretation and application taking place in the colonial courts.[34] In an era of widespread social reform and civic engagement, this development was not inconsequential: It made ideas of the legal and the

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[33] For different approaches to the study of "authority" in Islam, see, e.g, Hussein Ali Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa," *American Ethnologist* 37, no. 1 (February 1, 2010): 2–18, doi: 10.1111/j.1548-1425.2010.01238.x; Eric Lewis Beverley, "Property, Authority and Personal Law: Waqf In Colonial South Asia," *South Asia Research* 31, no. 2 (July 1, 2011): 155–82, doi:10.1177/026272801103100204; Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge, UK: Cambridge University Press, 2001); Iza Hussin, "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State," *Law & Social Inquiry* 32, no. 3 (July 1, 2007): 759–88; Gregory C. Kozlowski, "Imperial Authority, Benefactions and Endowments (Awqāf) in Mughal India," *Journal of the Economic and Social History of the Orient* 38, no. 3 (January 1, 1995): 355–70, doi: 10.2307/3632482; Kozlowski, "Loyalty, Locality and Authority in Several Opinions (Fatāwā) Delivered by the Muftī of the Jami'ah Niẓāmiyyah Madrasah, Hyderabad, India," *Modern Asian Studies* 29, no. 4 (October 1, 1995): 893–927; and Barbara Daly Metcalf, ed., *Moral Conduct and Authority: The Place of Adab in South Asian Islam* (Berkeley: University of California Press, 1984).

[34] For judges' interpretations, see Nandini Chatterjee, "Law, Culture and History: Amir Ali's Interpretation of Islamic Law," in *Legal Histories of the British Empire: Laws, Engagements and Legacies*, ed. Shaunnagh Dorsett and John McLaren (Abingdon, Oxon: Routledge, 2014), 45–57; and Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The University of Chicago Press, 2016), 184–190.

permissible part of public discourse and in turn made adapting to those norms the domain of public—rather than legal—policing. Expanded opportunities for the regular and routine publication of *fatwā*s and the general proliferation of vernacular *fatwā* literature thus made the discussion of Islamic law an element of everyday Muslim life.[35] Understanding how these discourses developed in the public sphere (and drew upon the technology of the local printing press) illustrates the importance of "law" beyond the formal context of the colonial courts and demonstrates how civic discourses of law became imbricated in the exercise of public and community policing.

III. Classical origins of the fatwā

Before turning to developments in the late-nineteenth century, it will be useful first to consider the longer history of the *fatwā* (especially before considering its institutionalization in the next chapter). In Islamic jurisprudence, *fatwā*s are simply legal opinions, written by a *muftī* in response to a question presented to him by the *mustaftī* (*fatwā*-seeker) on any matter of civic, political, religious, or other concern.[36] The practice of *fatwā*-seeking (*futyā*) developed gradually in the formative period of Islamic jurisprudence, in the centuries following the death of the prophet (632 CE).[37] During the prophet's lifetime, followers and new believers could directly ask for answers to questions of comportment, behavior, ritual practice, and law.[38] Following the death of

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[35] This dissertation contends that the publication of Islamic legal discourses created greater awareness among Muslims of the letter of the law.

[36] The discussion that follows draws upon Mujeeb Ahmad's wonderful study, *Janūbī Eshiyā ke Urdū majmūʿah-i hāʾe fatāvá: unīsveṉ aur bīsveṉ ṣadī ʿisvī* (Islāmābād: Nīshnal Buk Fāʾūnḍīshan, 2011), as well as Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), 110–113; Hallaq, *An Introduction to Islamic Law* (New York: Cambridge University Press, 2009), 9–11; and Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, "Muftīs, Fatwas, and Islamic Legal Interpretation," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, Harvard Studies in Islamic Law (Cambridge, Mass: Harvard University Press, 1996), 3–32.

[37] Hallaq, *Sharīʿa*, 27–71.

[38] Ahmad, *Janūbī Eshiyā ke Urdū majmūʿah-i hāʾe fatāvá*, 14.

the prophet, however, the companions began to consult the Qur'ān and the Ḥadith for answers to their questions, but for cases in which they could locate no clear answer in either of those sources, they began to turn to each other to develop an answer.[39] This practice remained in use through Abu Bakr's time as caliph (632–634 CE) at which point his successor, ʿUmar Farūq added Abu Bakr's actions and decisions to the possible sources of law. This practice of following the preceding caliph's actions and opinions continued until the fourth caliph ʿAlī bin Abī Ṭālib's death in 661 CE. Then, after the Rashīdūn Caliphate, Mujīb Aḥmad explains, as the Muslim community expanded and political discord arose, answering legal questions began to require additional sources.[40]

In the formative period, whenever the companions of the prophet could not answer a question by turning to the Qur'ān, they could bring the issue directly to the prophet for guidance, and it was during this period that the prophet designated Abu Bakr as "*muftī*",[41] and allowed him to provide answers to ancillary matters (*furūʿ masāʾil*).[42] Following in his footsteps, the other rightly guided caliphs also gave *fatwā*s during the prophet's lifetime such that as the community grew and new problems and situations (*ḥālat ō masā'il*) arose, the companions of the prophet began to issue *fatwā*s "in light of the Quʿān and Hadīth" more regularly.[43] The practice of seeking and receiving *fatwā*s thus emerged from the exigencies of the growing Muslim community beginning from the

[39] Ibid.

[40] Ibid., 14–15.

[41] Ibid., 19.

[42] Ibid.

[43] Ibid.

time of the prophet and continuing into the present.[44]

As an opinion given in response to a legal question, the *fatwā* is an inherently flexible legal form—agile and adaptable to different circumstances and situations.[45] In principle, *fatwā*s respond to specific questions posed by the *mustaftī* to the *muftī*, who then provides an answer based on the circumstances presented in the question to the best of his ability.[46] Once he issues his response, the *muftī* may revise his answer in light of new interpretations or new understandings.[47] It is only after the successive confirmation and repeated application that the *fatwā* may begin to assume a law-like status.[48] Though *fatwā*s may contribute to the production of a judicial ruling in the context of a particular case appearing before the *qazī*, the term "opinion", rather than "ruling" as it is sometimes translated, captures the nature of the *fatwā* more accurately.[49] In fact,

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[44] The development of institutions for *futyā* following the expansion of the Ottoman Empire also supports this observation. Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1999); Hilmar Krüger, *Fetwa und Siyar: zur internat.-rechtl. Gutachtenpraxis d. osman. Ṣeyh ül-Islâm im 17. u. 18. Jh. unter bes. Berücks. d. "Behcet ül-Fetâvâ"* (Wiesbaden: Harrassowitz, 1977); R. C. Repp, *The Müfti of Istanbul: A Study in the Development of the Ottoman Learned Hierarchy*, vol. no. 8, Oxford Oriental Institute Monographs (London: Published by Ithaca Press London for the Board of the Faculty of Oriental Studies, Oxford University, 1986). One course argue the late-nineteenth century represented a similar period of adjustment and intellectual expansion in the wake of political contraction.

[45] *Fatwā*s can be oral or written; most oral *fatāwa* have been lost, so scholars tend to consult only written texts. (The *fatwā*'s flexibility is in some ways reminiscent of the flexibility found in other document forms like the *fārigẖkẖaṭṭī*'s use in Bharuch.)

[46] In most places, *muftī*s tend to be men, on account of their traditionally greater access to higher education and ability to work in public spaces where questions could be brought to them. Because of this tendency, masculine pronouns are appropriate here. However, unlike for *qazī*s, the rules for *muftī*s do not automatically prohibit women, blind people, or deaf people from acting as *muftī*s. (See, E Tyan and J.R. Walsh, "Fatwā," ed. P. Bearman et al., Encyclopaedia of Islam, Second Edition [Leiden: Brill Online, 2012], http://dx.doi.org/10.1163/1573-3912_islam_COM_0219; Khalid Masud also describes the qualifications and necessary training *muftī*s must undergo in light of several sources from South Asia. M. Khalid Masud, "Ādāb Al-Muftī: The Muslim Understanding of Values, Characteristics, and Role of a Muftī," in *Moral Conduct and Authority: The Place of Adab in South Asian Islam*, ed. Barbara Daly Metcalf [Berkeley: University of California Press, 1984], 124–145.)

[47] Tyan and Walsh, "Fatwā"; and Masud, Messick, and Powers, "Muftīs, Fatwas, and Islamic Legal Interpretation," 25–26.

[48] Hallaq, "From *Fatwās* to *Furū'*". Historically, some scholars have viewed the *fatāwa* compiled in texts from South Asia, like the *Fatāwa-yi ʿĀlamgīrī*, as the accepted position of the school (here, the Ḥanafī school), rather than as an answer to a specific question—i.e., as a work of *furu'*, not *fatāwa*. (Masud, Messick, and Powers, "Muftīs, Fatwas, and Islamic Legal Interpretation", 14; and Guenther, "Hanafi *Fiqh* in Mughal India.")

[49] Masud, Messick, and Powers preface to *Islamic Legal Interpretation*, ix.

as many introductions to the *fatwā* will attest, the *fatwā*—except, perhaps, when issued in conjunction with a court ruling—carries no power of enforcement.[50] *Fatwā*s are by nature non-binding legal opinions; despite the certainty, authority, or strictness with which the *muftī* offers his response, he has no power to force the *mustaftī* or anyone else to follow his decree.[51]

The inherent flexibility of the *fatwā*, however, has not prevented many early scholars of Islamic jurisprudence to paint the system as "increasingly rigid and set in its mould" after the formative period.[52] J.N.D. Anderson, W.M. Watt, and H.A.R. Gibb, among others all came to the same conclusion that after the formative period, substantive legal innovation, proverbially referred to as the "gate of *ijtihād*"[53] (or, independent legal reasoning) "was closed, never again to be reopened."[54] This interpretation suggests that following the canonization of the four primary schools of Sunni jurisprudence (Ḥanafī, Malikī, Shafiʿī, and Ḥanbalī), the idealized juridico-political system embodied in Islamic *fiqh* remained stagnant for the next several centuries, immutable and unbending. Among these scholars, certain individuals, drawing upon different bodies of evidence, and different modes of reasoning have offered different timelines for the supposed closing of the gate of *ijtihād,* but they all seem to point to sometime between the ninth and twelfth centuries.[55]

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[50] Hallaq provides a succinct summary of this relationship, see his *Introduction to Islamic Law*, 9–11. This statement holds for Sunni Islam. In Shiʿī Islam, *fatwā*s issued by the *mujtahid* have a different status. For a good overview see E. Ann Black, Hossein Esmaeili, and Nadirsyah Hosen, "Fatwa and Muftis," in their *Modern Perspectives on Islamic Law* (Northampton, MA: Edward Elgar, 2013), 83–106.

[51] The question of enforcement has become a matter of concern lately in places like India, where judges have ruled that it is illegal to enforce *fatwā*s. ("India's Supreme Court Sets Rules for Sharia Courts," *Dawn*, July 7, 2014, Online Edition edition, https://www.dawn.com/news/1117667.)

[52] Schacht, *An Introduction to Islamic Law*, 75.

[53] This metaphor comes from the Arabic expression "insidad bab al-ijtihad".

[54] H.A.R. Gibb, cited in Hallaq, "Was the Gate of ijtihad closed?", 3. See also Intisar Rabb, "Ijtihād," in *Oxford Encyclopedia of the Islamic World,* ed. John L. Esposito, (Oxford: Oxford University Press 2008).

[55] Hallaq, "Was the Gate of ijtihad closed?," 3–4.

More recent revisionist scholarship has challenged this idea, citing the *fatwā*'s continued role in providing legal guidance for changing circumstances. Though countless oral and uncatalogued *fatāwa* have been lost over time,[56] those that have been compiled into *fatāwa* collections (*majmu'a*) help to "establish a connection between *fatwā* as legal discourse and *fatwā* as a social instrument."[57] That is, *fatwā* literature creates a link between the theoretical, theological aims of the *sharī'a* and the sociological, practical application of *qānūn.* Among these compendia, there are two types of compilations. Compilations of the first order preserve the question and answer format of the *fatwā*; these are "primary" compilations in Hallaq's taxonomy and the type of textual production under consideration in this chapter.[58] These writings differentiate the question (*al-suwāl*) from the answer (*al-jawāb*) and include personal and contextual details linking the question (and its answer) to a particular time and place.[59] Secondary compilations are those that have undergone subsequent revision or abstraction. Neither "secondary" collections of *fatāwa* (i.e., collections that have gone through a process of compilation, editing, and revision) nor legal treatises contain the level of detail found in these "primary" collections of *fatāwa*.[60] This distinction is important, as it further underscores the point that *fatwā* questions (*istiftā*) were based on real-world experiences and issues. Wael Hallaq includes other aspects of *fatwā* literature that

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[56]Ahmad, *Janūbī Eshiyā ke Urdū majmū'ah-i hā'e fatāvá,* 46; Masud, Messick, and Powers, "Muftīs, Fatwas, and Islamic Legal Interpretation," 23; see also G. C. Kozlowski, "A Modern Indian Mufti," in *Islamic Legal Interpretation: Muftis and Their Fatwás*, ed. Muhammad Khalid Masud, Brinkley Messick, David Stephen Powers (Cambridge: Harvard University Press, 1996), 242–50; and Kozlowski, "Loyalty, Locality and Authority in Several Opinions (Fatāwā) Delivered by the Muftī of the Jami'ah Niẓāmiyyah Madrasah, Hyderabad, India," *Modern Asian Studie*s 29, no. 4 (October 1, 1995): 893–927.

[57] There are hundreds of these works. As Hallaq reports, Ḥājji Khalifa's *Muhddardt fi Tarikh al-Madhhab al-Maliki* includes no fewer than 160 titles and "'Umar al-Jidi lists at least 80 titles of Māliki fatwā works." (Hallaq, "From Fatwās to Furu'," 35n and 31.)

[58] Hallaq, "From Fatwās to Furu'," 31–32.

[59] Ibid.

[60] Ibid., 32n, 32–33, 43.

strengthen these conclusions but for our purposes, the *fatwā*'s connection to particular individuals living in a particular time and place support the *fatwā*'s utility as a source of social and cultural history, in addition to its connection to theological doctrine and law.[61]

One of the obstacles preventing historians from working more closely with primary *fatwā* literature is that the practice of seeking and producing *fatāwa* often involved ephemeral media. Though many *mustaftī*s did write their questions on paper before bringing them to the *muftī* (and this practice even prompted Abū al-Su'ūd to compose a handbook with precise instructions for writing an *istiftā*),[62] the *muftī* would typically write his answer on the same page before returning it to the *mustaftī*.[63] Additionally, some *fatwā* questions and answers were not written but given and received through oral communication, further complicating the *fatwā*'s place as a source for social history.[64] As a result, many spoken and written *fatāwā* have been lost over time. In some contexts, the *muftī* or his assistant maintained a register in which he recorded the question and its answer, but for most cases, even when the "primary" format of the question and answer have been preserved, most *fatwā* compilations exist with at least one degree of separation from the original.

Because the term "*fatāwa*" has come to encapsulate a wide range of writings including primary and secondary *fatwā* literature as well as other jurisprudential writings, it is often difficult to establish the connection between extant *fatwā* literature and the history of legal practice. The

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[61] Masud, Messick, and Powers, "Muftīs, Fatwas, and Islamic Legal Interpretation," 10.

[62] Hallaq, "From Fatwās to Furu'," 34.

[63] For a discussion of the bureaucratic materiality of the *fatwā* file, see Chapter Six. Works of *inshā'* (see Chapter Three) also included form letters for how to address a *muftī*. See, e.g., Ḥifẓ Allāh, *Inshā-yi fayzrasān* (Kānpūr: Nawal Kishawr, 1882), 80.

[64] On the use of the *fatwā* for social history, see, David S. Powers, "Fatwas as Sources for Legal and Social History: A Dispute Over Endowment Revenues From Fourteenth-Century Fez," *Al-Qantara: Revista de Estudios Árabes* 11, no. 2 (1990): 295–342; Cf., Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār Al-Iftā* (BRILL, 1997), 19–21.

Fatāwa-yi ʿĀlamgīri is one such text that complicates this idea. Despite its name, the *Fatāwa-yi ʿĀlamgīrī* is not a collection of *fatāwa* in the strict sense given that it does not follow the question-and-answer format. Rather, the *Fatāwa-yi ʿĀlamgīrī* represents an effort to create a substantive compilation of prevailing opinions among the *ʿulamā* of South Asia within the Ḥanafī school of jurisprudence by systematizing the judicial opinions from across the subcontinent into "a comprehensive reference work of Islamic law."[65] Though contemporary chronicles praise the Mughal Emperor Aurangzeb's critical involvement in the project, the collection is neither a compilation of *fatāwa* written during Aurangzeb's reign, nor is it, as the name might otherwise suggest "a collection of fatwas issued by the Emperor Aurangzeb."[66] Rather, the text is a "comprehensive review of Ḥanafī *fiqh* produced to aid qazis and muftis in their work of making legal rulings according to the *sharīʿa*."[67] In this way, the *Fatāwa-yi ʿĀlamgīrī* represents an effort to summarize, compile, and abstract the standard consensus on matters of contemporary legal concern in light of judicial rulings and other jurisprudential writings. Along these lines, the text thus represents at least two degrees of separation and mediation from the types of *fatāwa* considered here.

The nature and extent of the mediation that contributes to the production of a text like the *Fatāwa-yi ʿĀlamgīrī* follows the progression "from *fatwā*s to *furuʿ*" that Hallaq cites as central to understanding the relationship between context-based, locally-produced *fatwā*s and works of substantive law.[68] Here, the mode of production is critical to understanding this relationship.

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[65] Guenther, "Hanafi *Fiqh* in Mughal India," 214.

[66] Ibid.

[67] Ibid., 225.

[68] Hallaq, "From Fatwās to Furuʿ." See also, Powers, "Fatwās as Sources for Legal and Social History."

Whereas *fatāwa* written on pieces of paper submitted by the *mustaftī* represent only one degree of separation between the *muftī* and *mustafti*, such writings reach a very limited audience. Once compiled into a *fatwā* collection, the audience for each *fatwā* expands to include scholars and students within the *muftī*'s circle as well as elite *ʿulamā* from elsewhere. *Fatwā* compilations produced by highly esteemed *muftī*s may then circulate among *ʿulamā* from elsewhere and become a source of citation. Once in circulation, other scholars may decide to reflect upon or to emend the legal reasoning exhibited within a particular answer. At this point, other scholars may challenge or revise the *muftī*'s ruling, moving the text from the context of its origins to the realm of legal abstraction. Through this process, a *fatwā*, which originated as a local experience or everyday point of confusion, moves from non-binding legal opinion, to accepted interpretation, to legal norm, and it is at the end of this process that *fatwā* literature approaches the idea of "law."[69]

IV. Print Technology and the Muslim Public Sphere

When lithographic printing became the primary means for producing and disseminating religious writings in the nineteenth century, the relationship between *fatwā* production, circulation, and reception changed. Not only did developments in print technology—along with attendant advances in other forms of communication like the telegraph—change the way *mustaftī*s could request answers to their questions but it also changed the processes of mediation involved in the production of *fatwā* collections. Print made *fatwā* literature accessible to a wider

[69] This is the process Hallaq describes in theorizing the transformation from contingent, contextual response to legal principle. Hallaq, "From Fatwās to Furuʿ."

audience of readers and placed Islamic legal debate within the (unruly) public sphere.[70] Along with changing readership and reception, print also made *fatwā* writings subject to greater scrutiny, discord, and debate. As an active contributor to the emergence of a vibrant colonial public sphere, *fatwā* literature influenced public thinking on a variety of subjects—including those falling under and those falling outside the colonial legal system's determination of what constituted religious personal law.[71] That is, as the *fatwā* became a part of public discourse, it provided scholars and subjects with the opportunity to comment upon the workings of the colonial legal system and to apply Islamic legal reasoning to other aspects of everyday life.

It has widely been noted among scholars, that the Muslim world was late to adopt print technology. While this observation fits squarely within the paradigm of Occidental ascendance and Oriental decline,[72] recent scholarship gives more credibility to the argument of religious preference, rather than to that of technological facility.[73] This view about Islam's late adoption of print technology benefits from the accepted observation that the invention of printing in Europe (c. 1440) fueled the success of the Protestant Reformation (began 1517). Not only did the printing press allow reformers like Martin Luther to disseminate their ideas quickly and efficiently across

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[70] On the formation of the public sphere, see Habermas *The Structural Transformation of the Public Sphere*. For an exploration of the public sphere in colonial South Asia, see Orsini, "What Did They Mean by 'Public'?"; and Orsini, *The Hindi Public Sphere 1920-1940*; along with Ghosh, *Power in Print*; and Joshi, *In Another Country*. My consideration of the public sphere draws upon Habermas's formulation as well as Benedict Anderson's pioneering work on print capitalism and community. See Benedict R. O'G Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Rev. and extended ed (London: Verso, 1991).

[71] For a discussion of the scope of *fatāwa*, see Metcalf, *Islamic Revival in British India*, 147–157.

[72] The Oriental/Occidental debate has flourished for decades. Recent contributions to this debate include Janet L. Abu-Lughod, *Before European Hegemony: The World System A.D. 1250-1350* (New York: Oxford University Press, 1989); Andre Gunder Frank, *Reorient: Global Economy in the Asian Age* (Berkeley, Calif.: University of California Press, 1998); Timur Kuran, *The Long Divergence How Islamic Law Held Back the Middle East* (Princeton: Princeton University Press, 2011); Kenneth Pomeranz, *The Great Divergence: Chine, Europe, and the Making of the Modern World Economy* (Princeton, N.J.: Princeton University Press, 2001); and Kenneth Pomeranz and Steven Topik, *The World That Trade Created: Society, Culture, and the World Economy, 1400 to the Present*, 3rd ed. (Armonk, N.Y.: M.E. Sharpe, 2013).

[73] See, e.g., Francis Robinson, "Technology and Religious Change: Islam and the Impact of Print," *Modern Asian Studies* 27, no. 1 (February 1993): 229–51.

the continent but the press also allowed the Reformation to achieve its aims of making scripture and religious knowledge accessible to parishioners.[74] In fact, the rise of print and the Protestant Reformation have been linked so closely that it is difficult to consider one without taking the other into consideration. But the basis for and the effects of the so-called "print revolution" have been hotly contested among historians of the book.

For book historians like Elizabeth Eisenstein whose *Printing Press as an Agent of Change* remains a rich resource, despite the convincing challenges that have been put to it, the print revolution contributed to the rationalization and systematization of information; it allowed scholars working in diverse fields to codify and unify information, to produce authoritative editions, and to establish coherence and consistency in diverse fields, such as law.[75] Systematization and organization derived from the printed book's inherently rational format contributed, in Eisenstein's analysis, to the development of rational thought and fixed standards of knowledge across a range of fields from law and religion to domestic science and medicine.[76] The technology was thus catalyst to an expansive range of developments in European religion, science, and governance.

Refuting many of Eisenstein's central claims, Adrian Johns argues the print revolution instead created competition, uncertainty, and diversity in the production of scientific

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[74] On this relationship, see, e.g., Roland Herbert Bainton, *The Reformation of the Sixteenth Century* (Boston: Beacon Press, 1952); Tessa Watt, *Cheap Print and Popular Piety, 1550-1640* (Cambridge [England]: Cambridge University Press, 1991); Richard G. Cole, "The Dynamics of Printing in the Sixteenth Century," in *The Social History of the Reformation*, ed. Lawrence P. Buck and Jonathan W. Zophy (Columbus: Ohio State University Press, 1972), 93–105; Richard Gawthrop and Gerald Strauss, "Protestantism and Literacy in Early Modern Germany," *Past & Present* 104, no. 1 (August 1, 1984): 31–55, doi:10.1093/past/104.1.31; and Elizabeth Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe* (Cambridge, England: Cambridge University Press, 1979).

[75] Eisenstein, *Printing Press as an Agent of Change*, 91–92; 104–105; and chapter 4.

[76] Ibid., 88–107.

knowledge.[77] Rather than fixing information, as Eisenstein suggests, print exacerbated concerns over the authority of information. The printed book was not a platform on which differences and disputes dissipated. Instead, it was a platform that produced diverse opinions, created contests over the origin of ideas, led to intense concerns about authenticity, and created a veritable marketplace of ideas, in which opponents battled with one another for control of the public's intellect.[78] Johns cites Eisenstein's analysis for its technological determinism, arguing against the rational principles promulgated by the linear structure of the book and the material rigidity of the printing press.[79] Most likely, there are merits to both cases. While the printing press did not fix information to the extent that Eisenstein suggests, mechanical reproduction did allow for some systematization in the production and dissemination of information, though there was always room to undermine print's authority.

Given print's connection to political rationalization, religious reformation, and scientific revolution, it is no wonder that historians of the Islamic world are still unable to answer questions about the relatively late adoption of print by Muslims. Despite the availability of the technology needed to print texts in the Arabic script and despite evidence that this technological knowledge reached the Levant shortly after print's arrival in Europe, it was not until the late-eighteenth

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[77] Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago, IL: University of Chicago Press, 1998).

[78] Ibid., 324–379. The ideas Johns presents for early modern Europe resonate with observations Nile Green makes regarding the religious marketplace in nineteenth-century Bombay. These parallels are worth noting, though I do not wish to suggest that Bombay lagged behind Europe or that Bombay needed to experience this particular developmental stage to archive parity with Europe, rather that competition remains a defining feature of the religious marketplace. (Green, *Bombay Islam*.)

[79] Johns, *The Nature of the Book*, 10–32. On the debate between Johns and Eisenstein, see, the forum in the *American History Review*: Anthony Grafton, "How Revolutionary Was the Print Revolution?" *AHR* 107, no. 1 (February 1, 2002): 84–86. doi:10.1086/ahr/107.1.84; Elizabeth L. Eisenstein,"An Unacknowledged Revolution Revisited." *AHR* 107, no. 1 (February 1, 2002): 87–105. doi:10.1086/ahr/107.1.87; Adrian Johns, "How to Acknowledge a Revolution," *AHR* 107, no. 1 (February 1, 2002): 106–25. doi:10.1086/ahr/107.1.106; and Eisenstein,"Reply," *AHR* 107, no. 1 (February 1, 2002): 126–28. doi:10.1086/ahr/107.1.126. See also Arthur Willimson's review of *Nature of the Book* on H-Ideas, available: http://www.h-net.org/reviews/showrev.php?id=3359. Accessed 19 August 2016.

century at the earliest that large parts of the Muslims world began to use print technology in a meaningful way.[80] As Francis Robinson frames it, the question still remains,"[W]hy did the Islamic world trail so far behind the Christian world in adopting print?"[81] Some scholars cite fears of loss of authority as the reason for this relatively late adoption.[82] Others cite the presence of strong scribal cultures, in the centers of Islamic literary and artistic production.[83] Still others consider the absence of print's aesthetic facility as a factor that discouraged the adoption of print for the production of Arabic texts.[84] In all likelihood, the best explanation lies in a combination of these factors.

In the context of South Asia, it was not until affordable lithographic printing reached the subcontinent that native printing became widespread. The printing press first reached the subcontinent with the Portuguese Jesuit missions in the sixteenth century, but early printing was dominated by European enterprises, particularly for the purpose of translating and printing Christian liturgical texts,[85] and printing remained a branch of missionary activity until the British East India Company took up the project of acquiring, translating, and printing Oriental texts in

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[80] On the early history of Arabic printing, see Jonathan Bloom, *Paper before Print : The History and Impact of Paper in the Islamic World* (New Haven: Yale University Press, 2001); Richard W. Bulliet, "Medieval Arabic Ṭarsh: A Forgotten Chapter in the History of Printing," *Journal of the American Oriental Society* 107, no. 3 (July 1, 1987): 427–38, doi: 10.2307/603463; Geoffrey Roper, "The Printing Press and Change in the Arab World," in *Agent of Change: Print Culture Studies after Elizabeth L. Eisenstein*, ed. Sabrina Alcorn Baron, Eric N. Lindquist, and Eleanor F. Shevlin (University of Massachusetts Press, 2007), 250–67, http://www.jstor.org/stable/j.ctt5vk8sv.

[81] Robinson, "Technology and Religious Change in South Asia," 233.

[82] Ibid., 234. (See also Brinkley Morris Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society*, 1st. pbk. ed, Comparative Studies on Muslim Societies 16 [Berkeley: University of California Press, 1996], 27.)

[83] Messick, *The Calligraphic State*, 240.

[84] Mahdi, "From the Manuscript Age to the Age of Printed Books."

[85] Vinay Dharwadker, "Print Culture and Literary Markets in Colonial India," in *Language Machines: Technologies of Literary and Cultural Production*, ed. Jeffrey Masten, Peter Stallybrass, and Nancy Vickers, Essays from the English Institute (New York: Routledege, 1997), 108–36; and Joshi, *In Another Country*, 38.

the second-half of the eighteenth century.[86] The establishment of the Asiatic Society in 1784 gave budding scholars like William Jones a platform from which to undertake their intellectual pursuits, and scholars affiliated with the Asiatic Society produced some of the earliest translations of Hindu and Islamic law books on the subcontinent.[87] Accordingly, the establishment of the government *madrasa* and Fort William College also contributed to the production of printed books in Persian, Sanskrit, and other Indian languages.[88] But at this time, printing remained expensive, time-consuming, and inaccessible to many natives. The Company's efforts to acquire, compile, and translate important doctrinal and religious texts contributed to the dissemination of religious knowledge at the time, but the real effects of South Asia's encounter with print would not be felt for another hundred years.

Two changes took place in the mid-nineteenth century that paved the way for the acceleration of vernacular printing. First, the abolition of censorship laws in places like Lucknow allowed young entrepreneurs like Nawal Kishore to set up shop.[89] Second, the development of lithographic printing lowered the bar to entry for printer-publishers like Kishore and mitigated some of the aesthetic complaints that had made letter-press an unattractive option to literate

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[86] Shaw notes that the first printed book in Bengali was a translation of a Company legal text. Graham Shaw, *Printing in Calcutta to 1800: A Description and Checklist of Printing in Late 18th-Century Calcutta* (London: The Bibliographical Society, 1981).

[87] Jamal Malik, *Islam in South Asia: A Short History* (Leiden: Brill, 2008), 245–46; Stark, *An Empire of Books*, 35–45. See also Michael J. Franklin, *Orientalist Jones: Sir William Jones, Poet, Lawyer, and Linguist, 1746-1794* (Oxford: Oxford University Press, 2011).

[88] Stark, *An Empire of Books*, 39–45.

[89] Stark, *An Empire of Books*, 58.

populations accustomed to the grace and beauty of manuscripts produced by trained scribes.[90] One need only take a cursory glance at two cover pages—one produced by the Nawal Kishore Press, and the other by the Government Press at Calcutta—to understand the role aesthetics might have played in the late adoption of print on the subcontinent. The relaxing of legal restrictions (like censorship under the Nawāb of Awadh) and the fact that lithography made printing in multiple scripts more economically accessible because it reduced the need to produce (or import) expensive type founts, provided the context for a boom in native printing in the latter-half of the nineteenth century.[91]

Once print—particularly for Persian and Urdu texts in the customary *nasta'alīq* font—was available, it opened the door for new genres and new voices to enter the market of printed material. At first, many Indian publishers relied on the acquisition of government contracts and newspaper sales to keep their presses afloat. This was certainly the case for Nawal Kishore whose early printing career benefitted from the generosity of contracts to print government documents and school textbooks.[92] Other presses relied on subsidies from subscriptions and often leveraged income from the regular sale of commercial texts, like calendars and almanacs, to support less lucrative ventures in literary or religious publishing.[93] Eventually, however, as the market for print grew and competition kept prices low, public taste began to drive the market and determine what

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[90] Stark, *An Empire of Books*, 45–49. Ian Proudfoot also cites aesthetic rather than religious explanations as the primary factor. See, Proudfoot, "Mass Producing Houri's Moles," 172–3. By comparison, traveler Robert Binning also made the following remark with respect to the late adaptation of print in Persia, "printing in types is not relished by Persians; the character being necessarily stiff and uncouth, and very displeasing to an eye accustomed to the flowing written hand" (Robert Binning, *A Journey of Two Years' Travel in Persia, Ceylon, etc.* vol. I, [London: W.H. Allen, 1857), 312, quoted in Willem Floor, "čāp" in *Encyclopaedia Iranica* [December 15, 1990],http://www.iranicaonline.org/articles/cap-print-printing-a-persian-word-probably-derived-from-hindi-chapna-to-print-see-turner-no).

[91] Proudfoot, "Mass Producing Houri's Moles," 174.

[92] Stark, *An Empire of Books,* 52–53.

[93] Ibid., 82.

was printed. It was in this context that the publication of religious tracts and pamphlets soared.

Even within the context of this proliferation, the relationship between South Asia's print revolution and Islamic modernism remains a contentious issue. While scholars like Francis Robinson cite print technology as a key component in the protestantization of Islam in South Asia, others remains rather skeptical of Robinson's conservative interpretation of Islamic learning. Robinson's analysis relies on a traditional understanding of the relationship between religious knowledge and textual artifacts, in which oral transmission is paramount and texts are subject to skepticism and uncertainty. Print disrupted the tradition of oral transmission, he contends, by allowing "any Ahmad, Mahmud or Muhammad" to pick up a text, read it, and offer his own interpretation, without receiving knowledge from a trained tutor.[94] Access to printed religious texts outside the context of a study circle thus changed—and challenged—the nature of religious authority. The monetary transaction of buying a book and independent process of reading it replaced memorization and oral recitation which previously safe-guarded Islamic knowledge.[95] Emphasis on the oral and fear of unauthorized interpretations, Robinson suggests, contributed to the late adoption of print and spurred momentous changes in the nature of religious scholarship and interpretation once print entered the field.[96] Copying a manuscript by hand after receiving permission to interpret the text from one's teacher was different from mechanically reproducing with the aid of the printing press.

With print, there was a higher likelihood that errors could enter a text and be reproduced across hundreds of copies as a result. Successful publishers like Nawal Kishore developed

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[94] Robinson, "Technology and Religious Change," 245.

[95] Ibid., 236.

[96] Ibid., 235–6.

strategies to counteract some of these superstitions about the fallibility of print by ensuring that the stone blocks used in the printing of the Qur'ān, for instance, were not used for the production of other texts and having each copy proofread and authorized by a trained *ḥāfiẓ* (i.e., one who has memorized the Qur'ān).[97] Fear of cultural and religious decline also drove people to purchase religious texts, and the availability of such texts was crucial to the establishment and success of new institutes of Islamic learning like the Dār ul-ʿulūm founded at Deoband in 1867.[98] In this regard, print provided motivation for and a vehicle by which to promote religious change. Print was both an "agent of change" and reason for change, to return briefly to Eisenstein.

The print revolution was also accompanied by the vernacularization of religious literature.[99] During the course of the nineteenth century, this change is evident in that the spoken idiom of Urdu became as well the primary mode of religious publication. As Barbara Metcalf notes with respect to Islamic revival and the Deoband movement, the spread of print allowed the *ʿulamā* to introduce new works to an Indian audience by publishing "classical religious works, particularly of *hadis*, for the first time."[100] These works included the first Indian editions of Jāmiʿ at-Tirmiẕī and Ṣaḥīḥ al-Buk̲h̲ārī collections of Ḥadīth, published by Aḥmad ʿAlī as early as 1850.[101] In addition to publishing these seminal Arabic texts, scholars also began to translate the classics of Islamic theology and *fiqh* into Urdu and to publish critical editions with interlinear Urdu translations, glosses, and explanatory notes.[102] Publishing helped to forge a new register of

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[97] Stark, *An Empire of Books*, 193.

[98] On the *ʿulamā* and book publishing see Stark, *An Empire of Books*, 285-291.

[99] Proudfoot, "Mass Producing Houri's Moles," 169.

[100] Metcalf, *Islamic Revival in British India*, 201.

[101] Ibid.

[102] Ibid., 202–6.

Urdu as a literary-theological language, equipped to handle the minutiae of classical Islamic scholarship.[103] Such publishing activities also connected textual production with critical analysis. Though Urdu readily accommodated technical terms borrowed from Arabic, translation was nonetheless a form of textual interpretation. By virtue of the translation process, then, publication went hand in hand with textual analysis.

Translation also allowed rivalries to flourish, as different translators offered their own interpretation of the classical texts. Translations of the Qur'ān in particular demonstrated some of the possibilities for linguistic flexibility. Differences between editions and translations were "also the fruit of rivalry among religious leaders, for the 'ulama of each school produced their own."[104] Prominent scholars of the Dār-ul-'ūlūm at Deoband produced translations which competed with those produced by their Barelvi rivals at the book *bāzār*. Sir Sayyaid Aḥmad Ḵẖān and Dipṭī Naẕīr Aḥmad also produced translations of the Qur'ān, along with commentaries, glossaries, and indexes.[105] These translations not only reflect the role of print in cultivating and fomenting rivalries among different schools of thought and factions but also reflect the changing relationship between patronage and authority.

With multiple translations of the Qur'ān crowding the marketplace of religious ideas, many have described Islamic reform in the nineteenth century as a "Protestant Islam".[106] If *'ulamā* belonging to different factions could openly contradict one another in the public sphere, then there was little incentive to keep other individuals from picking up a particular text and

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[103] Ibid., 206–10.

[104] Ibid., 203.

[105] Ibid., 203–4. (On contests over translations, see n. 15, 203–4.)

[106] Robinson, "Technology and Religious Change," 242. See also Roman Loimeier, "Is There Something like 'Protestant Islam'?," *Die Welt Des Islams* 45, no. 2 (2005): 216–54.

offering their own interpretations. The proliferation of "chapbook culture", which prompted the rapid production of small booklets and pamphlets, also contributed to competition in the public sphere.[107] Newspapers further encouraged factional competition by directly engaging in popular debates and commenting on the production of new religious works.[108] Such competitions in the public sphere solidified Urdu's place as the preeminent language for religious textual production and also made print the central medium of exchange for these debates.[109] Though oral transmission no doubt played a role in the transmission of publicity and hype, person-to-person transmission was no longer the central pillar of Islamic scholarship in South Asia.[110] Printed books contributed to the success and expansion of new institutes of Islamic learning—particularly those like the Dār-ul-ʿulūm at Deoband and Nadwat-ul-ʿulāmā in Lucknow—but debates now revolved around the publication of cheap tracts and transitory treatises.[111] *Fatwā*s were one of many textual forms that flourished at this time.

V. Questioning Place and the Origins of Information

As volumes like Nile Green and James Gelvin's *Global Muslims in the Age of Steam and Print* make apparent, with the second half of the nineteenth century, new technologies came into the lives of many Muslims living across the Indian Ocean littoral, bringing questions of geographic proximity and orthodoxy to the fore.[112] In *fatwā* collections from this time, it is evident that as new

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[107] Francis Robinson, "The British Empire and Muslim Identity in South Asia," *Transactions of the Royal Historical Society*, Sixth Series, 8 (January 1, 1998): 271–89, doi:10.2307/3679298, 275.

[108] Metcalf, *Islamic Revival in British India*, 206–7.

[109] Metcalf notes that in 1877, "some seventy percent of all titles classified as religious were Muslim" in the North-Western Provinces. (Ibid., 202.)

[110] For parallels in Shīʿa Islam, see Justin Jones, *Shi'a Islam in Colonial India: Religion, Community and Sectarianism*, vol. 18, Cambridge Studies in Indian History and Society (Cambridge: Cambridge University Press, 2012), 19.

[111] Robinson, "Technology and Religious Change," 242–3.

[112] Green and Gelvin, eds., *Global Muslims in the Age of Steam and Print*.

modes of transportation like steam ships and trains and novel sources of information like the newspaper, the telegraph, and later the radio, reconfigured forms of long-distance communication and connection, questions about the relationship between near and far assumed a new urgency. Seeking and issuing *fatwā*s became one method for working out the implications of these new technologies on religious practices and communal life. These concerns were reflected directly in discussions of geographical difference, and indirectly through debates over the transmission of information. Responses to new technologies often changed over time, reflecting the development of more nuanced understandings of how technology operated and at times reflecting the realization that it was no longer possible to avoid these new technologies.

Debates surrounding the sighting of the crescent moon at the beginning or end of the month of Ramadan is one category of *fatwā* questions that brings together concerns about new communications technology, greater awareness of an existing global or trans-local Muslim community, and concerns about observing orthodox practice in light of perceived local differences.[113] And owing to the cyclical nature of the annual calendar of religious rituals, these questions became common and repetitive. As will become evident in the examples below, popular *muftī*s received multiple inquiries relating to this issue, which allows one to unravel the contextual and legal issues at play by examining successive *fatwā*s. Thus, through these questions and their responses, which often follow a formulaic and prosaic format, it is possible to uncover deeper concerns surrounding issues of local practice, regional difference, and the effects of transportation and travel on information accuracy and authority.

[113] Several types of questions address these concerns but for the purposes of the discussion here, in order to consider the nature of framing and presenting *fatwā* questions (rather than the points of law considered within), I have chosen to focus on this category of question.

When presented in an *istiftā'* (*fatwā* question), enquiries about the sighting of the crescent moon at the beginning or end of the month of Ramadan, take the following form: "What say you, scholars of the faith, in the matter in which news of the sighting of the crescent moon for the months of Ramadan [*Ramaẓān,* the ninth month] or *Shawwāl* [i.e., the tenth month, following Ramadan] comes from another place by way of telegram [electric wire; *tār-i barqī*]. Is it acceptable or not?"[114] For Maulana Sayyid Muḥammad Naẕīr Ḥusain Dehlavī (1805-1902), the answer to this question was simple: Under these circumstances, telegram news of the sighting of crescent moon for the months of Ramadan or Shawwal was not acceptable. In the context of other affairs (*muʿāmlāt*), he maintained, it is permissible to use the telegram, but in the context of religion (*diyānāt*), the telegram is not an acceptable mode of transmission.[115] By answering in this way, Naẕīr Ḥusain Dehlavī divided earthly and religious affairs into separate categories and permitted the use of new technology in the context of the one but not in that of the other.

His response to a similar question on the issue strengthens this position and also brings the influence of the mode of transmission upon the status of the information transmitted into consideration. "What say you scholars of the religion in this matter: Can one believe testimony of the sighting of the moon [that comes] by way of telegram?" the *mustaftī* asked in this instance, adding, "Please answer according to the Qur'ān and Ḥadith."[116] In response, Naẕīr Ḥusain explains:

> It is clear that, according to *sharʿ* interpretation, news sent by telegram is counted as non-believer news [*ḵẖabar-i kāfir*] for the reason that those who operate the telegraph are non-

[114] Sayyid Naẕīr Ḥusain Muḥaddiṣ Dihlavī, *Fatāvá Naẕīriyah: mubavvab va mutarjam* (Na'ī Dihlī: al-Kitāb Inṭarneshnal: Milnē [kā pata], Maktabah Tarjuman, 2007), 239.

[115] Ibid.

[116] Ibid., 238–9.

> believers [*kāfir hī hōtē haiñ*]. The testimony of non-believers is not trustworthy in the context of religion [*diyānat meiñ*], therefore, by extension news regarding the sighting of the moon transmitted by telegram is not trustworthy.[117]

In support and solidarity, several other *muftī*s added their signatures to this answer, including Sayyid Muḥammd ʿAbd al-Salām, Abū al-Bashīr Muḥammad ʿAbd al-ʿAzīz, and Sayyid Muḥammad Abū al-Ḥasan.[118] Yet despite having answered the question along these lines in two separate *fatāwa*, Naẕīr Ḥusain continued to receive *istiftā*s connected with this issue. In a subsequent question, another *sāʾil* expanded his inquiry to include issues of geography, separation, and distance: "What say you, scholars of the faith, in the following circumstance [*ṣūrat*] when news of the *hilāl* moon comes from Bombay, etc., is it permissible to act on this information, believing it to be trustworthy, or not?"[119] Though he had already responded to this question on more than one occasion, the *muftī* nonetheless offered another response, this time drawing attention to the concept of "news" embedded within the question. News about the sighting of the moon that travels by way of telegram, the *muftī* began, is "not worthy of acceptance…because news of the sighting of the crescent moon is not mere news, but rather it is a type of 'testimony'."[120] As testimony, then, such information requires one to use the expression "I testify" in the presence of the *qāẓī,* with the proper forms of certification, he further clarified.[121] Given these requirements, news shared by way of telegram is insufficient for the purposes of ending the fast, and it is not permissible to follow such information in the context of

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[117] Ibid., 239. (Concerns over telegraph operators also arose in other contexts, which prompted many customers to develop short-hands and codes. See Gleick, *The Information*, 153–161.)

[118] Naẕīr Ḥusain Muḥaddiṯ Dihlavī, *Fatāvá Naẕīriyah*, 239.

[119] Ibid.

[120] Ibid., 239–40.

[121] Ibid., 239-40.

ritual practice.[122]

On the surface, this question and its answer are seemingly straightforward in that telegrams do not provide sufficient evidence for the sighting of the new moon, but owing to the ubiquity of the question in *fatwā* collections from well-known *muftī*s of the late-nineteenth and early twentieth centuries, it is useful to consider different versions of this question and the details they include. Furthermore, the presence of multiple versions of the same question within a single collection of *fatwā*s—as in those provided above—suggests that this question remained an issue of concern for many years, even after several members of the *ʿulamā* had agreed to the generic decision offered here. The above-cited answers were written by Naẕīr Ḥusain Dehlavī, but he was certainly not the only *muftī* to receive questions on this matter. Similar examples were also received by and subsequently published in the *fatwā* collection published by other members of the well-known Deoband school.[123]

As the introduction to the third edition of the *dār-ul-ʿulūm*'s collection states, the *Fatāwa Dār-ul-ʿulūm Deoband* comprises two sources. The first source is the *ʿAzīz-ul-fatāvá* of ʿĀlim Rabbanī Muftī-yi Aʿẓam Maulana ʿAzīz-ur-Raḥmān Sāḥib who was the former *ṣadr muftī* (chief *muftī*) at the Dār-ul-ʿūlum at Deoband.[124] ʿAzīz ur-Raḥmān wrote his *fatwā*s between 1329 AH and 1334 AH (1911–1915 CE), and his collection was first arranged for publication in 1359 AH (1940 C).[125] The second part of this two-volume compilation comes from the *Imdād al-Muftain* of Maulana Muftī Muḥammad Shafīʿ, who wrote his *fatāwa* between 1349 and 1362 AH (1930–

[122] Ibid., 240.

[123] On the genesis of Deobandi *fatāwa*, see Metcalf, *Islamic Revival in British India*, 147–56.

[124] "Introduction", *Fatāva Dārulʿulūm Diyoband* (Karācī: Dārulishāʿat, 1976).

[125] Ibid.

1949 CE) while employed as the *ṣadr muftī* at the Dār-ul-ʿulūm Deoband.[126] During that time, Muftī Muḥammad Shafīʿ wrote approximately forty-thousand *fatāwa*, a selection of which was later published in an eight-volume series.[127] According to the editor, the third edition of the *Fatāwa Dār-ul-ʿulūm Deoband* presented its contents under a new arrangement, but even with this new arrangement, the editor kept the two *muftī*s' writings separate, with volume one dedicated to the *fatwā*s of ʿAzīz ur-Raḥmān and volume two being the writings of Muḥammad Shafīʿ.[128]

ʿAzīz ur-Raḥman's collection in particular includes several questions addressing the sighting of the moon. Number 637, for instance, asks, "If news of the sighting of the *hilāl* (crescent) moon at Ramadān comes by way of telegram, is acting upon this permissible or not?"[129] The question in the following *fatwā* (Number 638) uses different language but asks an almost identical question: "Is giving up the Ramadān fast and celebrating ʿĪd on the authority of a telegram trustworthy or not? We have seen that in the Arab world, ʿĪd is celebrated on the basis of telegrams. What is the view of the Deoband leaders?"[130] Here the *mustaftī* asks the by-now well-known question about the relationship between information transmitted by telegram and one's decision to keep or to end the fast at the conclusion of Ramadan, but frames the question in relation to what is rumored to happen in the Arab world versus what is permissible in South Asia according to the Deobandi *ʿulamā*. Distance, location, and the origin of information are central to this *mustaftī*'s inquiry.

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[126] Ibid.

[127] Ibid.

[128] Ibid.

[129] ʿAzīz-ur-Raḥman, *Fatāwa Dār-ul-ʿulūm Deoband*, Vol. 1, 372.

[130] Ibid.

Again, *fatwā* Number 639,[131] presents a similar question: "If news of the breaking of the fast for the month of Ramadan comes [by way of telegram] are the conditions in the *Kitāb al-qāẓa* met or not? And if so, on the basis of what points? And is news by telegram reliable or not?"[132] The *muftī* replies accordingly. In response to the first part of the question, he writes that news of the sighting of the crescent moon that comes by way of telegram or letter is not lawful evidence and that acting upon it is not correct. For the second part of the question, he adds that according to the rules of *sharīʿa* (*qawāʿid-i sharīʿa kē muṭābiq*), relying on the authority of the telegram for the purposes of fasting or celebrating ʿĪd is not acceptable (*jāʾiz nahīñ*), but if the same information is later verified, then it is proper.[133] Then, for the third issue, the *muftī* again quotes from the sources cited earlier in his response, which he then summarizes by stating simply that news from a telegram for the purposes of fasting or breaking the fast is not reliable and adds that if there is other evidence, then it is possible to act upon the information contained in the telegram.[134] These questions and their responses point to a tension between the existence of information about the sighting of the moon and the inability to act upon that information. Offering these opinions without further deliberation, ʿAzīz ur-Raḥman suggests that acting upon information transmitted by letter or telegraph wire is not permissible. Thus, it is not impermissible, *per se*, to use the telegraph to transmit this type of news but in order for one to act on this information, it is incumbent upon the practitioner to verify the source of that information according to the lawful requirements. Though ʿAzīz ur-Rahman's answers confirm the sentiments

[131] The text reads 439, but this must be an error as the *fatwā*s are numbered sequentially. (Ibid.)

[132] Ibid.

[133] Ibid.

[134] Ibid., 272–3.

expressed in Naẕīr Ḥusain's *fatwā*s, he offers little contemplation on the nature of the technology or the information it transmits. For him, the new technology cannot replace existing procedures for verifying testimonial information; other *muftī*s, however, take up these aspects more directly.

The answers provided in the multi-volume work *Kifāyat al-Muftī* will help demonstrate this point in more detail.[135] This nine-volume set contains the *fatwā*s of Muftī-yi Aʿẓam Maulana Kifāyatullāh Dehlavī (c. 1875–1952), who grew up in Shāhjahānpūr and later moved to Delhi where he helped to found and worked as the first president of the Jam'īat ʿUlamā-i Hind.[136] During his lifetime, Kifāyatullāh remained active as a *fatwā navīs*, gaining prestige and prominence as he worked. According to Mujīb Aḥmad's encyclopedic volume on the history of Urdu *fatwā*-writing in South Asia, in addition to receiving *istiftā'* (*fatwā* questions) from people in South Asia, Kifāyatullāh also received inquiries from "Africa, Afghanistan, America, Iran, Britain, Burma, Badakhshan, Bukhara, Balkh, Tashkent, Turkestan, China, Java, Sumatra, and Malaya," not to mention those he received from "Arab countries (*ʿArab Mamālik*)."[137] Kifāyatullāh composed his first extant *fatwā* in 1901, and he was known for writing answers to contemporary problems in clear, easily understood language; his answers were brief but well-grounded (*mudallil*).[138] Though Mujīb Aḥmad notes that the name and provenance of the *mustaftī* (*fatwā*-seeker) is given for some of the entries, the ones discussed below in relation to Ramadan do not

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[135] Muḥammad Kifāyatullāh. *Kifāyat Al-muftī; [yaʿnī Muftī Aʿẓam Maulānā Kifāyatullāh Kī Fatavá]. Edited by Ḥafīẓurraḥmān Vāṣif* (Dihlī[?]: Ḥafīẓurraḥmān Vāṣif, 1971).

[136] Mujīb Ahmad gives his dates as 1898–1952 but this seems to be incorrect, as he then marks 1898 as the year in which Kifāyatullāh began to write *fatwā*s. (Mujīb Ahmad, *Janūbī Eshiyā Ke Urdū Majmūʿah-i Hā'e Fatāvá: Unīsven Aur Bīsven Ṣadī ʿīsvī* [*South Asia's Urdu Fatwā Collections: 19th and 20th Centuries, CE*] [Islāmābād: Nīshnal Buk Fā'ūnḍīshan, 2011], 63; Cf., "Kifāyatullāh Dihlawi," Wikipedia, the Free Encyclopedia, Accessed: June 18, 2014. Available: http://en.wikipedia.org/w/index.php?title=Kifāyatullāh_Dihlawi&oldid=600929733.)

[137] Ahmad, *Janūbī Eshiyā Ke Urdū Majmūʿah-i Hā'e Fatāvá,* 63.

[138] Ibid.

include these details.[139]

Like the individuals discussed above, Muftī Kifāyatullāh also received questions surrounding the credibility of information about the *hilāl*, or crescent moon, marking the end of Ramadan and the beginning of Sawwal, which appear in the Book on Fasting (*kitāb al-ṣawm*), found in the fourth volume of this set.[140] Under normal circumstances, the moon sighting occurs after thirty days of fasting, but as the *fatwā*s discussed below indicate, questions over precisely how one marks the end of one month and the start of the next are often unclear, especially in the context of cloud-cover or other optical impediments. The questions presented to Kifāyatullāh thus revolve around the transmission of information from one city to the next, particularly in instances wherein the new moon has been sighted in one location and not in another. For example, in one of these questions, the *mustaftī* explains:

> A *maulvī* heard news that a telegraph had come from Delhi saying that there, the 29th moon [i.e., the moon of the 29th day of the month of fasting] had happened. On the basis of this news, the maulvi broke the fast and celebrated ʿĪd and said he would take responsibility for all of the sins of these actions upon himself. Is breaking the fast and taking responsibility for the sins correct or not?[141]

In reply, the *muftī* points to two issues of relevance in this situation: First, he points out that the *maulvī* acted on the basis of a telegram that came from Delhi saying the moon of the 29th of the month had happened there. On the basis of this information, breaking the fast and celebrating ʿĪd was absolutely incorrect (*hargiz durust nahīñ*), Kifāyatullāh contends.[142] He then expands this interpretation by explaining that proof of the sighting of the moon requires the testimony of two

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[139] Ibid. (The final section of this chapter discusses those *fatāwa* published with information about their *mustaftī*s.)

[140] Kifāyatullah, *Kifāyat Al-muftī*, Vol. 4.

[141] Ibid., 197–8.

[142] Ibid., 198.

upright (*ʿādil*) men. This particular condition had not been met in the present situation because the telegram did not come to the *maulvī* directly and he therefore could not confirm whether the account provided in the telegram was authoritative.[143] Second, the *muftī* adds that because telegrams are perpetually indeterminate and incorrect (*chūnke tār meiñ kamī ō bēshī aur g̲halaṭī hōtī rahatī hai*), telegrams are not a sufficient source of evidence for the sighting of the new moon.[144] Because of this, the telegram could not serve as sufficient proof of the new moon's arrival.[145] After quoting a passage from the *Fatāwa-yi Hindiyah*,[146] the *muftī* then adds that the *maulvī*'s decision to take responsibility for all of the sins incurred was close to blasphemy and that it required great strength (*ṭ̲āqat*) to make such a claim.[147]

Though the *mustaftī* framed the question in terms of a specific incident surrounding the arrival of a particular telegram, Kifāyatullāh writes his response to the idea of the telegram in more general terms: The sighting of the moon must be witnessed by two upright men; if the *maulvī* cannot verify the identity or character of the witnesses, then he cannot trust their testimony. By way of elaboration, he adds that telegrams are notoriously incorrect and indeterminate, therefore, they cannot be trusted in this context.[148] Framing his answer in these terms, Kifāyatullāh calls into question the relationship between the information, its source, and its mode of transmission. In order for the *maulvī* to accept the news of the sighting of the moon, he must know or ascertain the identities of the individuals responsible for testifying to the moon's

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[143] Ibid.

[144] Ibid.

[145] Ibid.

[146] The work appears under this name in his citation. The *Fatāwā-yi ʿĀlamgīrī* is referred to as the *Fatāwá-yi Hindiyya* outside South Asia. See Guenther, "Hanafi Fiqh in Mughal India"; and Khalfaoui, "al-Fatāwā l-ʿĀlamgīriyya."

[147] Kifāyatullāh, *Kifāyat al-muftī*, vol. 4, 198.

[148] Ibid.

arrival. Without knowing the source, the *maulvī* cannot treat the information itself as trustworthy. Having established these requirements, Kifāyatullāh then calls the mode of transmission into question. Telegrams, he contends, are often inaccurate and cannot on their technological merits (or lack thereof) serve as proper witnesses to the moon's arrival.[149]

Kifāyatullāh is certainly not the only *muftī* to bring this relationship into question, but before turning to the opinions of others, it might be useful to look at another one of his *fatāw*s on the same subject to consider the way technological change not only complicated the issue of authenticity but also brought ideas of uniformity into question—particularly with respect to the way new technologies shortened distances and closed gaps between different locations, and brought disparate populations of local Muslims into contact with new global ideals.[150] In a subsequent question on the issue, the *mustaftī* explains that a telegram proclaiming that today is ʿĪd recached a place near western Rangoon on the 29th day of Ramadan at approximately ten o'clock.[151] On the basis of this message, "some people—meaning half the people (*bʿaẓ ashk̲h̲āṣ yaʿnī nisf lōg*)" broke the fast and half the people, not trusting the telegram, kept their fast until that evening (*shām*), waited until the completion of their fast on the following (i.e., the thirtieth) day, and celebrated ʿĪd on Sunday.[152] The *mustaftī* then summarizes:

> In short, the people of Rangoon, having kept the fast for a full 29 days celebrated ʿĪd on Saturday while here, some people, having completed (*kāmil kiyē)* 29 days of fasting, broke the fast on the 30th and others did a full 30 days of fasting. … Now the question is whether those people who broke their fast on the 30th day must make up for it or not. The

[149] Kifāyatullāh was not the only person to note the presence of errors in early telegrams. See Gleick, *The Information*, 158; P. Kevin MacKeown, *Early China Coast Meteorology: The Role of Hong Kong* [Aberdeen: Hong Kong University Press, 2011], 120.)

[150] The closing of these distances is often cited as one of the changes ushered in by print technology. (Robinson, "Technology and Religious Change," 243.)

[151] Kifāyatullāh, *Kifāyat al-muftī*, vol. 4, 198.

[152] Ibid.

> second issue worth questioning is that this year, most places heard that ʿĪd happened on Saturday, and if that is so, then, in this case, is atonement (*kaffārah*) still required or not? And what are the conditions for determining whether this was so? Is there any basis in rumors or not?[153]

Before considering the answer here, it is worth highlighting a few issues embedded within the *mustaftī*'s question. First, though the question begins by referring to the arrival of a telegram saying ʿĪd is today in Rangoon, the *mustaftī* concludes by wondering whether it is possible to place trust (*iʿtibār*) in rumors (*afwāh*).[154] The juxtaposition of these different forms of communication is striking, as the question links the two as complementary elements in a single process. Second, the reference to Rangoon is interesting for the way it draws this marginal location into the mainstream cultural sphere of South Asian Islam while simultaneously marking its separation from the subcontinent by questioning the legitimacy of actions taking place there. Third, the reference to the days of the week—Saturday (*shanbe*) and Sunday (*itvār*)—illustrates the particularities of context at play in this instance.[155] References to a particular day in a particular place ground the question in these specific circumstances and detract from the generic rule an earlier ruling might express.

In reply, the *muftī* writes that for situations in which the ascension of the crescent moon is not clear (*ṣāf na hō*), it is necessary to have the testimony of two upright witnesses (*dō ʿādil gawāhōñ kī shahādat sharṭ hai*).[156] Then, using a similar expression ("*kamī bēshī aur g̲halaṭī*"), he again points to the inherent shortcomings of the telegram and confirms that for these reasons, the telegram is

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[153] Ibid.

[154] Ibid.

[155] Ibid.

[156] Ibid.

not sufficient proof of the *hilāl* moon's arrival.[157] Again citing the same passage from the *Fatāvá-yi Hindiyyah*, he explains in Urdu: "The person who broke the fast on the basis of the news of the telegram alone, for him recompense is required."[158] "But later," he adds, "if the sighting is verified following lawful procedures that the moon emerged on the 29th of Ramẓān, then the demand for recompense will be nullified."[159] The *muftī* thus rejects the validity of the telegram as the *only* source of information regarding the emergence of the *hilāl* moon but maintains that if it is later determined that the information contained in the telegram was indeed correct, then those who followed it will not be punished, and it will not be incumbent upon them to make up for the day of fasting they missed. Thus, it is not the mode of telegraphic transmission itself that causes problems but rather one's inability to meet the legal conditions for verifying that information. Though the point of interpretation in this question is the same as the previous example, details within the question offer an interesting perspective on the circulation of knowledge and information in late-colonial South Asia. Not only does the *istiftā* refer to a location (Rangoon) on the fringes of British India, but it also points to a growing awareness of goings-on in other locations. Returning to the *Fatāvá-yi Dār-ul-ʿulūm Deoband*, the next *fatwā* draws even greater attention to this growing awareness. For the purposes of illustration, the entire passage appears below:

> Question (640): Generally, there is disagreement (*ikẖtilāf*) over the moon for Ramẓān and ʿĪd al-Fiṭr on account of cloud cover. Therefore, this year, three trustworthy (*muʿatabar*) men —Qazi ʿAlaʾū-ud-dīn, and Ġẖulām Ḥussain, and Ramẓān ʿAli—have come from Raipūr in the Hyderabad District and said that on Sunday, the 29th day of Shaʿbān [i.e., the month before Ramadan], they saw the Ramẓān moon in Raipūr and on Monday kept the

[157] Ibid.

[158] Ibid., 199.

[159] Ibid.

> fast. In Ajmer, only the moon of 29th was seen, and from here, Qazi ʿAzīm-ud-din and ʿAla'ū-ud-din and another man left for Delhi to read the *widāʿ* where they say Friday will be the 27th [day]. So, should we keep the fast on Monday or not?
>
> 2.) The ʿĪd al-Fiṭr moon did not appear because of clouds on Wednesday. According to the count of 29, Tuesday will be the thirtieth day of fasting but in the town of Sūjit because of clouds, the moon did not appear. And therefore because of the clouds, Tuesday was the first day of the fast here, instead of Monday. According to this calculation, the people of Sūjīt have had 29 days of fasting. The eye-witness account of the people of Ajmer, Raichor, however is that they saw the moon on the 29th of Shaʿbān such that the 29th day of Ramadān will mark the 30th day of fasting, so should ʿĪd happen or not? In addition to this information, a *vakīl* from Amritsar has written that the third of September is ʿĪd and because of this, the newspaper will not be printed. Because different pieces of information keep coming from different places, in this situation, is ʿĪd permissible or not?[160]

In response, the *muftī* begins: These witnesses are lawful and trustworthy. In the first case, it is necessary to fast on Monday, on account of the three witnesses' account. In the second case, after thirty days of fasting it is permissible to celebrate ʿĪd, which means those who began on Monday may then celebrate ʿĪd a day before those who began on Tuesday.[161] Though the question does not mention the mode of communication directly—save for the reference to information coming from different places—the *muftī* nonetheless takes the opportunity to reflect upon the modes of communication involved:

> When reliable information comes from another city, then it may be relied upon. But news derived from telegrams or letters alone is not trustworthy. If trustworthy witnesses see the moon, or if word comes from the order of a *qāẓī* or *ʿālim* [scholar] of another city, then these testimonies are trustworthy. … If people in the west see the moon and evidence of this reaches people in the east in a permissible manner, then they, too, must begin the fast and [similarly] the sighting of the moon by the people of the west is sufficient for the people of the east.[162]

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[160] *Fatāva Dārulʿulūm Diyoband*, Vol. 1, 373.

[161] Ibid.

[162] Ibid., 373–4. It is unclear to me whether the *muftī* is using the category to refer to Muslims in the eastern and western parts of the Islamic world (e.g., Indonesia and Morocco) or whether he means "east" in the sense of Orient and "west" in the sense of Occident. I prefer to read these terms as geographic coordinates, rather than as civilizational categories.

In this example, the *mustaftī*'s question cites the names of several places, but in his response the *muftī* employs generic geographic terms to suggest that verifiable testimony passed from one city to another—from west to east—is valid, but that using this information requires one to verify the source that information. Telegrams and letters are permissible means for the dissemination of information regarding the moon's sighting, provided the source of the information within these communications is verified and trustworthy.

This particular *fatwā*, then, demonstrates some of the ways in which such questions not only account for issues of technological innovation but also consider the relationship between the message, its source, and its mode of transmission. Breaking down the transmission of news by telegram into its component parts—i.e., who is involved and how the transmission occurs—allows the *muftī* to make a distinction between the use of the telegraph in the context of worldly affairs and its use in religious contexts.[163] While scholars such as those considered here express a slight degree of hesitation about the former, they are almost universally agreed in the telegraph's inappropriateness for the latter. As telegraphic communication became more widespread, this question also expanded to include references to practices in other places and the veracity of information transmitted by Muslims in those places. As such, these decisions draw together issues of technology, textuality, and authority within the context of a seemingly mundane matter (i.e., the sighting of the moon) in ways that draw attention to concerns about distance and difference, transmission and permission. At the same time, these seemingly innocuous questions about the timing for the Ramadan fast and celebration of ʿĪd demonstrates the manner in which Muslims turned to other sources of authority in the wake of foreign rule. Concerns over ritual practice did

[163] This debate also proliferated in Egypt. For a detailed analysis of the debate that occurred there, see Skovgaard-Petersen, *Defining Islam for the Egyptian State*, 80–99.

not dissipate after the colonial courts decided that personal law applied only to a particular set of issues interpreted according to specified textual sources. Rather these questions found expression, interpretation, and adherence in a new host of fora from private *fatwā*s and legal consultations, to public debates, to guidelines printed and circulated across the networks of Empire and Islamic learning. The final sections of this chapter further probe these issues in the context of late-colonial institutional structures and circulatory frameworks.

VI. The Social Networks of Publishing Fatāwa

In addition to questions that deal directly with ideas of distance, geography, accuracy, and authority, such as those described above, distance and authority also surface indirectly in a range of *fatwā*s published at this time. As lithographic printing made feasible the publication of vernacular and multi-lingual *fatwā* literature across the subcontinent, new formats for publication also emerged. Rather than focusing on the publication (and republication) of authoritative compendia, as had been the focus for the first-half of the nineteenth century, by the turn of the twentieth century, publishing efforts shifted away from large-scale projects toward the rapid publication of ephemeral writings, in response to questions of immediate and pressing concern. Although newspapers and pamphlets contributed to the publicity and circulation of politically rousing *fatāwa* in the first-half of the nineteenth century, by the end of the nineteenth century, mundane *fatwā*-writing became a regular feature for periodical publishing.[164] For figures like

[164] On the history of political *fatwā*s in early colonial India, see, e.g., Crispin Bates and Marina D. Carter, "Religion and retribution in the Indian rebellion of 1857," *Leidschrift*, 24(1) (2009): 51-68; Syed Mahdi Husain, *Bahadur Shah Zafar and the War of 1857 in Dehli* (Dehli: Aakar Books, 2006), "Appendix"; Avril Powell, "Questionable Loyalties: Muslim Government Servants and Rebellion," in *Mutiny at the Margins: New Perspectives on the Indian Uprising of 1857,* Vol. 5: Muslim, Dalit, and Subaltern Narratives, ed., Crispin Bates (Thousand Oaks, CA: Sage, 2014): 82–102; and Waleed Ziad, "Mufti 'Iwāz and the 1816 'Disturbances at Bareilli': Inter-Communal Moral Economy and Religious Authority in Rohilkhand," *Journal of Persianate Studies* 7, no. 2 (November 5, 2014): 189–218, doi: 10.1163/18747167-12341272.

Ashraf ʿAlī Thānwī, periodicals provided a custom forum for publicizing the *muftī's* legal writings.[165] These periodic contributions were further supplemented by the publication of his popular works, like the multi-volume *Bihishtī Zēwar* and his discourses on divorce and apostasy.[166] Where scholars have considered the confluence of vernacular publishing and Islamic legal discourse at this time, they tend to adopt an author-centered focus, drawing attention to the way publication contributed to the social reform efforts of these leaders, rather than focusing on the role of the reader—or in the context of the volumes considered below, the *fatwā*-seeker, or *mustaftī* —and his (or her) engagement with legal discourses encountered in public media.[167]

Following their author-centered approach, many religious journals and periodicals omitted information relating to the source or origin of the question.[168] Indeed, connecting specific, individual issues to generic legal principles was one of the *muftī*'s main tasks, but tracing the mechanics of this process, rather than foregrounding the *muftī*'s response, allows one to consider how *muftī*s orchestrated the transition from specific inquiries to general legal concepts.[169] For some *muftī*s, the process of editing and elision took place posthumously, when the *muftī*'s

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[165] Ashraf ʿAli Thānwī published *fatwās* and other types of advice in several of his periodicals, including *An-Noor* and *Al-Imdad*. On Ashraf ʿAli Thanwi's career as a *muftī*, see, Zaman, *Ashraf 'Ali Thanawi*, especially Chapter Three, "Colonial Law"; and Zaman, *The Ulama in Contemporary Islam Custodians of Change*, especially Chapter One, "Islamic Law and the ʿUlama in Colonial India" and Chapter Two, "Constructions of Authority."

[166] On Thanwi's publishing, see Barbara Daly Metcalf, *Perfecting Women: Maulana Ashraf ʿAli Thanawi's Bihishti Zewar, A Partial Translation with Commentary* (Berkeley: University of California Press, 1990); Khan, "Traditionalist Approaches to Shari`ah Reform: Mawlana Ashraf `Ali Thanawi's Fatwā on Women's Right to Divorce"; Khan, "Maulana Thanawi's Fatwā on the Limits of Parental Rights over Children"; and Zaman, *Ashraf ʿAli Thanawi.*

[167] An exception to this general trend may be found in recent work examining the reception of advice literature for women. See, e.g., Judith E. Walsh, "What Women Learned When Men Gave Them Advice"; and Gandotra, "In Search of a Subject."

[168] Where origins do appear within the question, they usually emerge in the context of disputes between factions, in relation to the interpretation of a particular passage in another work of *fiqh* (jurisprudence), or in connection with the interpretation of a particular Qur'ānic or Hadith. Examples for these types of questions are numerous. On the interpretation of competing questions—and the factional disputes they conceal—see, e.g, Barbara Metcalf, "Two Fatwās on Hajj in British India," in *Islamic Legal Interpretation: Muftīs and Their Fatwás*, ed. Muhammad Khalid Masud, B. Messick, D.S.Powers (Cambridge: Harvard University Press, 1996), 184-192, 355-356.

[169] On the transformation from specific question to legal principle, see Wael B. Hallaq, "From Fatwās to Furūʿ."

students or disciples sat down to compile and publish the scholar's writings.[170] For others, this process is evident by looking through successive editions and republications of the *muftī*'s *fatāwa*.[171] Yet moving beyond the establishment of legal principles, for the purposes of understanding the social and legal function of seeking and receiving *fatwā*s in late-colonial South Asia, the dialogic nature of the *fatwā* genre suggests that attending to the source of the question is as important as reading its answer. In this context, publications that break with earlier generic conventions provide important information for historians interested not in the jurist's exposition of legal concepts but in the public's pursuit of and response to legal discourse. Turing to specific publications that include this valuable information about the *mustaftī*, the remainder of this chapter focuses on the social networking aspects of seeking and receiving *fatwā*s in late-nineteenth and early twentieth century British India and the geographic distribution of *fatwā*-seekers across and outside the subcontinent at this time. Shifting the focus from author to reader helps to highlight questions of legal consciousness and to broaden the cast of characters considered within top-down histories of legal reform. Individual *muftī*s and organizations like the Anjuman-i Mustashār-ul-ʿulamā also contributed to the process of making and modernizing law by contributing to its presence in public discourse and making it relevant to the everyday lives of South Asia's Muslims.

One example of an ephemeral *fatwā* text focused on the origin and context of its

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[170] I confronted this problem when visiting the Nadwat-ul-ʿūlama in Lucknow. After enquiring about the "notebooks" or "registers" containing the institute's *fatwā*s from the late-nineteenth and early-twentieth century, I was informed that the originals were discarded after the *fatwā*s had been compiled into recently published volumes. See, e.g., Munavvar Sulṭān Nadvī, *Fatāvá Nadvatul'ulamā'* (Lucknow: Majlis-i Ṣaḥāfat o Nashriyāt, Nadvatulʿulamā', 2012).

[171] The first editions of ʿAbdul Ḥayy's *Majmūʿa-yi Fatāwa* published the *fatwā*s sequentially; later editions grouped the writings into chapters, following the common divisions given in works of jurisprudence and the marginal notes attached to each question and answer. On the common chapter divisions in works of Islamic law, see Wael B. Hallaq, *An Introduction to Islamic Law* (New York: Cambridge University Press, 2009), 29–30.

contributors is the *Majmūʿa-yi Fatāwa-yi Ṣābriya.*[172] Published by the Anjuman-i Mustashār-ul-ʿūlamā of Lahore in the early twentieth century, the *Fatāwa-yi Ṣābriya* included within its one-hundred pages of text, seventy unique questions and their answers.[173] Legally speaking, many of the questions fall into the categories of religious practice (purity and washing, food and drink, prayer and practice, etc.), while others related to marriage, kinship, and inheritance,[174] but socially, the questions and the format of their publication places the *Fatāwa-yi Ṣābriya* within the context of late-colonial associational culture and civic discourse.[175] Such details demonstrate the emergent connection between social reform, civic engagement, and religio-legal discourse at the time and suggest that the process of seeking and receiving *fatwā*s did not constitute a special category of communication reserved for moments of personal crisis or social rupture but rather constituted an everyday form of social engagement and exchange. Reconfiguring the *fatwā* along these lines offers a more nuanced understanding of how *fatwā* literature contributed to the making of social networks and community identities at this time and also demonstrates the ways in which vernacular publishing allowed religious legal discourse to travel beyond the rarefied spaces of the colonial courts and the institutes of Islamic learning into the more populous public sphere.

As the volume's editor-compiler makes clear, the *Fatāwa-yi Ṣābriya* incorporated many features that made it unique at the time of its publication. Writing in the volume's preface, the editor assured his future readers that the *fatwā*s had been composed "not only within the limits

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[172] Muftī Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, *Fatāwa-yi Ṣābriya*.

[173] Ibid.

[174] That is, the first and third quarters, according to Hallaq's categorization. (Hallaq, *An Introduction to Islamic Law*, 29–30). Along these lines, Metcalf claims the *ʿulamā* of British India "had, willy-nilly, restricted the realm in which they gave guidance." See *Islamic Revival in British India*, 148.

[175] On associational culture, see Stark, "Associational Culture and Civic Engagement."

and on the basis of religious and Islamic sciences but also on the basis and replete with evidence from the rational and philosophical sciences as well."[176] The answers also took into consideration the current state of affairs in the country (*mulkī ḥālāt*) and the needs of the community (*qaumī ẓarūriyāt*). Beyond that, the *fatwā*s were prepared and published from the *dār-ul-iftā'* (institute for issuing *fatwā*s) of the well-known *anjuman* (society), the Mustashār-ul-ʿulamā, and contained answers reflecting not the narrow interpretation of a single mind but the wide expanses of the group's collective wisdom.[177] Furthermore, in addition to providing an answer to each question, the volume also included references to the authoritative texts on each issue, along with volume and page numbers (*kitābōñ kī jildōñ aur ṣafḥōñ kē ḥavālē bhī diyē gayē haiñ*).[178] Thus, the *fatwā*s were not simply well-composed and grounded in the collective (*jamhūrī*) wisdom of the Anjuman's learned members, but using these citations each and every reader could verify the answer and confirm that the *muftī*s' responses were correct.[179] Finally, the book was competently printed on quality paper, adding to the volume's value as a published text and material object. As the product of these esteemed efforts, Muḥammad ʿAbdullāh Ṣāḥib Ṭōnkī concluded, the price (12 *anna*s) was appropriate and even with mailing charges amounted to far less than one would pay in fees for submitting one's *fatwā* questions to the Anjuman individually.[180]

The text's preface also presented the volume as the first in a proposed series of texts,

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[176] Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, "Iʿlān," in *Majmūʿā-yi Fatāwa-yi Ṣābiriya,* [i].

[177] Ibid. K.K. Aziz reiterates these points in his summary of the Anjuman-i Mustashār-ul-ʿulamā's activities, saying the Anjuman was established "on 1 January 1887 by a group of divines…in order to 1 create concord and unity among the *ulema*, 2 advance, promote and improve Arabic learning, and found and organise a *dar-ul-ifta* with the co-operation of the *ulema* of various schools which would issue its considered opinions about modern developments and problem after consulting and studying the views of as wide a circle of the learned as possible." (Aziz, *Public Life in Muslim India*, 87.)

[178] Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, "Iʿlān," in *Majmūʿā-yi Fatāwa-yi Ṣābiriya,* [i].

[179] Ibid.

[180] Ibid.

reflecting the Anjuman's success receiving and responding to *fatwā*s since its founding in 1887, but as far as I have been able to ascertain, this volume was the first and last to be published by the Anjuman.[181] By the time this volume appeared, Shams-ul-ʿulamāʾ Janāb Maulvī Ḥāfiẓ Muftī Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, the text's editor and supervisor of the Anjuman's publishing activities, was nearing the end of his working life: He had recently departed for the Ḥijāz and had fallen ill during the course of his journey.[182] Owing to this complication (or to others), the Anjuman published only the first volume, which remained a small publication of only one hundred pages, containing seventy questions (*istiftāʾ*) and their responses. But from this first volume, it is evident that the Anjuman-i Mustashār-ul-ʿulamā had an interesting objective in mind when it began to engage in the process of authoring and publishing *fatāwa*.

Unlike most canonical *fatwā* compendia, the *Majmūʿā-yi Fatāwa-yi Ṣābiriya* did not categorize its *fatāwa* by subject. Rather than sorting the questions and their responses into separate books (*kitāb*) or chapters (*bāb*), as other collections may have done, the Anjuman published its material chronologically, following the order in which each *mustaftī* submitted his (or her) question. Beginning with the first question from March 15, 1898 (20 Shawwāl 1315 AH) and ending with the final question from August 17, 1899 (10 Rabīʿ al-ṣānī 1317 AH), the volume covered topics ranging from Hindu caste and conversion to Islam; to pregnancy and legitimate childbirth; to reciting Qurʾānic verses, leading prayers, and building mosques; to selling bones and eating turkey (*fīl-murg̲h*).[183] The questions—and their answers—were written predominantly in Urdu, occasionally in Persian, and in a few instances, entirely in Arabic and included the

[181] Mujīb Aḥmad's refers to this text as the first volume of the Anjuman's publications, but I have not seen any subsequent volumes. (Aḥmad, *Janūbī Eshiyā Ke Urdū Majmūʿah-I Hāʾe Fatāvá,* 45 and n. 3, 133.)

[182] Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, *Majmūʿā-yi Fatāwa-yi Ṣābiriya,* [i].

[183] "Fihrist-i maẓāmīn," Ibid.

signatures of a rotating coterie of nine to twelve individuals at the end of each answer, certifying their agreement on the answer's accuracy. These individuals included the volume's editor and the Anjuman's principal *muftī*, Muḥammad ʿAbdullāh, along with several other individuals, whose signatures were replicated beneath the line "*al-jawāb ṣaḥīḥ*" along with each signatory's professional title and affiliation.[184] From the list of signatories given at the end of each *fatwā*, the organization's commitment to consensus is clear, but signatures do more than simply indicate the number of individuals who concur with the answer; they also embed the Anjuman-i Mustashār-ul-ʿulamā within the world of Islamic learning and Islamic institutions in Lahore.

In addition to appending several signatures at the end of each response, the *Majmūʿā-yi Fatāwa-yi Ṣābiriya* is also unique in that it dates each *fatwā* precisely (in Hijri and Gregorian) and includes specific information about the *sā'il*, or questioner. Of the seventy *fatwā*s included in the collection, only ten percent have been printed without individual names. In some instances, it appears that the identifying information was simply unavailable at the time of publication, but in a few instances, the name may have been intentionally withheld to protect the *mustaftī* from embarrassment. This protective omission was perhaps the case of one question sent by a man from Balochistan, who asked about the legitimacy of marrying a woman who was already pregnant at the time of marriage.[185] Though the volume includes this information about its *mustaftī*s in the para-textual matter, most of the *fatwā* texts follow the convention of presenting the

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[184] These individuals included, among others Qazi Ẓafar-ud-dīn Aḥmad, second principal, Arabic Oriental College Lahore; Muḥammad ʿĀlam, instructor at the Madrasa Ḥamīdiya, Qāẓī Nūr al-Ḥasan, Employee of the Anjuman-i Mustashār-ul-ʿulamā of Lahore, Ḡẖulām Aḥmad, first principal of the Madrasa Naʿīmiya of Lahore, Ḡẖulām Rasūl, instructor at the Madrasa Ḥamīdiya; Muḥammad Ismaʿīl, first principal and instructor at Madrasa Ḥamīdiya, Aḥmad ʿAlī, second principal of the College Islāmiya of Lahore, Muḥammad Ḥasan, first principal of the Madrasa Ḥamīdiya of Lahore, Faẓl Ḥaqq, Faqīr Ḡẖulām Muḥammad Bago'i, Imam at the Shāhī Mosque in Lahore; and Muḥammad ʿAzīz, Principal of the Madrasa Ḥamīdiya in Lahore. (It is interesting to note that the volume did not list the signatories according to their training of certifications but rather according to their professional offices.)

[185] Ibid., 27–28.

question using generic names (e.g., Zayd, Bakr, Hindah), though some of the *fatwā*s involving questions on inheritance do mention the names of individual family members, as in the question submitted by Munshī Sirāj al-dīn.[186] For the purposes of explicating matters of law, this level of individual detail would not be necessary, but when the purpose of answering an *istiftā* is to help specific *mustaftī*s and their families settle disputes and distribute property equitably following the death of a relative, using the individuals' names is much easier than reducing everyone to kinship terms (and such specificity also helps when taking the *fatwā* to court for settlement, as may have been the case in some instances). Including personal details about its *mustaftī*s and patrons, the Anjuman observed some of the conventions found in other collections (e.g., the use of generic names) but chose to modify others to fit its more modern purpose.

Scrutinizing the volume's approach to specification and abstraction along these lines suggests that the volume's purpose lay in its ability to document the activities of the Anjuman's *dār-ul-iftā'*, rather than its ability to unpack intricate legal questions, and that its audience consisted of readers who considered, agreed with, and generally observed the principles expressed in the text. Though many of the volume's *sā'il*s came from Lahore and its environs (at least twenty-six of the volume's questioners are attached to places in Lahore), the text also includes several questions sent from beyond Lahore and the Punjab region.[187] As the pattern observed earlier suggests, *istiftā*' sent from long distances tend to revolve around questions of community membership (as in the question sent to ʿAbdul Ḥayy Firangī Mahallī from Karnataka) and religious practice, as opposed to questions with a more local orientation aimed at the use of specific pieces of land, the division of property, or family relations, which affect

[186] Ibid., 58–59.

[187] See Image 5.1 below.

specific individuals, rather than an entire community (as in question thirty-six on *ḥaqīqī* relations submitted from Qasūr, near Lahore and question forty-one from Lahore, on questions relating to marriage and a woman's conversion to Christianity).[188] With distance, a distinction emerges between self-oriented and other-oriented questions, and this was true for the question that traveled the farthest: Maulvi Aḥmad-ud-dīn Ra'īs's question from Mysore.

In his question, Maulvī Aḥmad-ud-dīn questioned the permissibility of a particular man's behavior. This man, Aḥmad-ud-dīn complained, had written a letter in the name of a group of local congregants using the phrase "*as-salām ʿala man at-taba'ʿ al-huda*" as the greeting, rather than the customary "*as-salāmu ʿalaykum*."[189] In addition to asking for the correct ruling regarding this false practice, the *mustaftī* also enquired about the offender's belief that reading the funeral prayers in absentia was proper within the Ḥanafī school.[190] From the way it is written, the question suggests that the *mustaftī* had a particular opponent in mind and wanted a distant third-party to verify the impropriety of this man's behavior and to confirm his own correct interpretation of the matter. The *mustaftī* does not name the offending individual, nor does he connect him to a particular mosque or institution (as one might do in order to make competition among rival factions evident), but the inclusion of these seemingly unconnected issues within a single *istiftā'* suggests that Aḥmad-ud-dīn wanted to call upon the authority of the Anjuman's *dār-ul-iftā'* to keep this particular individual's offending behavior in check.[191] Long-distance enquiries

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[188] Ibid., 47–48, 52–3.

[189] Ibid., 2.

[190] Ibid.

[191] On these rivalries, see, e.g, B. D. Metcalf, "Two Fatwas on Hajj in British India," in *Islamic Legal Interpretation: Muftis and Their Fatwás,* eds. Muhammad Khalid Masud, B. Messick, D. S. Powers (Cambridge: Harvard University Press, 1996)184-192; 356; and Stephens, "Governing Islam," especially Chapter Three: "Ritual and the Authority of Reason," 139–201.

allowed *mustaftī*s to connect with higher, or outside authorities, and to check the offending behavior of their local opponents.

A question sent from Hyderabad touches upon a similar set of concerns about the appropriateness of certain practices within the local context. In this question, sent to the Anjuman's *dār-ul-iftā'* by Muḥammad ʿAbd-ul-wāḥid, instructor of Persian in and resident of Hyderabad (Deccan), the *mustaftī* asked whether it was permissible to include poetic verses in other languages, such as Persian, Urdu, or Telugu when giving the Friday sermon or saying the ʿĪd prayers.[192] As he wrote in his question, "At this time, it is common for preachers…to read verses and couplets from atop the *minbar*. According to religious scholars and doctors of law, is it permissible to pepper one's speech with Persian, Urdu, or Telugu during Friday prayers or sermons at ʿĪd?"[193] In his question, ʿAbd-ul-wāḥid broached a common theme in *fatwā*s from this time: Which languages are appropriate for Muslim worship and religious practice? For Muslims in South Asia, this question touched upon more than linguistic variety; it also involved the extent to which local practices had to be brought in line with outside practices—that is, the extent to which local, "little" traditions had to conform to orthodox practices.[194]

In answering this question, Muftī ʿAbdullāh responded that according to Abu Ḥanīfa, it was acceptable to use Persian or another language other than Arabic in the *k̲h̲uṭba*, but that the other companions held different opinions. By pointing to the persistence of discord among

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[192] Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, *Majmūʿā-yi Fatāwa-yi Ṣābiriya,* 13–14.

[193] Ibid., 14.

[194] Scholarship on this question often focuses on the ascendance of Urdu as a Muslim language vis-à-vis Arabic and other South Asian vernaculars. Metcalf, *Islamic Revivial*, 207; and Tariq Rahman, "Urdu as an Islamic Language," *Annual of Urdu Studies* 21 (January 2006): 101–19. For an extension of this logic, see Nile Green, "Urdu as an African Language: A Survey of a Source Literature," *Islamic Africa* 3, no. 2 (October 1, 2012): 173–99. On the failures of Urdu to create community in the South Asian diaspora, see Ahmed Afzal, *Lone Star Muslims: Transnational Lives and the South Asian Experience in Texas* (New York: NYU Press, 2014), 187–189.

various scholars, Muftī ʿAbdullāh gave the *mustaftī* an open-ended answer, one that would allow local practices and the local Urdu and Telugu vernacular languages to remain in use for the sake of local followers alongside the "cosmopolitan" Arabic language.[195] Here, as in other late-nineteenth-century *fatwā*-literature, questions about language were often a metonym for curiosities about other aspects of regional difference and cosmopolitan conformity. Such questions reflected a growing awareness of Islam as a global religion and an interest in differentiating local (heterodox) custom from (orthodox) Islamic practice. These concerns are evident in questions about using certain forms of expression to greet other Muslims, using vernacular languages to publish texts and treatises on Islamic subjects, and incorporating poetic verses and vocabulary from other languages in the Friday sermons. But these concerns were also evident in other types of questions, which routinely brought ideas of newly encountered, locally unique, and regionally differentiated practices into question.

The *Majmūʿā-yi Fatāwa-yi Ṣābiriya* touches upon a few of these concerns in the questions sent from afar, but in general, the volume is concerned with self-oriented questions submitted by local *mustaftī*s and oriented toward the cultivation of civic culture and social networks through the encouragement and circulation of legally minded problem solving in a public forum. By way of indicating this objective, though not all of the volume's contributors are identified by name, among those who are, many of them are identified alongside their professional designations. Several of these individuals hold teaching positions at local educational institutions, like Munshī Karam Ilahī, who worked at the Oriental College of Lahore; Sikandar K̲h̲ān, chief clerk at Punjab University; and Munshi Muḥammad Bak̲h̲sh, another clerk at Punjab University.[196]

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[195] On the Arabic cosmopolis, see Ricci, *Islam Translated.*

[196] Muḥammad ʿAbdullāh Ṣaḥib Ṭōnkī, *Majmūʿā-yi Fatāwa-yi Ṣābiriya,* 64, 43, 75.

Others worked in the post-office, the railway station, the municipal commissioner's office, and the local courts.[197] Beyond that, many of the *mustaftī*s were named as members or councilmen for local civic associations or as friends or associates of these civic leaders. In this way, the volume did more than simply answer questions of legal concern: It also embedded these questions in the discourse of civil activity and social concern, the way local councils connect citizens to the making of law. The volume employed its social connections to act as gate-keeper between the rabble of open public discourse and the order of legal codification. The Anjuman embraced this role in its approach to making Islamic law.

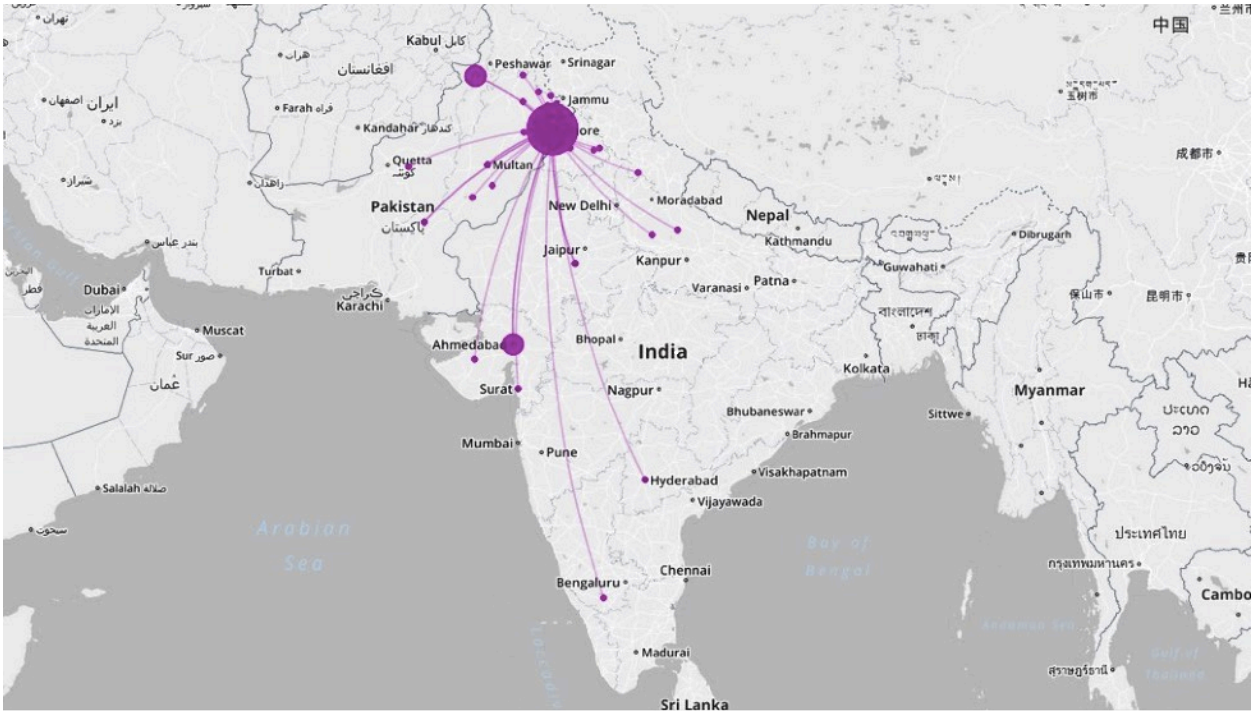

Image 5.1: Map showing the distribution of the Anjuman's *mustaftī*s.[198]

By including social connections between several of the *mustaftī*s and local leaders, the *Fatāwa-yi Ṣābiriya* created a social network through the solicitation and publication of its *fatwā*s.

[197] Ibid., 17, 59,

[198] The map shows the weighted distribution of the Anjuman's contributors, many of whom came from Lahore and its environs but several of whom wrote to the Anjuman from farther afield.

Maulvi Tāj-ud-dīn Aḥmad, *mukẖtār* in the Chief Court of the Punjab and councilman for the Anjuman-i Naʿīmiya, was one of these well-connected individuals who contributed to the *Majmūʿa-yi Fatāwa-yi Ṣābiriya* as an intermediary and submitted questions to the *dār-ul-iftā*' on behalf of others. These questions included one from Fateḥ Muḥammad revolving around the question of how to divide an inheritance among the remaining heirs and another question submitted on behalf of Munshī ʿAbdul Wāḥid, a clerk at Fort Lockhart (on the Samana Range in the North-West Frontier Province).[199] Tāj-ud-dīn Aḥmad was not the only civic leader to send questions to the Mustashār-ul-ʿulamā on the behalf of others. Shaiḵẖ ʿAbdul Qādir, general secretary of the Anjuman-i Himāyat-i Islām, facilitated Ḥāfiẓ ʿAbdul Raḥīm's question on trading in bones and other goods and Muḥammad Miyān Jān's question on inheritance.[200] In a similar way, the question from Sayyid Mehdī Shāh, *ṭhekedār* for the municipal commissioner in Rawalpinḍī, appeared through his connection to a councilman from the Anjuman-i Naʿīmiya of Lahore.[201] By including information about the *mustaftī*s and their local connections, the Mustashār-ul-ʿulāma placed *fatwā*-writing within the sphere of public discourse and associational culture.

Rather than restricting legal discourse to the closed spaces of the colonial courts or institutes of Islamic learning, publishers like the Anjuman made religio-legal discourse part of the public sphere. While periodical publications like those authored and edited by prominent scholars such as Ashraf ʿAlī Thanwī brought together Islamic legal discourse and vernacular publishing, exceptional efforts like those of the Anjuman-i Mustashār-ul-ʿulamā brought that

[199] Ibid., 69–71, 93–99.

[200] Ibid., 68, 71.

[201] Ibid., 72.

mode of discourse into direct conversation with the social life of local associational culture. The Anjuman achieved this aim by marking each contributor according to his professional title, institutional affiliation, and social associations such that the inclusion of such details helped to turn *fatwā*-writing into a multivalent, if not multi-polar activity, in which conversation, exchange, question, and response were integral to the process of producing the best answer. While the Anjuman first democratized its *dar-ul-iftā'* by encouraging scholarly collaboration and the production of multi-authored responses, it furthered this objective by highlighting the importance of the *fatwā*-seeker and his social origin in the publication of its text. Such practices resist the narrative of codification and solidification that have come to dominate discourses on Islamic legal change at this time, and demonstrate the ways in which small-scale vernacular publications made *fatwā*-writing a dynamic and socially integrated practice. The Anjuman's publication shows how civic organizations packaged law for public consumption and debate. The final section of this chapter considers how once packaged, law traveled and was transported across networks of travel and communication. These travels offer another perspective on the collaborative processes by which Muslims remade Islamic law in this period and the ways in which these makings and remakings so unsettled the Anglo-Indian legal system's tidy attempts to compartmentalize it.

VII. Circulating Legal Discourses, Building Religious Communities

Owing to its size and scope, the *Fatāwa-yi Ṣābriya* remains a locally-oriented volume, and the social network it reflects remains rooted in local institutions and associations. Though its influence extended to places like Mysore and Hyderabad (Deccan), most of the questions it considered and the majority of its *mustaftī*s lived in and around Lahore.[202] In fact, for some of its

[202] See Image 5.1 above, for evidence of this distribution.

*mustaftī*s, the volume includes detailed location information down to the level of the particular *mustaftī*'s neighborhood. Such information suggests that the Anjuman had a robust reputation within the city of Lahore, and that its influence extended along a handful of individual vectors beyond the Lahore region, but for the most part, the volume represents the organization's local orientation and reflects contributions from a small community of follower-participants. Local and horizontal connections should not, however, be discredited. The locally oriented volume also facilitates lateral discourse among and across *mustaftī*s, rather than solidifying a hierarchical mode with the chief *muftī* at the top. In this way, the volume's arrangement suggests that everyone who contributes an *istiftā* is a participant in the mission and aims of the Anjuman. For these reasons, the social networks created and presented by the *Fatāwa-yi Sābriya* demonstrate on a manageable scale the processes of network construction and community formation present in, but less-manageably demonstrated by, larger *fatwā* collections.[203] The final section of this chapter thus attempts to understand how these networks operated in the context of civic discourse and how the process of seeking and receiving *fatwā*s enabled one to participate in these processes of inquiry and adherence. These debates reveal an understanding of Islamic law and Islamic legal practice that extended beyond the narrow confines of the colonial courts and the legalistic and literalistic procedures of the Anglo-Indian legal system. *Fatwā* literature not only engaged with legal questions that fell outside the scope of Islamic personal law but also engaged with meanings of law that went beyond the top-down construction of statutes and law codes toward a more diffuse practice of legal discourse and ethical action that saw Islamic law as capable of accomplishing more than the mere punitive objectives of its colonial codes.

[203] Compare Images 5.1 and 5.2 to understand the distribution of the *Fatāwa-yi Ṣābriya*'s contributors compared to those represented in the *Kifāyat al-muftī*.

In this respect, Muḥammad ʿAbdul Ḥayy's two-volume *fatwā* collection that opened this chapter marks a point of transition in the evolution of *fatwā*-oriented community discourse. Belonging to the well-known and long-established Firangī Maḥall family of Lucknow, ʿAbdul Ḥayy had a reputation for being intelligent and well-reasoned when it came to interpreting points of law.[204] On account of his Arabic and other writings, ʿAbdul Ḥayy has been recognized as "one of the great scholars of recent times," and according to Francis Robinson, his *fatwā* writings, which Muslims living in and beyond South Asia today still consult, helped to put Lucknow on the map of Islamic scholarship for its status as the home of ʿAbdul Ḥayy.[205] By the time ʿAbdul Ḥayy came of age, his family had a reputation in the world of Islamic letters that provided him with many opportunities to work in government service or receive patronage from nobles like the Niẓāms of Hyderabad, but rather than tailor his work to the requirements of these forms of remuneration, ʿAbul Ḥayy chose instead to embrace the life of scholarly asceticism.[206] On more than one occasion, he turned down offers for employment in the British Government of India and likewise "refused to fill his father's place in the Nizam's government."[207] Other members of the Firangī Maḥall family also followed suit and refused to accept payment from British sources.[208]

But despite his decision to embrace the old world of Islamic letters and sciences, ʿAbdul Ḥayy could not escape the effects of late-nineteenth-century technological innovation and colonial rule entirely. His *fatwā*s, for instance, include references to newspapers, colonial courts,

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[204] On his approach as a *fatwā-navīs*, see Francis Robinson, *The ʿulama of Farangi Mahall,* 121–3.

[205] Ibid., 72. (In total, some sources claim that ʿAbdul Ḥayy authored 109 books. [Ibid., 80]).

[206] Ibid., 92.

[207] Ibid.

[208] Ibid., 93.

and even travel by train, and though he may have rejected "modern" forms of employment, he did not reject the teleology of progress.[209] History—and the lessons it provided—was an important element in all of his writings and his *fatwā* writings, in particular, embraced new answers to age-old questions in light of independent textual interpretations, not through submission to tradition or *taqlīd.*[210] However, although ʿAbdul Ḥayy maintained a strong reputation as a *fatwā-navīs* (that is, as a writer of *fatwā*s) during his lifetime, his *fatwā*s were not published until after his death in 1886.

When they first appeared in print, shortly after ʿAbdul Ḥayy's death, the *fatwā*s were published in Persian in two volumes, containing over four hundred pages each.[211] Though marginal notes refer to the questions according to the category of their contents, or the "books" (e.g., *kitāb al-nikāḥ*, or *kitāb al-jihād*) to which they belong, when published, the questions were ordered according to chronology, rather than category. Thus, the collection's first *fatwā*s correspond to the month of Shaʿbān in 1286 AH (November 1868 CE) and the final *fatwā*s were written after 1300 AH (1883 CE).[212] Occasionally for our purposes, it is useful to note that in some instances, the marginal notes also identify the place or person of origin for each question, but these details are sporadic and many questions appear without this identifying information. Without having additional information about the process of compilation and publication, it is difficult to determine whether the compiler included certain names and places simply as a point of reference, to note ʿAbdul Ḥayy's connections to other leading figures, or to indicate which

[209] See, e.g., ʿAbdul Ḥayy Farangī Maḥallī, *Majmuʿa-yi Fatāwa*.

[210] Robinson, *The ʿulama of Farangi Mahall*, 120–3.

[211] ʿAbdul Ḥayy Farangī Maḥallī, *Majmuʿa-yi Fatāwa*.

[212] The use of dates is less consistent toward the end of volume two. I have taken this date from one of the seals included at the end of an answer. It is probable that the final questions and their answers are from ʿAbdul Ḥayy's final year of life.

questions arrived from sources outside of Lucknow.

As presented at the beginning of this chapter, ʿAbdul Ḥayy received questions from across the subcontinent, including Bombay, Karnataka, the Deccan, and North India, but the majority of his questions have more local origins. Lucknow, Akbarabād (Agra), and Jaunpūr are a few of the places mentioned in the text's marginal notes. But place is only one of the ways in which ʿAbdul Ḥayy's collection attends to origin and identity. Other details also point to the importance of context, including occasional references to the date on which the *muftī* received a particular question or sent his response.[213] Along these lines, some of the questions are identified as belonging to Maulvi Muḥammad Shiblī Ṣāḥib, including three questions on the idea of *taqlīd*.[214] Another prominent *mustaftī* was one Maulvi ʿAbdul Raḥmān, who worked as a *ṣadr amīn* in Agra.[215] Contrary to other instances—like those found in the *Fatāwa-yi Ṣābriya*—in which court officials sought answers to questions of legal import for the purposes of interpreting and adjudicating Anglo-Muslim personal law, however, Maulvi ʿAbdul Raḥmān's questions was on the subject of *tarvīḥ namāz*.[216] In this way, ʿAbdul Ḥayy's *fatwā*-writing upheld his reputation as an erudite expert in Islamic learning and also placed his writings within the context of late-colonial vernacular publishing.

Subsequent editions of his text, however, did not preserve these particular details. Further scrutiny is necessary to trace the influences of the editorial process on the canonization of ʿAbdul Ḥayy's *fatwā*s, but for the present, it will have to be sufficient to note that later editions translated

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[213] Such references to messages received between Rabiʿ al-awwāl and Shaʿbān 1286 AH and can be found in the margins of pages 15–20, for instance.

[214] Ibid., Vol. 1, 22.

[215] Ibid., 10.

[216] Ibid.

his original Persian writings into the more common Urdu vernacular and that along with this translation (or, transformation?), later editions also re-arranged the individual *fatwā*s categorically. This arrangement is present in a more recently published edition of his work, the one-volume, Urdu-language, five-hundred page,1964 edition published from Karachi, and entitled *Majmūʿa-yi fatāvá-yi Maulānā ʿAbdulḥī, Urdū kāmil mabūb.*[217] As the title makes clear, the volume was "translated" by ʿĀlam Khvurshīd and organized according to chapter (i.e., *mabūb*).[218] A brief comparison of the contents presented in this volume and those given in the earlier 1886/7 edition suggests that along with rearranging the contents, some of the obsolete questions were perhaps also modified to fit with the editor's opinions.[219] Thus, by tracing the publication of these volumes over the course of the last century, it is possible to observe how the process of seeking and receiving *fatwā*s changed from one of lateral or horizontal conversation among learned men like ʿAbdul Ḥayy and Shiblī and became standardized, codified, and converted into something authoritative rather than discursive. Despite what is possible with these volumes, tracing this process historically remains difficult because followers (disciples, students) tend to treat the editing process as a way to update or revise the *fatwā*s in light of more recent understandings (as has been the case in the context of new technologies, like the phonograph, the loudspeaker, and the telephone),[220] but even from a cursory survey of different editions of ʿAbdul Ḥayy's *fatwā*s, it is

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[217] Muḥammad ʿAbd al-Ḥayy, *Majmūʿah-yi fatāvá-yi Maulānā ʿAbdulḥī: Urdū kāmil mabūb*, trans. Khvurshīd ʿĀlam (Karācī: Qurʿān Maḥal, 1964).

[218] Ibid.

[219] It would be interesting to see the results of a more detailed comparison of these and other editions of ʿAbdul Ḥayy's writings.

[220] Occasionally, editors make these changes transparently by indicating what they have changed and why. In other instances, later *muftī*s will certify an older answer by appending their signature and statement of correctness to the text before it is republished. In the present case, I suspect the editor simply omitted some of the *fatwā*s he thought were no longer relevant, but this hunch awaits further scrutiny.

possible to see how contextual details and information about each question's origin are elided, omitted, or ignored in each successive edition. In this way, *fatwā* writings move from their conversational context, their informal categorization as legal advice or *responsa*, and to a more rule-like status. Even in the late-colonial period it is possible to witness this process in action, as older responses enter the canon of student learning and private reference. Yet resistance to such canonization (or codification)—as the repeated willingness to engage with the same question about sighting the moon in the chapter's earlier section suggests—kept the practice of flexibility and contingency alive for the accommodation of new circumstances and experiences.

While the social network presented in ʿAbdul Ḥayy's *fatwā* collection appears to be one of like-minded experts, and that presented in the Anjuman's *Fatāwa-yi Ṣābriya* is one dominated by civic associations and social connections, the network of *mustaftī*s presented in Muftī Kifāyatullāh's nine-volume *fatwā* collection, *Kifāyat al-muftī,* offers depth and breadth. That is, when one maps the personal information of the over two-thousand numbered individuals who submitted questions to the well-known *muftī* of Delhi in the first several decades of the twentieth-century,[221] a network of followers emerges that extends from South Asia to South and East Africa, the United Kingdom, Burma, and beyond. Commentators like Mujīb Ahmad have already remarked on the breadth of Kifāyatullāh's *mustaftī*s, but it is useful to note that in addition to having a wide, international following, Muftī Kifāyatullāh also had a robust presence across the subcontinent.[222] That is, in addition to having recognized followers living abroad, in places like Nairobi and Johannesburg, he also received questions from major and minor towns across British

[221] The volumes refer to many of the *mustaftī*s by numbers ranging from one to over twenty-eight hundred. Not all of the *mustaftī*s are numbered, and there are some regular *fatwā*-seekers who remain unnumbered. The editor notes that the numbered *mustaftī*s visited Kifāyatullāh at the Madrasa Amīniya.

[222] See Image 5.2.

India. These included several, and regular, questions from more distant places like Rangoon, as well as countless questions from nearby places like Jaipur, Jodhpur, and Jalandhar; Meerut, Muzaffarnagar, and Multan; Raebareli, Raipur, and Rajputana; Shimla, Sialkot, and Surat.[223]

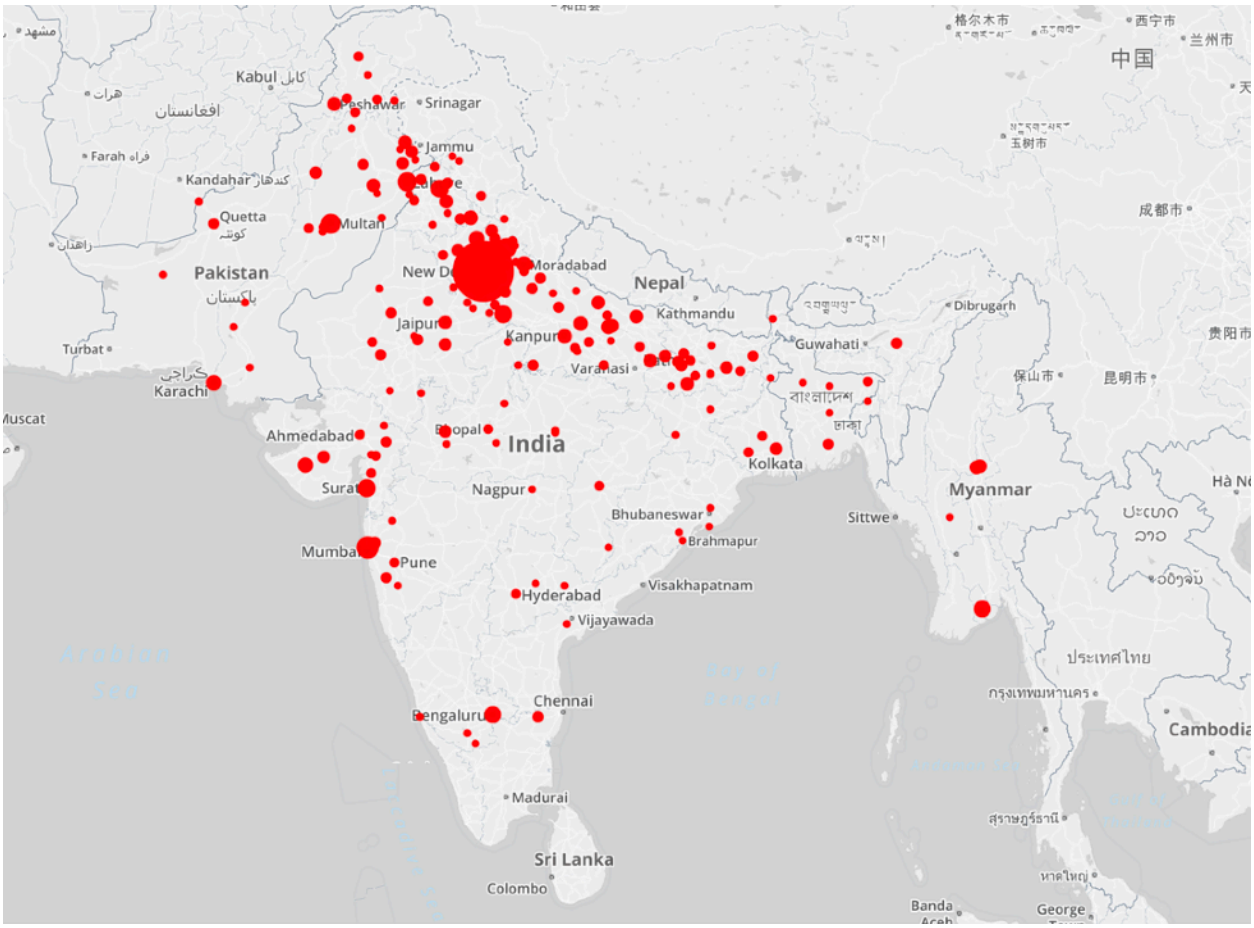

Image 5.2: Map showing the distribution of Kifāyatullāh's *mustaftī*s[224]

In this way, Kifāyatullāh's network of *fatwā*-seekers covers great distances, across the Indian Ocean and all the way to America, and also penetrates deeply into smaller towns in the subcontinent. This distribution of his *mustaftī*s across and beyond the subcontinent suggests that

[223] Kifāyatullāh, *Kifāyat al-Muftī*, Vol. 1. (See Image 5.2 for an overview of the network of Kifāyatullāh's interlocutors.)

[224] The information presented in this map comes from data gathered from volumes 1 and 8 of *Kifāyat al-muftī*.

at least some of Kifāyatullāh's international appeal derived from his local notoriety, popularity, and authority.

As the nine volumes of *fatwā*s he wrote might suggest, Kifāyatullāh had a long and prolific career as a *fatwā navīs*. Though many of the questions he received and the responses he wrote were connected to his work with the Jamʿīat ʿUlamā-i Hind and the organization's newspaper, *Al-Jamʿīya*, the majority of the *muftī*'s *fatwā*s were in fact written under other auspices.[225] These *fatwā*s address a range of topics and demonstrate varying degrees of legal knowledge. For example, one *fatwā* published in *Al-Jamʿīya* on April 14, 1927 contained the following question and its response:

> It is my desire that I should join the *shāfiʿī mazhab* [i.e. the *shāfiʿī* school of law]. Is there some book that gives an overview of the four schools [of law] [*chārōñ mazāhib*][?]. Until now, I have been a follower of the Ḥanafī school.
>
> Answer (378): Why do you want to leave the Ḥanafī school and become a Shafʿīte? What has happened to make this necessary [*aisī kiyā zarūrat pēsh ā'ī hai*]?[226]

For a response presented in the section on religious beliefs (*kitāb al-ʿaqā'id*), Kifāyatullāh's answer is rather banal. It does not attempt to defend the Ḥanafī school, nor does it even answer the *mustaftī*'s question requesting book recommendations. Rather, it prompts the *mustaftī* to reconsider the rationale behind his decision to leave behind the Ḥanafī school and join the Shāfiʿī school. The answer offers no citations to bolster its argument, nor does it outline the merits of the Ḥanafi *mazhab*. Instead, it simply asks the *mustaftī* to think about his desire before acting upon it.[227]

Not all of Kifāyatullāh's answers were written so plainly. In fact, many of them did include citations from other texts and references to Arabic sources, and many of the answers

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[225] Of the 954 *fatwā*s I tallied from the two volumes surveyed for this study, 156 *fatwā*s were identified as coming from Al-Jamʿīya, compared to the 178 *fatwā*s, which were not identified by place or person of origin.

[226] Ibid., Vol. 1, 332.

[227] Ibid.

were lengthy, detailed, and as later commentators would proclaim,"*mudallal*," rooted in references and well-grounded. But Kifāyatullāh was also a *muftī* of the people. He considered questions about the merits of poetic couplets;[228] drew diagrams to illustrate the proper division of inheritances;[229] translated questions and their answers from Arabic and Persian into Urdu;[230] verified the accuracy (or inaccuracy) of *fatwā*s written by other *muftī*s;[231] and answered questions that centered around decisions made by the colonial courts regarding the management of mosque properties.[232] In writing his *fatwā*s, Kifāyatullāh not only drew upon authoritative textual sources but he also relied upon his own intellect and understanding of the world to provide his *mustaftī*s with reasonable answers to the questions they asked. When responding to the question referred to above about the management of a mosque in relation to an earlier order from the court, the *muftī* reasoned that in light of the court's decision, the court-mandated mosque committee could gather the interest (*sūd*) from the bank account the court required the mosque committee to maintain and use that money to pay the property's land, water, and house taxes.[233] This way, the mosque committee could meet its obligation to pay taxes to the colonial state while at the same time washing its hands of sin accrued by accepting interest on its bank account savings. In this way, Kifāyatullāh provided answers that fit with the times and incorporated other exigent circumstances and legal configurations into his responses. This form of accommodation also allowed Kifāyatullāh to extend his responses to areas of life otherwise residing beyond the

[228] Ibid., 285;

[229] Ibid., Vol. 8, 348.

[230] Ibid., 216-220.

[231] Ibid., Vol. 1, 219-224.

[232] Ibid., Vol. 75.

[233] Ibid., 76.

scope of what counted as Anglo-Muslim personal law.[234]

Expanding the scope of his responses, offering comprehensible and reasonable answers, and using the newspaper *Al-Jamʿiyah* to circulate his responses in the public sphere, allowed Kifāyatullāh to contribute to the public discourses of law by receiving *fatwā* questions and authoring responses to them. In so doing, he not only created a community of followers who were united in their recognition of his authority and their participation in the act of seeking and receiving *fatwā*s but also enabled Islamic legal discourse to move beyond the regulated confines of marriage, divorce, inheritance, adoption, and religious rites to include other areas of life and law as well.[235] And in contrast to other *muftī*s who often promised but rarely delivered comprehensive collections, Kifāyatullāh's nine-volume series contains extensive sections on religious belief, purity, ritual, and practice in addition to rich chapters on economic life, civic life, social and political engagement. Remembering these aspects of his long career as a *fatwā navīs* demonstrates the ways in which legal discourse and civic discourse were woven together in this period and suggests that the social and cultural utility of "law" as a set of principles for guiding everyday life, extended beyond political pronouncements, legislative enactments, and people's engagement with the colonial courts.

VIII. Conclusion

Scholarship on the history of *fatwā*-writing and Islamic legal discourse at the turn of the twentieth century tends to focus on the intellectual biographies of individual scholars and jurists.

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[234] It was not uncommon for later editors and compilers to begin with the first types of *fatāwa*—e.g., prayer, purity, charitable giving, etc.—only to abandon ambitious multi-volume projects before reaching topics like contracts, banking, and business transactions. It would be wrong to assume that because prayer and piety constituted the majority of *fatāwa* written that *muftī*s did not address other issues as well. Cf. Metcalf, *Islamic Revival in British India*, 148–49 on popular topics included in *fatāwa*.

[235] On efforts to separate "economic" law from "religious" law, see Stephens, "Governing Islam," 246–298.

This pattern follows the history of Western legal history, but as the study of legal life has begun to move away from the idea of law as described in statutes and court rulings to law as a tool for governing and ordering individual lives, attention has also shifted from the biographies of judges and legislators to the lives of particular litigants and their individual—and at times creative, crafty, manipulative, or deviant—use of the courts to rectify personal problems or remedy perceived wrongs.[236] Understanding the purpose and use of *fatwā* literature in late-colonial society (as well as in the present) requires a similar turn, away from the ideologies and innovations of individuals to the everyday practice of seeking and receiving *fatwā*s within particular contexts of production and circulation.

By looking at questions of geography and authority, authorship and audience in several *fatwā* collections, this chapter has offered to a new perspective on the study of Islamic legal discourse—one that emphasizes the importance of individual action and participation in the production and interpretation of what constitutes "law". Thinking of the *fatwā* as a material object that is published cheaply in affordable (and disposable) chapbooks and pamphlets offers some insight into how we can recover the history of an individual *fatwā*'s authorship by highlighting information about place and time embedded within the question and by drawing attention to the construction of networks, affiliations, and connections engendered by the inclusion of such details in each publication.

Certainly this approach does not overlook the fact that over time, many of the answers written and published by prominent *muftī*s have achieved higher status as the word of law, but it does remove the illusion that once written, the *fatwā* becomes immutable. As scholarship on the

[236] For a summary of recent efforts in this direction for the study of colonial legal history, see Sally Engle Merry, "Law and Colonialism," *Law & Society Review* 25, no. 4 (1991): 889–922.

late-colonial period suggests, like other forms of religious practice, *fatwā*-writing contributed to the culture of competition in the marketplace of (religious) ideas, and as a result, disputation, revision, reconsideration, and refutation were common aspects of this discourse.[237] Vernacular publishing added elements of publicity, immediacy, and transience to this project, and by engaging in the citational culture print media enabled, *muftī*s encouraged comparison, consideration, and conversation about the answers they produced. In these ways, vernacular *fatwā* publishing contributed to the development of a public legal discourse that made "law"—and challenged its authority—through the process of accepting, refuting, following, and engaging with published *fatwā*s throughout the late-nineteenth, through the twentieth, and into the twenty-first century.[238] The next chapter introduces a novel institutional context for the issuing of *fatwā*s, the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya in the princely state of Hyderabad. Drawing attention to the princely state's sovereign position within the context of British rule in South Asia, Chapter Six contemplates the process of making Islamic law using the question and answer process of the *fatwā* in the context of a government-sponsored, bureaucratic institution designed for this purpose. The files from the *dār-ul-iftā'* in Hyderabad extend the present chapter's consideration of the *fatwā* into another institutional setting in order to understand how law and bureaucracy were woven together in late-imperial society.

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[237] On the religious marketplace, see, e.g., Nile Green, *Bombay Islam: The Religious Economy of the West Indian Ocean, 1840-1915* (New York: Cambridge University Press, 2011). In this context, it may also be useful to return to the Adrian Johns and Elizabeth Eisenstein over issues of fixity, authority, and fact-making in the context of print media and the scientific revolution.

[238] On more recent innovations in *fatwā*-writing, including digital fora, see, e.g., Gary R. Bunt, *Islam in the Digital Age: E-Jihad, Online Fatwās and Cyber Islamic Environments* (Sterling, VA: Pluto Press, 2003).

CHAPTER 6: INSIDE THE DĀR-UL-IFTĀ': ALTERNATIVE LEGAL BUREAUCRACIES AT THE END OF EMPIRE (HYDERABAD, C. 1920–1950)

I. INTRODUCTION

In 1356 Faṣlī (corresponding to 1946 CE), Ḡẖulām Muḥammad Ḵẖān executed a *waqf-nāma* for the distribution of the proceeds from his property.[1] He then registered this deed of endowment with the *waqf* board of the Religious Affairs Department in Hyderabad. However, when the Religious Affairs Department attempted to bring the entrusted property and proceeds under its control the following year, Ḡẖulām Muḥammad Ḵẖān found himself in a bit of a bind.[2] As he explained, despite his decision to entrust his property to the careful oversight of the Religious Affairs Department after his death, in life, Ḡẖulām Muḥammad Ḵẖān still needed the property and its proceeds to support himself; therefore, the *waqf* authorities could not take control of the property until after his death.[3] Unfortunately for Ḡẖulām Muḥammad Ḵẖān, this complaint conflicted with the department's regulations. When he explained his situation to the department's *waqf* branch, and requested the return of his original deed (and the erasure of its

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[1] Andhra Pradesh State Archive (APSA), Fatwa Number 30 (37/1) of 1358 F. For an introduction to the different dating systems used in India and the use of the Faṣlī calendar in the Deccan,see Benjamin B. Cohen, *Kingship and Colonialism in India's Deccan, 1850-1948*, 1st ed. (New York: Palgrave Macmillan, 2007), xiii; Sir Alexander Cunningham, *Book of Indian Eras: With Tables for Calculating Indian Dates* (Calcutta: Thacker, Spink & Co., 1883), 82; and Kavasji Sorabji Patel, *Cowasjee Patell's Chronology: Containing Corresponding Dates of the Different Eras Used by Christians, Jews, Greeks, Hindus, Mohamedans, Parsees, Chinese, Japanese, &c* (London: Trübner and Company, 1866), 52. For a detailed treatment of the Nizams' dating system, see Andhra Pradesh Bureau of Economics and Statistics, *Diglott Calendar*, 4th ed. (Hyderabad[?]: Bureau of Economics and Statistics, 1961).

[2] Ibid.

[3] The maintenance and preservation of personal and religious *waqf*s (endowments) and other religious establishments fell under the Religious Affairs Department's activities from its inception in 1294 Faṣlī (1884 CE), but the department's activities were formalized and made more rigid in the first-half of the twentieth century. The promulgation of measures like the Hyderabad Endowments Regulation of 1349 Faṣlī (1940 CE), in particular, made the rules for establishing and maintaining endowments more rigid and provided for government oversight in supervising and managing endowments. These regulations were further modified with the Government of India's Central Wakfs Act of 1954 and the later Wakf Act of 1995. On the role of the Religious Affairs Department's involvement in managing *waqf*s, see Andhra Pradesh State Archives (APSA),"Report on the Administration of H.E.H. the Nizam's Dominions, for the year 1347 F." I use the terms "*waqf*" and "endowment" synonymously here since the Religious Affairs Department managed Hindu as well as Muslim endowments, suggesting deviation from the term's definition in Islamic jurisprudence.

details from the department's register), the department could not comply. The *waqf* he created was, by definition, permanent and irrevocable.[4] The only way to grant his request, then, was to refer the matter to the state's *dār-ul-iftā'* .[5] Fortunately for Ghulām Muḥammad Khān, the *dār-ul-iftā'* could help. Looking at the original deed, the *muftī* was able to find cause to nullify the otherwise irrevocable trust.[6] As the text of the document detailed not just once, but twice, the division of his property and its proceeds was intended to occur only after Ghulām Muḥammad Khān's death. As a result of this particular condition, the document was not valid as a *waqf* and could be returned to the executor on this basis.[7] Although the Department of Religious Affairs was prohibited from breaking its rules in response to Ghulām Muḥammad Khān's request, referring the case to the *muftī* of the department's *dār-ul-iftā'* offered another means for legally, but equitably, answering Ghulām Muḥammad Khān's plea.

For petitioners like Ghulām Muḥammad Khān, legal documents—like the *waqf-nāma* referred to here—presented an opportunity to express their wishes in a lasting—and at times permanent—form.[8] However, without formal guidance or expertise, the validity of these documents often fell into question, and to answer these questions, private individuals frequently

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[4] On the definition of *waqf*s, see W. Heffening, "Wakf," in *Encyclopaedia of Islam, First Edition (1913-1936),* edited by M. Th. Houtsma et al. (Leiden: Brill Online, 2012), http://dx.doi.org/10.1163/2214-871X_ei1_COM_0214. For the history of *waqf*s in British India, see, e.g., Eric Lewis Beverley, "Property, Authority and Personal Law: Waqf In Colonial South Asia," *South Asia Research* 31, no. 2 (July 1, 2011): 155–82, doi:10.1177/026272801103100204; Gregory C. Kozlowski, *Muslim Endowments and Society in British India* (Cambridge, UK: Cambridge University Press, 1985); Anantdeep Singh, "Zamindars, Inheritance Law and the Spread of the Waqf in the United Provinces at the Turn of the Twentieth Century," *The Indian Economic & Social History Review* 52, no. 4 (October 1, 2015): 501–32, doi: 10.1177/0019464615603888; Singh, "Women, Wealth, and Law: Anglo-Hindu and Anglo-Islamic Inheritance Law in British India," *South Asia: Journal of South Asian Studies* 40, no. 1 (2017): 40–53, doi:10.1080/00856401.2017.1258612; and Julia Anne Stephens, "Governing Islam: Law and Religion in Colonial India" (Ph.D. Dissertation, Harvard University, 2013), 271–4.

[5] APSA, Fatwa Number 30 (37/1) of 1358 F.

[6] Ibid.

[7] Ibid.

[8] Kozlowski, *Muslim Endowments and Society in British India*, 4.

turned to the *dār-ul-iftā'* to validate, authenticate, and register the terms of their documents.[9] But not all supplicants received responses as favorable as the one returned to Ġẖulām Muḥammad Ḵẖān. Many supplicants took issue with the documents they presented and wanted the advice of the *muftī* on whether the document was legally valid or not.[10] But regardless of the *muftī*'s decision, looking at the types of documents included in questions sent to the *dār-ul-iftā*' illustrates not only the types of concerns people experienced over the execution of certain documents but also the way legal instruments, legal consultation, and questions submitted to the *dār-ul-iftā*' reflected their lives and social relations more generally.

Moving from published *fatwā* compilations to unpublished *fatwā* files, this chapter examines evidence from the state-run *dār-ul-iftā*' in the princely state of Hyderabad. As material objects, the *dār-ul-iftā*"s files offer a behind-the-scenes view of the institutions that evolved in late-colonial India to produce and provide *fatwā*s. Here, rather than having the question and its answer printed together, the *fatwā* files from Hyderabad include an original version of the *fatwā*

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[9] This chapter focuses on the archive of the state-run *dār-ul-iftā*' at Hyderabad but similar arguments could hold for documents presented in the colonial courts as well, where questions about the legitimacy of documents often revolved around the executor's diligence in following the ever-changing colonial regulations surrounding the execution and registration of documents, rather than about the content or intent of the document. This chapter considers the relationship between the ethics of intent and the restrictions of bureaucratic rules.

[10] Such questions probe the relationship between the letter and the spirit of the law. If legal procedure and the letter of the law came to dominate legal activity in British India, then alternative legal fora like the *dār-ul-iftā*' presented an opportunity to recover the spirit of law. On the entanglement of these issues through the lenses of legal positivism, and legal consciousness, see, e.g., J. M. Finnis, "On 'Positivism' and 'Legal Rational Authority,'" *Oxford Journal of Legal Studies* 5, no. 1 (March 1, 1985): 74–90, doi:10.1093/ojls/5.1.74; Mary E. Gallagher, "Mobilizing the Law in China: 'Informed Disenchantment' and the Development of Legal Consciousness," *Law & Society Review* 40, no. 4 (December 1, 2006): 783–816, doi:10.1111/j.1540-5893.2006.00281.x; Orly Lobel, "The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics," *Harvard Law Review* 120, no. 4 (2007): 937–88; Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: University of Chicago Press, 1990); Austin Sarat, "The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law & the Humanities* 2 (1990): 343–379; Austin Sarat and William L. F. Felstiner, "Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office," *The Yale Law Journal* 98, no. 8 (1989): 1663–88, doi:10.2307/796611; Susan S. Silbey, "After Legal Consciousness," *Annual Review of Law and Social Science* 1, no. 1 (2005): 323–68, doi:10.1146/annurev.lawsocsci.1.041604.115938; and Silbey, "Legal Culture and Legal Consciousness," in International Encyclopedia of the Social & Behavioral Sciences, ed. Neil J. Smelser and Paul B. Baltes, Second, vol. 13 (New York: Elsevier, 2015), 726–733, http://dx.doi.org/10.1016/B978-0-08-097086-8.86067-5.

question (the *istiftā*), along with a draft of the *fatwā* response, office notes asking for additional information or for further clarification, edits and amendments to the drafted *fatwā* response, and in some instances a copy of the final answer in the format in which it was meant to be returned to the *fatwā*-seeker (the *mustaftī*).[11] These files provide detailed information about the process of seeking and receiving *fatwā*s toward the end of British rule in South Asia, while at the same time demonstrating how the institutional process of receiving an inquiry, opening a file, creating a coversheet and table of contents for the file, circulating the original inquiry and draft response through the office, and finally returning an official response to the supplicant operated in practice. In addition to displaying the material-bureaucratic aspects of the *dār-ul-iftā'*, *fatwā* files—as opposed to published collections—also include the material documents petitioners brought with them to the *dār-ul-iftā'*. The files reveal the manifold ways in which individuals presented their questions to the *dār-ul-iftā'*—from inexpensive post-cards, to letters written on blank paper and business stationary, to in-person visits to the *dār-ul-iftā'*, to formal requests from other government offices, sent in connection with inheritance disputes or court cases, or in Ġẖulām Muḥammad Ḵẖān's case, premature efforts to establish an endowment. These modes and methods flesh out the texture of legal consultation in a way other sources can only lead one to imagine, and as such, they reveal some of the ways in which engagement in legal consultation through the process of seeking and receiving *fatwā*s bled into other aspects of modern life in late-colonial South Asia.

Following a brief introduction to the institutional structure of the state-run *dār-ul-iftā'*, this chapter considers the routines and procedures through which the *fatwā* file flowed, as it moved

[11] Examples of the final version intended for the *mustaftī* represents a failure in the *dār-ul-iftā'*s procedures because it means the petitioner never received a response.

from being an amorphous, personal question to being a formal response to a question of legal substance. Then, it considers the *fatwā* files now preserved in the state archives in Hyderabad in relation to the Ṣadārat-ul-ʿĀliya's two-volume collection of *fatwā*s published in the 1940s. Comparing published and unpublished *fatwā*s highlights the centrality of context, materiality, and authority in the process of seeking and receiving legal advice. After establishing the validity of the *fatwā* file as a source for historical study, the chapter then turns to the role of *fatwā*-seeking in the context of late-colonial social and legal history, as a source that offers insight into individuals' engagement with the legal system in Hyderabad, as well as among those who petitioned the Ṣadārat-ul-ʿĀliya's *dār-ul-iftā*' from beyond the geographic confines of the princely state of Hyderabad. The subsequent sections of the chapter considers the construction of the *fatwā* file, the place within the *dār-ul-iftā*"s documentary culture, and women's voices in the *dār-ul-iftā*'. Each of these sections considers the relationship between the *dār-ul-*iftā"s place as a bureaucratic office and the extent to which bureaucratic procedure shaped, encouraged, influenced, and chanced individuals' interactions with it. The final section on gender brings the status of women to bear on informal nature of the *dār-ul-iftā*'. In many ways, the *dār-ul-iftā*' and other institutes of Islamic law were—and perhaps still are—predominantly male spaces, yet the conflation of religious personal law with family law often means that women as wives, widows, and daughters, require the *dār-ul-iftā'*s services—particularly in instances in which they were rebuffed by or could not

afford (socially or economically) to enter the regular courts of law.[12]

Drawing upon recent contributions to the theory and anthropology of paperwork, the chapter concludes by considering the possibilities for the introduction of formal state structures for the production of legal responses that are, by their very definition, individual, contingent, and without any enforcement power. The modes of paperwork presented in these files offer an alternative possibility for adjudicating what has now become "Muslim personal law" that differs dramatically from the model adopted by the British Government of India. The *fatwā* files of the state-run *dār-ul-iftā'* in the princely state of Hyderabad thus represent an alternative model for Islamic legal practice while demonstrating some of the reasons why this form of legal consultation—even in instances where enforcement is not an issue—remains popular among Muslims, not only in South Asia but around the world.[13]

II. The Ṣadārat-ul-ʿĀliya in the princely state

In addition to shifting from published to unpublished sources, this chapter also represents a departure from earlier chapters in that it turns to a new location. Whereas the previous

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[12] The *dār-ul-iftā*'s place in the resolution of familial disputes means that women's concerns routinely appear among the organization's files. Readers interested in questions surrounding women and law, should also consider Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (New Delhi: Oxford University Press, 1999); Agnes, *Family Law*, 2 vols. (New Delhi: Oxford University Press, 2011); Sylvia Vatuk, "Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law," *Modern Asian Studies* 42, no. Special Double Issue 2-3 (2008): 489–518, doi:10.1017/S0026749X07003228; Vatuk, *Marriage and Its Discontents: Women, Islam and the Law in India* (New Delhi: Kali for Women, 2017); Vatuk, "'Where Will She Go? What Will She Do?' Paternalism toward Women in the Administration of Muslim Personal Law in Contemporary India," in *Religion and Personal Law in Secular India: A Call to Judgment*, ed. Gerald James Larson (Indiana University Press, 2001), 226–250; and Vatuk, "Moving the Courts: Muslim Women and Personal Law," in *The Diversity of Muslim Women's Lives in India*, ed. Zoya Hasan and Ritu Menon (New Brunswisck, NJ: Rutgers University Press, 2005), 18–58.

[13] Hussein Ali Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa," *American Ethnologist* 37, no. 1 (February 1, 2010): 2–18, doi:10.1111/j.1548-1425.2010.01238.x; Agrama, "Law Courts and Fatwa Councils in Modern Egypt: An Ethnography of Islamic Legal Practice" (Ph.D. Dissertation, The Johns Hopkins University, 2005); Katherine Lemons, "At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi" (Ph.D. Dissertation, University of California, Berkeley, 2010); and Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār Al-Iftā*, Social, Economic, and Political Studies of the Middle East and Asia (Leiden: Brill, 1997).

chapters have considered the practice of Islamic law in British India, this chapter turns to the princely state of Hyderabad to consider an alternative approach to the practice and adjudication of Islamic law in the late-colonial period. The princely state of Hyderabad was the premier (Muslim) princely state in British India. As such, it held pride of place among Muslim intellectuals—many of whom migrated to the state in search of employment following the decline of Muslim sovereignty in North India.[14] It also boasted a large state infrastructure, that was modeled after, but did not entirely resemble the administrative infrastructure of British India.[15] One of the ways in which the princely state of Hyderabad mirrored British India was through the adoption and implementation of a penal code, patterned after the Indian Penal Code.[16] One of the ways it differed, however, was through the sponsorship of state-run religious institutions like the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya.

The princely state of Hyderabad thus provides an interesting complement to the study of Islamic legal practice in British India for a number of reasons. First, compared to many of the

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[14] See, e.g., C. Ryan Perkins, "Partitioning History: The Creation of an Islami Pablik in Late Colonial India, C. 1880--1920" (Ph.D. Dissertation, University of Pennsylvania, 2011).

[15] For many of the princely states, judicial and administrative reforms modeled after those present in British India were frequently made a condition of continued independence. In this way, many of the princely states retained a nominally independent, yet practically subordinate status. For further discussion of sovereignty in the context of princely states' history, see, e.g., Eric Lewis Beverley, *Hyderabad, British India, and the World: Muslim Networks and Minor Sovereignty, c. 1850-1950* (Cambridge, United Kingdom: Cambridge University Press, 2015); and Alexander Wood Renton and George Granville Phillimore, *Colonial Laws and Courts* (London: Sweet and Maxwell, 1907), 43–44, cited in cited in Mitra Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda," *Law and History Review* 28, no. 4 (November 2010): 979–1009, doi:10.1017/S073824801000074X.

[16] The princely states of Bhopal and Kashmir also had penal codes, modeled after the Indian Penal Code. For further discussion of legal overlaps between Hyderabad and British India, see Government of India, *British Enactments in Force in Native States: Southern India (Hyderabad)* (Office of the Superintendent of Govt. Print., India, 1900). For the general history of judicial administration in Hyderabad, see M. A. Muttalib, *Administration of Justice under the Nizams, 1724-1948* (Hyderabad: State Archives, Andhra Pradesh, 1988). For a discussion of the penal code in the princely state of Bhopal, see Barbara Metcalf, "Islam and Power in Colonial India: The Making and Unmaking of a Muslim Princess," *The American Historical Review* 116, no. 1 (February 1, 2011): 1–30. For a discussion of princely state jurisdictions within British India, see, e.g., Sharafi, "Marital Patchwork"; and Lauren A. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge [UK]: Cambridge University Press, 2010). 222–278.

other princely states, the state of Hyderabad occupied a sizable portion of land in the middle of the subcontinent. As such, it was flanked by British Indian territories to the north, south, east, and west, and was criss-crossed historically, and throughout this period as well, by travel, trade, and pilgrimage routes.[17] Second, unlike many of the other Mughal successor states that were gradually—or eventually—integrated into Britain's territorial holdings on the subcontinent, the princely state of Hyderabad remained (nominally) independent even after the date of India's birth as an independent nation in 1947.[18] Hyderabad's position as the subcontinent's premier princely state made it a leader among British India's other nominally independent polities and also enabled it to forge and maintain ties with foreign states. Hyderabad's connections with the Ottoman *k̲halīfā* and ties to the Ottoman ruling family also gave the princely state status and clout vis-à-vis the British Government of India.[19] Foreign ties also fortified the Niẓāms' commitment to traditional institutions and patronage.

Yet like many of the subcontinent's hundreds of other princely states, Hyderabad was also susceptible to pressures to reform exerted upon it by British imperial administrators and residents. Following the example of judicial administration in British India, the Hyderabad state

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[17] See, e.g., Alexandra Mack, "One Landscape, Many Experiences: Differing Perspectives of the Temple Districts of Vijayanagara," *Journal of Archaeological Method and Theory* 11, no. 1 (March 1, 2004): 59–81, doi:10.1023/B:JARM.0000014617.58744.1d; and Mack, *Spiritual Journey, Imperial City: Pilgrimage to the Temples of Vijayanagara* (Delhi: Vedams eBooks (P) Ltd, 2002). On trade and travel in ancient India more generally, see Moti Chandra, *Trade And Trade Routes In Ancient India* (New Delhi: Abhinav Publications, 1977).

[18] The Mughal Successor state of Awadh provides an anatomical lesson in the longue duree process of annexation. See, e.g., Saiyid Zaheer Husain Jafri, *Studies in the Anatomy of a Transformation: Awadh from Mughal to Colonial Rule* (New Delhi: Gyan Pub. House, 1998); and Michael Herbert Fisher, *A Clash of Cultures: Awadh, the British, and the Mughals* (New Delhi: Manohar, 1987), among others.

[19] On Ottoman-Hyderabad relations see, e.g., Eric Lewis Beverley, *Hyderabad, British India, and the World* (Cambridge University Press, 2015); Basant K. Bawa, *The Last Nizam: The Life and Times of Mir Osman Ali Khan* (New York: Viking, 1992); Karen Isaksen Leonard, *Locating Home: India's Hyderabadis Abroad* (Palo Alto, CA: Stanford University Press, 2007); Syed Tanvir Wasti, "The Political Aspirations of Indian Muslims and the Ottoman Nexus," *Middle Eastern Studies* 42, no. 5 (September 1, 2006): 709–22, doi:10.1080/00263200600826331; John Zubrzycki, *The Last Nizam: An Indian Prince in the Australian Outback* (Sydney: Pan Macmillan, 2007).

implemented a series of reforms in the last decades of the nineteenth century, including the separation of executive and judicial branches of government; the production of new codes of civil and criminal law (including the introduction of the aforementioned penal code); the creation of a High Court in the state capital and the introduction of lower-level courts throughout the province; and the training and certification of lawyers, pleaders, and other legal personnel to work in these courts.[20] But the Hyderabad State also maintained a number of other institutions that had either been abandoned or abrogated in British India, including *dār-ul-qaẓā* courts and support for state-sponsored *muftī*s and *qāẓī*s.[21] Such reforms adhered to British sentiments about the separation of government offices from family and heredity but also reflected the Nizams' interest in maintaining—at least symbolically, if not in administrative terms—the trappings of Islamic sovereignty through the sponsorship of religious activities and the appointment of religious-judicial officials. Following the separation of powers, appointing and managing these offices was not the direct responsibility of the Nizam but rather belonged to the Ṣadārat-ul-ʿĀliya.

The origins of the Ṣadārat-ul-ʿĀliya date back to the reign of Niẓām-ul-Mulk Aṣaf Jāh I. Historical records, one administrative report explained, refer to the existence of the Ṣadārat's head, the Ṣadr-us-Ṣudūr in 1748 CE. From that date forward, the report summarized, the office

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[20] See, e.g., BL, IOR/R/2/ Temp No. 66/13, Hyderabad State Administration (No. 295, 1898, Parts I and II); BL, IOR R/2/67/20, Appointment of Chief Justice and of Hindu Judge for the Hyderabad High Court and arrangements for control of judicial business under His Highness the Nizam's scheme (1892-95); IOR/R/2/67/20, File 111/95, "Appointment of Chief Justice and of a Hindu Judge for the Hyderabad High Court and arrangements for control of Judicial business under H.H. the Nizam's scheme"; and Mohammad Abdul Muttalib, "The Administration of Justice Under the Nizams, 1724–1947" (Ph.D. Dissertation, Osmania University, 1957); Muttalib, *Administration of Justice under the Nizams, 1724-1948* (Hyderabad: State Archives, Andhra Pradesh, 1988). (Cf. BL, IOR/R/2 Temp no. 68/49, On the unprofessional conduct of Templeton and Newton.)

[21] See, e.g., Jörg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law*, 1769-1817, Beiträge Zur Südasienforschung, Bd. 79 (Wiesbaden: F. Steiner, 1983); and Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press Delhi, 1998).

of the Ṣadārat-ul-ʿĀliya oversaw the religious activities of the state, including the maintenance of mosques and other religious institutions, appointing individuals to the offices of *qāẓī* and *muftī*, and overseeing the annual pilgrimage to Mecca and Medina.[22] By the end of the nineteenth-century, however, little remained of the Ṣadārat-ul-ʿĀliya's previous importance, "except its old name and prestige."[23] Then, in the year 1294 F. (1884 CE), the prime minister created a new department, the Maḥkama-yi Umūr-i Maẕhabī (or, Religious Affairs Department), to oversee religious affairs across the Nizam's territory. After this restructuring, the Ṣadārat-ul-ʿĀliya retained its name and institutional autonomy and was exclusively charged with "the ministration of Islamic religious rites and worship."[24] It was not until 1345 Faṣlī (1935 CE) that the government combined the two branches, the Ṣadārat-ul-ʿĀliya and the Maḥkama-yi Umūr-i Maẕhabī, to create a single department now responsible for overseeing not only Muslim religious rites and institutions but Hindu and Christian ones as well.[25] With this amalgamation, the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya formally became part of the bureaucratic infrastructure of the princely state of Hyderabad. Given its incorporation into the Department of Religious Affairs and engagement with departmental paperwork, then, the institute's extant files provide an opportunity to examine the relationship between the production and circulation of legal documents in the age of bureaucratic expansion in South Asia and the Hyderabad state's regard for religious law in light of its other judicial reforms.

Although the Ṣadārat-ul-ʿĀliya appears in government records as early as 1161 AH (1748

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[22] APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the year 1347 F., "General Administration and Policy," 264.

[23] Ibid.

[24] Ibid.

[25] Ibid., 265.

CE),[26] the institution did not include a *dār-ul-iftā'* until much later. Of course, the office of the *muftī* for the city of Hyderabad (*muftī-yi balda*) was a long-standing institution, but it was not until 1332 F. (1922 CE) that the *dār-ul-iftā'* was officially incorporated into the Ṣadārat-ul-ʿĀliya.[27] Beyond this, the early history of the *dār-ul-iftā'* is difficult to piece together. The institute's extant archive indicates that *fatwā* files from the years 1936 to 1949 were incorporated into the Andhra Pradesh State Archives in 1950, but it is unclear as to whether 1936 marks the year in which the *dār-ul-iftā'* first began to create and preserve *fatwā* files, or whether this was the simply the earliest record transferred to the state archives.[28] This part of the archive includes over three thousand files, but the issuing of *fatwā*s represented a fraction of the Ṣadārat-ul-ʿĀliya's activities.[29] Nonetheless, for the purposes of understanding the relationship between the *dār-ul-iftā'* and late-colonial society, these files provide a wealth of information.

In addition to supervising the appointment of *qāẓī*s and *muftī*s, the Ṣadārat-ul-ʿĀliya oversaw a wide range of other matters tied to religious affairs (or, *umūr-i mazhabī*) in the Hyderabad State, including (1) the maintenance and upkeep of mosques, temples, and other religious buildings, (2) assistance to pilgrims and administrative support for the annual Ḥajj to Mecca and Medina, (3) issuing *sanad*s and certificates for those who passed the examination for, and (4) appointing people to the offices of *qāẓī*. The budget allocations, as stated in the annual *Report on the Administration of H.E.H. the Nizam's Dominions*, shows the department spending upwards

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[26] Ibid, 264.

[27] APSA, Report on the Administration of the H.E.H. the Nizam's Dominions for the year 1332 F., 69.

[28] Of these, I was only able to obtain access to files from 1356 F. to 1359 F., on account of the haphazard storage and retrieval practices at this archive. For a description of the collection, see S. Dawood Ashraf, ed., *Guide to Persian and Urdu Materials Preserved in Andhra Pradesh State Archives and Research Institute* (Hyderabad: Andhra Pradesh State Archives).

[29] By comparison, there are nearly sixty-five hundred *sanad*s and almost twenty-thousand case proceedings in this collection.

of ten *lākh* rupees annually.[30] Of these annual expenditures—at least for the year 1332 Fasli (1913 CE)—eleven percent went to routine operating costs, just slightly less than the amount spent on mosques and temples (twelve percent).[31] Expenditures for religious and charitable institutions and charities amounted to a combined forty-one per cent while the amount spent to send pilgrims on Ḥajj to Mecca and to aid other festivals amounted to only ten per cent of the annual budget.[32] In addition to these fiscal obligations, the department also allocated over a quarter of its annual spending to stipend recipients (that is, *yōmīadār*s, *sāliānadār*s, and *maʿamūldār*s).[33] The indexes for the files of the Department of Religious Affairs (Maḥkama-yi Umūr-i Maẕhabī) attest to this distribution: The majority of the files pertain to the maintenance, upkeep, and institutional management of mosques and temples in the Nizam's territories, while the activities of the *dār-ul-iftā'* receive little mention in the administrative reports. Issues related to the annual Ḥajj to Mecca and Medina are disproportionately represented in the files relative to their minimal budget allocation but this anomaly is likely the product of the extra administrative attention sending

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[30] This discussion draws upon several administrative reports: See, APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the years 1320 F., 1321 F., 1324 F., 1325 F., 1326 F., 1327 F., 1328 F., 1329 F., 1330 F., 1331 F., 1332 F., 1333 F., 1333 F., 1334 F., 1335 F., 1336 F., 1338 F., 1339 F., 1340 F., 1341 F., 1342 F., 1343 F., and 1344 F.

[31] APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the Year 1332 F. (1922–1923 CE). As the a later report summarizes, "The Ecclesiastical Department may be taken to be a machinery devised to serve the above purpose. Within the Dominions, besides churches scattered all over it, there are 26,358 Hindu religious institutions including 24,000 temples existing side by side with 12,774 Mohammedan religious institutions including 4,000 mosques. If Government gives a grant of Rs. 14,860 annually to churches, it gives a grant of Rs. 1,12,870 annually to Hindu religious institutions. In the shape of land and jagir, large royal grants have been made both to Hindu and Muslim sanctuaries. Rs. 3,10,946 is the annual income of land grants and '*maul*' for Hindu temples and institutions alone. Besides the above grants, we find big jagir grants yielding large incomes, both to Muslim and Hindu institutions. Then there are Trusts and Waqfs made by private individuals. The Ecclesiastical Department may be considered to be the real custodian of such interests. Their managements may be in charge of private individuals described as '*mutavallis*' or '*mahouts*' or managers but the Government can never be relieved of its obligation to supervise the proper application of the income of these properties. This is a broad outline of the nature of duties which the Ecclesiastical Department is expected to perform." (APSA, Report on the Administration of the H.E.H. the Nizam's Dominions for the year 1347 F., 265.)

[32] APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the Year 1332 F. (1922–1923 CE).

[33] Ibid.

pilgrims to the Ḥaramain required, over and above the cost involved, not to mention the symbolic importance of maintaining the state's connection to the holy lands. In other years, the department exhibited similar spending habits, with anomalies in the annual budget indicated and explained with asterisks in the annual report. The department's fiscal responsibilities demonstrated its place between old and new forms of administration—patronage of offices on the one hand and government management on the other.

Annually, the ecclesiastical department granted a handful of professional certificates to judicial office holders—that is, people in the service of the Sharīʿat (*Ahl-i K̲h̲idmat-i Sharīʿat*)—along with a few dozen scholarships to the sons of those employed by the department for their training at the Nizamiah School.[34] The Department was also responsible for appointing *qāẓī*s to the regional *dār-ul-qaẓā*s. Though details are unavailable about the contents or format of the examination passed by those receiving certificates from the Ṣadārat-ul-ʿĀliya in order to be eligible for appointment, one may infer from these references that, as with other departments, the Ṣadārat-ul-ʿĀliya's embraced administrative efforts to standardize and to centralize these operations under the banner of the Nizam's government. Such efforts are reminiscent of those attempted in British-controlled territories, like the Bombay Presidency earlier in the nineteenth century, but not unsurprisingly, Hyderabad's efforts appear to have been more successful. Nor was Hyderabad the only princely state to reconfigure the process for examining and appointing these officers. In Bhopal, for instance, judicial officials passed examinations before being allowed to work in the courts,[35] and the judicial system incorporated *qāẓī*s, *muftī*s, and a council of ʿulamā

[34] APSA, Report on the Administration of H.E.H. The Nizam's Dominions for the year 1331 Fasli (6th October 1921 to 5th October 1922 A.D.).

[35] Metcalf, "Islam and Power in Colonial India," 24, n. 84.

(*majlis-i ʿulamā*) for the purposes of settling disputes between Muslim litigants.[36] In addition to certifying appointees' intellectual accomplishments, the certification process also worked to maintain order in other regards as well.

In his report from the year 1333 F. (1923–4 CE), for instance, the Ṣadr-us-Ṣudūr made a point of mentioning that he took charge of bringing the slaughter houses of the city "under Government supervision" by making the "inexperienced mullahs" pass a professional examination.[37] Before the compartmentalization and specialization of this work in the nineteenth century, it was not uncommon for *qāẓī*s to oversee slaughter-houses to ensure their compliance with *ḥalāl* requirements.[38] There are some references to *qāẓī*s performing this work elsewhere in India before the judicial department of the East India Company Judicial Department officials began to narrow the *qāẓī*'s workload in the nineteenth century,[39] but in Hyderabad, this aspect of religious life, as it intersected with consumption and community, remained within the *qāẓī*'s ambit. Lax supervision in the preceding years, however, had led to a serious decline in the oversight of regional *qāẓī*s. As the Ṣadr-us-Ṣudūr's report suggests, unprofessional practices had proliferated in recent years, generating a need to reform and refinement in the *qāẓī*s' work. After increasing government supervision for these activities, then, the *qāẓī*'s work was standardized as follows:

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[36] *Tanẓīmāt-i Shāhjahānī* (Bhopal Penal Code), sections 194 and 195; and James Sutherland Cotton, Sir Richard Burn, and Sir William Stevenson Meyer, eds., *Imperial Gazetteer of India*, New Edition, vol. VIII, Berhampore to Bombay (Oxford: Clarendon Press, 1908), 138–139.

[37] APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the year 1333 F., 77.

[38] M. P. Singh, *Town, Market, Mint, and Port in the Mughal Empire, 1556-1707: An Administrative-Cum-Economic Study* (New Delhi: Adam Publishers & Distributors, 1985), 46–48. (The slaughter of animals and the establishment of separate quarters for butchers fell under within the *kōṭwāl*'s jurisdiction, but in many places, the work of the *qāẓī* and the *kōṭwāl* overlapped.) See also, MSA, Judicial Department Proceedings, 1842, Vol. 21/798, "Statement of the rates of the Broach fees and their annual amount."

[39] See, e.g., BL, IOR/Z/P/3150, Index, Bombay Judicial Consultations, 1816 and MSA, Judicial Department Proceedings, 1842, Vol. 21/798.

> [T]heir salaries were paid out of slaughter fees collection; Kazi's were exempted from fixing stamps in official correspondence; [in] villages where there are no courts, the Kazis and deputy Kazis and in their absence the Muslim patels or patwaris have been empowered to grant certificate[s] of divorce in consultation with the High Court…the District Judges have also been authorised to inspect the Kazi's offices; [and] it has been ordered that out of nikahana (Kazi's fees) *viz*., Rs. 5, Rs. 3 should be take by the Kazis and Rs. 2 given to their naibs.[40]

These were the types of controls the East India Company attempted to enforce in places like the Bombay Presidency, but it appears Hyderabad was better-equipped to do so.[41] Efforts to reform the office of the *qāẓī* and to extend the Ṣadārat-ul-ʿĀliya's influence were replicated in subsequent years. In 1334 F. (1924-5 CE), for instance, the department introduced the practice of applying thumbprint impressions to contracts of marriage (*siḥajāt*) and along with this practice, *nā'aib qāẓī*s received training in the art of reading thumbprint impressions from the Anthropometry Branch of the District Police Department.[42] Then in 1336 F. (1926–7 CE), the Ṣadārat-ul-ʿĀliya extended this practice from the capital to "all over the dominions" and "arrangements [were also] made to give the candidates a training in the art of taking impressions in the district superintendent's office, so that they may not have to travel to Hyderabad."[43] The addition of finger-tip impressions to the marriage contract brought together the identificatory practices of police investigative work with the administration of Muslim marriages, and paralleled practices for registering marriages in British India.[44] The department also took the liberty of issuing

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[40] APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the year 1333 Fasli, 77.

[41] Of course this statement of policy likely simplified what happened on the ground.

[42] APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the year 1334 F. (6th Oct. 1924 to 5th Oct. 1925 AD), Section 403. For the history of finger-printing in British India, see Chandak Sengoopta, *Imprint of the Raj: How Fingerprinting Was Born in Colonial India* (London: Pan, 2003). The police force for the Princely State of Hyderabad had a fingerprint division as early as 1912.

[43] APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the year 1334 F., 77.

[44] See Chapter Four of this dissertation.

government licenses for the practice of other religiously oriented occupations. For instance, the *ġhassāl*s (or, corpse bathers) of the city were subjected to examination and issued certificates upon passing the government exam.[45] In general, then, the process of training, standardizing, and supervising various religious and quasi-religious functionaries was central to the Ṣadārat-ul-ʿĀliya's reform efforts.

III. Negotiating Bureaucratic and Moral Authority

Certificates of appointment and procedures for examination were not the department's only engagement with public life. Another way in which the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya followed the pattern of other government offices was through its use of the file to organize its activities.[46] File production commenced with the receipt of the *mustaftī*'s initial inquiry and drew upon the same bureaucratic techniques as other government departments. Here, as in other departments, the file's first page was a generic coversheet to which all subsequent correspondence and documentation was affixed. Complete files from the *dār-ul-iftā*' included the original submission, a draft copy of the response, and any later communications exchanged between the *mustaftī* and the *dār-ul-iftā*'. The thinnest file in the *dār-ul-iftā*"s records might include only three pages: a cover page, the original inquiry, and a draft response. Other files could include dozens of pages including pieces of supplemental evidence (e.g., copies of legal documents, *iqrār-nāma*s, *ṭalāq-nāma*s, and *waqf-nāma*s), correspondence sent to the supplicant from the *dār-ul-iftā*' for clarification, elaborate diagrams drawn to calculate the division of inheritance (many of which spilled across several pages to facilitate the division of property into ten-thousandths of the whole), or documents copied from another department's records to clarify a question. Materially,

[45] APSA, Report on the Administration of H.E.H. the Nizam's Dominions for the year 1334 F.

[46] For a general discussion of the process of seeking and receiving *fatwā*s, see Chapter Five.

then, the *fatwā* files from the *dār-ul-iftā'* were no different from those found in other departments (with the tell-tale generic brown-paper covers, and white-string ties binding the pages together), and they would follow a similar course from desk to desk as work on the case progressed.[47] The bureaucratic mundane-ness of the *fatwā* file made it subject to the same material-bureaucratic constraints as other government matters, but the ethical, religious aspect of the *fatwā* file in some ways challenged the indifference of routine paperwork. Considering the material constraints of the government file with the inherent flexibility of the *fatwā* as a legal genre, the *dār-ul-iftā'*'s documentary routines and intellectual position offered yet another answer to the question of how Islamic law and modern governance came together at this time.

The material aspects of the *fatwā* file, and its cumulative construction as it moved through the *dār-ul-iftā'* draws attention to the tension between the flexible, dialogic nature of the *fatwā* question and response and the rigid requirements of a modern legal system—particularly one grounded in doctrinal equality and the formal rule of law.[48] *Fatwā*s called upon individual and exigent circumstances when presenting legal interpretations, yet this tension between law and circumstance was precisely at issue in Orientalist critiques of Islamic law in the pre- and early colonial periods.[49] If Max Weber and company took issue with the *qāẓī*'s use of generic principles

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[47] For a rich description of the use of files in the making of law, see Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (Cambridge, UK: Polity Press, 2010), 70–106. Matthew Hull describes the use of similar file-making objects in M. S Hull, "The File: Agency, Authority, and Autography in an Islamabad Bureaucracy," *Language & Communication* 23, no. 3–4 (2003), 295–96.

[48] The origins of efficiency and equality in bureaucracy are grounded in its associations with impersonality. As David Graeber writes, summarizing Weber's take on bureaucratic efficiency, "The simplest explanation for the appeal of bureaucratic procedures lies in their impersonality. Cold, impersonal, bureaucratic relations are much like cash transactions…On the one hand they are soulless. On the other, they are simple, predictable, and—within certain parameters, at least—treat everyone the more or less the same." (David Graeber, *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy* [Brooklyn, NY: Melville House Publishing, 2015], 152.) This chapter thus considers the relationship between bureaucratic process and individuated legal advice to further question the relationship between legal substance and legal practice.

[49] See Chapter One of this dissertation for an introduction to these critiques.

to guide legal interpretation, then the *muftī*'s application of this interpretive leniency was equally problematic.[50] Yet the Ṣadārat-ul-ʿĀliya's bureaucracy suggested that equality in procedure and discretion in interpretation might in fact provide a more equitable approach to law.[51] *Muftī*s, who offer legal opinions on basis of their interpolation of the question before them, are neither expected to exhibit need-blind interpretations, nor are they subject to the pressures and corrupting influences judges might otherwise face. With moral consciousness as their highest authority, *muftī*s have the ability to produce clearer interpretations of the law. The question presented in this chapter, then, is whether they can maintain interpretive equanimity while working within the structures of the state and when subject to the same protocols of bureaucratic paperwork as other government officials.

The criticisms of Weber and other arise in part from the fact that Islamic jurisprudence *(fiqh)* in general, and the *fatwā* in particular, are designed to account for individual and exigent circumstances, but contrary to these superficial critiques, *de facto* and *de jure* inequality before the law does not mean that the system of adjudication was any less rigorous or systematic than other forms of judicial labor. Turning to the *fatwā* files of the *dār-ul-iftā'* in Hyderabad—and looking forward to the meticulous procedures followed by institutional *dār-ul-iftā'* in places like

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[50] Weber, *Economy and Society*; and Chapter One of this dissertation. On the *kadijustiz* allegations in the Ottoman context, see Benton, *Law and Colonial Cultures*, 102–114. Of course Weber's critique assumes that law in other contexts lives up to the expectation that men, women, rich, poor, Christian, Muslim, and Jew are not judged according to status or social expectation, and that the law applies equally to members of different classes and communities. On the books, one might be able to argue that legal equality existed in Western Europe or North America at the time, but in practice, one cannot uncritically claim that judges, juries, and other judicial bodies responded equally to litigants regardless of class, race, or gender.

[51] Equality before the law was one of the myths of colonial rule, not to mention the fact that codification was a socio-legal experiment fit for the colonies and not the metropole. (See Nasser Hussain, *The Jurisprudence of Emergency Colonialism and the Rule of Law*, Law, Meaning, and Violence [Ann Arbor: University of Michigan Press, 2003]; Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *Law and History Review* 23 [2005]: 631–84; and Karuna Mantena, *Alibis of Empire Henry Maine and the Ends of Liberal Imperialism* [Princeton, N.J.: Princeton University Press, 2010].)

Hyderabad, Lucknow, and Delhi today—this chapter shows that bureaucratic procedure can standardize one's experience with the government office, while at the same time allowing for individual and exigent circumstances to shape outcomes. That is, bureaucratic paperwork assured equal treatment within the *dār-ul-iftā'* and equal opportunity to have one's case heard, though the *fatwā* response itself could be flexible. In other words, every *mustaftī* received an equal hearing before the *muftī* and his *madad-gār*s, but part of this equality before the office was predicated on the understanding that responses were nonetheless dependent upon independent circumstances. No two questions were exactly the same, and no two answers were identical, though procedurally they followed the same process.

In the *dār-ul-iftā'*, every file, request, *istiftā'* received equal treatment. Individuality, however, shaped the *muftī*'s interpretive approach. He could, for instance, respond differently to enquiries submitted by women, vis-à-vis those submitted by men, or take into consideration other aspects like the *mustaftī*'s place of residence and whether he was living in princely Hyderabad, British India, or Arabia.[52] What might be possible in one location—say, closing one's restaurant during the daytime hours in the month of Ramadan—might not be possible in another.[53] Trained *muftī*s negotiated these possibilities and potentialities in their responses, attending to issues of context, class, and other conditions. Therefore, reading the *fatwā* as a contingent response to a particular legal question, whose answer is correct for the particular circumstances represented in the question (though it may not be entirely appropriate for other circumstances), is

[52] This approach is also evident in some of Muftī Kifāyatullāh's *fatwā*s. (See Chapter Five.)

[53] Anecdotal evidence suggests consideration for location remains a chief concern among *muftī*s today. During an interview, Maulvi Ateeq Ahmad Sahib told me that his response to a *mustaftī*'s question about taking out a loan for a car might change depending upon whether the *mustaftī* was living in Lucknow, where cars are not necessary, Mumbai, where cars are necessary but ḥalāl loans might be available, or the United States, where cars are necessary but interest-free loans might not be readily available. (Interview with Maulvi Ateeq Ahmad Sahib, April 11, 2013.)

one of the characteristics that allows the *fatwā* to travel (as demonstrated by the transnational circulation of *fatwā* literature considered in the previous chapter), but it is also a feature that allows the *fatwā* to respond and adapt to modern challenges and obstacles.[54] That the *dār-ul-iftā'* in Hyderabad could bring these aspects of formal office work together with the conditional and contingent aspects of the *dār-ul-iftā'* is one of its most salient features.

In bureaucratic organizations, paper—and now, perhaps electronic—technologies like the file create collective ownership and distance participants from personal responsibility for group action.[55] Collective agency strengthens the ties that bind individual bureaucrats together in the aims and objectives of the organization, though they can also work in more sinister ways to relieve individual participants of personal responsibility for the illegitimate or immoral activities in which a bureaucratic institution might engage.[56] In the late-nineteenth and early-twentieth centuries, Islamic legal institutions also walked this line between maintaining and upholding their authority and bowing to the exigencies of government oversight and bureaucratic rules and protocols to guide the execution of their work. The *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya was no

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[54] For consideration of this issue in another context, see Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State : Muftis and Fatwas of the Dār Al-Iftā*, Social, Economic, and Political Studies of the Middle East and Asia (Leiden: Brill, 1997).

[55] Jeremy Bentham, *Bentham's Theory of Fictions* (New York: Harcourt, 1932); Peter Michael Blau, *The Dynamics of Bureaucracy: A Study of Interpersonal Relations in Two Government Agencies*, Rev. [2d] ed. (Chicago: University of Chicago Press, 1963); Blau, *Bureaucracy in Modern Society*, Random House Studies in Sociology (New York: Random House, 1956); Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (Berkeley: University of California Press, 1984); and Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther. Roth and Claus. Wittich (Berkeley: University of California Press, 1978). For a more recent assessment of bureaucratic practice and corporate authority, see Hull, "The File," 287–314; and Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2012).

[56] On the dangers of bureaucratic organization, see, e.g., Gerald D. Feldman and Wolfgang Seibel, eds., *Networks of Nazi Persecution: Bureaucracy, Business, and the Organization of the Holocaust*, vol. 6, Studies on War and Genocide ; (New York: Berghahn Books, 2005); Yaacov Lozowick, *Hitler's Bureaucrats: The Nazi Security Police and the Banality of Evil*, trans. Haim. Watzman, Eng. ed. (London: Continuum, 2002); E. N. Peterson, "The Bureaucracy and the Nazi Party," *The Review of Politics* 28, no. 2 (1966): 172–92; Pierre-Etienne Will, *Bureaucracy and Famine in Eighteenth-Century China* (Stanford, Calif.: Stanford University Press, 1990). For a delightful analysis of one man's fight against the absurd constraints of bureaucratic practice in see, Ben Kafka, *The Demon of Writing: Powers and Failures of Paperwork* (New York: Zone Books, 2012).

exception to this general trend, and its institutional alienation is further exemplified by the anonymity of the institute's employees. Despite the contributions individual employees made to the institution, the name and seal of the *dār-ul-iftā'* took precedence over the names and reputations of its employees and *muftī*s.

Collective authorship, as the previous chapter suggested, was one of the ways in which Islamic legal organizations granted authority to the institution over the reputation of the individual, but the relationship between one and the other remained in productive conversation throughout this period. Institutional affiliations boosted the reputation of individual *muftī*s and individual *muftī*s could make or break budding institutions. Furthermore, as institutes of Islamic learning like the *dār-ul-ʿulūm* at Deoband matured in the decades following their founding, more formal structures for issuing and validating legal opinions also emerged.[57] Before the authority of the institution was solidified, individual names and regulations still mattered, but as official protocols evolved, institutional authority began to replace individual reputation.[58] One of the effects of this institutional structure was that *fatwā*s issued by *muftī*s employed by the *dār-ul-iftā'* at first appeared under the authority of the institute as well as that of the individual *muftī*. This divided sense of authority—that is, reflecting the individual and the institution—is evident in later efforts to publish institutional *fatāwa*, which generally place the name of the institution

[57] Like theṢadārat-ul-ʿĀliya, the *madrasa* at Deoband did not initially possess a separate *dār-ul-iftā'*. The *dār-ul-iftā'* only became a permanent part of the university in 1893. Barbara Daly Metcalf, *Islamic Revival in British India: Deoband, 1860–1900* (Princeton, N.J: Princeton University Press, 1982), 146–157.

[58] This shift is evident in the fact that the *Fatāva Dārulʿulūm Diyoband* still retained the names of its individual *muftī*s while at the same time privileging their institutional affiliation. Institutional and individual reputation were at this time mutually dependent.

ahead of that of the individual *muftī*.[59] In the context of increased legal competition, the *muftī*'s response provided petitioners with an ethical antidote to the increasingly nit-picky, legalistic, and literalist mode of interpretation obtaining in the colonial courts.[60] Being able to negotiate multiple sources of authority was one of the hallmarks of a successful *dār-ul-iftā'*, and maintaining the institute's moral authority in matters of legal interpretation was likewise central to the its continued relevance to the lives of local Muslims in princely Hyderabad—and remains so in the present.[61] Files from the *dār-ul-iftā'* display the fruits of these negotiations.

At the same time, in order for the *dār-ul-iftā'* to retain any value in the context of responding to contemporary problems facing Muslims in the first decades of the twentieth century, the opinions it offered had to offer solutions that could settle disputes and disagreements. This power lay in the *dār-ul-iftā'*'s moral or ethical standing. Without the power to enforce its interpretations, the *dār-ul-iftā'* relied on its religious authority, which gave it two advantages over the regular courts of law. First, the *dār-ul-iftā'* bore no responsibility for ensuring adherence either to the laws (*qānūn*) promulgated by the state's legislators or to the answers its *muftī*s offered. Second, it had no obligation to ensure the payment of compensation or restitution for damages incurred following its decision. That is, the *dār-ul-iftā'* had no obligation to enforce its rulings. Lower stakes freed the *dār-ul-iftā'* from the (financial) traps that beset more punitive judicial

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[59] The two-volume collection *Fatāva Dārul'ulūm Diyoband* includes *fatwā*s from two of the chief *muftī*s employed by the *dār-ul-'ulūm*'s *dār-ul-iftā'* in the early twentieth century—namely, 'Azīz ur-Raḥmān and Muftī Muḥammad Shafī'. Though published under the authority of the institution, editors preserved the individual origins of the *fatwā*s included in the collection. (See "Introduction" to *Fatāva Dārul'ulūm Diyoband,* 2 vols. [Karācī: Dārulishā'at, 1976].)

[60] Metcalf, *Islamic Revival*, 49–52; Zaman, *The 'Ulama in Contemporary Islam*, 25-27.

[61] Even in Muslim-majority states like Egypt where personal law courts recognize the authority of Islmaic *sharī'at* for the purposes of adjudicating personal disputes, the appeal of religious institutions like *Al-Azhar* retain moral authority that extends beyond the legalistic-interpretative framework of the state courts. For this reason, litigants frequently visit extra-legal institutes during the course of litigation in order to confirm the moral appropriateness of the court's ruling. (See, Hussein Ali Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa," *American Ethnologist* 37, no. 1 (February 1, 2010): 2–18, doi:10.1111/j.1548-1425.2010.01238.x.)

institutions. Yet, in order for the organization to retain any value among supplicants, it needed to exercise a modicum of authority—either through prominence, prestige, or charisma.

The *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya negotiated these competing demands for political and moral authority through its decidedly governmental *and* Islamic identity. In its everyday activities and procedures, it was a government office, equipped with bureaucratic processes to ensure and maintain the accountability of the office through the production and preservation of "graphic artifacts".[62] At the same time, as a religious institution, it was not beholden to other laws of the state, in the same way that the state's courts of law or department of irrigation might be. At times, the government did call upon the *dār-ul-iftā'* to issue orders, or to "make laws" for the state, that would contribute to public morality, but this function was minor. Such orders, when they appeared, used the term *ḥukm* (pl. *aḥkām*) or "order", but even in Hyderabad *ḥukm*s issued by the Ṣadārat-ul-ʿĀliya differed from the *qānūn* of the state. Not only did the Ṣadārat's *aḥkām* revolve around ritual matters (e.g., times for prayer and the calendar for fasting), but they also adopted an advisory tone like that of a guideline or recommendation, rather than an order, command, or "law".[63] Yet in their appearance as orders, the *aḥkām* provided a uniform point of departure for the state's Muslim inhabitants for the purposes of comportment during the holy month of Ramadan,[64] marking time through lunar calendar, based on moon sightings at the beginnings

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[62] I borrow this term from Matthew Hull. (Hull, *Government of Paper*.) For a productive discussion of materiality in Hull's work, see Constantine V. Nakassis, "Materiality, Materialization," *HAU: Journal of Ethnographic Theory* 3, no. 3 (December 23, 2013): 399–406. (I thank Eric Gurevitch for drawing my attention to this reference.)

[63] See, e.g., APSA, Fatwa Number 22 (2/3) of 1358 F.; Fatwa Number 2 (1/3) of 1350 [F.].

[64] Ibid.

and ends of the month, and observing prayer times.[65] Accuracy and authority in these ritual matters supported the institute's ability to address supplicants' concerns in other matters.

Print and Paperwork: Getting files ready for work

Evidence of the *dār-ul-iftā'*s activities beyond its production of paperwork is located in the texts it published. In 1943, the Ṣadārat-ul-ʿĀliya published a selection of its *fatāwa* under the title, *Majmūʿa-yi Fatāwa-yi Ṣadārat-ul-ʿĀliya*.[66] Consisting of eight-four pages, the volume includes thematically organized *fatāwa* pertaining to prayer (*ṣalāt*), alms-giving (*zakāt*), marriage (*nikāḥ*), divorce (*ṭalāq*), earnings (*kasb*), merchandising (*ḥajar*), gifts (*hiba*), endowments (*waqf*), pledges (*rahn*), absences or disappearances (*mafqūd*), statements (*iqrār*), and prohibition and permissibility (*al-ḥaẕr wa al-ibāḥat*).[67] Not surprisingly, questions related to prayer, alms-giving, marriage, and divorce filled two-thirds of the volume's pages, with the remaining categories of questions confined to the volume's last twenty pages. What is surprising, however, is the range of topics covered in this single volume. The typical arrangement of topics prioritizes faith and belief (*īmān* and *ʿaqāʾid),* prayer, purity and washing, alms-giving, fasting, pilgrimage, and food and drink or butchering—i.e., those behaviors connected most closely to the five pillars of faith—which are then followed in subsequent sections by concerns about marriage and divorce, sales, debts and pledges, documents and agreements. This organizational hierarchy places religious rituals and practices at the top of

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[65] APSA, Fatwa Numbers [A] (1/4) for 1359 F., [B] (2/4) for 1359 F., [C] (3/4) for 1359 F., [D] 4/4/ for 1359 F., [D] (4/4) for 1950 CE, [E] (5/4) for 1950 CE, [F] (6/4) for 1950 CE, [G] (7/4) for 1950 CE, [H] (8/4) for 1950 CE, [I] (9/4) for 1950 CE, [J] (10/4) for 1950 CE, [K] (11/4) for 1950 CE, [L] (12/4) for 1950 CE., 2[?] (2/4) fo 1358 F., 3 (3/4) for 1358 F., 4 (4/4) for 1358 F., 4 (5/4) for 1358 F., 6 (6/4) for 1358 F., 7 (7/4) for 1358 F., 8 (8/4) for 1358 F., 9 (9/4) for 1358 F., 10 (10/4) for 1358 F., 11 (11/4) for 1358 F., 12 (11[*sic*]/4) for 1358 F., 13 (12/4) for 1358 F.

[66] This information comes from volume two (*jild-i duwum*).

[67] Muḥammad Raḥīm-ud-dīn, *Majmūʿa-yi Fatāwa-yi Ṣadārat-ul-ʿĀliya,* (Hyderabad [Deccan]: Maṭbaʿ-i Barqī Aʿẓam Jahī, 1943), [n.p.].

the *dār-ul-iftā*'s list of concerns, followed by family relations and trade and commerce.[68] The organization of the Ṣadārat-ul-ʿĀliya's compilation follows this logic internally but suggests that the inclusion of certain categories may also reflect the chronology in which they reached the *dār-ul-iftā*'. It is unclear from the organization of this volume whether the editors prioritized theme or chronology, but the range of topics the volume includes, given its brevity, suggests that the editor chose the volume's contents out of circumstance, rather than according a schematic long-term publishing plan.[69] This reading is conjectural; the editor does not describe his methods for selection.

Beyond the contents themselves, there is no information about the motivation behind the publication. Given that this type of publication was common for other *dār-ul-iftā*'s, it is possible that the Ṣadārat-ul-ʿĀliya simply saw publication as part and parcel of its workload. It is also possible that the *dār-ul-iftā*' saw publication as a way to build its reputation—that is, to place its work before the public. Another interpretation might suggest that the editor or compiler selected particularly meaningful *fatāwa* for inclusion in the volume, though the collection's unremarkable, hodgepodge contents make this explanation unlikely. For the purposes of reading the dār-ul-iftā' as a bureaucratic office, the published the volume is noteworthy for its lack of detail vis-à-vis what the institute preserved in its files. From this transition to publication, one might infer that other institutes for issuing *fatwā*s had similar file-making origins.

Unfortunately the Ṣadārat's published volume does not include information about either the *mustaftī* or the context for the *fatwā*, despite the Ṣadārat's advanced record-keeping practices.

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[68] Wael B. Hallaq, *An Introduction to Islamic Law* (New York: Cambridge University Press, 2009), 28–30.

[69] Kifāyatullāh's nine-volume collection of *fatāwa* reflect this pattern for organization. Nadwat-ul-ʿulamā and Dār-ul-ʿulūm Deoband have begun to publish their *fatāwa* according to this multi-volume schema in recent years.

In fact, there are few references either to specific individuals or to specific places throughout the volume.[70] Most of the names mentioned in the volume are generic—Zayd, Bakr, Hinda, K̲h̲ālida, etc.—and include few other proper nouns, like names of mosques or landmarks in or around Hyderabad.[71] The difference between the degree of specificity captured in the files and the apparent generality of the Ṣadārat's published *fatwā*s perhaps reflects its institutional position: The reading public does not need access to all of the details contained in a particular *fatwā* file when the abstract answer will suffice. Other *muftī*s and their *dār-ul-iftā*'s likely observed similar processes, as the Anjuman-i Mustashār-ul-'ūlamā's volume of *fatwā*s suggests.[72] When responding to private questions, the *dār-ul-iftā*' exercised discretion, not judicial discretion in the sense of arbitrariness or inequality, but discretion in the form of sensitivity to the material and emotional impact its rulings might have. The distinction between the specificity of the file and the generality of the *fatwā* compendium addresses the importance of the *fatwā* files for the study of socio-legal history. Not only do the original questions reflect legal concerns and legal consciousness among individual petitioners, but the files also demonstrate the use of bureaucratic work to organize and order the *dār-ul-iftā*'s approach to answering and responding questions.

Making a Fatwā File "Ripe for Use"[73]

Every *fatwā* file began with a request. Requests arrived as postcards, telegrams, mailed letters, scraps of paper, or oral questions offered to the *dār-ul-iftā'*. Upon receipt, each *istiftā*'

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[70] The volume's insistence upon generic terminology differs in comparison to the writings considered in Chapter Five.

[71] There are some personal names in the volume, such as 'Azīz un-nisā' on page thirty-nine, but not many. (Raḥīm-ud-dīn, *Majmū'a-yi Fatāwa-yi Ṣadārat-ul-'Āliya*, 39.)

[72] See the discussion in Chapter Five above.

[73] I borrow Latour's phrasing here. (See, Bruno Latour, "How to make a file ripe for use," in his *The Making of Law: An Ethnography of the Conseil d'Etat* [Cambridge, UK: Polity Press, 2010], 70–105.)

became the starting point for a file—the *miṣl-i muqaddama*, or file for the case—which would then order and record the inquiry's movement through the *dār-ul-iftā'*. Such files were the organizational building-blocks of the *dār-ul-iftā'*'s daily activities and the basis of what became its archive. Once created, the office ordered its files sequentially according to the date and sequence of their arrival as well as according to the division or chapter of their contents (i.e., the *bāb*), which was marked on the file's coversheet.

Coversheets for the *dār-ul-iftā'* had the same appearance as those used in other government offices.[74] The form's outline was lithographed on light brown paper, which began with the words "*fihrist-i miṣl-i daftar-i…* (table of contents for the case in the office of the …)," after which the clerk would enter the name of the office by hand, here, the "Ṣadārat-ul-ʿĀliya-yi Sarkār-i ʿĀlī."[75] Beneath the office heading, the form provided a place for the insertion of the case number (the *nishān-i miṣl*), followed by the type of case, (i.e., "*iftā'*," for the cases included here). Beneath the *nishān-i miṣl*, the clerk would right the "chapter" or category for the particular case. The *dār-ul-iftā'* used the designation of "chapter one" for files pertaining to the division of inheritance (*taqsīm-i matrūka*), "chapter three" for files pertaining to the publication of orders for ʿĪd al-Fiṭr, "chapter four" for files related to the sighting of the *ḥilāl* (crescent) moon at the beginning of the each lunar month, and "chapter five" for files of miscellaneous content (*mutafarriq*).[76] The left-hand header of the coversheet gave the year, for which the word *sana* (year), the first three numbers of the year (e.g., 135_), and the letter "fa" for *faṣlī* were printed on the

[74] See Image 6.1 below.

[75] Ibid.

[76] Most of the twelve-hundred files to which I had access were classified as *mutafarriq* or *taqsīm.* I did not encounter any files belonging to chapter two.

form.[77] The scribe would simply add the final number (e.g., 135**7**) to complete the date.[78]

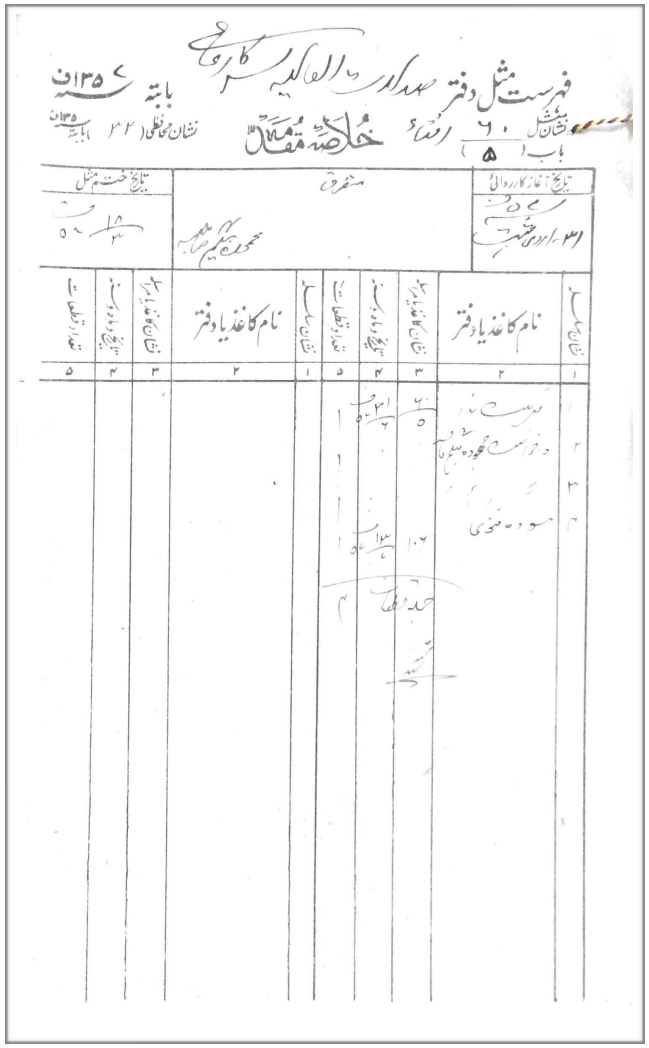

Image 6.1: *Fatwā* file coversheet from the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya[79]

[77] As mentioned above, the princely state of Hyderabad followed the *faṣlī* calendar (with the Persian months), which was based around the timing of the harvest, running from July to June, and became common in South Asia during the reign of Akbar. Administrative reports corresponded to the *faṣlī* calendar but often included references to the Gregorian calendar as well. For further discussion, see, e.g., B. K. Narayan, *Finances and Fiscal Policy of Hyderabad State (1900-1956); a Study in Economic History*, vol. no. 2, Andhra Pradesh Government. Regular Monograph Series of State Archives. (Hyderabad: Govt. of Andhra Pradesh, 1970); Sheela Raj, *Mediaevalism to Modernism: Socio-Economic and Cultural History of Hyderabad, 1869-1911* (Bombay: Popular Prakashan, 1987); V. Ramakrishna Reddy, *Economic History of Hyderabad State: Warangal Suba, 1911-1950* (Delhi: Gian Pub. House, 1987).

[78] This format is common in printed forms from other contexts as well. Printed personal checks, for instance, have a blank line (_____) followed by a comma (","), the digits two-zero, followed by another blank line (20__), to allow the check-writer to insert the final digits for the year, after writing the month and day on the check: **February 2**, 20**17**. Forms employed in Hyderabad used a similar schema, adjusted to accommodate other calendrical systems.

[79] APSA, Fatwa Number 32 (60/5) of 1357 F.

The next set of details indicated on the form gave the date the inquiry arrived at the office, that is, the date for the start of the case, the *tārīk̲h-i āg̲hāz-i kār-rawā't̤*, which the scribe normally wrote using the number for the date, the word for the month, and an abbreviation of the year (generally the final two numbers of the year), followed by the "fa" for Faṣlī. The scribe placed this information in a box designed for this purpose, next to which was a much larger box for the title of the file. In this location, the first noted the general category to which the question belonged (e.g., *taqsīm*, *mutafarriq*), in the center of the box, and would then write the name of the supplicant or petitioner in the lower-left-hand corner of the box (e.g., Maḥmūda Bēgum Ṣāhiba).[80] The final box at the top of the page was reserved for writing the date on which the case closed, the *tārīk̲h-i k̲hatm-i miṣl* (here the eighteenth day of the third month of the year 1357 F.).[81] After the heading, the cover page included two sets of columns for recording the specific contents of the file, along with the number of pages and date for each document later added to the file. The shortest possible file might consist of only a cover sheet and a single-page inquiry, but most files from the *dār-ul-iftā*' included at least three pages: (1) the cover page, (2) the *mustaftī*'s inquiry, and (3) a draft of the response. Others included much more elaborate collections of papers, including back-and-forth correspondence between the *mustaftī* and the *muftī*, copies of legal documents related to the issue in question, lengthy responses (particularly for elaborate inheritance cases in which the sub-division of the property required calculations down to the ten-hundredth part).[82] Amīr Ḥamzah K̲h̲ān's file from 4 Āz̲ar 1357 F. contains only three sheets of paper; by contrast, Muḥammad G̲h̲ulām Q̲ādir Ṣaḥib Ṣadīqqī's file concerning a *hiba nāma*

[80] See Image 6.1. (APSA, Fatwa Number 32 [60/5] of 1357 F.)

[81] Ibid.

[82] For an example of a lengthy file, see the discussion of Fatwa Number 31 (38/1) of 1358 F. below.

included ten pages of documents, such as typed copies of the gift deeds and other documents concerning the legitimacy of the gift.[83] These elements made the *fatwā*s of the *dār-ul-iftā'* resemble other government files but also followed conventions unique to the *dār-ul-iftā'* itself, such as the categorization of each file's contents.

To understand how the file's structure facilitated the *dār-ul-iftā'*'s efforts, it will be useful to consider some examples in detail. In 1950, Ghulām Dastgīr addressed an inquiry to the *dār-ul-iftā'* belonging to the "miscellaneous, divorce" category.[84] He wrote this inquiry on a small square of tan paper, measuring approximately five inches across in a legible but somewhat shaky hand, belying unfamiliarity with either the nuances of *nasta'līq* handwriting or the particular pen and ink he used. Submitting his petition for the consideration of the "exalted employee, sir, of the Department of Religious affairs, good fortune to him," Ghulām Dastgīr drew a line across the page, two inches from the top, and began in Persian: *ba 'arẓ-i aqdas-i 'ālī.*[85] This opening was the same formula found in petitions, but it was not the standard formula for *fatwā*s. Hoping to show the *muftī* honor and respect, Ghulām Dastgīr likely employed the most formal terms of address he knew. By another metric, this cross-over between petitioning culture and the conventions of the *istiftā'* suggests that Ghulām Dastgīr saw the *dār-ul-iftā'* performing a role similar to that of a government official who might otherwise be able to grant his request. Following this introduction, the *mustaftī* then proceeded to describe his circumstances in Urdu:

> My Lord (*'ālī jāh*),
>
> Your humble servant's wife, Musammāt Banū Bī, daughter of Muḥammad Jalāl,

[83] APSA, Fatwa Number 1 (1/5) of 1357 F.; and Fatwa Number 26 (47/5) of 1357 F.

[84] APSA, Fatwa Number 23 (27/5) of 1359 F.

[85] Ibid., 2a.

> 35 years in age, has two sons, Ḥamzah (14 years), and the other (*dīgar*) eight years who are living at this time in Nalgonda District. This aforementioned wife, on account of disobedience (*nā farmāngī*) caused your humble servant to get angry and say to his wife, "Look, every time you disobey me, I get angry and in anger say that if you stay in this condition [of disobedience], I will divorce you." What is the *fatwā* related to this?
>
> Please present it.
> Your humble servant, Ġẖulām Dastgīr
> Son of Muhamamd Ghalib, Resident of Nalgonda District.[86]

When preparing the institute's response, the *madadgār* began: "It is clear from the present circumstance, that Ġẖulām Dastgīr Ṣāhib said to his wife 'Every time you disobey me, if you remain in that state, then I will divorce you.' If the husband gives his wife this kind of threat of divorce, the divorce has not happened. However, the wife is obligated to stop disobeying her husband."[87] In the course of composing this reply, the *madadgār* made several changes, crossing out "*dhamkī ba-ṭaur*" after *"is ṭaraḥ*" and changing the construction to read "*apnī bīvī kō ṭalāq kī dhamkī dēnē sē*" and later changing "*āīn sē*[?]" to "*apnē shōhar*".[88] These corrections were written in the same hand as the main text, indicating that they were made during the drafting process, rather than during a later review. These corrections are part of scribe's routine work that altered the phrasing but not the substance of, the response. Once the scribe finished his response, and received approval for it, the *dār-ul-iftā*' penned its official reply on Ṣadārat stationary, with the institute's official seal, and mailed it to Ġẖulām Dastgīr by registered post, the receipt for which was attached to Ġẖulām Dastgīr's file.[89]

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[86] Ibid.

[87] Ibid., 3a.

[88] Ibid.

[89] Ibid., 4a. On institutional letterhead, see Brinkley Morris Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1996), 241–6.

Ġẖulām Dastgīr's file includes a paltry four pages of material including the file's coversheet and registered mail receipt. Like the coversheet, the Ṣadārat's response and the postal receipt were also issued on printed forms the scribe completed by hand.[90] These pages were just as much a part of the work of making a file as was the coversheet. The lithographed form for the draft response, for instance, has a header at the top indicating the paper's precise purpose: "Draft *fatwā* prepared by the *dār-ul-iftā'* of the Department of the Ṣadārat-ul-ʿĀliya of the Exalted Government."[91] To this, the clerk then added the number thirty-nine, to place the document in sequence. The top left-hand corner of the page (i.e., the corner opposite the string fastener) gives the date according to the Hijrī calendar (*wāqiʿ 5 Ṣafar, sana 1369 H.*); the line below this gives the equivalent date according to the Faṣlī calendar (*muṭābiq-i 26 De'ī, sana 1359 F*). The final line in the header gives the case number: 27/5 for the department of the *dār-ul-iftā'* for the year 1359 F. Like bureaucratic papers found in other contexts, the printed forms of the *dār-ul-iftā'* for the Hyderabad state divides the page into a section for substance and one for commentary. The substance side for the draft response comes under an Arabic heading "*al-jawāb ḥāmadāñ wa muṣallibāñ*", which covers the right two-thirds of the page's horizontal space, from the right-hand margin to slightly past the middle of the page. A single straight line running vertically from just beneath the header to the bottom of the page creates space to the left of the page, for the addition of intra-office notes. If the comments were to continue onto subsequent pages, the margin gave the scribe space to indicate this continuation with the remark: "*Ǧārī kiyā jāyē / faqaṭ.*"[92] There is also a place for the registrar, or *nāẓim*, to indicate his agreement. The mark on

[90] APSA, Fatwa Number 23 (27/5) of 1359 F., 3a–b and 4a–b.

[91] Ibid., 3a.

[92] Ibid.

this file reads simply "*madad gār*", followed by the number 26/2 for the date.[93] In this way, information within the file corresponds to information included on the coversheet, and the printed, fill-in-the-blank forms guide the office clerk in the execution of his duties and maintains the documents' accuracy and institutional anonymity.[94] These procedures helped the *dār-ul-iftā'* maintain its own internal authority and consistency but simultaneously evade external scrutiny; only those familiar with the office and its personnel can identify the person behind the initials scribbled on the page. The response transmitted to Ġẖulām Dastgīr, for instance, would not conclude with the name of a particular *muftī*, scribe, clerk, or student who was responsible for the answer he received, nor does it memorialize the contributions of individual employees.[95] The "*madad-gār*" mentioned here indicates the rank of the office peon, or assistant, who annotated the *istiftā'* and drafted the response before sending the question up to the next rung in the bureaucratic ladder. For those employed in the *dār-ul-iftā'*, it would be easy to identify who read the file and added notes, comments, and additional pages to the document before sending it to the next clerk, but for the outside observer, these office annotations are shrouded in routine, consistency, and by extension obscurity.[96] What appears on the page today charts the file's

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[93] For an explanation of the dating system followed in the Nizam's domains, see Andhra Pradesh (India), *Diglott Calendar.*, 4th ed. ([Hyderabad?, 1961).

[94] Today, there is perhaps no way to connect these writings with individual employees of the Ṣadārat-ul-ʿĀliya. Initials, when included, are almost impossible to decipher without foreknowledge of the individual's name.On anonymity in paperwork, see Hull, *Government of Paper*, 131–2; Hull, "The File," 288; and Caplan, "Illegibility," 109–111. For a slightly different perspective on agency in paperwork, see James T. Bennett and Manuel H. Johnson, "Paperwork and Bureaucracy," *Economic Inquiry* 17, no. 3 (July 1, 1979): 435–51, doi:10.1111/j.1465-7295.1979.tb00541.x.

[95] On signatures and seals, see Béatrice Fraenkel, "Signatures," in *A History of Writing: From Hieroglyph to Multimedia*, ed. Anne Marie Christin, English-language ([Paris, France]: Flammarion, 2002), 315–17; Fraenkel, *La signature, genèse d'un signe*. Bibliothèque des histoires ([Paris]: Gallimard, 1992); Fraenkel, "On Signatures and Traces." *HAU: Journal of Ethnographic Theory* 3, no. 3 (December 23, 2013): 431–34. doi:10.14318/hau3.3.028; and Jacques Derrida, *Limited Inc* (Evanston, IL: Northwestern University Press, 1988).

[96] Hull, "The File," 302–4.

progress through the office but does not reveal enough information to assign individual credit or blame.

Questions submitted to the *dār-ūl-iftā'* of the Ṣadārat-ul-ʿĀliya reflected office work and modern paperwork in other aspects as well. Indeed, the Ṣadārat was not the only organization to use company letterhead and stationary in the conduct of its daily affairs. Petitioners and correspondents also used letterhead when writing to the *dār-ul-iftā'*. In 1356 Faṣlī, for instance, Muḥammad Ṣadīq Yūnus submitted an *istiftā'* in which he complained about an *ʿālim* who mispronounced words when reading *namāz*.[97] Offering "the exalted members of the Department of Religious Affairs" several examples of this individual's poor pronunciation, Muḥammad Ṣadīq scribbled his complaint on a piece of stationary with the name and logo of his company "Mohamed Siddick Yunus, Merchants, Importers and Exporters, Parbhani (D[ecca]n.)" printed in blue ink at the top of the page, along with an emblem containing a star and crescent moon reminiscent of that used by the Hyderabad state, along with the numbers "786", and the license number for his business.[98] With these and other details, private business stationary also employed forms that encouraged bureaucratic regularity and efficient record-keeping. The document heading includes a blank line proceeded by the place name ("Parbhani-Dn.") on which the *sā'il* has written the date (11-4-56 [Faṣlī]) and another blank space intended for the reference number ("Ref. No."). Muḥammad Ṣadīq has left the reference number blank—most likely owing to the fact that this not was a private concern, not a corporate concern.[99]

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[97] APSA, Fatwa Number 52 (53/5) of 1356 F.

[98] Ibid., 2. ("786" is the *abjad* numeral for the *basmala*.) Weber also drew parallels between public and private bureaucracies. See, Weber "Bureaucracy," in *From Max Weber: Essays in Sociology*, trans. and ed. Hans Heinrich Gerth and C. Wright Mills (New York: Oxford University Press, 1946), 196.

[99] Ibid.

In a similar example, the "Manager Ṣāḥib" of the "Nashanal Ledar Kampanī (National Leather Company)" of Calcutta sent two question about *ṭalāq* to the *dār-ul-iftā'*.[100] Writing in Arabic, the *sā'il* used stationary with the name "National Leather Co., Importers, Exporters, Tanner of all Kinds of Leather" emblazoned across the top of the page, but the *mustaftī* modified the stationary by hand for his second submission to reflect the alternate purpose of his note. At the very top of the page, the *sā'il* added an invocatory *basmala* and began his request for the "opinion of the munificent scholars of the faith in (*qaul al-ʿulamā al-karīm*)" beneath the company name.[101] Again in this example, the *sā'il* left blank the space intended for the reference number as well as that provided for the date.[102] Stationary such as that belonging to the National Leather Company and the Mohamed Siddick Yunus Merchants placed inquiries sent to the *dār-ul-iftā'* within the growing world of business communication and professional correspondence. Not only did the paperwork of the *dār-ul-ifta'* employ many of the same organizational technologies as local and transnational businesses but participation in the latter did not by any means prevent one from seeking advice from the former. Professionalization and technological advancement in the *dār-ul-iftā'* ran parallel to and were conversant with developments in the business world.

Company stationary was only one of the ways in which inquiries submitted to the *dār-ul-iftā'* reflected changes in the material culture of writing and paperwork. Chapter Five referred to the submission of *fatwā* questions first drawing upon the extensive postal system and later using the subcontinent's nascent network of telegraph lines. The *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya also received inquiries from the telegraph and used registered mail to return its answers to petitioners.

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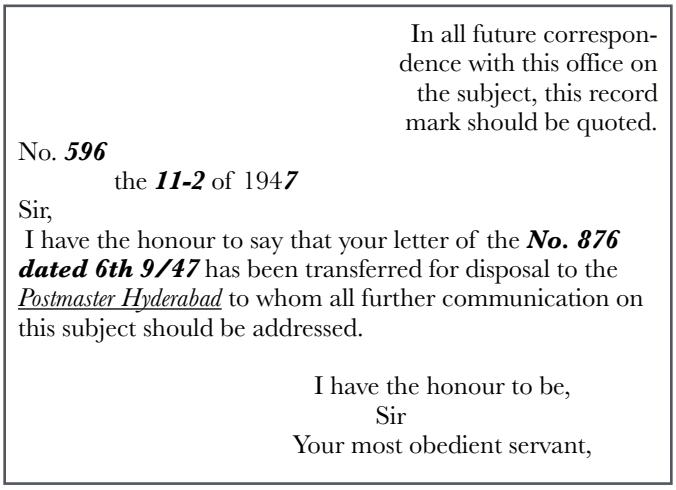
[100] APSA, Fatwa Numbers 32 (33/5) of 1356 F. and 33 (34/5) of 1356 F.

[101] APSA, Fatwa Number 33 (34/5) of 1356 F., 2.

[102] Ibid., 2.

The department's use of postal and telegraphic communication was so extensive that in 1947, it wrote to the telegraph department for the purpose of buying more telegraph forms.[103] As the request explained, in 1356 F. [1946 CE], the department purchased two packets, or one-hundred forms, for the purpose of sending telegrams (*tār kē fārmōñ kī dō kāpīyāñ, ya'nī yek ṣad 'adad fārm*). Now, the clerk wrote, the previous supply of forms had been finished (*k̲h̲atm hō gayē haiñ*) and the department wanted to purchase six packets of forms, based on the calculation that it used approximately thirty forms



In all future correspondence with this office on the subject, this record mark should be quoted.

No. ***596***
the ***11-2*** of 194***7***

Sir,

I have the honour to say that your letter of the ***No. 876 dated 6th 9/47*** has been transferred for disposal to the *Postmaster Hyderabad* to whom all further communication on this subject should be addressed.

I have the honour to be,
Sir
Your most obedient servant,

Image 6.2: Terse response to the *dār-ul-iftā*'s request for telegraph forms

per month (*z̤āhir hōgā ke har māh 30 fārm k̲h̲arch hōtē haiñ*).[104] Addressing its request to the Postmaster of the Telegrams Office, the Religious Affairs Department explained that it needed a regular supply of one-hundred forms every six months. Not inclined to violate bureaucratic protocols, the postmaster responded to the Ṣadārat-ul-'Āliya's request with a form letter that read: "I have the honour to say that your letter of the No. 876 dated 6th 9/47 has been transferred for disposal

[103] APSA, Fatwa Number 62 (63/5) of 1356 F.

[104] Ibid., 2.

to the Postmaster Hyderabad to whom all further communication on this subject should be addressed."[105] When the postmaster responded several weeks later, he politely informed the "Director of the Ecclesiastical Department" that "Telegraph forms may be purchased at any Post Office at the rate of annas 8 for 50."[106] The postmaster's response was terse and officious but provided the Ṣadārat-ul-ʿĀliya with the information it needed in order to purchase the necessary forms.

In addition to telegraphic communication, the widespread availability of surface mail and cheap postcards also contributed to the material culture of the *dār-ul-iftā*'s work. When sending its responses to petitioners, for example, the *dār-ul-iftā*' folded its properly sealed and neatly written responses into eighths before slipping them into a small envelop addressed to the petitioner.[107] After mailing these responses, the Ṣadārat-ul-ʿĀliya affixed the registered mail receipt to the file. The postal network thus supported and enabled the *dār-ul-iftā*'s work in more than one way. It not only helped the *dār-ul-iftā*' reach its petitioners but it also helped petitioners reach the *dār-ul-iftā*' in order to to participate in the communicative process of answering legal queries. For instance, in 1358 F., Ḡẖulām Aḥmad Ḵẖān sent a question about inheritance to the *dār-ul-iftā*'.[108] In it, he listed the names of his relations to determine the proper means for dividing the estate in question, that of Muḥammad Ḵẖwāja ʿAlī Ṣāḥib. After reviewing Ḡẖulām Aḥmad's description of his family, the *madad-gār* at the Ṣadārat realized more information was needed in

[105] Ibid. (See Image 6.2)

[106] Ibid., 6.

[107] Most of these envelopes are absent from the archive owing to their transmission to petitioners. Those that were undeliverable and returned to the Ṣadārat were in many instances attached to the *fatwā* file for future reference. From these examples, it is possible to trace this process.

[108] APSA, Fatwa Number 31 (38/1) of 1358 F.

order to answer the inheritance question properly.[109] The Ṣadārat sent a short note to Ghulām Aḥmad, requesting particular information about the date of Amīna Bī[bī]'s death.[110] Rather than mailing another letter, as he had done for the original question, Ghulām Aḥmad responded this time from his home in Karīmnagar with a postcard on which he wrote that Amīna Bībī had died seven or eight years after her parents.[111] He later sent a second card to clarify the answer provided in the first and to say definitively that Amīna Bī[bī] died ten years after her father's death (*Amīna Bī nē wālid kē intiqāl kē das sāl ba'd intiqāl kiyā hai*) and then sent yet another card, referring to his earlier cards, reiterating this information.[112] The follow-up question the *dār-ul-iftā'* sent to Ghulām Aḥmad as well as Ghulām Aḥmad's multiple replies all included the case number (38/1 of 1358 F.) as well as the date of the other party's message.[113] The procedures of bureaucratic paperwork thus informed the behavior of those working within the office, as well as those who interacted with the office.

The replies Ghulām Aḥmad sent to the Ṣadārat-ul-'Āliya arrived on printed post cards. The plain index-card-sized document included printed postage valued at five *pies*—written in Urdu, Roman, Devanagari, and Telugu scripts around the stamp insignia. Text at the top of the card labeled the document as a postcard from the Nizam's dominions (*mamlakat-i Āṣafiya*). These words, "post card", were printed next to the postage stamp in English and Urdu and were arranged around the state's star and crescent moon emblem. The place for writing the address

[109] Ibid., 3b.

[110] Ibid., 3a.

[111] Ibid., 4a–b.

[112] Ibid., 6a–b, 8a–b.

[113] Ibid., 3, 4a, 6b, 8a.

was indicated beneath the postage with the words "Address Only," or in Urdu "*ṣirfpata*".[114] The space for writing the message lay to the left of the red dividing line printed across the front of the card and was shown with the words "writing space" and "*barā-yi mazmūn*".[115] Ghulām Aḥmad used this space to indicate the subject of his inquiry, then used the blank backside of the card to write out his actual message. The *dār-ul-iftā'* then used this space to stamp the date of the card's arrival, which paralleled the post-office's stamp for canceling the card's postage.[116]

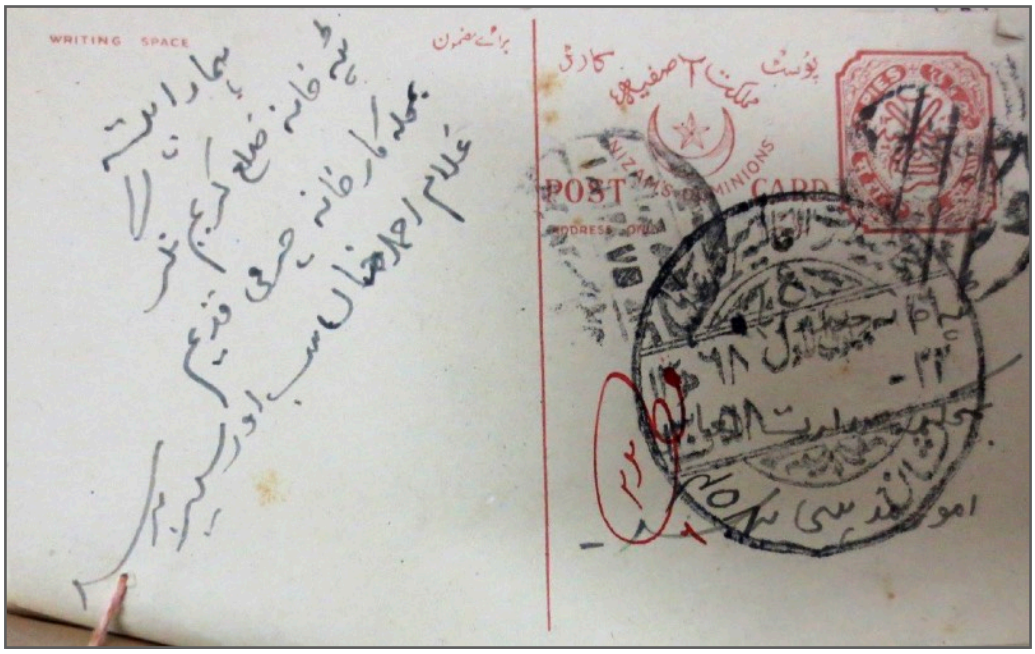


Image 6.3: Postcard sent to the dār-ul-iftā' of the Ṣadārat-ul-ʿĀliya

Stationary, letterhead, postcards, and scraps of paper all made their way into the *dār-ul-iftā'*'s files, and the *dār-ul-iftā'* employed many strategies for organizing and maintaining their files

[114] Ibid.

[115] Ibid.

[116] Ibid. With the exception of the blank backside, the postcard's appearance and conventions were similar to those recognizable today. The history of postcards in late-colonial South Asia requires further investigation. Most references to postcards call upon the postcard's pictorial element to describe cultures of visual representation or memorialization in images. Fewer studies consider the circulation of postcards as a form of communication within and across colonial cultures. The cheap availability of postcards in princely Hyderabad and British India certainly facilitated the expansion of postal communication and also enabled the *dar-ul-iftā'* to conduct detailed investigations into questions it received.

and paperwork. From cover sheets, to systems for sequential numbering, to constant employment of the date (according to the Faṣlī and Ḥijri calendars), to the routine use of registered postal and telegraphic communication, the *dār-ul-iftā'* embraced the organized routines of the modern office. In these ways, the material artifacts it produced (i.e., the graphic instruments that structured and ordered its responses), provided a framework for its engagement with sticky questions on sensitive moral, ethical, or religious matters. These documentary routines made the *dār-ul-iftā'*'s work resemble not only that of other government office but also that of modern national or transnational corporations, with dated memoranda, references numbers, and internal filing procedures. These routines ensured that all supplicants received the same treatment before the *dār-ul-iftā'* and that the *dār-ul-iftā'* remained open and accessible to all—including those residing within or beyond the Nizam's dominions. Additional scrutiny of the office's paperwork protocols will further exemplify these developments.

IV. Cultures of Copying

The *dār-ul-iftā'* also developed strategies for handling legal documents with the efficiency of modern office work. While lithographic printing facilitated routine office work through the production of forms, the typewriter facilitated more complex tasks, such as the process of copying legal documents presented in connection with *istiftā'*.[117] As described in Chapter Two, copying documents was an important aspect of bureaucratic work that allowed colonial officials to create consistency and continuity across multiple volumes of records.[118] The act of copying excerpts from one volume into another allowed secretaries and scribes to build upon earlier

[117] The Ṣadārat-ul-ʿĀliya periodically ordered additional copies of its forms from the printer. See, e.g., APSA, Fatwa Number [X] (2/3) of 1350 F., regarding "*ṭibāʿat-i fārm-i musauwadat.*"

[118] See Chapter Two, above and the author's "The Quest for a True Copy" (forthcoming).

decisions and to ensure the proper execution of administrative orders.[119] But copying was never perfect. Mistakes, errors, elisions, and other forms of inaccuracy also entered the record through the act of reproduction.[120] In the context of legal decisions and decrees, accurate copying was (and is) necessary, but the *dār-ul-iftā'* represented other intentions and could approach document copies from another perspective. In contrast to court cases in which evidence from an original document could sway the court with more force than a document copy, in the *dār-ul-iftā'*, original documents had less power; they represented archetypes, and when properly copied, they could be analyzed as if they were the original.[121] These copies resembled their originals, yet the contents could be abstracted or redacted to address particular legal questions. These document copies were a necessary part of the *dār-ul-iftā'*'s work.

Document copies came to the *dār-ul-iftā'* in many forms. Some documents were copied

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[119] I consider the importance of copying in more detail in a forthcoming article. See, the author's "The Quest for a True Copy."

[120] The literature on scribal copying is robust, particularly within the field of medieval and early modern European history and book history. On the nuances of scribal copying, see, e.g., Mary Carruthers, *The Book of Memory: A Study of Memory in Medieval Culture* (New York: Cambridge University Press, 2008), 113–114; 201–2; and 241–2. On the relationship between scribes and book production more generally, see, e.g., Leila Avrin, *Scribes, Script, and Books: The Book Arts from Antiquity to the Renaissance* (Chicago, IL: American Library Association, 1991); Peter Beal, *In Praise of Scribes: Manuscripts and Their Makers in Seventeenth Century England*, vol.(Oxford, UK: Clarendon Press, 1998); Cynthia J. Cyrus, *The Scribes for Women's Convents in Late Medieval Germany* (Toronto: University of Toronto Press, 2009), 47–51; Kim Haines-Eitzen, *Guardians of Letters: Literacy, Power, and the Transmitters of Early Christian Literature* (New York: Oxford University Press, 2000); Linne R. Mooney and Estelle Stubbs, *Scribes and the City: London Guildhall Clerks and the Dissemination of Middle English Literature, 1375-1425* (Rochester, NY: York Medieval Press, 2013); Brian Paul Muhs, *The Ancient Egyptian Economy, 3000-30 BCE* (Cambridge, UK: Cambridge University Press, 2016); M. B. (Malcolm Beckwith) Parkes, *Scribes, Scripts, and Readers: Studies in the Communication, Presentation, and Dissemination of Medieval Texts* (London, UK: Hambledon Press, 1991); Hillel Schwartz, *Culture of the Copy: Striking Likenesses, Unreasonable Facsimiles*, Revised and updated edition. (New York: Zone Books, 2014); and Daniel Wakelin, *Scribal Correction and Literary Craft: English Manuscripts 1375-1510*, vol. 91, Cambridge Studies in Medieval Literature (Cambridge, UK: Cambridge University Press, 2014). For a discussion of early efforts to produce exact copies, see Silvio A. Bedini, *Thomas Jefferson and His Copying Machines* (Charlottesville: University Press of Virginia, 1984). On the history of copying legal documents, see, e.g., Clanchy, *From Memory to Written Word*, and Muhs, *The Ancient Egyptian Economy, 3000-30 BCE*, 65–85.

[121] In this way, the *fatāwa* preserved in the *dār-ul-iftā'*'s records belong to the category of legal consultation. For a discussion of this genre in the context of Hindu law, see Donald R. Davis, "Responsa in Hindu Law: Consultation and Lawmaking in Medieval India," *Oxford Journal of Law and Religion*, July 26, 2013, 1–19, doi:10.1093/ojlr/rwt028; and for Islamic law, see Wael B. Hallaq, "Model Shurūṭ Works and the Dialectic of Doctrine and Practice," *Islamic Law and Society* 2, no. 2 (January 1, 1995): 109–34.

out nicely in a neat *nastaʿlīq* hand; others were delivered in a more casual manner, copied out hastily with a quasi-*shikasta* script. Still others were typed in a way that brought the technology of the modern office to bear on the work of the scribe.[122] Whether written neatly, sloppily, or typed, all of the documents sent to the *dār-ul-iftā'*—as well as those copied on the spot—present some effort to mimic—if not to replicate—the format of the original by illustrating the signs of authenticity included in the original.[123] For many, these efforts involved mirroring the layout of the original, as well as the language.[124] Copyists marked the placement of seals—usually by drawing a circle around the word "*mohr*"—and they indicated the location of the signatures of

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[122] The early history of the Urdu typewriter mains rather murky. Stephen May proclaims 2010 as the hundredth anniversary of the Urdu typewriter, making 1910 the date of the typewriter's origin, but his source is unspecified. Khaver Zia, director of the FAST Institute of Computer Science in Lahore, gives 1911 as the date of the first Urdu typewriter's appearance. Other histories of the typewriter indicate that international models like the Hall had Urdu types may have included Urdu types as early as 1909. Ṭāriq ʿAzīz suggests the first Urdu typewriter appeared around 1917, after Hyderabad's seventh niẓām, Mīr ʿUṣmān ʿAlī Ḵẖān, commissioned its invention for use at Jāmiʿīya Niẓāmīya. Mirzā Hādī Ruswā's biographer claims the poet (d. 1931) created a keyboard for typing Urdu. This might confirm Ṭāriq ʿAzīz's claim, owing to Ruswā's employment in Hyderabad's Translation Bureau beginning in 1919. (See Kavita Datla, *The Language of Secular Islam: Urdu Nationalism and Colonial India* [Hyderabad: Orient Blackswan, 2013], 77–78; Ṭāriq ʿAzīz, *Urdu Rasmulkhat Aur Taip* [Islamabad: Muqtadirah-yi Qaumi Zaban, 1987], 439–440; G. C. Mares, *The History of the Typewriter: being an Illustrated Account of the Origin, Rise and Development of the Writing Machine* [London, 1909], 249; Stephen May, *Get Started In Creative Writing: Teach Yourself* [London: Hodder & Stoughton, 2010]; Munibur Rahman, "Ruswā", in *Encyclopaedia of Islam*, Second Edition, ed. by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs [Leiden: Brill Online], accessed 27 February 2017, http://dx.doi.org/10.1163/1573-3912_islam_SIM_6350; and Khaver Zia, "A Survey of Standardization in Urdu," accessed February 27, 2017, http://www.cicc.or.jp/english/hyoujyunka/mlit4/7-10Pakistan/Pakistan2.html.) On the role of the typewriter in remaking office work, see, Marshall McLuhan, "The Typewriter: Into the Age of the Iron Whim" in his *Understanding Media: The Extensions of Man*, 1st MIT Press ed. (Cambridge, Mass.: MIT Press, 1994); and Darren S. Wershler-Henry, *The Iron Whim: A Fragmented History of Typewriting* (Toronto: McClelland & Stewart, 2005). For South Asia, see David Arnold, *Everyday Technology: Machines and the Making of India's Modernity* (Chicago: University of Chicago Press, 2015), and for the Middle East, see Uri M. Kupferschmidt, "On the Diffusion of 'Small' Western Technologies and Consumer Goods in the Middle East during the Era of the First Modern Globalization," in *A Global Middle East: Mobility, Materiality and Culture in the Modern Age, 1880-1940*, eds. Liat Kozma, Cyrus Schayegh, and Avner Wishnitzer, Library of Middle East History, 50 (London: I.B. Tauris, 2015), 229–260. For the role of the typewriter in other office spaces, see e.g., Harry Braverman, *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century*, 25th anniversary ed. (New York: Monthly Review Press, 1998), 203–247; Sharon H. Strom, *Beyond the Typewriter: Gender, Class, and the Origins of Modern American Office Work, 1900-1930* (Chicago, IL: University of Illinois Press, 1994); Onno de Wit et al., "Innovative Junctions: Office Technologies in the Netherlands, 1880-1980," *Technology and Culture* 43, no. 1 (January 1, 2002): 50–72, doi:10.1353/tech.2002.0012.

[123] On efforts to mimic original documentation in the context of forged documents, see Caplan, "Illegibility," 111–115.

[124] For a discussion of the the relationship between the original and the copy in another Islamic context, see Messick, *Calligraphic State*, 29–30.

the document's executor/s and witnesses beside various statements of *gawāh* or *shahādat*.[125] Along with signatures, some copies also indicated the placement of thumb- or finger-tip impressions, tracing oblong shapes where the mark appeared in the original.[126] Some of the typed copies even attempted to mimic the *mashq* or elongation of letters used stylistically to mark details like property boundaries.[127] All of these elements demonstrate an understanding of what makes a document legitimate: the presence and arrangement of certain elements—headings, seals, signatures; details such as dates, times, and locations; and indicators of originality and individual identity such as signatures, thumb- or finger-tip impressions.[128] The presence of these elements encapsulated for the *sā'il* (or, *fatwā*-seeker) as well as for the scribe, the authenticity of the document, rendering the visual copy more authentic, more legitimate, more meaningful than a simple reproduction of its contents.

Fair Documents

Technologies of the state also played a role in making documents more official. For example, in Fatwa Number 60 of 1950 CE, a question reached the *dār-ul-iftā*' that revolved around the legal status of a divorce decree sent to its recipient by registered mail. One of the issues in question was whether the process of registering the letter gave it legal authority. The *mustaftī*'s question suggested that a letter sent by registered post would be more authentic than an unregistered letter because the identity of the sender and that of the recipient were verified

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[125] Ibid.

[126] As in British India, finger-prints were also included on many of the documents produced in Hyderabad.

[127] For a description of these formal elements, see Christoph Werner, "Formal Aspects of Qajar Deeds of Sale," in *Persian Documents: Social History of Iran and Turan in the Fifteenth to Nineteenth Centuries*, ed. Kondo Nobuaki (New York: RoutledgeCurzon, 2003), 13–49; and Chapter Three above.

[128] For an analysis of how copying reflects perceptions of paper's power, see Kevin McLaughlin's discussion of Nemo from Charles Dickens's *Bleak House* in *Paperwork: Fiction and Mass Mediacy in the Paper Age* (Philadelphia: University of Pennsylvania Press, 2011), 81–87.

through registration.[129] This question reflected the *mustaftī*'s inclination that registration through the government post office would lend the statement of divorce the letter contained legally binding, but the limits of government registration were unclear and the extent to which registration through government offices replicated the procedures for witnessing decrees in Islamic law remained a constant concern.[130] In some cases, state apparatuses replaced other modes or methods for authenticating documents—such as the process of registering one's endowment through the *waqf* board—but in other cases, "secular" registration competed with the requirements necessitated by Islamic law.[131] For Ḡẖulām Muḥammad Ḵẖān, whose *waqf nāma* began this chapter, registering the deed of endowment (or, *waqf-nāma*) made his proclamation legal and enforceable, which brought the endowed property under the purview of the *waqf* board,

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[129] APSA, Fatwa Number 60 (71/5) of 1950.

[130] This issue is an extension of the question over the accuracy of information transmitted by telegraph in the context of moon-sightings. (See Chapter Four, above.)

[131] On *waqf*s registration and management in the Ottoman empire and post-imperial contexts, see, e.g.,Siraj Sait and Hilary Lim, *Land, Law and Islam: Property and Human Rights in the Muslim World* (London: Zed Books, 2006); Ahmed Akgündüz, "The Ottoman Waqf Administration in the 19th and Early-20th Centuries: Continuities and Discontinuities," *Acta Orientalia Academiae Scientiarum Hungaricae* 64, no. 1 (2011): 71–87; Said Amir Arjomand, "Philanthropy, the Law, and Public Policy in the Islamic World before the Modern Era," in *Philanthropy in the World's Traditions* (Bloomington, Indiana University Press, 1998), 109–32; Gabriel Baer, "The Waqf as a Prop for the Social System (Sixteenth-Twentieth Centuries)," *Islamic Law and Society* 4, no. 3 (1997): 264–97; Daniel Crecelius, "The Organization of Waqf Documents in Cairo," *International Journal of Middle East Studies* 2, no. 3 (1971): 266–77; Beshara Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," *Comparative Studies in Society and History* 40, no. 1 (1998): 3–41; Hadi Hosainy, "Ottoman Legal Practice and Non-Judicial Actors in Seventeenth-Century Istanbul," *Journal of the Ottoman and Turkish Studies Association* 2, no. 1 (2015): 21–36, doi:10.2979/jottturstuass.2.1.21; Hadi Hosainy, "Ottoman Legal Practice and Non-Judicial Actors in Seventeenth-Century Istanbul," in *Law and Legality in the Ottoman Empire and Republic of Turkey* (Indiana University Press, 2016), 26–42, http://www.jstor.org/stable/j.ctt19qghj5.5; Aharon Layish, "'Waqfs' and Ṣūfī Monasteries in the Ottoman Policy of Colonization: Sulṭan Selīm I's 'waqf' of 1516 in Favour of Dayr Al-Asad," *Bulletin of the School of Oriental and African Studies* 50, no. 1 (1987): 61–89; Jonathan Miran, "Endowing Property and Edifying Power in a Red Sea Port: Waqf, Arab Migrant Entrepreneurs, and Urban Authority in Massawa, 1860s-1880s," *The International Journal of African Historical Studies* 42, no. 2 (2009): 151–78; Norbert Oberauer, "'Fantastic Charities': The Transformation of 'Waqf' Practice in Colonial Zanzibar," *Islamic Law and Society* 15, no. 3 (2008): 315–70; Kayhan Orbay, "Account Books of the Imperial Waqfs (Charitable Endowments) in the Eastern Mediterranean (15th to 19th Centuries)," *The Accounting Historians Journal* 40, no. 1 (2013): 31–50; Philipp Reichmuth, "'Lost in the Revolution': Bukharan Waqf and Testimony Documents from the Early Soviet Period," *Die Welt Des Islams* 50, no. 3/4 (2010): 362–96; Yitzhak Reiter, "Family Waqf Entitlements in British Palestine (1917-1948)," *Islamic Law and Society* 2, no. 2 (1995): 174–93; Ron Shaham, "Christian and Jewish 'waqf' in Palestine during the Late Ottoman Period," *Bulletin of the School of Oriental and African Studies*, University of London 54, no. 3 (1991): 460–72.

which created new problems for the *wāqif* and prompted his inquiry to the *dār-ul-iftā'*. Certifying his endowment by registering the deed with the state's *waqf* board provided a way to record his intent, but at the same time, registration brought the force of the board's regulations into play.[132] Registered mail, as the example below demonstrates, reflected a different process. Government registration in British India and Princely Hyderabad worked to authenticate and to complicate deeds and documents.

Yet in the questions submitted to the *dār-ul-iftā'*, concerns over origin and authority were often ancillary to the legal issues at stake. Though the *sā'il*s and their copyists saw these elements as central to the document's value and legitimacy, answers from the *dār-ul-iftā'* frequently revolved not around the form but around the content of the document. Indeed, answers to many of the questions involving the legitimacy or authenticity of documents presented to the *dār-ul-iftā'* in Hyderabad concerned whether the documents fulfilled certain legal conditions (*shart*, pl. s*harā'iṭ*) or whether the inclusion of particular conditions was appropriate for a give document type.[133] In the aforementioned request involving the registered letter, for instance, the *mustaftī* wrote to ask whether a letter sent to a wife by a husband via registered mail constituted a legitimate deed of divorce (*ṭalāq-nāma*).[134] The letter begins by addressing the wife—*ba nām-i* {___} daughter of {___}—with the names of the parties replaced by blank spaces in order to protect the identities of the individuals in question.[135] The letter then continues:

I {____} by way of this notice, announce that by giving you this declaration of divorce I

[132] APSA, Fatwa Number 30 (37/1) of 1358 F.

[133] This perspective is the inverse of that taken by judges in the colonial courts where form, procedure, and registration took precedence over content.

[134] APSA, Fatwa Number 50 (71/5) of 1950.

[135] Ibid.

> separate you from the contract of marriage [*ʿaqd-i zaujīyat*] because having become disobedient you left my house against the commands of *sharīʿa* and without my permission, and therefore you must return my ornaments [*zīwar*] and apparel [*malbūsāt*] and you must arrange for the return of my youngest (girl) child so that I may provide for her rearing and training [*parwarish aur tarbiyat*].[136]

The letter concludes by admonishing the wife to retain this notice as proof of her separation, should she ever need it, and informing her that the husband has also entrusted this proof of their divorce to the guardian of *sharīʿa* (meaning the local *qāẓī*).[137] Having quit the house of her husband without his permission, the wife has not only disobeyed him but also made it impossible for the oral communication of the divorce decree. Now it was up to the *mustaftī* to determine whether written notification, sent by registered post, was sufficient to finalize the divorce.

Testing the legitimacy of this document, the *mustaftī* asks the *muftī* whether the statement included in the mailed notice of divorce is legitimate and whether the specific conditions it includes (i.e., returning ornaments and apparel to the husband, and placing the daughter back into his care) are appropriate. To the former, the *muftī* answers in the affirmative: The document is legitimate for the purposes of ending the couple's contract of marriage.[138] However, the conditions included in the document are not entirely appropriate. The right to care for the daughter belongs to the mother; the father has no right to demand her return, though he must still provide for her maintenance.[139] Having answered the *mustaftī*'s specific points of inquiry, the *muftī* returns his answer to the inquirer but offers little detail on how to ensure the proper execution of the divorce.

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[136] Ibid.

[137] Ibid.

[138] Ibid.

[139] Ibid.

Because the *mustaftī* brought his question to the *dār-ul-iftā'*, rather than to the law courts, the *muftī* has little influence over the proper execution of the terms of the document or the guidance provided in his *fatwā*. He has no power to enforce the rules; he merely explains what *should* happen. Based on the evidence included in the question, however, the *muftī* confirms that the divorce has been finalized by adding that if the former husband and wife wish to resume their marital relations, then they will be required to execute another *'aqd* (contract [of marriage]) before doing so. Yet despite this admonition, the *muftī* challenges the second part of the decree, which included the terms of the divorce and referred to the return of offspring and jewelry, and concludes these are not legitimate. The *muftī*'s response answers the *mustaftī*'s questions without the burden of needing to enforce his interpretation. Without the exigencies of a court decree, the parties involved are left to sort out the details independently. As the reply suggests, the wife may continue to live independently of her now ex-husband without returning his cash or children.

Answering legal questions without the expense, time commitment, or legal artifice of going to court was one of the benefits the *dār-ul-iftā'* afforded its patrons. Not only did its answers place the agreeable resolution of disputes between parties above ethically and economically unsatisfactory legal solutions, but its responses also offered timely assistance, without the interference of legal professionals.[140] The absence of legal professionals does not mean that other family members—fathers, brothers, mothers, etc.—did not insert themselves into the resolution of intra-familial disputes, but the simple question-and-answer format of the *fatwā* allowed families to seek guidance from the *muftī* without indulging in scare-mongering or antagonistic factionalism.[141] In most cases, going to court remained an option, but only a few *fatwā* files

[140] Agrama, "Law Courts and Fatwa Councils in Modern Egypt"; Agrama, "Ethics, Tradition, Authority."

[141] See discussion of women's entry to the *dār-ul-iftā'* below.

preserved in the *dār-ul-iftā'*s archives refer to cases that called upon the statutory authority of the court in addition to the ethical authority of the *muftī*. In a way, the *dār-ul-iftā'* offered individuals easy access to services one might now place in the framework of alternative dispute resolution (ADR).[142] Here, *sharīʿa* was the guiding principle to which both parties agreed, the *muftī* was the mediator who interpreted the *sharīʿa*, and the *fatwā* was the decision individuals—like the couple referenced in the question above—could agree to follow.[143] The strength and appeal of the *dār-ul-iftā'* lay in its ability to answer delicate questions (e.g., those involving the care for minors) without the dictatorial interference of judge's orders or the monetary pettiness of the courts of law.

In another question on the issue of divorce documents, Zayd and Hindah had decided to separate on account of growing disagreements and long-standing arguments between them.[144] To finalize their separation, Zayd executed a *ṭalāq-nāma* (divorce decree, for male-initiated divorce) and Hindah produced a *k͟hulʿ-nāma* (divorce decree for female-initiated divorce) to certify their decision to separate.[145] However, despite deciding to terminate their relationship and executing these twin documents, the *mustaftī* explains in his question, the couple has now decided to get back together and to resume their marital relations.[146] "Is this permissible under Islamic

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[142] Arif A. Jamal, "ADR and Islamic Law: The Cases of the UK and Singapore," NUS Law Working Paper Series 2015/004 (May 2015), http://law.nus.edu.sg/wps; Mohamed M. Keshavjee, *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community,* Vol. 6. Library of Islamic Law (London: I.B. Tauris, 2013; Syed Khalid Rashid, "Alternative Dispute Resolution in the Context of Islamic Law." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network (September 20, 2012), https://papers.ssrn.com/abstract=2149550.

[143] As with ADR, attention to individual circumstances and the search for a solution that could accommodate individual needs and circumstantial exigencies should not be read as arbitrary—as European challenges to the legitimacy of Islamic adjudication in early modern polities suggested—but rather should be read as a form of accommodation that permeates the settlement of disputes in courts of law today.

[144] APSA, Fatwa Number 44 (45/5) of 1356 F.

[145] On women's access to different forms of divorce, see Sylvia Vatuk, *Marriage and Its Discontents: Women, Islam and the Law in India*, (New Delhi: Kali for Women, 2017), especially the chapter on female-initiated divorce. (For further discussion of documentation for marriage and divorce, see Chapter Three.)

[146] APSA, Fatwa Number 44 (45/5) of 1356 F.

law, or do they need to execute a new contract of marriage?," he asks.[147] Along with his question, the petitioner also created copies of the two documents (Image 6.4), which he copied out in parallel on the page, using red (now faded to pink) ink to mask identifying information like the parties' names, parentage, and place of residence.[148] The formulaic names, Zayd and Hindah (John and Jane Doe), remain in the document, along with Zayd's father's generic name (Bakr), but the parties' places of residence have been written in parentheses as "*fulān"*, as have other details like Hindah's nickname (*ʿurf fulān*), and her father's name (*fulān*).[149] In so doing, the *mustaftī* has made a deliberate attempt to demonstrate for the *muftī* where the proper names have been elided.[150] Rather than simply writing Zayd's name, the document copy encloses his name in parentheses, so the reader knows "Zayd" is not the husband's real name but rather a pseudonym.[151] These strategies allowed the *muftī* to address the legal question without compromising the individual's identities.

When addressing the question at the heart of this case, the *muftī* confirmed the legitimacy of these documents and acknowledged their ability to secure the couple's separation. Though the *muftī* raises a concern about the finality of Zayd's statement, owing to the fact that he does not repeat the word *ṭalāq* as required three times, Hindah's confirmation and acceptance of the document as a *ṭalāq-nāma* by referring to it as such in her deed of divorce certifies its status as

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[147] Ibid.

[148] Ibid.

[149] Ibid.

[150] See Image 6.4, "Dual divorce decrees with omitted text provided in red (pink) ink," APSA, Fatwa Number 44 (45/5) of 1356 F."

[151] Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, eds., *Islamic Legal Interpretation: Muftis and Their Fatwas, Harvard Studies in Islamic Law* (Cambridge, Mass: Harvard University Press, 1996), 22–3; Brinkley Messick, "The Mufti, the Text and the World: Legal Interpretation in Yemen," *Man,* New Series, 21, no. 1 (March 1, 1986): 102–19, doi:10.2307/2802649.

such.[152] (That is, her acceptance of the *ṭalāq-nāma* makes it such.) The legitimacy of the deeds of separation executed between the two parties, however, does not answer the second part of the *mustaftī*'s question—i.e., whether the couple can resume their marital relations despite the presence of these documents. Drawing attention to the date presented within the deeds, the *muftī* points out that the two documents were signed by the parties on the 8th of Bahman (1356 Faṣlī) and that the question reached him on the 29th of Bahman.[153] The close proximity of these two dates meant that the period of *ʿidat* (typically three months) had not yet elapsed. Therefore, the window was still open for the husband to revoke his divorce decree, after which the couple could

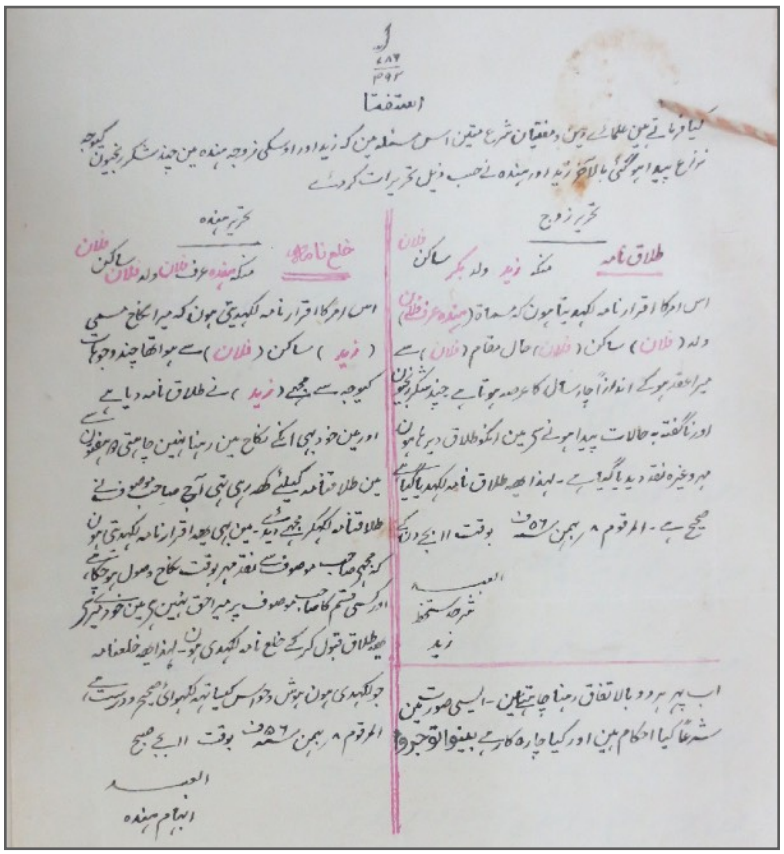

Image 6.4: Dual divorce decrees with omitted text provided in red (pink) ink.

[152] APSA, Fatwa Number 44 (45/5) of 1356 F.

[153] Ibid.

resume their marital relations without executing a second *ʿaqd*.[154] Here again, the *muftī* called upon details contained within the document to offer an equitable solution that would resolve the situation without unnecessary complications. Surveying the copies of the documents submitted to him within the *istiftā'*, the *muftī* confirmed the documents' legitimacy (permitting other couples to follow similar patterns in the future) but also used details within the documents to offer a solution for this particular couple's conundrum. Though the term "*ʿidat*" does not appear in the documents, the *muftī* invoked the principle of the three-month waiting period to offer the couple another option. The flexible, case-based format of the *dār-ul-iftā'* allowed the *muftī* to locate solutions that would meet the needs of the parties involved, without contradicting the ethical-juridical dictates of the law.

In yet another example, Major Sayyid Nūr Allāh executed a *ṭalāq-nāma* in which he left the option of divorce open to his wife's discretion and granted her the power of declaring her own divorce (*k͟hūd ṭalāq ḥāṣil karnē kā ik͟htiyār*) whenever she wished (*apnī marẓī par, jab cāhaiñ*).[155] To finalize the arrangement, he would then present—at her request—the eleven thousand rupees owed to her as *mahr* (dower), and should he die before her decision to divorce him, the amount of her *mahr* should be given to her from his property.[156] Skeptical of the document's validity, Sayyid

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[154] Ibid.

[155] Fatwa No. 81 (95/5) of 1950 CE. For a definition of *ṭalāq-i tafwīz*, as understood by in Anglo-Muslim law, see Neil B. E. Baillie, *A Digest of Moohummudan Law on the Subjects to Which It Is Usually Applied by British Courts of Justice in India* (London: Smith, Elder & co., 1875), 70–72. On the problems these types of contracts created for British judges, see Lucy Carroll,"Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife," *Modern Asian Studies* 16, no. 2 (1982): 277–309; and Mitra Sharafi, "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism Meets Anglo-Islamic Dower and Divorce Law," *The Indian Economic and Social History Review* 46, no. 1 (January 1, 2009): 57–81.

[156] It was standard for the dower-debt to be paid out to the widow before dividing the rest of her deceased husband's estate among children and other relatives. See, e.g., Rakesh Kumar Singh, "Law of Dower (Mahr) in India," *Journal of Islamic Law and Culture* 12, no. 1 (April 1, 2010): 64–65.

Nūr Allāh's wife submitted a question to the *dār-ul-iftā'* to alleviate her concerns.[157] Having examined the documents, the *muftī* then wrote in his reply that there are three ways a husband can divorce his wife: (1) by letter or document (*risālatāñ*), (2) by agent (*vakālatāñ*), or (3) through the practice of *tafwīẓ*, that is, "delegation to the wife of the right to pronounce *ṭalāq*."[158] Based on these options, the *muftī* concludes, the document executed by the husband, granting her wife the ability to declare divorce at will, belongs to the third category and is therefore legitimate. With the document in hand, the wife holds the right to divorce her husband at will. Here the *muftī* contextualizes the document vis-à-vis other forms of divorce to satisfy the wife's request.

Texts and Technology

Though all of these examples consider questions surrounding divorce, and the nuances of writing and executing *ṭalāq-nāma*s, petitioners sent questions surrounding other types of documents to the *dār-ul-iftā'* as well. Deeds of endowment (such as the question surrounding the *waqf-nāma* that opened this chapter), deeds of gift (*hiba-nāma*s), and other types of legal statements (*iqrār-nāma*s) also appeared among inquiries submitted to the *dār-ul-iftā'*. The final example in this section turns to one of these document types of explore the *dār-ul-iftā*"s response to these other forms. Turning to a question surrounding property belonging to one of Hyderabad's *paigāh* family, this final example draws attention to the role multiple document types played in the day-to-day work of the *dār-ul-iftā'* and the way the *dār-ul-iftā'* negotiated changing structures of

[157] APSA, Fatwa Number 81 (95/5) of 1950 CE.

[158] Ibid.; and Carroll, "Talaq-I-Tafwid," 279.

government.[159]

This particular question reached the *dār-ul-iftā'* in two parts.[160] In the first part of his question, the *sā'il* asked the *muftī* about the validity of a deed of gift, in relation to (immovable) property gifted from Nawāb Ḵẖurshed Jāh to his grandson Najīb-ud-dīn.[161] The *muftī*'s response granted the legitimacy of this type of gift with little reservation.[162] Upon receiving this response, the *sā'il* sent a follow-up question, including a typed copy of the deed of gift and his own comments on the validity of the document. Within his questions, the *sā'il* raised the following concerns. Not only was the *hiba-nāma* written on plain paper (*sāda kāg̲hiz̲*) but it was also unregistered (*g̲hair regisṭer shuda*) and did not include what the *sā'il* thought was an essential component of the deed: the term "*wilāyatāñ*" along with the recipient's name (*mōhūb kē nām kē sāth*

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[159] Benjamin Cohen provides a nice introduction to the Paigah estates relative to other land-holders. Benjamin B. Cohen, *Kingship and Colonialism in India's Deccan, 1850-1948*, 1st ed. (New York: Palgrave Macmillan, 2007), 20–3. On the Paigah nobles, see, e.g., K. Chandraiah, *Hyderabad, 400 Glorious Years*, 2nd ed. (Hyderabad, [India]: K. Chandraiah Memorial Trust, 1998), 88–89; Salma Ahmed Farooqui, "Diverse Social Groups under the Asaf Jahis," (Delhi: Nehru Memorial Museum and Library Occasional Paper, 2013), 3; and Sheela Raj, *Mediaevalism to Modernism: Socio-Economic and Cultural History of Hyderabad, 1869-1911* (Bombay: Popular Prakashan, 1987), 52–53. For background on the political-patrimonial structures in Hyderabad, see Carolyn M. Elliott, "Decline of a Patrimonial Regime: The Telengana Rebellion in India, 1946-51," *The Journal of Asian Studies* 34, no. 1 (1974): 28–32.

[160] The two-part question was common. If the first answer was favorable, the *mustaftī* would then pursue his second question.

[161] APSA, Fatwa Number 26 (47/5) of 1357 F. For discussion of other property disputes involving Nawāb Ḵẖurshed Jāh, see Karen Leonard, "Hindu Temples in Hyderabad: State Patronage and Politics in South Asia," *South Asian History and Culture* 2, no. 3 (July 1, 2011): 359–60. The Paigahs were involved in numerous disputes over movable and immovable property, many of which called upon the British Residents to intervene. See, e.g., BL, IOR/R/2/70/71, File 902/16 Note on the origin and history of the Paigah estate; IOR/R/1/1/1867, Confiscation by the Nizam of Hyderabad of (a) the estate of the late Syed Azeezuddin Ali Khan (b) Certain jewellery belonging to the Khurshid Jah Paigah; IOR/L/PS/10/1185, File 2962/1926 Hyderabad: settlement of the Paigah claims; IOR/R?1/1/1464 (1), (2), (3), File 13(4)-P(S)/1924-27 1. Restoration of the Paigah Estates in Hyderabad. 2. Treatment of the family of the late Nawab Imam Jang, Khurshid-ul-Mulk. 3. Nawab Sikandar Niwaz Jang's claim to the headship of the Khurshed Jah Paigah - rejected. 4. Misbehaviour of the sons of Sultan-ul-Mulk and grandsons of Lady Vicar-ul-Mulk; IOR/1/1/4151, File 264-P(S)/1944 1. Claim of Nawab M. Abul Fateh Khan to the Amirship of the Vikar-ul-Umra Paigah. 2. Question of advising His Exalted Highness the Nizam to amend certain Farmans relating to Paigah States in Hyderabad; IOR/R/1/1/3922, File 3(25)-P(S)/1943 Petition from Nawab M. Abul Fatah Khan of Hyderabad regarding his claim to the Amirship of the Vicar-ul-Umra Paigah; IOR/R/1/1/1799, File 49-P(S)/1929 Restoration of the Paigah Estates in Hyderabad; and IOR/R/2/76/130, Paigah Affairs—Claim of Nawab Abul Fateh Khan.

[162] APSA, Fatwa Number 26 (47/5) of 1357 F.

lafẕ vilayātāñ nahīñ likhā gayā).[163] Such an oversight, the petitioner suggests, could—or perhaps *should*, he thought—invalidate the entire deed.[164] Additional details included within the *sā'il*'s petition complicated the matter further because Nawāb K̲h̲urshed Jāh's grandson was not the only person involved in the property exchange. The deed designated K̲h̲urshed Jāh's son, Nawāb Ẓafar Jang Bahādur, as caretaker for the property, who himself remained under K̲h̲urshed Jāh's care at the time of the gift.[165] Filial dependence, the *sā'il* seems to suggest, should render any argument about the custodianship of Najīb-ud-dīn's gift invalid, for how could the recipient's father (Ẓafar Jang Bahādur) be custodian of the property when Ẓafar Jang Bahādur himself was still under the guardianship of his own father (*voh k̲h̲ud bhī zīr imārat ō sar parastī apnē vālid [mājid kiyē thē]*), the *sā'il* implored.[166]

To help the *muftī* resolve these concerns, the *sā'il* supplied the *dār-ul-iftā'* with copies of the documents in question and added them to the fatwa file.[167] Using paper normally reserved for internal office memos and a rather imperfect Urdu typewriter,[168] the *madad-gār* copied the two *hiba-nāma*s in question. After the standard opening attestation (*iqrār muʿatabir o iʿtirāf-i ṣaḥīḥ namūd*), the document describes the property in question, including information about its size, features, and location within the city of Hyderabad. The text of the document is in Persian, but the text

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[163] Ibid.

[164] Ibid.

[165] For another case involving gifts to minors, see Lucy Carroll, "Definition and Interpretation of Muslim Law in South Asia: The Case of Gifts to Minors," *Islamic Law and Society* 1, no. 1 (1994): 83–115; and on the management of guardianship in British India and Princely Hyderabad, see Benjamin Cohen, "The Court of Wards in Hyderabad," in his *Kingship and Colonialism in India's Deccan, 1850-1948*, 1st ed. (New York: Palgrave Macmillan, 2007); and Anand A. Yang, "An Institutional Shelter: The Court of Wards in Late Nineteenth-Century Bihar," *Modern Asian Studies* 13, no. 2 (1979): 247–64, doi:10.1017/S0026749X00008313.

[166] APSA, Fatwa Number 26 (47/5) of 1357 F.

[167] Ibid.

[168] The use of the Urdu typewriter here may reflect the high status of this case.

also draws upon legal terminology drawn from Arabic to explain technical features of the gift. Toward the end of the document, for instance, where the testator expresses and certifies the gift, the document describes the gift as "*hibatāñ, saḥiḥatāñ, sharʿatāñ, jaʾizatāñ, nāfiẕatāñ*" using, the Arabic *ḥāl* construction to define the manner in which the trustee offered the gift.[169] The document then concludes with the standard closing line: *īn chand kalimā ba ṭarīq-i hiba-nāma nawishta dāda shud ke ʿaind al-ḥājit ba kār āyed* (these few words, in the form of a deed of gift, have been written, so that if needed, they shall come of use).[170] In its formal execution, this document includes the formulaic expressions and graphic elements that mark its membership in the tradition of Persian documentary forms, yet errors abound in the copy produced by the *dār-ul-ifā'*.

Unlike the documents considered earlier in this section—which tended to be casual writings exchanged privately between individuals—this document shows signs of its official origins. The language is formal, the descriptions are precise, and the format bears the mark of a skilled draftsman, who wrote the document according to the technical specifications provided in manuals for scribes.[171] Yet its presence among the *fatwā* files of the *dār-ul-iftā'* gives it another quality: Rather than displaying the skill or finesse of the scribal hand that drafted the document, the document's mechanical reproduction on the office typewriter has altered its appearance. Typed on the standard paper used for office memoranda and notes, the smooth beauty of the

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[169] APSA, Fatwa Number 26 of 1357 F.; H.H. Wilson includes many of these terms in his legal dictionary, see Horace Hayman Wilson, *A Glossary of Judicial and Revenue Terms: And of Useful Words Occurring in Official Documents Relating to the Administration of the Government of British India, from the Arabic, Persian, Hindustání, Sanskrit, Hindí, Bengálí, Uriya, Maráthi, Guazráthí, Telugu, Karnáta, Tamil, Malayálam, and Other Languages* (London: W.H. Allen and Company, 1855). On the problem of Arabic and other foreign terms in Turkish legal documents, see Uriel Heyd, *Language Reform in Modern Turkey*, vol. no. 5, Oriental Notes and Studies / Published by the Israel Oriental Society (Jerusalem: Israel Oriental Society, 1954), 52–53.

[170] APSA, Fatwa Number 26 of 1357 F.

[171] See the discussion of these elements in Chapter Three above, and Christoph Werner, "Formal Aspects of Qajar Deeds of Sale."

original document has been refashioned according to the inflexible straightness of a type-written page. To make matters worse, the typewriting itself is clumsy—replete with spelling and formatting mistakes—and the rigidity of the metal font offers a poor imitation of the scribe's skilled hand.[172] Where a scribe would elongate letters in superscript to highlight the details of dimension, for instances, the typewriter must add additional lines—unable to mimic the scribe's meticulousness.[173] In the second *hiba-nāma*, the typist attempts to replicate this feature by creating a separate line for the direction and inserting the details in the line below. This feature demonstrates the copyists attempt to replicate the calligrapher's hand to mark the boundaries of the property textually (i.e., with a description of the boundary markers) and graphically (i.e., by inscribing the text within the frame of the elongated letters). But the typist can only produce a rough imitation of this calligrapher's style.

Another place in which the verisimilitude of the typewritten copy suffers is in the section containing the measurements for the property. These measurements are included toward the end of the first *hiba-nāma* where the typist types the words "length (*ṭūl*)" and "breadth (*ʿarẓ*)" but must add the particular numeric measurements using a pen because the typewriter cannot

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[172] On scribal hands in print, see Stark, *An Empire of Books*, 273, and the description of lithographic printing in Chapter Five. On Arabic printing more generally, see also Samir Abu-Absi, "The Modernization of Arabic: Problems and Prospects," *Anthropological Linguistics* 28, no. 3 (1986): 337–48; Richard W. Bulliet, "Medieval Arabic Ṭarsh: A Forgotten Chapter in the History of Printing," *Journal of the American Oriental Society* 107, no. 3 (1987): 427–38, doi:10.2307/603463; Ekmeleddin İhsanoğlu and Humphrey Davies, *The Turks in Egypt and Their Cultural Legacy* (Cairo: American University in Cairo Press, 2012) (especially the sections on printing translated works in Egypt, 297–314); Nile Green, "Journeymen, Middlemen: Travel, Transculture, and Technology in the Origins of Muslim Printing," *International Journal of Middle East Studies* 41, no. 2 (2009): 203–24; S. A. Rochlin, "Early Arabic Printing at the Cape of Good Hope," *Bulletin of the School of Oriental Studies*, University of London 7, no. 1 (1933): 49–54; Geoffrey Roper, "Arabic Printing and Publishing in England before 1820," *Bulletin of the British Society for Middle Eastern Studies* 12, no. 1 (1985): 12–32; Roper, "The Printing Press and Change in the Arab World," in *Agent of Change: Print Culture Studies after Elizabeth L. Eisenstein*, ed. Sabrina Alcorn Baron, Eric N. Lindquist, and Eleanor F. Shevlin (University of Massachusetts Press, 2007), 250–67.; and Walter Tracy, "Advances in Arabic Printing," *Bulletin of the British Society for Middle Eastern Studies* 2, no. 2 (1975): 87–93. (Many of the problems encountered in Arabic printing are similar for Urdu.)

[173] This style of writing, called *mashq,* is a common practice in Persian calligraphy where words are stretched and shrunk to fit the margins of the writing surface.

accommodate the *siyāq* style of numerical notation.[174] These stylistic improvisations suggest that the typewriter may have been a useful piece of technology in the modern Urdu-centric office place but it remained a deficient technology as well—a frustration common to many office machines.[175] The typist's ability to find a makeshift solution for the problem posed by the complex, multi-modal forms of presentation, however, belie his educational background. The typist's skills and knowledge of Persianate legal documentation clearly extended beyond the scope of his office work.[176] Part of his job as typist, then, was to translate the Persianate document's fluid style into the rigid linearity of the typewritten page.

To a trained reader, the *dār-ul-iftā*'s copy omits many of the hallmark features of Islamic legal documents, preserving the contents of the text without the being able to replicate the document's appearance. The typewritten text resembles one produced by a *nas̲k̲h̲* letterpress, similar to those first employed by East India Company officials in Calcutta, but closer examination reveals that the typewriter presents other problems as well.[177] Many of the characters are unclear as a result of the typewriter's mechanisms, for instance. On an English-language typewriter, there are two types for each letter, one for uppercase and one for lowercase, but Urdu keyboards were more complicated and had to account for more letters, as well as

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[174] APSA, Fatwa Number 26 of 1357 F.

[175] The need for a standard Urdu typewriter continued to vex promoters of Urdu after Partition. 'Abdul Ḥaqq, for instances, was called upon by the Pakistan Constituent Assembly to supervise efforts to make Urdu typewriters accessible to government offices in Pakistan. See Pakistan Constituent Assembly, "Starred Questions and Answers," *Constituent Assembly (Legislature) of Pakistan Debates* Vol. 1, (30 March–16 April, 1951), 771 and 949. By contrast, Matthew Hull refers to the numerous references to "Hindi" in bureaucratic manuals. Matthew Stuart Hull, "Paper Travails: Bureaucracy, Graphic Artifacts, and the Built Environment in the Islamabad Metropolitan Area, 1959–1998" (Ph.D. Dissertation, The University of Chicago, 2003), 168.

[176] It is easy to suggest when examining bureaucratic personnel that office peons are part of the problem, but reading these documents, one can almost see the typist's frustration at this awkward and impossible piece of office machinery!

[177] See Graham Shaw, *Printing in Calcutta to 1800: A Description and Checklist of Printing in Late 18th-Century Calcutta* (London: The Bibliographical Society, 1981).

multiple letter shapes (e.g., initial, medial, final).[178] Early Urdu keyboards took many approaches to the alphabet, in an effort to make the typewriter competent yet usable. The Remington Company's Urdu keyboard consisted of forty-six keys and could produce a total of ninety-two different characters, with the use of the "shift" key. This layout was far from perfect, however. As Ṭāriq ʿAzīz explains in his *Urdu Script and Type*, the keyboard did not include some of the special characters used in Urdu, such as the retroflex *"ṭe*".[179] Furthermore, many of the more common letters in Urdu were placed in hard-to-reach places on the keyboard, making it difficult for the typist to work.[180] The process for typing on this keyboard would be cumbersome, to say the least, but not entirely impracticable. Evidence on the typed page suggests the typist executed his work in a halting manner. Not only do the characters line up imperfectly such that there are extra teeth or missing teeth between letters, but the typist also makes mistakes—adding extra parts to some letters and missing parts of other letters. Dots (*nuqṭa*) assigned to various letters are missing, misplaced, or too faint to read, making it possible to read the document only if one is already familiar with the legal document's conventions and contents. Despite these mistakes, however, the document remains legible (with some difficulty) to a knowledgeable reader, but these shortcomings certainly draw attention to the document's transformation from a spoken decree, to

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[178] The Urdu alphabet contains over fifty letters but in typographic terms, the aspirated consonants would not require separate letter keys but rather would remain digraphic, combining the consonant and the aspirating "ha". There were multiple attempts to make Urdu keyboards for layouts, though none of the solutions were perfect. See Ṭāriq ʿAzīz, *Urdu Rasmulkhat Aur Taip*, 443–4; and Pakistan Constituent Assembly, "Starred Questions and Answers."

[179] ʿAzīz, *Urdu Rasmulkhat Aur Taip*, 443–4.

[180] Ibid., 444–5. Other non-English-speaking countries were also interested in developing typewriters. See Raja Adal, "Epigraphic Rituals and Legal Authority: A Visual Epistemology of Modern Laws," paper presented at the Annual Meeting of the American Historical Association, Denver, CO (January 5, 2017); and Thomas Mullaney, "The Moveable Typewriter: How Chinese Typists Developed Predictive Text during the Height of Maoism," *Technology and Culture* 53, no. 4 (October 2012): 777–814. For a recent reappraisal of the QWERTY keyboard's origin story, see Jimmy Stamp, "Fact of Fiction? The Legend of the QWERTY Keyboard," Smithsonian.com (May 3, 2013), http://www.smithsonianmag.com/arts-culture/fact-of-fiction-the-legend-of-the-qwerty-keyboard-49863249/.

a written document, to a typed copy. Furthermore, the imprecision of this transformation is made even more obvious by places in which the mechanisms of the typewriter fail.

This approach to type-written reproduction differs from the approach amateurs take when presenting copies of documents to the *dār-ul-iftā'*.[181] Such copies attempt to mimic the visual affect of the document, while attending less to the language of the main text. In many instances, amateur copies will include a circle, drawn at the top of the page, to indicate the placement of the seal. Yet the copy will simply enclose the word "*muhr*" (seal) within that circle, rather than writing out information about the seal's owner or place of origin.[182] Nor do such copies include information about the date on the seal. Details about the contents of a seal would matter to an expert working to determine the legitimacy or illegitimacy of a particular document —i.e., whether it is a fake or forgery—but to a petitioner, these details are pictorial elements that make a document appear official, without containing any information.[183] Fake signatures reveal similar ideas, through the imitation of the signature's shape, rather than in the production of individual letters.[184] In the context of the modern *dār-ul-iftā*', however, one should not overestimate the power of superficial verisimilitude. Despite the document copies' visual shortcomings, the typewriter's technical interference did not alter the *muftī*'s interpretation of the question(s) at hand. The copies included in the file were not meant to be "true copies" bearing

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[181] This amateur approach resembles the methods of early East India Company scribes who would copy documents into volumes of proceedings or transfer reproductions from one section of the proceedings to another. (See Ogborn, *Indian Ink*, 74–86.)

[182] See, e.g., APSA, Fatwa Number 93 (116/5) of 1950; and Fatwa Number 154 (158/5) of 1950.

[183] It has become cliché, yet nonetheless, this dissertation must also participate in the convention of citing the remarks of Claude Levi-Strauss on the illiterate imitation of writing and its power. See Claude Lévi-Strauss, *Tristes Tropiques*, trans. John Weightman and Doreen Weightman, Penguin Classics (New York: Penguin Books, 2012), 296–8. The second example given above does, however, note that the seal belonged to the Āṣafiya Government.

[184] Caplan, "Illegibility," 111–115.

the authority and accuracy of an *apostille*. Rather, the copies were for internal reference only, to guide the *muftī*'s interpretation of the documents, not to stand in for the originals. As such, the *dār-ul-iftā*'s office copies were a departure from earlier modes of copying. They neither reduced the copy to a summary, as in the *qāẓī*'s notebook, nor did they follow the pattern of "true copies." Instead, they represented a novel type of bureaucratic copy—efficient, if not entirely unaesthetic.

When presented with these documents, the *muftī* addressed two interrelated issues in the deeds' contents, the first being the question of whether the recipient of the gift (i.e., the grandson) ever assumed control of the property and the second being the absence of the word "*vilāyatāñ*" to describe the father's custodianship of the property during the period of the recipient's minority.[185] With respect to the first question, the *muftī* concluded that possession by proxy (or guardian) was not an issue. It was customary for *qāẓī*s or other designated individuals to care for the property of a minor until he came of age. Therefore, in this particular case, the father's custodianship should not be cause for concern.[186] With respect to the second issue—i.e., the question of terminology—the *muftī* reasoned that the intent of the document was clear about the mode of transfer and custodianship; the absence of this particular word "*vilāyatāñ*" was not sufficient reason to render the document—and the gift—invalid.[187] Thus after examining copies of the documents in question, the *muftī* dismissed the *sā'il*'s concerns and confirmed the documents' legitimacy.

Conclusion

Based on the copies of documents considered here—along with countless others found in

[185] APSA, Fatwa Number 26 (47/5) of 1357 F.

[186] Ibid.

[187] Ibid.

the fatwa files of the *dār-ul-iftā'* of the Ṣadārat-ul-'Āliya—the idea of legal writing was widespread, yet what really counted as a true and legitimate document was often subject to question. For individuals who produced as well as those who received these documents, the *dār-ul-iftā'* often provided an opportunity to confirm or repudiate a document's validity or its specific terms. In most of these cases, the *muftī*'s answer was dependent upon the inclusion of a copy of the document and the inclusion of these copies afforded the *muftī* an opportunity to review each case individually, providing a customized response to the *mustaftī*'s request. More work remains to be done with the countless other documents submitted to the *dār-ul-iftā'* in order to understand the range of concerns and questions people submitted as well as the range of possibilities expressed in these documents. As scholarship to date and the examples surveyed here suggest, documents such as these provide insight into the scope of legal consciousness at end of empire and reveal the role of religious authority in shaping and confirming people's understandings of the role of documents. Further examination of these and other documents will help to create a richer understanding of changes in the practice of law in the context of the emergence of the modern bureaucratic state.

V. Women's Access to Law in the Dār-ul-Iftā'

The final section of this chapter considers the types of voices present in the *dār-ul-iftā'*s archive, using gender as the frame for analysis. Popular understandings often stereotype Islamic law as inherently anti-female or anti-feminist,[188] but this view often assumes that fundamentalist

[188] See, e.g., "Maher to Gloria Steinem: Why Isn't Anti-Woman Sharia Law a Bigger Feminist Issue?," accessed February 27, 2017, http://www.mediaite.com/tv/maher-to-gloria-steinem-why-isnt-anti-woman-sharia-law-a-bigger-feminist-issue/.

rhetoric represents the only interpretation of Islamic law.[189] In reality, multiple perspectives exist on the position of women in Islam, and women's access to gender equality or human rights status varies according to nationality and class.[190] Furthermore, many representations of Islamic law—in scholarly and non-scholarly fora—assume that the interpretation of *sharī'a* that dominates today existed in its present form since Islam's formative period.[191] Literature on the "invention" of tradition in the colonial period,[192] scholarship on the re-creation of Islamic law through the lens of "Anglo-Muhammadan" codification,[193] and recent reappraisals of the relationship between Islamic law and society,[194] suggest that contemporary practice does not represent a timeless interpretation, nor is it possible, given these varying perspectives, to classify Islam as fundamentally pro- or anti-feminist.[195]

The purpose of this section, however, is not to debate whether Islamic law is "good" or "bad" for women but rather to consider the types of claims, forms of evidence, and nature of

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[189] Sherifa Zuhur, "Review of *Speaking in God's Name: Islamic Law, Authority and Women* by Khaled Abou El Fadl," *The Arab Studies Journal* 10/11, no. 1/2 (Fall 2002 / Spring 2003): 203–5.

[190] Anita M. Weiss's recent monograph, which focuses on contemporary Pakistan, illustrates the multiplicity of "Islamic/ate" or "Muslim" voices present in Pakistani society today. See *Interpreting Islam, Modernity, and Women's Rights in Pakistan*, First edition. (New York, NY: Palgrave Macmillan, 2014).

[191] On changed or changing interpretations, see, e.g., Oussama Arabi, *Studies in Modern Islamic Law and Jurisprudence* (The Hague: Kluwer Law International, 2001); Hina Azam, *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure, Cambridge Studies in Islamic Civilization* (New York, NY: Cambridge University Press, 2015); Khurram Dara, *Contracting Fear: Islamic Law in the Middle East and Middle America* (Eugene, Oregon: Cascade Books, 2015); Keshavjee, *Islam, Sharia and Alternative Dispute Resolution*; Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge, UK: Cambridge University Press, 2001); Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, Law, Governance, and Development ([Amsterdam]: Leiden University Press, 2010).

[192] See, e.g., Eric Hobsbawm and Terence Ranger, eds., *The Invention of Tradition* (New York: Cambridge University Press, 1983).

[193] Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35, no. 2 (May 1, 2001): 257–313.

[194] Azam, *Sexual Violation in Islamic Law.*

[195] As with any legal tradition, such assessments are necessarily complicated by the assessor's politics and other ideological commitments.

reasoning, women presented when bringing their claims to the *dār-ul-iftā'* in princely Hyderabad. Certainly, the Ṣadārat-ul-ʿĀliya's was not the only *dār-ul-iftā'* to receive inquiries from women, but the status of the *dār-ul-iftā'*'s archive means that women's voices are more easily accessible within this collection.[196] Certainly, when it comes to any form of legal action, the extent to which women represent themselves or are represented by others is a tricky matter to untangle from written evidence, and the *dār-ul-iftā'* of Hyderabad is no exception. Even within the *dār-ul-iftā*'s files, there are instances in which husbands, fathers, and brothers brought matters concerning their wives, daughters, and sisters to the *dār-ul-iftā*'.[197] But the records also indicate that women were able to bring their claims to the *dār-ul-iftā*' independently—or with minimal support from male relatives—and in some instances presented questions to counter male relatives' interpretations of contentious issues.[198]

Of the twelve-hundred *fatwā*s surveyed for this chapter, only twenty percent were presented by women.[199] Yet the nearly two-hundred questions presented by women and included in this sample cover a range of topics and concerns similar to those presented by men, including questions pertaining to divorce (*ṭalāq*, *k͟hul*ʿ) and annulment (*fask͟h*), remarriage (*ʿaqd-i ṣānī*) and permission to remarry (*ijāzat-i ʿaqd-i ṣānī*), questions about the legitimacy of the marriage contract

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[196] Printed collections often exclude the *mustaftī*'s name, so gender must be inferred from the content of the question to the extent possible.

[197] Some records explicitly indicate that a representative approached the *dār-ul-iftā'* on a woman's behalf, as in the issue presented by Sayyid Ḥusain ʿAli K͟hān as *mukͮhtār-i ʿām* (general attorney) for Karīm-un-nisa' Begum Ṣaḥiba in May, 1950. (APSA, Fatwa Number 87 of 1950.)

[198] Anecdotal evidence from contemporary *dār-ul-iftā'*s in Hyderabad, Lucknow, and Delhi demonstrate similar patterns of access. For further discussion of women's access to law see Katherine Lemons, "At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi" (Ph.D. Dissertation, University of California, Berkeley, 2010).

[199] Women's names appear on 185 files; men's names appear on 957 files. This calculation excludes questions lacking individual names, presented by people with indecipherable names, and groups, as well as memos initiated within the *dār-ul-iftā'*.

(*istifsār-i ʿaqd-i ṣaḥīḥa*), inheritance and the division of property (*taqsīm-i matrūka*), and maintenance (*nafaqa*).[200] Over forty percent (41.62%) of the questions presented by women were labeled "*taqsīm*" and not quite forty percent (36.22 %) belonged to the "*mutafarraq*" category, suggesting that women's concerns followed the same pattern as those brought to the *dār-ul-iftā*' generally, of which questions labeled "*taqsīm*" represented forty-four percent and those labeled "*mutafarraq*" represented nearly fifty-three percent, though the smaller sample size also admits more irregularity in the labeling of files.[201] Women were able to bring their concerns to the *dār-ul-iftā'* in person, but that ability did not preclude them from using other forms of submission, as well, such as submission by post. These questions also reveal signs of forum-shopping or interest in consulting multiple sources before settling on a solution to personal or familial problems.[202] In general, then, women's questions were not qualitatively different from those submitted by the population at large, though gender shaped their perspectives and concerns.

Like other *mustaftī*s, women also approached the *dār-ul-iftā'* out of concern for themselves and their families, looking for permissible solutions to problems they faced, but women's claims differed from those presented by men, however, in one particular way: When writing to request

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[200] See, e.g., APSA Fatwa Numbers 40 (46/5) of 1359 F., Number 54 (64/5) of 1950 CE, Number 52 (62/5) of [1950 CE], Number 42 (49/5) of 1950 CE, Number 84 (102/5) of 1950 CE, Number 189 (4/1) of 1359 F., Number 8 (9/1) of 1359 F., Number 22 (27/1) of 1359 F., and Number 115 (141/1) of 1950 CE.

[201] The irregular labeling of files for women's questions might reflect the petitioner's lack of legal knowledge or the clerk's bias.

[202] On forum-shopping in colonial contexts, see, e.g., Keebet von Benda-Beckmann, "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra," *The Journal of Legal Pluralism and Unofficial Law* 13, no. 19 (January 1, 1981): 117–59, doi:10.1080/07329113.1981.10756260; K. von Benda-Beckmann, *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau* (Dordrecht: Foris, 1984); Elizabeth Kolsky, "Introduction," *Law and History Review* 28, no. 4 (November 2010): 973–78, doi:10.1017/S0738248010000738; Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96, doi:10.2307/3053638; Merry, "Anthropology, Law, and Transnational Processes," *Annual Review of Anthropology* 21, no. 1 (1992): 357–77, doi:10.1146/annurev.an.21.100192.002041; and Sharafi, "The Marital Patchwork of Colonial South Asia"; and more generally, Lauren A. Benton and Richard Jeffrey Ross, eds. *Legal Pluralism and Empires, 1500-1850* (New York: New York University Press, 2013).

permission to contract a second marriage, women often wrote out of economic and material necessity, on account of their general economic dependence upon men and male relatives. For instance, on March 24, 1950, Afsar Begum wrote to the *dār-ul-iftā'* out of desperation—having reached an extreme state of worry (*ba ḥadd pareshān ḥāl*) and under compulsion (*majbūr hō kar*)—requesting permission to contract a second marriage, owing to the fact that her husband had been absent (*ġhā'ib*) for several years.[203] "Today, it has been approximately one, two, three years, on account of which *k̲hādima* [your servant-petitioner] …considered it appropriate to place this request before your presence (*aik dō tīn sāl kā ʿarṣa hōtā hai jiskī vajah sē … ḥuẓūr kī k̲hidmat maiñ apnī dark̲hwāst pēsh karnā manāsab samjhā*)."[204] Fortunately, Afsar Begum's father cared for her son at the *dargāh* of Ujālī Shāḥ in Akbar Bāg̲h̲ near Hyderabad and was able to loan her four to five hundred rupees while she waited for her husband's return.[205] Recently, however, it had come to light that (*maʿlūm hu'a ke*) her husband left for Pakistan (*Pākistān chalā gayā haiñ*) and will not be returning. Therefore, Afsar Begum wanted to know whether it was permissible for her to contract a second marriage (*ʿaqd-i sānī [*sic*] ya'nī dūsrā ʿaqd karnē kī ijāzat farmā'i jāyē*).[206] Without a husband, Afsar Begum had no means to support herself and could not continue to rely on the generosity of her father.

The *muftī* could not grant Afsar Begum's request, but he could tell her what to do in order to make it possible for her to contract a second marriage. In its draft reply, the *dār-ul-iftā'* reported

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[203] APSA, Fatwa Number 69 (81/5) of 1950 CE.

[204] Ibid.

[205] On maintenance and women's rights, see Riyad Sadiq Koya, "The Campaign for Islamic Law in Fiji: Comparison, Codification, Application," *Law and History Review* 32, no. 4 (November 2014): 853–881, doi:10.1017/S073824801400042X; Singh, "Law of Dower (Mahr) in India,"; Sabiha Hussain, "Shariat Courts and the Question of Women's Rights in India," *Pakistan Journal of Women's Studies* 14, no. 2 (December 2007): 73–102.

[206] APSA, Fatwa Number 69 (81/5) of 1950 CE.

that the petitioner would have to go to court (*ʿadālat*) to plead her case (*rujūʿ karnā*) on the basis of her husband's departure for Pakistan and failure to provide for her. The *qāẓī*, or judge (*ḥākim-i ʿadālat*),[207] could then grant her a separation (*tafrīq*), which would allow her to contract a second union.[208] Before offering this response, the office clerk summarized the situation at the top of the page, turning Afsar Begum's story into a shorter legal question. The meat of the question was also highlighted in the original with underlining and notes, marking key points in the narrative.[209] These markings provide insight into the way employees of *dār-ul-iftā'* read and responded to questions; such insights not available from published compilations.

Although the answer the *dār-ul-iftā'* gave may not have offered the immediate solution Afsar Begum desired, the *muftī* nonetheless described the next steps Afsar Begum could follow in order to overcome the hardships she faced, and rather than calling the response a *fatwā*, the *madad-gār* marked the top of the page as "draft instructions" (*musauwada fahmāyish*). This response was not an order, nor was it a ruling; it was an explanation of the next steps Afsar Begum should take in order to make herself eligible for remarriage.[210] The *muftī* signed this draft on March 29 (five days after the question's submission), and the assistant conveyed the response to Afsar Begum.[211] In this case, the *dār-ul-iftā'* could not grant Afsar Begum's request but it could offer her advice on how to proceed, and with access to the judicial functions of the court, Afsar Begum could remedy her desperate situation.

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[207] The response offers both terms—*qāẓī* and *ḥākim-i ʿadālat*—placing the latter in parentheses after the former. (Ibid.)

[208] Ibid.

[209] Ibid.

[210] For similar negotiations over marriage eligibility, see Muhammad Qasim Zaman, *Modern Islamic Thought in a Radical Age: Religious Authority and Internal Criticism* (Cambridge University Press, 2012), 184–5.

[211] APSA, Fatwa Number 69 (81/5) of 1950 CE.

Miriam Bī brought a similar situation to the *dār-ul-iftā'*. As she explained, her husband had been missing (*lā pata*) since the time of the Raẓākārs' action in Hyderabad.[212] She had not received a letter, or any news, or evidence that he was still alive (*na kō'ī k̲haṭ hai, na kō'ī k̲habar hai, aur na kō'ī dalīl hai ke wo̊h zinda haiñ*).[213] In the *istiftā*', Miriam Bī continued her hyperbolic plaint as follows:

> And I, an afflicted, *pardah-nashīn* [woman] have been ruined and have reached a state of decline (*azlā*ʿ) like that of the migrants.[214] And I, after two and half years of time, have met with great difficulty (*baṛī muṣībat).* Not enough food to fill my stomach, nor clothing to cover my body.[215]

At this point, Miriam Bī wanted to contract a second marriage, and after offering additional explanations for why this choice was the best way forward for her, Miriam concluded her *istiftā',* saying, "I am extremely hopeful (*qawī umīd*) that to the extent possible (*jahāñ tak hō sakē*), I may receive permission [to contract a second marriage] because I have entered terrible times (*kyōñ ke, mujh par waqt-i bahut burā hai*)."[216] Aside from the remark concerning her husband's participation in the Raẓākars' military action, Miriam Bī's situation was almost identical to that presented by Afsar Begum, yet the *dār-ul-iftā'* responded to the question somewhat differently.

To begin with, the first office note on Miriam Bī's submission noted the uniqueness of her case. Referring to her circumstances as new, or *jadīd,* the *madad-gār* then proceeded to explain that

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[212] APSA, Fatwa Number 67 of 1950. The Raẓākārs were a private militia force that supported the Nizam and objected to Hyderbad's integration into the Indian nation-state in 1947. For a brief history, see Sayyid Kamāluddīn Aḥmad, *Tārīk̲h-i Ḥaidarābād Dakkan aur razākār*, Ishā'at 1 (Karācī: Sayyid Kamāluddīn Aḥmad, 1995), as well as, Taylor C. Sherman, "Migration, Citizenship and Belonging in Hyderabad (Deccan), 1946–1956," *Modern Asian Studies* 45, no. 1 (2011): 81–107; and Wilfred Cantwell Smith, "Hyderabad: Muslim Tragedy," *Middle East Journal* 4, no. 1 (1950): 27–51.

[213] APSA, Fatwa Number 67 of 1950.

[214] Here she refers to the influx of refugees from the newly created Pakistan, following the subcontinent's partition.

[215] APSA, Fatwa Number 67 of 1950.

[216] Ibid.

this type of case typically fell to the *qāẓī-ul-qaẓāt* but there was some question as to whether the Ṣadārat-ul-ʿĀliya retained the ability to end the marriage, or whether that privilege now belonged to another judicial authority.[217] If the Ṣadārat had permission, then it would grant Miriam Bī permission to re-marry, but if it did not have that authority, then it would need to recommend another course of action. Nonetheless, the note concluded—and a marginal note confirmed—that it was necessary to investigate the legal points in question (*sharʿī nuqṭa-i naẓr sē taḥqīqāt*) and to commit the testimonies of witnesses to paper (*gawāhōñ kō bayānāt qalam-band kar*) before presenting an opinion.[218]

Following this directive, then, employees of the *dār-ul-iftā'* went through the process of gathering testimony from witnesses who could verify Miriam Bī's claim; summarizing and reiterating their testimony for the purposes of internal review; and articulating reasons why Miriam Bī's case did not belong to the category of *mafqūd-ul-ḵẖabar* but rather belonged to the category of failure to pay maintenance.[219] During its deliberations, the *dār-ul-iftā'* commissioned two sworn statements (*muḥlif maẓhar*) by witnesses who knew Miriam Bī and her husband Amīn Ṣāḥib and could testify to the fact that Amīn Ṣaḥib participated in the Raẓākārī action and had not returned since then.[220] The second witness, who mentioned that Amīn Ṣaḥib had been grabbed during the police action (*pōlīs ākshan kē waqt pakṛē gayē*) even mentioned some of the efforts he made to look for Amīn Ṣaḥib in the jails before speculating that Amīn Ṣaḥib was no longer living (*zinda nahīñ hai*) and had been killed (*mār diyā gayā hai*).[221] Miriam Bī also contributed

[217] Ibid., 3.

[218] Ibid.

[219] Ibid.

[220] Ibid., 5–6.

[221] Ibid., 6.

to these witness statements, testifying under oath that her husband had been missing for approximately two years (*takẖmīnan dō sāl sē ghā'ib haiñ*) and that her aging father did not have the capacity to support her (*mērē parwarish kī sakat nahīñ hai*) before signing her statement with a fingerprint.[222]

After completing its investigation, the *dār-ul-iftā'* compiled and summarized the statements it had received, and attempted to separate the *mafqūd-ul-ẖabar* issue from Miriam Bī's generally degraded condition. Marginal notes added to the summary document suggest that the *muftī* wanted to grant Miriam Bī's request for permission "according to God and his prophet (*ẖudā aur us kē rasūl kē wāsṭē*)" to contract a second marriage but could not do so without the *qāẓī's* support.[223] The first note remarked that the *muftī* had given his opinion in accordance with the *sharī'a* (*sharʿī liḥāẓ sē*) and considered it appropriate to give the petitioner permission to contract a second marriage (*ʿaqd-i ṣānī kī ijāzat dēnā munāsib hai*) and the second confirmed that according to the *muftī*'s opinion (*ḥasb-i ra'i-yi muftī*) permission to contract a second marriage is granted (*ʿaqd-i ṣānī kī ijāzat dī jātī hai*).[224] After reviewing these responses, the clerk began to draft a response to Miriam Bī, granting her permission to remarry, but the clarity of the *muftī*'s position was then challenged by the response the city *qāẓī* offered.[225]

Whereas the *dār-ul-iftā'* referred Afsar Begum's case to the courts for the purpose of dissolving her marriage and making her eligible for remarriage, the *dār-ul-iftā'* sent its question directly to the city *qāẓī*.[226] According to the city *qāẓī*, Miriam Bī's predicament belonged to the

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[222] Ibid., 7.

[223] Ibid., 1, 7.

[224] Ibid., 7. These remarks are dated March 20th and 21st respectively.

[225] Ibid., 12

[226] Ibid.

category of *mafqūd-ul-k̲habar,* which made it impossible for Miriam Bī to consider remarriage until a waiting period of four years had elapsed. The Malikī school of Sunni jurisprudence, which the *qāẓī* cited in his response, required women to wait four years for remarriage in *mafqūd-ul-k̲habar* cases*;* Miriam Bī had only been waiting two-and-a-half years and was not eligible for divorce from an absentee husband.[227] The *dār-ul-iftā'* took issue with this interpretation, claiming the city *qāẓī* had only given the question a cursory (*sarsarī*) examination and that the issue of Amīn Ṣāḥib's military service had no bearing on the question.[228] Miriam Bī's destitute circumstances clearly necessitated a more lenient interpretation, the *dār-ul-iftā'* seemed to suggest, but the *dār-ul-iftā'* itself did not have the authority to nullify Miriam Bī's marriage; she was stuck between the proverbial rock and hard place.

The *dār-ul-iftā'* answered other questions of marriage and separation with greater agility. When Amīna Bī wrote to the *dār-ul-iftā'* to determine whether her marriage was valid following her decision to renounce Islam (*Islām sē phir jānā*), the response prepared by the *dār-ul-iftā'* was short and concise: "If someone in a married couple turns away from Islam (*zōjain meiñ sē kō'ī aik agar Islām sē phir ja'yē*), a separation happens between them (*tō mā bain tafrīq wāqi' hō jātī hai*)… According to the situation in question, the woman is free to marry whomever she wishes (*ṣūrat-i mas'ūla kē liḥāẓ sē musammāt majāz hai ke jis sē chāhai, rishta-yi izdiwāj jōṛē*) and that the relationship to her previous husband no longer remains (*bāqī nahīñ rahā*)."[229] Apostasy within a Muslim marriage

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[227] Ibid. The four-year waiting period prescribed by the Malikī school for cases of *mafqūd-ul-k̲habar* was the view adopted in British India by the Dissolution of Muslim Marriages Act in 1939, but the act also allowed women to seek divorce if a husband failed to maintain his wife for two years. See Rohit De, "Mumtaz Bibi's Broken Heart: The Many Lives of the Dissolution of Muslim Marriages Act," *Indian Economic & Social History Review* 46, no. 1 (2009): 114; and Syed Mohammed Ali, *The Position of Women in Islam: A Progressive View* (Albany, NY: State University of New York Press, 2004), 72.

[228] APSA, Fatwa Number 67 of 1950.

[229] APSA, Fatwa Number 58 of 1950 CE.

was grounds for separation, the answer reasoned.

The issue of renouncing Islam in order to escape or terminate an undesirable or abusive relationship was one of the concerns that contributed to the formulation the Dissolution of Muslim Marriages Act in British India in 1939.[230] Ashraf ʿAlī Thānwī and other leading members of the Indian *ʿulamā* were concerned about the alarming rate at which young Muslim women were renouncing their faith in order to escape unpleasant marriages.[231] The Dissolution of Muslim Marriages Act provided a more reasonable path to divorce that would protect women from abusive husbands, while at the same time protecting and preserving their religious devotion.[232] The response in Hyderabad a decade later reflects a different attitude towards the issue. Rather than questioning, challenging, or trying to undo Amīna Bī's decision to turn away from Islam, the *dār-ul-iftā'*s response here freely granted Amīna Bī the ability to contract a new marriage with whomever she desired.[233] Perhaps the fact that Islam in Hyderabad was not facing constant criticism allowed the *ʿulamā* to answer this question without resorting to extensive mental gymnastics. Flexibility to answer questions according to their context is one of the ways in which the *dār-ul-iftā'* differed from the courts of law, in which the application of the law's letter often

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[230] De, "Mumtaz Bibi's Broken Heart"; Sylvia Vatuk, "'Where Will She Go? What Will She Do?' Paternalism toward Women in the Administration of Muslim Personal Law in Contemporary India," in *Religion and Personal Law in Secular India: A Call to Judgment*, ed. Gerald James Larson (Indiana University Press, 2001), 232; and Vatuk, "Moving the Courts: Muslim Women and Personal Law," in *The Diversity of Muslim Women's Lives in India*, ed. Zoya Hasan and Ritu Menon (New Brunswisck, NJ: Rutgers University Press, 2005), 36–40.

[231] Fareeha Khan, "Traditionalist Approaches to Shari`ah Reform: Mawlana Ashraf `Ali Thanawi's Fatwa on Women's Right to Divorce" (Ph.D., University of Michigan, 2008); Muhammad Khalid Masud, "Apostasy and Judicial Separation in British India," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, Harvard Studies in Islamic Law (Cambridge, Mass: Harvard University Press, 1996), 193–203; Muhammad Qasim Zaman, *Ashraf 'Ali Thanawi: Islam in Modern South Asia*, Makers of the Muslim World (Oxford: Oneworld, 2008), 57-62.

[232] Despite the compassion granted to women looking to end unpleasant marriages, efforts to place the needs of the community over the woman's religious freedom is as paternalistic as it is compassionate. (See, e.g., Vrinda Narain, *Reclaiming the Nation: Muslim Women and the Law in India* [Toronto: University of Toronto Press, 2008], 69–73.)

[233] APSA, Fatwa Number 58 of 1950 CE.

superseded the spirit of the law.

In this way, the *dār-ul-iftā'* created legal options for petitioners either without access to or without success in other legal fora. This was the situation Ruqaiya Bī brought to the Ṣadārat-ul-ʿĀliya in December of 1948.[234] Ruqaiya Bī was a widow concerned for the well-being of her daughter, who was married to her uncle's son. The marriage was unhappy; the daughter was beaten and did not receive proper maintenance at home. As a widow, Ruqaiya Bī had very little power. She took her daughter to court to request the marriage's dissolution (*ḵẖulʿ kē liyē kahē*) and was even content to forgive the son-in-law's dower payment (*mahr muʿāf karnē par raẓāmand hu'ē*), but at each and every turn, Ruqaiya Bī's uncle was there to block her efforts and to defeat her (*mujhē shikast dē rahē haiñ*).[235] So after these struggles, Ruqaiya Bī approached the *dār-ul-iftā'* looking for guidance and support.

The Ṣadārat-ul-ʿĀliya's first note on the matter took Ruqaiya Bī's complaints and reframed them according to the possible interpretation that her daughter's marriage agreement had been executed against her will (*duḵẖtar kē ʿaqd unkī marẓī kē ḵẖilāf hū'a hai*). "In this context," the note continued, "if I have permission, then after examining the marriage register, I can provide…a detailed opinion (*agar ḥukm hō, tō maiñ siyāha kō dēkhnē kē baʿd mufaṣṣal rā'i kar sakūnga*).[236] Ruqaiya Bī did not frame the problem in these terms when she wrote to the *dār-ul-iftā'*, but the clerk extracted the root of the problem from Ruqaiya Bī's scattered articulation and began to work on a solution, using the records available within the government's marriage registers. As the office continued to investigate the situation, it clung to the idea that Ruqaiya Bī contracted this

[234] APSA, Fatwa Number 142 of 1348 Fasli.

[235] Ibid., 2.

[236] Ibid., 3.

marriage for her daughter out of necessity and that her daughter had not been privy to the decision.[237] Upon consultation, the marriage contract (number 25734) confirmed this assertion (*darḵẖwāst ke bayān kī ṣadāqat hō jātī hai*).[238] The marriage register explicitly mentions that aside from her grandfather, there was no near relative (*qarībī rishta*) present to serve as guardian (*walī*).[239] When the mother is still living, the grandfather's guardianship is not preferred for the purposes of executing a marriage contract (*ʿaqd kē liyē, nānā kī wilāyat hargiz afẓal nahīñ hō saktī*), the office assistant pointed out, therefore, the *muftī* could declare the marriage invalid.[240] Yet despite locating a plausible means for aiding Ruqaiya Bī's daughter, however, the Ṣadārat-ul-ʿĀliya did not conclude its investigation at this point.

To confirm the results of its inquiry, one of the *muftī*s of the Ṣadārat-ul-ʿĀliya, Sayyid Muḥammad, asked Ruqaiya Bī a series of additional questions.[241] Beginning with the question of whether she was satisfied with her daughter's marriage contract and ending with a question about whether the *qāẓī* sought verbal or written consent from her at the time of the contract's execution, the *muftī* confirmed the conclusion that the original contract had been improperly executed. In its response, then, the *dār-ul-iftā'* explained the problem of the grandfather's inability to contract his granddaughter's marriage and deemed the *ʿaqd* invalid (*ġẖair ṣaḥīḥ*).[242] Drawing upon its powers to investigate the situation and to examine the context of the marriage contract's execution, the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya found a legal solution to Ruqaiya Bī's impossible

[237] Ibid., 4.

[238] Ibid.

[239] Ibid.

[240] Ibid.

[241] Ibid., 5.

[242] Ibid., 6.

situation. By rendering the marriage contract invalid through this means of investigation and interrogation, the *dār-ul-iftā'* provided Ruqaiya Bī with the opportunity to escape the monetary and emotional imprisonment imposed upon her and her daughter.

Not all questions presented to the *dār-ul-iftā'* by female petitioners revolved around questions of marriage, divorce, and remarriage, but many of them did. In its capacity to respond thoughtfully and compassionately according to the original context, the *dār-ul-iftā'* provided women with ethical, equitable, and legal solutions to their everyday problems. The office also drew upon its institutional structure to make enquiries with other offices on behalf of its petitioners, as it did in the case of Miriam Bī by referring the question to the city *qāẓī* or in the case of Ruqaiya Bī by examining the register of marriages and uncovering details about who acted as guardian at her daughter's marriage. This ability to send questions to specialists in particular areas (e.g., the *qāẓī*) or to cross-reference statements with accessible records (e.g., marriage registers) enabled the *dār-ul-iftā*' to weigh questions of law and religion in the context of modern bureaucratic governance, and in Princely Hyderabad, the *dār-ul-iftā*' of the Ṣadārat-ul-ʿĀliya was uniquely poised to undertake this effort.

VI. Conclusion

Institutional status and bureaucratic processes gave the *dār-ul-iftā*' of the Ṣadārat-ul-ʿĀliya a credible presence within the modern bureaucratic state. As the Hyderabad state reformed its judicial system to match changes introduced in British India, creating an appellate court system and introducing a high court, it also created separate spaces for the practice of "religious" law. But unlike in British India, the princely state did not excise all aspects of religious legal practice from its administrative structure. Through institutions like the Religious Affairs Department

(*Maḥkama-yi umūr-i mazhabī*), the government extended its bureaucratic practices and protocols to religious institutions in the same way it extended such procedures to the state's "secular" institutions. This institutional structure offered possibilities different from those offered by non-state *dār-ul-iftā*'s in British India. Seeking advice from the state's *dār-ul-iftā'* did not take place in opposition to the state's other judicial or administrative institutions but rather occurred in concert with those institutions.

As Chapter Five suggested, in late-nineteenth and early-twentieth century South Asia, seeking and receiving *fatwā*s provided devout Muslims living in a changing world with access to timely advice on the problems they encountered through the introduction of new technologies and modes of transportation, new administrative structures and governmental relationships (rooted in a purportedly secular ideology rather than backed by the religious authority or political acumen of a Muslim ruler), and a growing sense of one's place in a globalizing world. The state-supported *dār-ul-iftā'* in Hyderabad also engaged in these activities, but it also did more than this. In addition to answering personal questions, the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya also helped petitioners navigate the state's legal system, to locate the correct judicial body, and to present their claims in the proper legal terminology in order, say, to achieve a legal separation from an abusive or absentee husband. It guided them through the complicated accounting involved in inheritance disputes and lent flexibility to the more rigid rules of irrevocability governing the state's *waqf* board. With its status confirmed within the administrative structure of the princely state, the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya could navigate an intermediary course between the alienation and rigidity of bureaucratic governance and the *muftī*'s contingent, personal, and ethical approach to petitioners' problems.

The *fatwā* files of the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya in Hyderabad thus bear the imprint of the princely state's increasingly modern bureaucratic administration. Indeed, many of the paper forms and annotations employed in the paperwork produced by the *dār-ul-iftā'* are identical to those found in other government departments—cover sheets, serial numbers, tables of contents, internal office memos, marginal notes. In this way, the *dār-ul-iftā'* presented itself not as the idiosyncratic arm of a fickle, individual, or capricious office but as an accountable, regulated, and efficient organization, capable of providing individual petitioners with accurate, reliable, and timely responses to their enquiries.

At the same time, the lack of enforcement capability did not weaken but rather strengthened the *dār-ul-iftā'*s authority.[243] Even for questions involving the execution of legal documents, concerned with the exact letter of the law written into these deeds, the unique status of the *dār-ul-iftā'* allowed it to focus on the content of the questions it received. Though the newly reorganized *waqf* board could not bend its rules to accommodate Ḡẖulām Muḥammad K̲ẖān's concern regarding the dispossession of his property before the time of his death, by considering the language of the *waqf-nāma* in its entirety—rather than simply pushing for the blanket application of the department's rules—the *dār-ul-iftā'* produced an interpretation of the document that rendered it invalid and allowed Ḡẖulām Muḥammad K̲ẖān to maintain possession of the property until the time of his death. In this way, the *dār-ul-iftā'* offered an alternative mode of dispute resolution that provided individuals with legal and ethical solutions to problems arising among individuals and their families or between families and other

[243] On the lack of political support for *fatwā*s in British India, see Barbara Daly Metcalf, "Two Fatwas on Hajj in British India," in *Islamic Legal Interpretation: Muftis and Their Fatwás,* ed. Muhammad Khalid Masud, B. Messick, D. S. Powers (Cambridge: Harvard University Press, 1996), 190.

government agencies. And many of the answers it provided not only gave petitioners legal solutions to their problems but also guided them in negotiating the bureaucratic processes of other institutions. Many of the *muftī*s who lived and worked in British India could also do this, but their unofficial status left them vulnerable to factionalism and competition as well as to allegations of separatism or dis-integration from the mainstream nationalist political body. These are a few of the dynamics that made the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya unique.

Not all state-sponsored *dār-ul-iftā'*s are immune to allegations of corruption or immorality. In fact, in many instances where the *muftī*'s role has been formalized and institutionalized, questions about ethics and moral integrity frequently arise. This bifurcation between the ethical integrity of the jurist or theologian working at the margins of the state and the corruption and venality of the state-appointed judge or jurist has a long tradition within the history of Islamic legal practice that continues into the present. For instance, Hussein Agrama notes that in contemporary Egypt, individuals often visit the *dār-ul-iftā'* of Al-Azhar in order to double-check or to confirm rulings offered by the state's *sharī'a* court.[244] Likewise, in the world of Islamic finance, scholars often level attacks against one another for declaring the legitimacy of or certifying as *ḥalāl* certain financial instruments in order to validate or legalize the actions of their political or financial backers.[245] The *ʿulamā* of South Asia are not immune to these types of

[244] Agrama, "Ethics, Tradition, Authority; and Agrama, "Law Courts and Fatwa Councils in Modern Egypt."

[245] On the contentious politics of Islamic finance, see, e.g., Habib Ahmed, "Legal Environment for Islamic Banks: Status in Selected Gulf Cooperation Council Countries," in *Islamic Finance: Political Economy, Values and Innovation* (Volume 1) (Berlin: Gerlach Press, 2015), 47–62; Jonathan A. C. Brown, "Reaching into the Obscure Past:: The Islamic Legal Heritage and Reform in the Modern Period," in *Reclaiming Islamic Tradition, Modern Interpretations of the Classical Heritage* (Edinbrugh: Edinburgh University Press, 2016), 100–135; Clement M. Henry and Rodney Wilson, eds., *The Politics of Islamic Finance* (Edinburgh: Edinburgh University Press, 2004); Monzer Kahf, "Islamic Banks: The Rise of a New Power Alliance of Wealth and Shari'a Scholarship," in *The Politics of Islamic Finance*, 17–36; Muhammd Tahir Mansoori, "Is 'Islamic Banking' Islamic? Analysis of Current Debate on Sharī'ah Legitimacy of Islamic Banking and Finance," *Islamic Studies* 50, no. 3/4 (2011): 383–411; Thomas Pierret, "Merchant Background, Bourgeois Ethics: The Syrian 'ulama and Economic Liberalization," in *Syria from Reform to Revolt*, ed. Fred H. Lawson, Volume 2: Culture, Society, and Religion (Syracuse University Press, 2015), 130–46.

controversies and disputes and also benefit ethically from their marginal position within the state's administration of law.[246] One of the reasons they remain a viable alternative to forms of dispute resolution offered by the state lies in the fact that its bureaucracy remains in many ways more efficient than the bureaucracy of the state. If bureaucracy gives South Asia's *ʿulamā* legitimacy within and in relation to the state's apparatuses, then efficient (and at times flexible) bureaucracy also lends support to these institutions.

In early-twentieth-century Hyderabad, the bureaucratic structure of the state's *dār-ul-iftā'* lent it legitimacy amidst the state's modernizing administration. Through the production, compilation, and circulation of files, the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya dressed the office of the *muftī* in the apparel of modern office work—making itself modern through the procedures of paperwork it followed and the official memoranda it composed. It also exercised its efficiency by formalizing its procedures for cross-checking, double-checking, and investigating the questions it received. These practices made the *dār-ul-iftā'* administratively modern and procedurally bureaucratic while allowing the content of its responses to embrace the flexibility, contingency, and individuality the *fatwā*'s dialogic format promoted. In these ways and others, the *dār-ul-iftā'* of the Ṣadārat-ul-ʿĀliya presented an alternative answer to the question of how Islamic legal practice became relevant to the process of modern governance. Many of these lessons learned in the late-nineteenth and early-twentieth centuries continue to shape the practice of Islamic law today.

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[246] For an introduction to some of these controversies, see, e.g., William Gould, *Religion and Conflict in Modern South Asia* (Cambridge University Press, 2011); Brian J. Didier, "When Disputes Turn Public: Heresy, the Common Good, and the State in South India," in *Public Islam and the Common Good*, ed. Armando Salvatore and Dale F. Eickelman (Leiden: Brill, 2004); and more generally, Armando Salvatore and Dale F. Eickelman, eds., *Public Islam and the Common Good* (Leiden: Brill, 2004).

EPILOGUE: LIFE AND LAW IN THE POST-COLONIAL WORLD

In 2013, I took a break from sifting through published collections of *fatāwa* in the library at the Dār-ul-ʿulūm Nadwat-ul-ʿulamā to visit the school's *dār-ul-iftā*'. The enquiries I had made at the library for information about possible registers used to record and compile the school's *fatāwa* had been rather unsuccessful, and the staff at the library referred me not to the university's archives but to the school's book sales depot to purchase copies of the first volumes of the institute's newly edited and compiled *fatwā* collection. Needless to say, I was not very interested in these volumes—the contents of which quickly find their way onto the internet and are readily available in academic libraries in the U.S. Instead, I was interested in the older, unedited registers of *fatwā*s that would capture the day-to-day workings of the *dār-ul-iftā*' and provide insight into the individuals who brought their questions to the *muftī*. At Nadwa, these registers (if they do indeed still exist) were not made available to me, but I was able to visit the institute's *dār-ul-iftā*' instead.

Located in the southeast corner of Nadwa's campus, the *dār-ul-iftā*', and its adjoining *dār-ul-qaẓā* are working institutes of Islamic legal practice to which inhabitants of Lucknow and its neighboring areas bring their questions, concerns, and complaints. The authority these institutions maintain derives from the public's respect for the venerable history and continued service to the community, as well as from the *dār-ul-qaẓā*'s authority to settle domestic or personal disputes within the framework of the personal law system. The status of the *dār-ul-qaẓā*'s remains controversial within Indian society and their powers of enforcement are necessarily limited,[1] but

[1] Jeff Redding's recent contribution to the *St. Louis University Law Journal* offers a detailed summary and careful analysis of these debates in India today. See Jeffrey A. Redding, "Secularism, The Rule of Law, and 'Shariʿa Courts': An Ethnographic Examination of a Constitutional Controversy," *Saint Louis University Law Journal* 57, no. 2 (Winter 2013): 339–76.

*dār-ul-qaẓa*s like the one at Nadwa exist in many cities throughout India, and new *dār-ul-qaẓā*s continue to emerge.[2] On the day I first visited the *dār-ul-iftā*', the Nadwa campus was quiet and the *dār-ul-qaẓā* was not in session, but when I peeped into the room, I could see tables and chairs arranged like a small, family court room, with files and folders waiting on the docket.

The *dār-ul-iftā*' is located diagonally across the hall from the *dār-ul-qaẓā* and when I entered tentatively, I was greeted politely, if not with a bit of confusion. When I told the gentleman seated behind the small but cluttered desk situated in the middle of the office why I was there, I was instructed to take a seat and was offered a glass of chai while the man in charge tried to track down some of Nadwa's more advanced students who would know whether Muftī Ṣāḥib was on campus that day or not. Unfortunately, neither Muftī Ṣāḥib, nor his assistant, were available that day, but while I waited for answers to arrive about the *muftī*'s current whereabouts (Delhi, or maybe the Gulf, or the U.S.), I was able to observe the day-to-day activities inside the office.

Two visitors arrived while I sat and waited. The first was a journalist who worked for the local Lucknow paper. Through print journalism is a dying medium in South Asia, as it is around the world, the local Urdu papers in cities like Lucknow, Hyderabad, Delhi, and Mumbai, among others, often print a weekly column dedicated to *sawāl-o-jawāb* or *iftā*'. These columns, which usually appear in Friday's paper to correspond with the weekly "holiday" and *juma*' prayers, and many of them are prepared for local papers by the local *dār-ul-iftā*'s. During my visit to the *dār-ul-iftā*' at Nadwa, I had the opportunity to witness the process. The journalist entered, presented his

[2] Mohammed Wajihuddini, "Mumbai Gets Its First Shariah Court to Settle Civil, Marital Disputes," *The Times of India*, April 29, 2013, Mumbai edition, http://timesofindia.indiatimes.com/city/mumbai/Mumbai-gets-its-first-Shariah-court-to-settle-civil-marital-disputes/articleshow/19772852.cms.

"hellos" and "*salāms*" to the staff, and then proceeded to inquire about the status and preparedness of the text for that week's column.

This practice has a direct connection to practices that began in the late nineteenth century when aspiring *muftī*s began to print *sawāl-ō-jawāb* columns in their newspapers as a way to publicize the advice they were giving and also to give a public face to on-going debates tied to various aspects of religious law in late-colonial society. The columns fulfill a similar purpose today, allowing *muftī*s to print answers to important, timely, or even mundane questions about marital relations, health and well-being, living and traveling abroad, devotion and religious practice, and the vicissitudes of the fast during the month of Ramadan. A careful reader might observe that many of the questions that appear in the paper today also appeared in the paper in the past and that many of the same questions periodically reappear, occasionally on an annual cycle (e.g., questions about fasting and vaccinations) while others present a much more unique face—perhaps relevant only to the one person who asked the question—but these columns demystify the process of seeking or receiving a *fatwā* and give a public presence to the *muftī*'s take on religious legal interpretation in the present day (at least for those who take the time to read the Urdu-language newspapers).

The other practice I observed while waiting at the *dār-ul-iftā*' revolved around the visit of a young student who had submitted a question for the *muftī*'s consul. A few days after his first visit to the *dār-ul-iftā*' to request the *muftī*'s advice, the student had returned to the office to retrieve his answer. The assistant seated behind the table asked the young man his name and the content of his question, then proceeded to look through the stack of papers on his desk. After finding the page on which the student had submitted his question, the assistant glanced at the back of the

page to confirm whether or not the *muftī* had written and confirmed his answer. Noting that the *muftī* had, in fact, completed the *fatwā*, the assistant then placed the original document on the bed of the multifunction printer-copier-scanner beside him. He copied the student's question and the *muftī*'s response, punched holes in the print out, and filed the document in a binder filled with other people's questions and the *muftī*'s responses. He then handed the document back to the student, after reading through the answer and making sure the student understood its nuances. I was neither made privy to the contents of the student's question nor able to overhear the entirety of the exchange between the student and the assistant, but from my seat at the same table, I was able to observe this practice and to take note of the efficiency, clarity, and consistency with which the assistant executed his duties.

A visit to a government office—let alone a government archive—would hardly run as smoothly as the transaction I witnessed. The request the student left with the *muftī* after his first visit had been answered. The assistant was able to find the document upon the student's return. The multi-function printer-copier-scanner was working when the assistant needed it (and it had ink and paper!) and he did not need to check with his superior or to wait for permission from the person above or below him in the bureaucratic hierarchy to complete this task. The entire exchange lasted five, maybe seven minutes, after which the student left, content with the answer he received. The assurances of the bureaucratic office, the formality of the assistant's procedure, and the record-keeping measures of the certifying and copying procedure not only matched those of a government office but would likely exceed the expectations of anyone who has entered such an office for the purpose of having a form, request, petition, or procedure completed by the state. Such efficiencies not only within Nadwa but within other Islamic institutions I visited during the

course of my research demonstrate one of the reasons why such institutions remain popular and continue to serve vital functions in their communities. Private organizations across the subcontinent likely share in this favoritism of efficiency, which allows them to fill gaps produced by clumsy, inefficient, or corrupt government institutions while also serving the needs of specific communities.[3] Care and efficiency are two of the main reasons alternative legal fora remain popular options among Muslims and within other communities as well.[4]

Yet the non-state aspect of these fora also rankle their detractors, who feel such non-state fora, which derive understandings of gender (in)equality and human rights from religious sources, interfere with the post-colonial state's constitutional protections and guarantees.[5] In Pakistan, as well as in India, the state's ability to legislate uniform civil protections that cut across religious understandings and authorities are a constant source of tension and controversy—one that also hinders Muslim reformers' ability to engage with state-sponsored approaches to legal reforms. But one of the obstacles that anthropological research—and to a lesser extent historical study—is able to bring to light is the extent to which alternative forms of dispute resolution, legal engagement, and legal concepts derive from the state's consistent failures to address the needs of some of the most vulnerable segments of the population, and more often than not, these

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[3] For an anthropological consideration of some of these institutions in India today, see Katherine Lemons, "At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi" (Ph.D. Dissertation, University of California, Berkeley, 2010).

[4] Noah Salomon also foregrounds affective concerns when thinking about the origins of the modern Islamic state. See Salomon, *For Love of the Prophet: An Ethnography of Sudan's Islamic State* (Princeton: Princeton University Press, 2016).

[5] See Sylvia Vatuk, "Moving the Courts: Muslim Women and Personal Law," in *The Diversity of Muslim Women's Lives in India*, ed. Zoya Hasan and Ritu Menon (New Brunswisck, NJ: Rutgers University Press, 2005), 18–58 for a consideration of Muslim Personal Law in relation to constitutional debates, along with Eleanor Newbigin, et al., "The Codification of Personal Law and Secular Citizenship: Revisiting the History of Law Reform in Late Colonial India," *The Indian Economic & Social History Review* 46, no. 1 (January 1, 2009): 83–104, doi: 10.1177/001946460804600105.

segments of the population—the poor, the illiterate, women—are the ones held up as needing safeguarding from these vicious non-state actors.[6] Advocates of Islamic legal practice are not alone in their efforts to address the needs of these communities and to use alternative legal frameworks to uplift their communities and to settle settle intra-communal disputes. Khap and Nyaya panchayats and other family, caste-, and tribe-based organizations also engage in similar forms of adjudication and dispute resolution, yet the vigilantism promoted by these groups is less likely to be read as an attack on the secular foundations of independent India today than are Islamic legal organizations.[7] In these ways, Islamic law at once stands out as something more and something quite less than it can be today.[8]

Tensions between Islamic law, Anglo-Indian law, Hindu law, secular law, and international understandings of "rule-of-law" often place these different "types" or "forms" of law at odds with one another, as fundamentally opposed, entirely distinct, and irreconcilably different. Yet

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[6] See, e.g., Pratiksha Baxi, Shirin M. Rai, and Shaheen Sardar Ali, "Legacies of Common Law: 'Crimes of Honour' in India and Pakistan," *Third World Quarterly* 27, no. 7 (2006): 1239–53.

[7] In recent years, these institutions have received some criticism as antiquated or unconstitutional institutions, though they still carry more favor than the demonized "shari'a courts" Jeff Redding discusses. On panchayats in British India, see Marc Galanter, "The Displacement of Traditional Law in Modern India*," *Journal of Social Issues* 24, no. 4 (April 14, 2010): 65–90, doi:10.1111/j.1540-4560.1968.tb02316.x; James Alan Jaffe, *The Ironies of Colonial Governance: Law, Custom, and Justice in Colonial India*, Cambridge Studies in Law and Society (Cambridge, United Kingdom: Cambridge University Press, 2015); and Mitra Sharafi, "Judging Conversion to Zoroastrianism: Behind the Scenes of the Parsi Panchayat Case (1908)," in *Parsis in India and the Diaspora*, ed. John R Hinnells and Alan Williams (London: Routledge, 2007), 159–180, along with Robert M. Hayden, "A Note on Caste Panchayats and Government Courts in India," *The Journal of Legal Pluralism and Unofficial Law* 16, no. 22 (January 1, 1984): 43–52, doi: 10.1080/07329113.1984.10756282. For criticisms of these institutions that raise such concerns, see, e.g., A. Avasthi, "Judicial (Nyaya) Panchayats in Madhya Pradesh," *The Indian Journal of Political Science* 13, no. 3/4 (1952); Nirmala Buch, "Reservation for Women in Panchayats: A Sop in Disguise?," *Economic and Political Weekly* 44, no. 40 (2009): 8–10; Dilip K. Ghosh, "Governance at Local Level: The Case of Panchayats in West Bengal," *The Indian Journal of Political Science* 69, no. 1 (2008): 71–88; Dinoo Anna Mathew, "Panchayats Alone Are Not to Blame," *Economic and Political Weekly* 37, no. 18 (2002): 1767–68; Ranbir Singh, "The Need to Tame the Khap Panchayats," *Economic and Political Weekly* 45, no. 21 (2010): 17–18; Vidya Bhushan Rawat, "India: Haryana's Khap Panchayats Are Unconstitutional - South Asia Citizens Web," *South Asia Citizens Web*, October 18, 2012, http://www.sacw.net/article2935.html; and Bhupendra Yadav, "Khap Panchayats: Stealing Freedom?," *Economic and Political Weekly* 44, no. 52 (2009): 16–19.

[8] Iza Hussin's treatment of the "paradox" of Islamic law encapsulates this duality. Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The University of Chicago Press, 2016).

glancing back to the nineteenth century reveals more similarities than differences, more parallelisms than oppositions, and more modifications than traditions. While the majority of the historiography focused on the long nineteenth century has addressed the role colonial officials, judges, and their texts and translations, had on the transformation of law and religion in colonial South Asia, the present dissertation has taken a different tack, looking at the ways in which law and legal action shaped and structured the lives and lived experiences of individuals who lived during this period. Certainly the colonial construction of categories for "religion" and the "state", "personal law" and "public law" affected these experiences, but surveying colonial ideologies and political policies only addresses one side of the experience. The full history of this encounter must necessarily address the other side of law as well—that is, the side through which individuals defined themselves in legal categories, organized their lives through legal transactions, understood their actions in terms of their legality or illegality, and came to recognize the pervasive power of the modern, bureaucratic state. That is the story this dissertation tells, and it is the story with which Islamic legal practitioners continue to engage today.

At the beginning of the nineteenth century, many of South Asia's *qāẓī*s and *muftī*s possessed only a vague notion of what their titles or offices entailed. They worked independently in remote towns, and villages, serving the local communities who inhabited these locations. By the end of the nineteenth century, the *qāẓī*s were organized, engaged, and capable of producing records that bore the enumerative specificity and documentary complexity of the colonial state's own engine of paper. *Muftī*s—and members of the South Asian *ʿulamā* more broadly—also defined themselves and their work in terms professional ability, scholastic training, and most notably for the figures and organizations considered in Chapter Five, in terms of institutional

formality. Just as the *qāẓī* could no longer document a marriage without creating an elaborate entry for it in his register—complete with the participants' names, ages, addresses, professions, and thumb-tip impressions—the *muftī* could also no longer issue a *fatwā* without proclaiming his institutional affiliation, professional credentials or location in an extensive intellectual network of scholars, *ʿālim*s, and *ʿulamā*. These are some of the the markers that defined the transformation of such Islamic legal practitioners in the nineteenth century and they are still the markers that define and characterize the most vocal proponents—as well as the opponents—of certain legal reform measures today.

For outsiders, the definition, meaning, and practice of Islamic law remains a fraught field in which to wander, but a closer consideration of the materials, methods, and paperwork protocols that dominate legal bureaucracies in secular as well as religious institutions point to the many commonalities and similarities between these modes of action. Indeed, these similarities fuel some of the most contentious debates not only in post-colonial South Asia where the shape of Islamic legal practice continues to follow the contours of regional difference and local experience but also in the United States, Canada, the United Kingdom, and around the world in Muslim majority and minority nations. Unfortunately in these debates, the fundamental similarities among people turning to law to satisfy personal needs and to create a habitable world in which to live are often lost amidst the clamor of political party disputes and xenophobic rhetoric. Understanding the historical origins of these apparent—and seemingly ever-growing—divides and the motivations behind their development provides a rubric for advancing these debates more productively and humanistically.

APPENDIX A: DOCUMENTS FROM BHARUCH[1]

Document A:

This document is a deed of sale (*baiʿ*) for a house and two *qaṭʿa* of land belonging to Tulsī Dās (son of Kishanjī) and Mūrarjī (son of Naryanjī). The document is dated 19 Rabīʿ al-ṣānī 1185 AH and bears the the seal of Sayyid Murtaẓá.

Document B:

This document is also a deed of sale dated 14 Shawwāl 1141 AH. It refers to a single-story house constructed of clay bricks and located within the limits of the Chunhar district. The property belongs to Aḥmad, who obtained the property from his father Sulaimān. This baiʿ nāma describes the sale of the house to Shaiḵẖ Ismaʿīl, sone of Muḥammad Qāsim for 173 rupees of ʿĀamgīrī weight. The document contains three Persian signatures, with ornamental floral designs, and a fourth signature in Gujarati.

Document C:

This document is a sale deed dated 17 Ramaẓān 1231 AH (corresponding to 19 August 1816). It bears the "sign" of Roshan at the bottom.

Document D:

This document, the bottom portion of which has been damaged, is another deed of sale dated 1081 AH. The document contains a number of seals and attestations around the border of the page.

Document E:

This document is a deed of sale dated the 26 of Ramaẓān 1166 AH.

Document F:

This document is a *tamassuk,* or deed of obligation. It includes two seals at the top of the page (very faint in the reproduction), one of which is in Devanagarī script. The document is dated 2 Rabīʿ al-awwāl 1215 AH.

Document G:

This document is a deed of sale dated 15 Ṣafar 1108 AH. It includes dozens of attestations along the right-hand margin, many of which are written in the Moḍī script.

Document H:

This document, which appears to be a deed of sale, has been rendered illegible in the course of its preservation and subsequent reproduction.

Document I:

This document is a deed of sale dated 15 Ẕūlḥijja 1123 AH.

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[1] NAI, MSS Microfilmed at Bharuch, Acc. No. 851. This appendix lists and summarizes the documents preserved among the family papers of the *qāẕīs* of Bharuch. The documents have been rather haphazardly microfilmed and this list aims to aid scholars looking to make use of the collection in the future.

Document J:

This document is a deed of sale dated 25 Jumādī al-ṣānī 1205 AH.

Document K:

This document is a deed of sale dated 15 Shawwāl 1195 AH. It bears the seal of Qāẓī Aḥmad Ḥusain with the date 1186 AH.

Document L:

This document is a deed of sale dated 6 Jumādī al-ṣānī 1152 AH. It bears the seal of Qāẓī Muṣtafá with the date 1151 AH.

Document M:

The documents on this page are copies of *madad-i maʿāsh* grants, which have been copied and reaffirmed by the *qāẓī*.

BIBLIOGRAPHY

UNPUBLISHED PRIMARY SOURCES

Bodleian Library, Oxford University

Persian Manuscripts (Ms. Per.)

British Library, Asia, Pacific, and Africa Section (BL)

India Office Records (IOR)

Board of Control Records (IOR/F)

Bombay Judicial Consultations Indices (IOR/Z/P)

India Office Records Official Publications Series (IOR/V)

East India Company: General Correspondence (IOR/E)

Home Miscellaneous Series (IOR/H)

Proceedings and Consultations (IOR/P)

Political Department Indian States Records 1880-1947 (IOR/R/1)

Indian States Residencies Records (IOR/R/2)

Public and Judicial Department Records (IOR/L/P&J)

Political and Secret Department Records (IOR/L/P&S)

India Office, Islamic Manuscripts (IO Islamic)

Oriental Manuscripts (Or.)

Additional Oriental Manuscripts (OMS. Add.)

Vernacular Tracts (VT)

The National Archives (UK) (TNA)

Family History Centre Microfilms

The National Archives of India (NAI)

Central India Agency (CIA)

Foreign Department, Persian

Home Department Proceedings

Judicial Branch

Legislative Branch

Oriental Records Department

Acquired Documents

Acquired Manuscripts

Manuscripts Microfilmed at Bharuch, Acc. Nos. 848, 850, 851

Miscellaneous Microfilm Collection

Andhra Pradesh State Archives (APSA), India

Reports on the Administration of H.E.H. the Nizam's Dominions

Āṣaf Jāhī Collection, Daftar-i Ṣadārat-ul-ʿĀliya, Fatwās

Maharashtra State Archives (MSA), India

Bombay Government Gazette

Judicial Department Proceedings

Uttar Pradesh State Archives (UPSA), India

Proceedings—Judicial (Civil) Department

Selections from the Vernacular Newspapers Published in the Panjab, North-Western Provinces, Oudh, Central Provinces and Berar

Law Reports

Indian Law Reports (ILR)

Allahabad Series

Bombay Series

Calcutta Series

Madras Series

All India Report

Reports of the Selected Cases Decided by the Sudder Dewanee Adawlut, Bombay

Decisions of the Sudder Dewanny Adawlut: recorded in English in conformity to Act XII. 1843, in 1845[-1861]: with indexes of names of parties, and the causes of action, and principal points touched upon in the decision

PUBLISHED PRIMARY SOURCES

ʿAbdul Ḥayy Farangī Maḥallī. *Majmūʿa-Yi Fatāwa*. 2 Vols. vols. [Lucknow]: Shaukat-e Islām, 1886.

ʿAbdullāh Ṣaḥib Ṭōnkī, Muftī Muḥammad, ed. and compiler, *Fatāwa-yi Ṣābriya*. Lahore: Matḅ aʿ Faiẓī, [1907].

An Appeal to England Against the New Indian Stamp Act; with some Observations on the Condition of British Subjects in Calcutta, under the government of the East India Company (London: James Ridgway, 1828).

ʿAzīz-ur-Raḥman. *Fatāva Dārulʿulūm Diyoband.* 2 vol. vols. Karācī: Dārulishāʿat, 1976.

Bernier, François. *Travels in the Mogul Empire, AD 1656–1668*. Revised and Improved Edition. Edited by Archibald Constable. Translated by Irving Brock. Westminster: Archibald Constable and Company, 1891.

Decisions of the Sudder Dewanny Adawlut: recorded in English in conformity to Act XII. 1843, in 1845[–1861]: with indexes of names of parties, and the causes of action, and principal points touched upon in the decision. (Calcutta: W. Risdale, Bengal Military Orphan Press, 1847).

Dow, Alexander. *The History of Hindostan, from the Death of Akbar, to the Complete Settlement of the Empire under Aurungzebe. To Which Are Prefixed, I. A Dissertation on the Origin and Nature of Despotism in Hindostan. II. An Enquiry into the State of Bengal*. Vol. III. London: Printed for John Murray, 1772.

East India Company. *Administration of Justice in Bengal; the Several Petitions of the British Inhabitants of Bengal Recited in the Petition of Their Agents, of the Governor-General and Council and of the Court of Directors of the East India Company to Parliament. Together with Letters and Addresses to His Majesty's Ministers and to the Court of Directors Respecting the Supreme Court of Judicature in Bengal and an Account of the Expenses Incurred in Support of the Said Court.* 1 v. London, 178AD.

East India Company. *Rules, Orders, and Directions Appointed and Established by the Governour and Committees of the East-India Company, for the Well Regulating and Managing Their Affairs in the Parts of India General Rules for the President, Agents or Chiefs, and Their Respective Council*. [London: s.n., 1680].

Elliot, H. M. (Henry Miers). *Memoirs on the History, Folk-Lore, and Distribution of the Races of the North Western Provinces of India : Being an Amplified Edition of the Original Supplemental Glossary of Indian Terms*. Edited by John Beames. London: Trübner & co., 1869.

Fallon, S. W. *A Hindustani-English Law and Commercial Dictionary*. Banaras: Medical Hall Press, 1879.

Forbes, Duncan. *A Dictionary, Hindustani and English: Accompanied by a Reversed Dictionary, English and Hindustani.* London: W.H. Allen & Co., 1866.

Forrest, George, ed. *Selections from the State Papers of the Governors-General of India,*. Vol. Volume 2, Warren Hastings. Oxford: B.H. Blackwell, 1910.

Gilchrist, John Borthwick. *Hindoostanee Philology Comprising a Dictionary, English and Hindoostanee; with a Grammatical Introduction.* London: Kingsbury, Parbury, and Allen, 1825.

Government of India. *The Regulations of the Bengal Code in Force in September 1862*. Calcutta: Savielle and Cranenburgh, Bengal Printing Co., Ltd., 1862.

Great Britain, Parliament House of Lords. *Accounts and Papers; Seven Volumes. (6) Relating to East India Company and East Indies*. London: [s.n.], 1829.

Great Britain. *Second Report from the Select Committee on the Affairs of the East India Company*. Calcutta: [Cambray], [1810].

Harikaṇa, Multānī. *Inshā-yi Harkaran. The Forms of Herkern Corrected from a Variety of Manuscripts, Supplied with the Distinguishing Marks of Construction, and Translated into English: With an Index of Arabic Words Explained, and Arranged under Their Proper Roots. By Francis Balfour, M.D.* Edited and translated by Francis Balfour. [Calcutta]: Printed at Calcutta [by Charles Wilkins], 1781.

Hastings, Warren and George Forrest. *Historical Documents of British India*. Delhi: Anmol Publications, 1985.

Ḥifẓ Allāh. *Inshā-yi fayẓrasān.* Kānpūr: Nawal Kishawr, 1882.

Karīm-ud-dīn, Maulvī. *Inshāʾ-yi Urdū*. 4th edition. (Lucknow: Nawal Kishore Press, 1880).

Kifāyatullāh, Muḥammad. *Kifāyat Al-Muftī; [Yaʿnī Muftī Aʿẓam Maulānā Kifāyatullāh Kī Fatavá]*. Edited by Ḥafīẓurraḥmān Vāṣif. Dihlī[?]: Ḥafīẓurraḥmān Vāṣif (milne kā patah, Kutub Khānah Rashīdiyyah), 1971.

Master, Streynsham. *The Diaries of Streynsham Master, 1675-1680, and Other Contemporary Papers Relating Thereto*. Edited by Richard Carnac Temple. Indian Records Series. London: J. Murray, 1911.

Muir, Ramsay. *The Making of British India, 1756-1858: described in a Series of Dispatches, Treaties, Statutes, and Other Documents*. Manchester, UK: University of Manchester Press, 1915.

Nazīr Ḥusain Muḥaddis Dihlavī, Sayyid. *Fatāvā Nazīriyyahmubavvab va mutarjam.* Naʾī Dihlī: al-Kitāb Inṭarneshnal (Milne [kā patā] Maktabah Tarjuman), 2007.

Orme, Robert. A History of the Military Transactions of the British Nation in Indostan, from the Year 1745: To Which Is Prefixed a Dissertation on the Establishments Made by Mahomedan Conquerors in Indostan. 4th rev. ed. Madras: Pharoah, 1861.

Orme, Robert. *Historical Fragments of the Mogul empire.Of the Morattoes, and of the English Concerns, in Indostan, from the Year M,DC,LIX. [Section I]*. London: Printed for F. Wingrave, 1802.

Qamar-ud-dīn Khān, Munshī. *Inshāʾ-yi Khirdafrūz*. Akbarabad [Agra]: Asʿad-ul-Akhbār, 1852.

Raḥīm-ud-dīn, Muḥammad. *Majmūʿa-yi Fatāwa-yi Ṣadārat-ul-ʿĀliya.* Hyderabad [Deccan]: Matbṭ aʿ-i Barqī Aʿẓạ m Jahī, 1943.

Regulations passed by the Governor General in Council of Bengal, with an Index and Glossary. Vol. I, containing the regulations passed in the years 1793, 1794, and 1795. (London: printed by the Order of the Honourable Court of Directors, J.L. Cox,).

Report on the Administration of the Punjab and Its Dependencies for 1901–1902 [Lahore: Punjab Government Press, 1902].

Shāh Nawāz K̲h̲ān, Ṣamṣām al-Dawlah. *The Maásir-Ul-Umara.* Edited by Maulavī ʿAbd-ul-Raḥīm. Vol. 1. 3 vols. Calcutta: The Asiatic Society, 1888.

Shāh-navāz K̲h̲ān ʿAbd al-Razzāk, Samsām al-Daulah. *The Maā<u>th</u>ir-Ul-Umarā, Being Biographies of the Muhammadan and Hindu Officers of the Timurid Sovereigns of India from 1500 to about 1780 A.D.* Edited by Baini Prashad. Translated by H Beveridge. (Second edition). Calcutta: Baptist Mission Press, 1911.

Steingass, Francis Joseph. *A Comprehensive Persian-English Dictionary, Including the Arabic Words and Phrases to Be Met with in Persian Literature*. London: Routledge & K. Paul, 1892.

Thompson, Joseph T. *A Dictionary in Oordoo and English. Arranged according to the Order of the English Alphabet.* Serampore: Mission Press, 1838.

Wilson, Horace Hayman. *A Glossary of Judicial and Revenue Terms: And of Useful Words Occurring in Official Documents Relating to the Administration of the Government of British India, from the Arabic, Persian, Hindustání, Sanskrit, Hindí, Bengálí, Uriya, Maráthi, Guazráthí, Telugu, Karnáta, Tamil, Malayálam, and Other Languages*. London: W.H. Allen and Company, 1855.

SECONDARY SOURCES

Abbott, Nicholas J. "Household, Family, and State: Negotiating Sovereignty and Sarkār in the Awadh Nawābī, C. 1775–1840." Ph.D. Dissertation, University of Wisconsin–Madison, 2017.

ʿAbd al-Ḥayy, Muḥammad. *Majmūʿah-yi fatāvá-yi Maulānā ʿAbdulḥī: Urdū kāmil mabūb*. Translated by K̲h̲vurshīd. ʿĀlam. Karācī: Qurʿān Maḥal, 1964.

Abraham, Susan. "Steal or I'll Call You a Thief: 'Criminal' Tribes of India." *Economic and Political Weekly* 34, no. 27 (1999): 1751–53.

Abu-Lughod, Janet L. *Before European Hegemony: The World System A.D. 1250-1350*. New York: Oxford University Press, 1989.

Abu-Absi, Samir. "The Modernization of Arabic: Problems and Prospects." *Anthropological Linguistics* 28, no. 3 (1986): 337–48.

Adal, Raja. "Epigraphic Rituals and Legal Authority: A Visual Epistemology of Modern Laws." Paper presented at the Annual Meeting of the American Historical Association, Denver, CO, January 5, 2017.

Afzal, Ahmed. *Lone Star Muslims: Transnational Lives and the South Asian Experience in Texas*. New York: NYU Press, 2014.

Agnes, Agnes. *Family Law*. 2 vols. vols. New Delhi: Oxford University Press, 2011.

———. *Law and Gender Inequality: The Politics of Women's Rights in India*. New Delhi: Oxford University Press, 1999.

Agrama, Hussein Ali. "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa." *American Ethnologist* 37, no. 1 (February 1, 2010): 2–18. doi:10.1111/j.1548-1425.2010.01238.x.

———. "Law Courts and Fatwa Councils in Modern Egypt: An Ethnography of Islamic Legal Practice." Ph.D. Dissertation, The Johns Hopkins University, 2005.

Aguirre, Carlos. "Tinterillos, Indians, and the State: Towards a History of Legal Intermediaries in Post-Independence Peru." In *One Law for All? Western Models and Local Practices in (Post) Imperial Contexts*, edited by Stefan B. Kirmse, 119–51. New York: Campus Verlag, 2012.

Ahmad, Muhammad Basheer. *Judicial System of the Mughal Empire. A Study in Outline of the Administration of Justice under the Mughal Emperors Based Mainly on Cases Decided by Muslim Courts in India*. Karachi: Pakistan Historical Society, 1978.

Ahmad, Mujeeb. *Janūbī Eshiyā Ke Urdū Majmūʿah-I Hāʾe Fatāvá: Unīsven Aur Bīsven Ṣadī ʿisvī*. Islāmābād: Nīshnal Buk Fāʾūnḍīshan [National Book Foundation], 2011.

Aḥmad, Sayyid Kamāluddīn. *Tārīkh-i Ḥaidarābād Dakkan aur raz̤ākār*. Ishāʿat 1. Karācī: Sayyid Kamāluddīn Aḥmad, 1995.

Ahmed, Habib. "Legal Environment for Islamic Banks: Status in Selected Gulf Cooperation Council Countries." In *Islamic Finance: Political Economy, Values and Innovation (Volume 1)*, 47–62. Gerlach Press, 2015.

Ahuja, Dilip. "Mendacity in Our Midst: Treatments in Ramanujan, Max Muller and in Ancient Indian Behaviour Codes." *Economic and Political Weekly* 38, no. 18 (2003): 1795–99.

Akgündüz, Ahmed. "The Ottoman Waqf Administration in the 19th and Early-20th Centuries: Continuities and Discontinuities." *Acta Orientalia Academiae Scientiarum Hungaricae* 64, no. 1 (March 1, 2011): 71–87. doi:10.1556/AOrient.64.2011.1.5.

Akhtar, Shirin. *The Role of the Zamindars in Bengal, 1707-1772*. Dacca: Asiatic Society of Bangladesh, 1982.

Alam, Muzaffar. *The Crisis of Empire in Mughal North India: Awadh and the Punjab, 1707-48*. Second Edition. Delhi: Oxford University Press, 2013.

———. "Guiding the Ruler and Prince." In *Islam in South Asia in Practice*, edited by Barbara Daly Metcalf, 279–92. Princeton: Princeton University Press, 2009.

———. *The Languages of Political Islam in India, c. 1200–1800*. Delhi: Permanent Black, 2004.

Alam, Muzaffar, and Sanjay Subrahmanyam. "The Making of a Munshi." *Comparative Studies of South Asia, Africa and the Middle East* 24, no. 2 (January 1, 2004): 61–72. doi: 10.1215/1089201X-24-2-61.

Alavi, Seema. *Muslim Cosmopolitanism in the Age of Empire*. Cambridge, Massachusetts: Harvard University Press, 2015.

ʿAlī, Saiyid Bāqir. *Majmūʿa-yi Kāg̲hiz̲āt-i Karravāʾī*. [N.P.]: Gulshan Muḥammadī, 1890.

Ali, Syed Mohammed. *The Position of Women in Islam: A Progressive View*. Albany, NY: State University of New York Press, 2004.

Allen, Charles. "The Hidden Roots of Wahhabism in British India." *World Policy Journal* 22, no. 2 (July 1, 2005): 87–93.

Anderson, Benedict R. O'G. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Rev. and extended ed. London: Verso, 1991.

Anderson, G., and Manu Subedar. *The Expansion of British India (1818-1858)*. New Delhi: Uppal Publishing House, 1987.

Anderson, Jon W. "The Internet and Islam's New Interpreters." In *New Media in the Muslim World: The Emerging Public Sphere*, edited by Dale F Eickelman and Jon W Anderson, 2nd ed., 46–60. Indiana Series in Middle East Studies. Bloomington: Indiana University Press, 2003.

Anderson, Michael R. "Islamic Law and the Colonial Encounter in British India." In *Institutions and Ideologies: A SOAS South Asia Reader*, edited by David Arnold and Peter Robb, 165–85. London: Curzon Press Ltd., 1993.

———. "Legal Scholarship and the Politics of Islam in British India." In *Perspectives on Islamic Law, Justice, and Society*, edited by Ravindra S. Khare, 65–92. New York: Rowman & Littlefield, 1987.

Anṣārī Farangī Maḥallī, Muḥammad Khalīlullāh, and Shāh ʿAbdussalām. *Tuḥfat al-ʾaḥbāb fī bayān al-aʾnsāb*. Lakhnaʾū: Amīruddaulah Pablik Lāʾibrerī, 2000.

Ansari, Ishrat Husain, and H. A. Qureshi, trans. *Medieval & Modern India: New Sources, 1000 -1986 AD*. Vol. nos. 41-42. 2 vols. IAD Oriental (Original) Series. Delhi, India: Idarah-i Adabiyat-i Delli, 2009.

Appadurai, Arjun. "Number in the Colonial Imagination." In *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, edited by Carol Appadurai Breckenridge and Peter van der Veer, 314–339. South Asia Seminar Series. Philadelphia: University of Pennsylvania Press, 1993.

Arjomand, Said Amir. "Philanthropy, the Law, and Public Policy in the Islamic World before the Modern Era." In *Philanthropy in the World's Traditions*, edited by Warren F. Ilchman, Stanley N. Katz, and Edward L. Queen, 109–32. Indiana University Press, 1998.

Armitage, David. *The Ideological Origins of the British Empire*. Cambridge: Cambridge University Press, 2000.

Armstrong, Karen. *The Battle for God*. 1st ed. New York: Alfred A. Knopf, 2000.

Arnold, David. *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*. Berkeley: University of California Press, 1993.

———. *Everyday Technology: Machines and the Making of India's Modernity*. Paperback ed. Science.culture. Chicago: University of Chicago Press, 2015.

———. *Science, Technology, and Medicine in Colonial India.* New York: Cambridge University Press, 2000.

Anṣārī, Irshādulḥaq. *Maslak-i aḥnāf aur Maulānā ʿAbdulḥaʾī Lakhnavī raḥmatulláh ʿalaih*. Maʾūnāth Bhanjan: Maktabah al-Fahīm, 2013.

Arabi, Oussama. *Studies in Modern Islamic Law and Jurisprudence*. The Hague: Kluwer Law International, 2001.

Asad, Talal. *Formations of the Secular: Christianity, Islam, Modernity*. Stanford, Calif.: Stanford University Press, 2003.

Aṣarī, Irshādulḥaq. *Maslak-i aḥnāf aur Maulānā ʿAbdulḥaʾī Lakhnavī raḥmatulláh ʿalaih*. Maʾūnāth Bhanjan: Maktabah al-Fahīm, 2013.

Ashraf, S. Dawood, ed., *Guide to Persian and Urdu Materials Preserved in Andhra Pradesh State Archives and Research Institute* (Hyderabad: Andhra Pradesh State Archives, [n.d.])

Aspinall, A. (Arthur). *Cornwallis in Bengal; the Administrative and Judicial Reforms of Lord Cornwallis in Bengal, Together with Accounts of the Commercial Expansion of the East India Company, 1786-1793, and of the Foundation of Penang, 1786-1793*. Historical series, no. 60. Publications of the University of Manchester. [Manchester]: Manchester University Press, 1931.

Atiyeh, George N., ed. *The Book in the Islamic World : The Written Word and Communication in the Middle East*. New York: State University of New York Press, 1995.

Avasthi, A. "Judicial (Nyaya) Panchayats in Madhya Pradesh." *The Indian Journal of Political Science* 13, no. 3/4 (1952): xix–xix.

Avrin, Leila. *Scribes, Script, and Books: The Book Arts from Antiquity to the Renaissance*. Chicago, IL: American Library Association, 1991.

Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge Studies in Islamic Civilization. New York, NY: Cambridge University Press, 2015.

Aziz, K.K. *Public Life in Muslim India, 1850–1947: A Compendium of Basic Information on Political, Social, Religious, Cultural, and Educational Organizations Active in Pre-Partition India*. Lahore: Vanguard, 1992.

ʻAzīz, Ṭāriq. *Urdu Rasmulkhat Aur Taip*. Islamabad: Muqtadirah-yi Qaumi Zaban, 1987.

Babb, Lawrence A., and Susan S. Wadley. *Media and the Transformation of Religion in South Asia*. Philadelphia, PA: University of Pennsylvania Press, 1995.

Baden-Powell, B. H. "The Permanent Settlement of Bengal." *The English Historical Review* 10, no. 38 (1895): 276–92.

Baderin, Mashood. "Understanding Islamic Law in Theory and Practice." *Legal Information Management* 9, no. 3 (September 2009): 186–90. doi:10.1017/S1472669609990302.

Baer, Gabriel. "The Waqf as a Prop for the Social System (Sixteenth-Twentieth Centuries)." *Islamic Law and Society* 4, no. 3 (1997): 264–97.

Bailkin, Jordanna. "Where Did the Empire Go? Archives and Decolonization in Britain" *The American Historical Review* 120, no. 3 (June 1, 2015): 884–99. doi:10.1093/ahr/120.3.884.

Baillie, Neil Benjamin Edmonstone. *A digest of Moohummudan law on the subjects to which it is usually applied by British Courts of Justice in India*. London: Smith, Elder, 1887.

Bainton, Roland Herbert. *The Reformation of the Sixteenth Century*. Boston: Beacon Press, 1952.

Bakshi, S. R. *British Diplomacy and Administration in India, 1807-13*. New Delhi: Munshiram Manoharlal, 1971. https//catalog.hathitrust.org/Record/001251681.

Barkey, Karen. *Bandits and Bureaucrats: The Ottoman Route to State Centralization*. Ithaca, N.Y.: Cornell University Press, 1994.

Barrier, N. Gerald. "Introduction." In *The Census in British India: New Perspectives*, edited by N. Gerald Barrier, v–xiv. New Delhi: Manohar, 1981.

Barton, David, and Uta Papen. *The Anthropology of Writing: Understanding Textually Mediated Worlds*. London: Bloomsbury, 2010.

Bates, Crispin, and Marina D. Carter. "Religion and Retribution in the Indian Rebellion of 1857." *Leidschrift* 24, no. 1 (April 1, 2009): 51–68.

Bates, Crispin, Andrea. Major, Marina. Carter, and Gavin. Rand, eds. *Mutiny at the Margins: New Perspectives on the Indian Uprising of 1857*. 7 Vols. New Delhi: SAGE Publications, 2013.

Bawa, Basant K. *The Last Nizam: The Life and Times of Mir Osman Ali Khan*. New York, NY: Viking, 1992.

Bayly, C. A. *The Birth of the Modern World, 1780-1914 : Global Connections and Comparisons /*. The Blackwell History of the World. Malden, MA : Blackwell Pub., 2004.

Bayly, C. *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870*. 1st pbk. ed. New York: Cambridge University Press, 1999.

———. "Knowing the Country: Empire and Information in India." *Modern Asian Studies* 27, no. 1 (February 1, 1993): 3–43.

Bayly, Susan. *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age*. Cambridge, UK: Cambridge University Press, 1999.

Baxi, Pratiksha, Shirin M. Rai, and Shaheen Sardar Ali. "Legacies of Common Law: 'Crimes of Honour' in India and Pakistan." *Third World Quarterly* 27, no. 7 (2006): 1239–53.

Beal, Peter. *In Praise of Scribes: Manuscripts and Their Makers in Seventeenth Century England*. The Lyell Lectures, Oxford (1995-1996). Oxford, UK: Clarendon Press, 1998.

Bear, Laura. *Navigating Austerity: Currents of Debt along a South Asian River*. Anthropology of Policy. Stanford, Calif.: Stanford University Press, 2015.

Bear, Laura and Nayanika Mathur. "Introduction: Remaking the Public Good: A New Anthropology of Bureaucracy." *The Cambridge Journal of Anthropology* 33, no. 1 (March 1, 2015): 18–34.

Bearman, P. J., Wolfhart Heinrichs, and Bernard G. Weiss, eds. *The Law Applied Contextualizing the Islamic Shari'a: A Volume in Honor of Frank E. Vogel*. London: I.B. Tauris, 2008.

Bedini, Silvio A. *Thomas Jefferson and His Copying Machines*. Charlottesville: University Press of Virginia, 1984.

Bellenoit, Hayden J."Between Qanungos and Clerks: The Cultural and Service Worlds of Hindustan's Pensmen, c. 1750–1850." *Modern Asian Studies* 48, no. 4 (July 2014): 872–910. doi:10.1017/S0026749X13000218.

———. *The Formation of the Colonial State in India: Scribes, Power and Taxes, 1760-1860*. New York: Routledege, 2017.

Ben-Bassat, Yuval. *Petitioning the Sultan: Protests and Justice in Late Ottoman Palestine, 1865-1908*. Vol. 42. Library of Ottoman Studies. London: I.B. Tauris, 2013.

Bennett, James T., and Manuel H. Johnson. "Paperwork and Bureaucracy." *Economic Inquiry* 17, no. 3 (July 1, 1979): 435–51. doi:10.1111/j.1465-7295.1979.tb00541.x.

Bennett, Tony, and Patrick Joyce. *Material Powers: Cultural Studies, History and the Material Turn*. New York, NY: Routledge, 2013.

Bennett, Tony, Fiona Cameron, Nélia Dias, Ben Dibley, Rodney Harrison, Ira Jacknis, and Conal McCarthy. *Collecting, Ordering, Governing: Anthropology, Museums, and Liberal Government*. Durham, NC: Duke University Press, 2017.

Benson, Melanie R. "The Fetish of Surplus Value; Or, What the Ledgers Say." In *Global Faulkner*, edited by Annette Trefzer and Ann J. Abadie, 43–58. Jackson, MS: University Press of Mississippi, 2009.

Bentham, Jeremy. *A Fragment on Government*. Oxford: Clarendon Press, 1891.

———. *Bentham's Theory of Fictions*. New York: Harcourt, 1932.

———. *Panopticon, Or the Inspection House.* London: Printed for T. Payne, at the Mews-Gate, 1791.

———. *Theory of Legislation*. Translated by Etienne Dumont and Richard Hildreth. London: Trübner, 1864.

Benton, Lauren. *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900*. Cambridge [UK]: Cambridge University Press, 2010.

———. "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State." *Comparative Studies in Society and History* 41, no. 3 (1999): 563–88.

———. "Historical Perspectives on Legal Pluralism." *Hague Journal on the Rule of Law* 3, no. 1 (2011): 57–69. doi:10.1017/S1876404511100044.

———. *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*. New York, NY: Cambridge University Press, 2002.

Benton, Lauren A., and Richard Jeffrey Ross, eds. *Legal Pluralism and Empires, 1500-1850*. New York: New York University Press, 2013.

Bernstein, Jeremy. *Dawning of the Raj: The Life and Trials of Warren Hastings*. London: Aurum Press, 2001.

Beverley, Eric Lewis. *Hyderabad, British India, and the World*. Cambridge University Press, 2015.

———. "Property, Authority and Personal Law: Waqf In Colonial South Asia." *South Asia Research* 31, no. 2 (July 1, 2011): 155–82. doi:10.1177/026272801103100204.

Bhagat, Ram. "Census and Caste Enumeration: British Legacy and Contemporary Practice in India." *Genus* LXII, no. 2 (n.d.): 119–35.

Bhattacharya, Sanjoy, Mark Harrison, and Michael Worboys. *Fractured States: Smallpox, Public Health and Vaccination Policy in British India 1800-1947*. New Delhi: Orient Longman, 2005.

Bhojani, Ali Reza. *Moral Rationalism and Sharīʿa: Independent Rationality in Modern Shīʿī Uṣūl Al-Fiqh*. Vol. volume 48. Culture and Civilization in the Middle East. Abingdon, Oxon: Routledge, 2015.

Birla, Ritu. "Performativity Between Logos and Nomos: Law, Temporality and the 'Non-Economic Analysis of Power.'" *Columbia Journal of Gender and Law* 21 (n.d.).

Bishara, Fahad Ahmad. *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780-1950*. Asian Connections. Cambridge, UK: Cambridge University Press, 2017.

———. "Paper Routes: Inscribing Islamic Law across the Nineteenth-Century Western Indian Ocean." *Law and History Review* 32, no. 4 (November 2014): 797–820. doi:10.1017/S0738248014000431.

Black, E. Ann, Hossein Esmaeili, and Nadirsyah Hosen. *Modern Perspectives on Islamic Law*. Northampton, MA: Edward Elgar Publishing, 2013.

Black, Henry Campbell. *A Law Dictionary Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern: And Including the Principal Terms of International, Constitutional, Ecclesiastical and Commercial Law, and Medical Jurisprudence, with a Collection of Legal Maxims, Numerous Select Titles from the Roman Modern Civil, Scotch, French, Spanish, and Mexican Law, and Other Foreign Systems, and a Table of Abbreviations*. Second edition. St. Paul, Minnesota: West Pub. Co., 1910.

Blackburn, Stuart H. *Print, Folklore, and Nationalism in Colonial South India*. Delhi: Permanent Black, 2003.

Blake, Stephen P. "The Patrimonial-Bureaucratic Empire of the Mughals." *The Journal of Asian Studies* 39, no. 1 (1979): 77–94. doi:10.2307/2053505.

Blau, Peter Michael. *Bureaucracy in Modern Society*. Random House Studies in Sociology. New York: Random House, 1956.

———. *The Dynamics of Bureaucracy: A Study of Interpersonal Relations in Two Government Agencies*. Rev. [2d] ed. [Chicago]: University of Chicago Press, 1963.

Bloom, Jonathan. *Paper before Print : The History and Impact of Paper in the Islamic World*. New Haven: Yale University Press, 2001.

Bodman, Herbert L., and Nayereh Esfahlani Tohidi. *Women in Muslim Societies: Diversity within Unity*. Boulder, Colo.: Lynne Rienner Publishers, 1998.

Bose, Sugata., and Kris Manjapra, eds. *Cosmopolitan Thought Zones: South Asia and the Global Circulation of Ideas*. Palgrave Macmillan Transnational History Series. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2010.

Brahmānanda. *Bhāratīya svatantratā āndolana aura Uttara Pradeśa kī Hindī patrakāritā*. Dillī: Vāṇī Prakāśana, 1986.

Brokaw, Cynthia Jones, ed. "Preserving the Social Hierarchy in the Seventeenth and Eighteenth Centuries." In *The Ledgers of Merit and Demerit*, 157–228. Social Change and Moral Order in Late Imperial China. Princeton, N.J.: Princeton University Press, 1991.

Brown, Jonathan A. C. "Reaching into the Obscure Past: The Islamic Legal Heritage and Reform in the Modern Period." In *Reclaiming Islamic Tradition*, edited by Elisabeth Kendall

and Ahmad Khan, 100–135. Modern Interpretations of the Classical Heritage. Edinburgh University Press, 2016.

Brown, Mark. "Ethnology and Colonial Administration in Nineteenth-Century British India: The Question of Native Crime and Criminality." *The British Journal for the History of Science* 36, no. 2 (2003): 201–19.

Bryant, G. J. *The Emergence of British Power in India, 1600-1784: A Grand Strategic Interpretation*. Vol. 9. Boydell and Brewer, 2013.

Buch, Nirmala. "Reservation for Women in Panchayats: A Sop in Disguise?" *Economic and Political Weekly* 44, no. 40 (2009): 8–10.

Bulliet, Richard W. "Medieval Arabic Ṭarsh: A Forgotten Chapter in the History of Printing." *Journal of the American Oriental Society* 107, no. 3 (July 1, 1987): 427–38. doi:10.2307/603463.

Bunt, Gary R. *Islam in the Digital Age: E-Jihad, Online Fatwas and Cyber Islamic Environments*. Sterling, VA: Pluto Press, 2003.

———. *iMuslims: Rewiring the House of Islam*. Islamic Civilization and Muslim Networks. Chapel Hill: University of North Carolina Press, 2009.

Burak, Guy. *The Second Formation of Islamic Law: The Hanafi School in the Early Modern Ottoman Empire*. Cambridge Studies in Islamic Civilization. New York, NY: Cambridge University Press, 2015.

Burns, Kathryn. *Into the Archive: Writing and Power in Colonial Peru*. Durham, NC: Duke University Press, 2010.

———. "Notaries, Truth, and Consequences." *The American Historical Review* 110, no. 2 (April 1, 2005): 350–79. doi:10.1086/ahr/110.2.350.

Burton, Antoinette M., ed. *Archive Stories: Facts, Fictions, and the Writing of History*. Durham [N.C.]: Duke University Press, 2005.

Caplan, Jane. "Illegibility: Reading and Insecurity in History, Law and Government." *History Workshop Journal* 68, no. 1 (September 21, 2009): 99–121. doi:10.1093/hwj/dbp012.

Carroll, Lucy. "Caste, Social Change, and the Social Scientist: A Note on the Ahistorical Approach to Indian Social History." *The Journal of Asian Studies* 35, no. 1 (November 1975): 63–84.

———. "Definition and Interpretation of Muslim Law in South Asia: The Case of Gifts to Minors." *Islamic Law and Society* 1, no. 1 (1994): 83–115.

———. "Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife." *Modern Asian Studies* 16, no. 2 (1982): 277–309.

Carruthers, Mary. *The Book of Memory: A Study of Memory in Medieval Culture*. New York: Cambridge University Press, 2008.

Chakrabarty, Dipesh. "Bourgeois Categories Made Global: Utopian and Actual Lives of Historical Documents in India." *Economic and Political Weekly* XLIV, no. 25 (June 20, 2009): 67–75.

———. *The Calling of History: Sir Jadunath Sarkar and His Empire of Truth*. Chicago: The University of Chicago Press, 2015.

———. *Habitations of Modernity: Essays in the Wake of Subaltern Studies*. Chicago: University of Chicago Press, 2002.

———. *Provincializing Europe: Postcolonial Thought and Historical Difference*. 2nd ed. Princeton, N.J.: Princeton University Press, 2008.

Chan, Wing-Cheong, Barry Wright, and Stanley Yeo, eds. *Codification, Macaulay and the Indian Penal Code The Legacies and Modern Challenges of Criminal Law Reform*. International and Comparative Criminal Justice. Farnham: Ashgate Publishing Ltd, 2011.

Chandra, Moti. *Trade and Trade Routes in Ancient India*. New Delhi: Abhinav Publications, 1977.

Chanock, Martin. The Making of South African Legal Culture, 1902-1936 Fear, Favour, and Prejudice. Cambridge: Cambridge University Press, 2001.

Charry, Brinda, and Gitanjali Shahani, eds. *Emissaries in Early Modern Literature and Culture: Mediation, Transmission, Traffic, 1550–1700*. New York: Routledge, 2016.

Chatterjee, Indrani. "Women, Monastic Commerce, and Coverture in Eastern India circa 1600–1800 CE." *Modern Asian Studies* 50, no. 1 (January 2016): 175–216. doi:10.1017/S0026749X15000062.

Chatterjee, Nandini."English Law, Brahmo Marriage, and the Problem of Religious Difference: Civil Marriage Laws in Britain and India." *Comparative Studies in Society and History* 52, no. 3 (2010): 524–52. doi:10.1017/S0010417510000290.

———. "Law, Culture and History: Amir Ali's Interpretation of Islamic Law." In *Legal Histories of the British Empire: Laws, Engagements and Legacies*, edited by Shaunnagh Dorsett and John McLaren, 45–57. Abingdon, Oxon: Routledge, 2014.

———. "*Mahzar-Nama*s in the Mughal and British Empires: The Uses of an Indo-Islamic Legal Form." *Comparative Studies in Society and History* 58, no. 2 (April 2016): 379–406. doi:10.1017/S0010417516000116.

———. "Reflections on Religious Difference and Permissive Inclusion in Mughal Law." *Journal of Law and Religion* 29, no. 3 (2014): 396–415.

———. "Religious Change, Social Conflict and Legal Competition: The Emergence of Christian Personal Law in Colonial India." *Modern Asian Studies* 44, no. 6 (2010): 1147–95.

Chatterjee, Partha. *The Black Hole of Empire: History of a Global Practice of Power*. Princeton, N.J: Princeton University Press, 2012.

Choudhury, Deep Kanta Lahiri. *Telegraphic Imperialism: Crisis and Panic in the Indian Empire, c. 1830-1920*. The Palgrave Macmillan Transnational History Series. Basingstoke, Hampshire: Palgrave Macmillan UK, 2010.

Clanchy, M. T. *From Memory to Written Record, England, 1066-1307*. Cambridge, Mass.: Harvard, University Press, 1979.

Cohen, Benjamin B. *In the Club: Associational Life in Colonial South Asia*. Studies in Imperialism. New York: Manchester University Press, 2015.

———. *Kingship and Colonialism in India's Deccan, 1850-1948*. 1st ed. New York: Palgrave Macmillan, 2007.

Cohn, Bernard S. "The Census, Social Structure and Objectification in South Asia." In *An Anthropologist among the Historians*, edited by Bernard S. Cohn. New Delhi: Oxford University Press, 1987.

———. *Colonialism and Its Forms of Knowledge: The British in India*. Princeton Studies in Culture/Power/History. Princeton, N.J: Princeton University Press, 1996.

———. "The Command of Language and the Language of Command." In *Subaltern Studies IV: Writings on South Asian History and Society*, edited by Ranajit Guha, 276–329. Delhi: Oxford University Press, 1985.

———. "From Indian Status to British Contract." *The Journal of Economic History* 21, no. 4 (December 1961): 613–28.

Cole, Richard G. "The Dynamics of Printing in the Sixteenth Century." In *The Social History of the Reformation.*, edited by Lawrence P. Buck and Jonathan W. Zophy, 93–105. Columbus: Ohio State University Press, 1972.

Conlon, Frank F. "The Census of India as a Source for the Historical Study of Religion and Caste." In *The Census in British India: New Perspectives*, edited by N. Gerald Barrier, 103–17. New Delhi: Manohar, 1981.

Conniff, James. "Burke and India: The Failure of the Theory of Trusteeship." *Political Research Quarterly* 46, no. 2 (1993): 291–309. doi:10.2307/448889.

Cooke, Miriam, and Bruce B. Lawrence, eds. *Muslim Networks from Hajj to Hip Hop*. Islamic Civilization & Muslim Networks. Chapel Hill: University of North Carolina Press, 2005.

Cooper, Frederick, and Ann Laura Stoler, eds. *Tensions of Empire: Colonial Cultures in a Bourgeois World*. Berkeley, Calif: University of California Press, 1997.

Cooper, Frederick, and Ann L. Stoler. "Introduction Tensions of Empire: Colonial Control and Visions of Rule." *American Ethnologist* 16, no. 4 (November 1, 1989): 609–21.

Cotroneo, Ross R. and Jack Dozier. "A Time of Disintegration: The Coeur d'Alene and the Dawes Act." *The Western Historical Quarterly* 5, no. 4 (1974): 405–19, doi:10.2307/967306.

Crecelius, Daniel. "The Organization of Waqf Documents in Cairo." *International Journal of Middle East Studies* 2, no. 3 (1971): 266–77.

Cyrus, Cynthia J. *The Scribes for Women's Convents in Late Medieval Germany*. Toronto: University of Toronto Press, 2009.

Das, Veena, and Stanley Cavell. *Life and Words: Violence and the Descent into the Ordinary*. 1st ed. University of California Press, 2007.

Darnton, Robert. "Literary Surveillance in the British Raj: The Contradictions of Liberal Imperialism." *Book History* 4, no. 1 (2001): 133–76. doi:10.1353/bh.2001.0007.

Das, Veena, and Deborah. Poole, eds. *Anthropology in the Margins of the State*. Santa Fe: School of American Research Press, 2004.

———, eds. "Signature of the State: The Paradox of Illegibility." In *Anthropology in the Margins of the State*, 225–252. Santa Fe: School of American Research Press, 2004.

Datla, Kavita. "A Worldly Vernacular: Urdu at Osmania University." *Modern Asian Studies* 43, no. 5 (September 2009): 1117–48.

Datla, Kavita Saraswathi. *The Language of Secular Islam Urdu Nationalism and Colonial India*. Honolulu: University of Hawai'i Press, 2013.

Davies, A. Mervyn. *Warren Hastings, Maker of British India*. London, Nicholson and Watson, 1985.

Davis, Donald R. "Responsa in Hindu Law: Consultation and Lawmaking in Medieval India." *Oxford Journal of Law and Religion*, July 26, 2013, 1–19. doi:10.1093/ojlr/rwt028.

Day, Ronald E. *The Modern Invention of Information: Discourse, History, and Power*. Carbondale: Southern Illinois University Press, 2001.

De, Rohit."Mumtaz Bibi's Broken Heart: The Many Lives of the Dissolution of Muslim Marriages Act." *Indian Economic & Social History Review* 46, no. 1 (2009): 105–30.

———. "The Two Husbands of Vera Tiscenko: Apostasy, Conversion, and Divorce in Late Colonial India." *Law and History Review* 28, no. 4 (2010): 1011–41. doi:10.1017/S0738248010000751.

De Wit, Onno, Johannes Cornelis Maria van den Ende, Johan Schot, and Ellen van Oost. "Innovative Junctions: Office Technologies in the Netherlands, 1880-1980." *Technology and Culture* 43, no. 1 (January 1, 2002): 50–72. doi:10.1353/tech.2002.0012.

DeMallie, Raymond J. "Touching the Pen: Plains Indian Treaty Councils in Ethnohistorical Perspective." In *Ethnicity on the Great Plains*, edited by Frederick C. Luebcke, 38–53. Lincoln, NE: University of Nebraska Press, 1980.

Derrett, J. Duncan M. *Religion, Law, and the State in India*. New York: Free Press, 1968.

———. "The Administration of Hindu Law by the British." *Comparative Studies in Society and History* 4, no. 1 (November 1961): 10–52.

Derrida, Jacques. *Limited Inc*. Evanston, IL: Northwestern University Press, 1988.

Dery, David. "'Papereality' and Learning in Bureaucratic Organizations." *Administration & Society* 29, no. 6 (January 1, 1998): 677–89. doi:10.1177/009539979802900608.

Deshpande, Prachi. "The Writerly Self: Literacy, Discipline and Codes of Conduct in Early Modern Western India." *Indian Economic & Social History Review* 53, no. 4 (October 1, 2016): 449–71. doi:10.1177/0019464616662137.

Deshpande, Satish, and Nandini Sundar. "Caste and the Census: Implications for Society and the Social Sciences." *Economic and Political Weekly* 33, no. 32 (August 8, 1998): 2157–59.

Devji, Faisal."Muslim Nationalism: Founding Identity in Colonial India." Ph.D Dissertation, University of Chicago, 1993.

———. "Qawm." In *Key Concepts in Modern Indian Studies*, edited by Gita Dharampal, Monika Kirloskar-Steinbach, Rachel Dwyer, and Jahnavi Phalkey, 217–219. Washington Square, New York: New York University Press, 2015.

Dharampal, Gita, Monika Kirloskar-Steinbach, Rachel Dwyer, and Jahnavi Phalkey, eds. *Key Concepts in Modern Indian Studies*. Washington Square, New York: New York University Press, 2015.

Dharwadker, Vinay. "Print Culture and Literary Markets in Colonial India." In *Language Machines: Technologies of Literary and Cultural Production*, edited by Jeffrey Masten, Peter Stallybrass, and Nancy Vickers, 108–36. Essays from the English Institute. New York: Routledege, 1997.

Didier, Brian J. "When Disputes Turn Public: Heresy, the Common Good, and the State in South India." In *Public Islam and the Common Good*, edited by Armando Salvatore and Dale F. Eickelman. Leiden: Brill, 2004.

Dirks, Nicholas B. *The Scandal of Empire: India and the Creation of Imperial Britain*. Cambridge, MA: Belknap Press, 2006.

———. *Castes of Mind: Colonialism and the Making of Modern India*. Princeton, N.J.: Princeton University Press, 2001.

Dodwell, Henry. *The Indian Empire, 1858-1918 : With Chapters on the Development of Administration, 1818-1858*. Delhi: S. Chand, 1958.

Donohue, John J., and John L. Esposito. *Islam in Transition: Muslim Perspectives*. New York: Oxford University Press, 1982.

Dorsett, Shaunnagh, and John McLaren. *Legal Histories of the British Empire: Laws, Engagements and Legacies*. Abingdon, Oxon: Routledge, 2014.

Doumani, Beshara. "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860." *Comparative Studies in Society and History* 40, no. 1 (1998): 3–41.

Eaton, Richard Maxwell. *The Rise of Islam and the Bengal Frontier, 1204-1760*. Berkeley: University of California Press, 1993.

Edney, Matthew H. *Mapping an Empire: The Geographical Construction of British India, 1765-1843*. Chicago: University of Chicago Press, 1997.

Edwards, Laura F. "Enslaved Women and the Law: Paradoxes of Subordination in the Post-Revolutionary Carolinas." *Slavery & Abolition* 26, no. 2 (August 1, 2005): 305–23. doi: 10.1080/01440390500176665.

———. "'The Marriage Covenant Is at the Foundation of All Our Rights': The Politics of Slave Marriages in North Carolina after Emancipation." *Law and History Review* 14, no. 1 (April 1996): 81–124. doi:10.2307/827614.

———. "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South." *The American Historical Review* 112, no. 2 (2007): 365–93.

Eickelman, Dale F., and Jon W. Anderson, eds. *New Media in the Muslim World: The Emerging Public Sphere*. 2nd ed. Indiana Series in Middle East Studies. Bloomington: Indiana University Press, 2003.

Eickelman, Dale F. *Knowledge and Power in Morocco: The Education of a Twentieth-Century Notable*. Princeton, N.J.: Princeton University Press, 1985.

Eisenstein, Elizabeth L. *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe, Volumes I and II*. Cambridge, England: Cambridge University Press, 1980.

———. "An Unacknowledged Revolution Revisited." *The American Historical Review* 107, no. 1 (February 1, 2002): 87–105. doi:10.1086/ahr/107.1.87.

———. "Reply." *The American Historical Review* 107, no. 1 (February 1, 2002): 126–28. doi: 10.1086/ahr/107.1.126.

El Shakry, Omnia. "'History without Documents': The Vexed Archives of Decolonization in the Middle East." *The American Historical Review* 120, no. 3 (June 1, 2015): 920–34. doi:10.1093/ahr/120.3.920.

El Shamsy, Ahmed. "Fiqh, Faqīh, Fuqahāʾ." In *Encyclopaedia of Islam, Three,* edited by Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, and Everett Rowson. Leiden: Brill Online, April 1, 2015. http://dx.doi.org/10.1163/1573-3912_ei3_COM_27135.

Elkins, Caroline. "Looking beyond Mau Mau: Archiving Violence in the Era of Decolonization." *The American Historical Review* 120, no. 3 (June 1, 2015): 852–68. doi:10.1093/ahr/120.3.852.

Elliott, Carolyn M. "Decline of a Patrimonial Regime: The Telengana Rebellion in India, 1946-51." *The Journal of Asian Studies* 34, no. 1 (1974): 27–47. doi:10.2307/2052408.

Emerson, Michael O., and David Hartman. "The Rise of Religious Fundamentalism." *Annual Review of Sociology* 32, no. 1 (2006): 127–44. doi:10.1146/annurev.soc.32.061604.123141.

Emrence, Cem. *Remapping the Ottoman Middle East: Modernity, Imperial Bureaucracy, and the Islamic State*. Vol. v. 31. Library of Ottoman Studies. London: I.B. Tauris, 2012.

Enthoven, R. E. *The Tribes and Castes of Bombay*. Vol. 1. Delhi: Cosmo Publications, 1975.

Feldman, Gerald D., and Wolfgang Seibel, eds. *Networks of Nazi Persecution: Bureaucracy, Business, and the Organization of the Holocaust*. Vol. v. 6. Studies on War and Genocide ; New York: Berghahn Books, 2005.

Findley, Carter V. *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922*. Princeton, N.J.: Princeton University Press, 1980.

Finnis, J. M. "On 'Positivism' and 'Legal Rational Authority.'" *Oxford Journal of Legal Studies* 5, no. 1 (March 1, 1985): 74–90. doi:10.1093/ojls/5.1.74.

Fisch, Jörg. *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769-1817*. Beiträge Zur Südasienforschung, Bd. 79. Wiesbaden: F. Steiner, 1983.

Fisher, Michael H. *A Clash of Cultures: Awadh, the British, and the Mughals*. New Delhi: Manohar, 1987.

———. "The Office of Akhbār Nawīs: The Transition from Mughal to British Forms." *Modern Asian Studies* 27, no. 1 (1993): 45–82.

———. "Political Marriage Alliances at the Shi 'i Court of Awadh." *Comparative Studies in Society and History* 25, no. 4 (1983): 593–616.

———, ed. *The Politics of the British Annexation of India, 1757-1857*. Delhi: Oxford University Press, 1993.

Fischer-Tiné, Harold and Michael Mann, eds., *Colonialism as Civilizing Mission: Cultural Ideology in British India*. Anthem South Asian Studies. London: Anthem Press, 2004.

Fleischer, Cornell H. *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Âlï (1541-1600)*. Princeton, N.J.: Princeton University Press, 1986.

Floor, Willem. "ČĀP." *Encyclopædia Iranica,* IV/7, 760–764. Available Online: http://www.iranicaonline.org/articles/cap-print-printing-a-persian-word-probably-derived-from-hindi-chapna-to-print-see-turner-no. (Accessed August 20, 2016).

Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. 2nd Vintage Books ed. New York: Vintage Books, 1995.

———. *Ethics: Subjectivity and Truth*. Edited by Paul. Rabinow. Translated by Robert Hurley. Vol. v. 1. Essential Works of Michel Foucault, 1954-1984. New York: New Press, 1997.

———. "Governmentality." In *The Foucault Effect: Studies in Governmentality, with Two Lectures by and an Interview with Michel Foucault*, edited by Graham Burchell, Colin Gordon, and Peter Miller, 87–104. Chicago: University of Chicago Press, 1991.

Fraas, Arthur Mitchell. "Readers, Scribes, and Collectors: The Dissemination of Legal Knowledge in Eighteenth-Century British South Asia." Draft paper presented at the Middle East Studies Association Annual Conference, 2012. https://works.bepress.com/mitch_fraas/14/.

Fraenkel, Béatrice. *La signature, genèse d'un signe*. Bibliothèque des histoires. [Paris]: Gallimard, 1992.

———. "On Signatures and Traces." *HAU: Journal of Ethnographic Theory* 3, no. 3 (December 23, 2013): 431–34. doi:10.14318/hau3.3.028.

———. "Signatures." In *A History of Writing: From Hieroglyph to Multimedia.*, edited by Anne Marie Christin, English-Language Edition. 315–17. [Paris, France]: Flammarion, 2002.

Frank, Andre Gunder. *Reorient: Global Economy in the Asian Age*. Berkeley, Calif.: University of California Press, 1998.

Franklin, Michael J. *Orientalist Jones: Sir William Jones, Poet, Lawyer, and Linguist, 1746-1794*. Oxford: Oxford University Press, 2011.

Frykenberg, Robert Eric. *Guntur District, 1788-1848; a History of Local Influence and Central Authority in South India.* Oxford: Clarendon Press, 1965.

Fuller, C. J. "Orality, Literacy and Memorization: Priestly Education in Contemporary South India." *Modern Asian Studies* 35, no. 1 (2001): 1–31.

Fuller, Lauren L. "Alaska Native Claims Settlement Act: Analysis of the Protective Clauses of the Act through a Comparison with the Dawes Act of 1887."*American Indian Law Review* 4, no. 2 (1976): 269–78, doi:10.2307/20067993.

Fyzee, Asaf Ali Asghar. *Cases in the Muhammadan Law of India and Pakistan*. Oxford : Clarendon Press, 1965.

———. *Outlines of Muhammadan Law*. Calcutta: Indian Branch, Oxford University Press, 1974 [1949].

Galanter, Marc. "The Modernization of Law." In *Modernization: The Dynamics of Growth*, edited by Myron Weiner, 153–65. New York: Basic Books, 1966.

Gallagher, Mary E. "Mobilizing the Law in China: 'Informed Disenchantment' and the Development of Legal Consciousness." *Law & Society Review* 40, no. 4 (December 1, 2006): 783–816. doi:10.1111/j.1540-5893.2006.00281.x.

Gandotra, Smita. "In Search of a Subject; Stri Upayogi Sahitya, 1870–1930." Ph.D., The University of Chicago, 2013.

Gawthrop, Richard, and Gerald Strauss. "Protestantism and Literacy in Early Modern Germany." *Past & Present* 104, no. 1 (August 1, 1984): 31–55. doi:10.1093/past/104.1.31.

Geertz, Clifford. *Local Knowledge: Further Essays in Interpretive Anthropology*. New York: Basic Books, 1983.

———. *The Religion of Java*. Phoenix ed., vol. P65B. Chicago: University of Chicago Press, 1976.

Gelsthorpe, Loraine, and Nicola Padfield, eds. *Exercising Discretion*. London: Routledge, 2012.

Gelvin, James L., and Nile Green, eds. *Global Muslims in the Age of Steam and Print*. Berkeley: University of California Press, 2014.

Gerber, Haim. *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective*. Albany: State University of New York Press, 1994.

Ghose, Rajarshi. "Islamic Law and Imperial Space: British India as 'domain of Islam' circa 1803–1870." *Journal of Colonialism and Colonial History* 15, no. 1 (2014). doi:10.1353/cch.2014.0020.

———. "Politics for Faith: Karamat Ali Jaunpuri and Islamic Revivalist Movements in British India circa 1800--73." Ph.D., The University of Chicago, 2012.

Ghosh, Abinaschandra. *Lawyers' Anglo-Mohammedan Law: With the Statutes Relating to Wakfs Including the Bengal Wakf Act, 1934*. Calcutta : Raychowdhury, 1935.

———. *The Principles of Anglo-Mahomedan Law*. Calcutta: H. Ghose, 1917.

Ghosh, Anindita. "An Uncertain 'Coming of the Book': Early Print Cultures in Colonial India." *Book History* 6 (September 2003): 23–55.

———. *Power in Print: Popular Publishing and the Politics of Language and Culture in a Colonial Society, 1778-1905*. New Delhi: Oxford University Press, 2006.

———. "Revisiting the 'Bengal Renaissance': Literary Bengali and Low-Life Print in Colonial Calcutta." *Economic and Political Weekly* 37, no. 42 (October 19, 2002): 4329–38.

Ghosh, Dilip K. "Governance at Local Level: The Case of Panchayats in West Bengal." *The Indian Journal of Political Science* 69, no. 1 (2008): 71–88.

Ghosh, Durba. *Sex and the Family in Colonial India: The Making of Empire*. Cambridge [Engand]: Cambridge University Press, 2006.

———. "Legal and Liberal Subjects: Women's Crimes in Early Colonial India." *Journal of Women's History* 22, no. 2 (2010): 153–156.

Giddens, Anthony. *The Constitution of Society: Outline of the Theory of Structuration*. Berkeley: University of California Press, 1984.

Gidwani, Vinay Krishin. "'Waste' and the Permanent Settlement in Bengal." *Economic and Political Weekly* 27, no. 4 (1992): 39–46.

Gilmartin, David. "Rule of Law, Rule of Life: Caste, Democracy, and the Courts in India." *The American Historical Review* 115, no. 2 (April 1, 2010): 406–27.

Ginzburg, Carlo. *Clues, Myths, and the Historical Method*. Baltimore, Md.: Johns Hopkins University Press, 1989.

Gleave, R., and E. Kermeli. *Islamic Law: Theory and Practice*. Paperback ed. London: I.B. Tauris, 2001.

Gleick, James. *The Information: A History, a Theory, a Flood*. 1st ed. New York: Pantheon Books, 2011.

Go, Julian. "Fanon's Postcolonial Cosmopolitanism." *European Journal of Social Theory* 16, no. 2 (May 1, 2013): 208–25. doi:10.1177/1368431012462448.

Gould, William. *Religion and Conflict in Modern South Asia*. Cambridge University Press, 2011.

Government of India. *British Enactments in Force in Native States: Southern India (Hyderabad)*. Office of the Superintendent of Govt. Print., India, 1900.

Graeber, David. *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy*. Brooklyn, NY: Melville House Publishing, 2015.

Grafton, Anthony. "How Revolutionary Was the Print Revolution?" *The American Historical Review* 107, no. 1 (February 1, 2002): 84–86. doi:10.1086/ahr/107.1.84.

Graham, William A. *Beyond the Written Word: Oral Aspects of Scripture in the History of Religion*. Cambridge [U.K.]: Cambridge University Press, 1987.

Grant, Robert. *A Sketch of the History of the East-India Company, from Its First Formation to the Passing of the Regulating Act of 1773; with a Summary View of the Changes Which Have Taken Place since That Period in the Internal Administration of British India.* 13 p., 1 l., liii, 397. London: Printed for Black, Parry, and co. [etc.], 1813.

Green, Nile. *Bombay Islam: The Religious Economy of the West Indian Ocean, 1840-1915*. New York: Cambridge University Press, 2011.

———. "The Hajj as Its Own Undoing: Infrastructure and Integration on the Muslim Journey to Mecca." *Past & Present* 226, no. 1 (February 1, 2015): 193–226. doi:10.1093/pastj/gtu041.

———. "Persian Print and the Stanhope Revolution: Industrialization, Evangelicalism, and the Birth of Printing in Early Qajar Iran." *Comparative Studies of South Asia Africa and the Middle East* 30, no. 3 (January 1, 2010): 473–90.

———. *Terrains of Exchange: Religious Economies of Global Islam*. New York: Oxford University Press, 2014.

———. "Urdu as an African Language: A Survey of a Source Literature." *Islamic Africa* 3, no. 2 (October 1, 2012): 173–99.

Greenblatt, Stephen. *Renaissance Self-Fashioning*. Chicago: University Of Chicago Press, 2005 [1983].

Gregory, James. Victorians against the Gallows: Capital Punishment and the Abolitionist Movement in Nineteenth Century Britain. Vol. 5. Library of Victorian Studies ; London: I.B. Tauris, 2012.

Grewal, J. S. *In the By-Lanes of History: Some Persian Documents from a Punjab Town*. 1st ed. Simla: Indian Institute of Advanced Study, 1975.

———. "The Qāzi in the Pargana." In *Studies in Local and Regional History*, 1–17. Amritsar: Guru Nanak University, 1974.

———. "The Shariat and the Non-Muslims of Batala." In *Proceedings of the Punjab History Conferece*, 6th Session:152–6. Patiala: Punjabi University, 1972.

Grillo, Ralph. "Islam and Transnationalism." *Journal of Ethnic and Migration Studies* 30, no. 5 (September 1, 2004): 861–78. doi:10.1080/1369183042000245589.

Grunebaum, Gustave E. von. *Unity and Variety in Muslim Civilization*. Comparative Studies of Cultures and Civilizations. Chicago: University of Chicago Press, 1955.

Gudelunas, David. *Confidential to America: Newspaper Advice Columns and Sexual Education*. New Brunswisck, NJ: Transaction Publishers, 2011.

———. "Talking Taboo: Newspaper Advice Columns and Sexual Discourse." *Sexuality & Culture* 9, no. 1 (December 1, 2005): 62–87. doi:10.1007/BF02908763.

Guenther, Alan M. "Hanafi Fiqh in Mughal India: The Fatāwá-i ʿĀlamgīrī." In *India's Islamic Traditions, 711-1750 / Ed. by Richard M.Eaton*, 209–30. Delhi: Oxford University Press, 2003.

———. "Syed Mahmood and the Transformation of Muslim Law in British India." Ph.D. Dissertation, McGill, 2004.

Guha, Ranajit. *A Rule of Property for Bengal; an Essay on the Idea of Permanent Settlement.* Paris: Mouton, 1963.

———. *Dominance without Hegemony: History and Power in Colonial India. Convergences*. Cambridge, Mass.: Harvard University Press, 1997.

Guha, Sumit. "The Politics of Identity and Enumeration in India C. 1600-1990." *Comparative Studies in Society and History* 45, no. 1 (January 2003): 148–67.

Habermas, Jürgen. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Studies in Contemporary German Social Thought. Cambridge, Mass: MIT Press, 1989.

Haines-Eitzen, Kim. *Guardians of Letters: Literacy, Power, and the Transmitters of Early Christian Literature*. New York: Oxford University Press, 2000.

Hallaq, Wael B. *Authority, Continuity, and Change in Islamic Law*. Cambridge, UK: Cambridge University Press, 2001.

———. "From Fatwās to Furūʿ: Growth and Change in Islamic Substantive Law." *Islamic Law and Society* 1, no. 1 (1994): 29–65.

———. *An Introduction to Islamic Law*. New York: Cambridge University Press, 2009.

———. "Model Shurūṭ Works and the Dialectic of Doctrine and Practice." *Islamic Law and Society* 2, no. 2 (January 1, 1995): 109–34.

———. *Sharīʿa: Theory, Practice, Transformations*. Cambridge, UK: Cambridge University Press, 2009.

———. "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16 (1984): 3–41.

Hampf, Michaela, and Simone. Mûller-Pohl. *Global Communication Electric: Business, News and Politics in the World of Telegraphy*. Vol. 15. Global History. Frankfurt-on-Main: Campus, 2013.

Hanif, N. *Islamic Concept of Crime and Justice*. New Delhi: Sarup & Sons, 1999.

Hardless and Hardless, *Forgery in India. A Practical Treatise on the Detection of Forgery Dealing with the Languages of India*. (Chunar: Hardless and Hardless Publishers, 1920).

Hardwick, Julie. *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France*. University Park, Pa.: Pennsylvania State University Press, 1998.

Hardy, Peter. *The Muslims of British India*. Cambridge South Asian Studies, no. 13. London: Cambridge University Press, 1972.

Harrington, Jack. *Sir John Malcolm and the Creation of British India*. 1st ed. Palgrave Studies in Cultural and Intellectual History. New York, NY: Palgrave Macmillan, 2010.

Harris, Harriet A. *Fundamentalism and Evangelicals*. Pbk. ed. Oxford Theological Monographs. Oxford: Oxford University Press, 2008.

Hasan, Farhat. *State and Locality in Mughal India: Power Relations in Western India, c. 1572-1730*. University of Cambridge Oriental Publications 61. Cambridge, U.K.: Cambridge University Press, 2004.

Haskins, George L. "Law and Colonial Society." In *Essays in the History of Early American Law*, 41–52. University of North Carolina Press, 1969.

Hayden, Robert M. "A Note on Caste Panchayats and Government Courts in India." *The Journal of Legal Pluralism and Unofficial Law* 16, no. 22 (January 1, 1984): 43–52. doi: 10.1080/07329113.1984.10756282.

Haykel, Bernard. *Revival and Reform in Islam: The Legacy of Muhammad Al-Shawkānī*. Cambridge Studies in Islamic Civilization. New York: Cambridge University Press, 2003.

Headrick, Daniel. "A Double-Edged Sword: Communications and Imperial Control in British India." *Historical Social Research / Historische Sozialforschung* 35, no. 1 (131) (2010): 51–65.

Heffening, W. "Waḳf." *Encyclopaedia of Islam, First Edition (1913-1936),* Edited by M. Th. Houtsma, T.W. Arnold, R. Basset, and R. Hartmann. Leiden: Brill, First published online 2012. http://dx.doi.org/10.1163/2214-871X_ei1_COM_0214.

Hendley, W. Clark. "Dear Abby, Miss Lonelyhearts, and the Eighteenth Century: The Origins of the Newspaper Advice Column." *The Journal of Popular Culture* 11, no. 2 (September 1, 1977): 345–52. doi:10.1111/j.0022-3840.1977.00345.x.

Henningham, Stephen. "Bureaucracy and Control in India's Great Landed Estates: The Raj Darbhanga of Bihar, 1879 to 1950." *Modern Asian Studies* 17, no. 1 (January 1, 1983): 35–55.

Henry, Clement M., and Rodney Wilson, eds. *The Politics of Islamic Finance*. Edinburgh: Edinburgh University Press, 2004.

Hirji, Zulfikar A. *Diversity and Pluralism in Islam: Historical and Contemporary Discourses amongst Muslims*. London: I.B. Tauris, 2010.

Hirschkind, Charles. *The Ethical Soundscape Cassette Sermons and Islamic Counterpublics*. Cultures of History. New York: Columbia University Press, 2006.

Hobsbawm, Eric, and Terence Ranger, eds. *The Invention of Tradition*. New York: Cambridge University Press, 1983.

Hodgson, Marshall G. S. *The Venture of Islam*, vol. 1a, The Classical Age of Islam. Pbk. ed. Chicago: University of Chicago Press, 1977.

Horn, Patrick E., Jessica Martell, and Zackary Vernon. "Reading the Forms of History." In *Fifty Years after Faulkner*, 168–88. University Press of Mississippi, 2016.

Hosainy, Hadi. "Ottoman Legal Practice and Non-Judicial Actors in Seventeenth-Century Istanbul." *Journal of the Ottoman and Turkish Studies Association* 2, no. 1 (2015): 21–36. doi: 10.2979/jottturstuass.2.1.21.

Hosainy, Hadi. "Ottoman Legal Practice and Non-Judicial Actors in Seventeenth-Century Istanbul." In *Law and Legality in the Ottoman Empire and Republic of Turkey*, edited by Schull Kent F., Saraçoğlu M. Safa, and Zens Robert, 26-42. Indiana University Press, 2016.

Huda, Shahnaz. "Anglo-Muhammedan and Anglo-Hindu Law—Revisiting Colonial Codification." *Bangladesh Journal of Law* 7, no. 1&2 (2003): 1–22.

Hull, Matthew Stuart. "Paper Travails: Bureaucracy, Graphic Artifacts, and the Built Environment in the Islamabad Metropolitan Area, 1959–1998." Ph.D. Dissertation, The University of Chicago, 2003.

Hull, M. S. "The File: Agency, Authority, and Autography in an Islamabad Bureaucracy." *Language & Communication* 23, no. 3–4 (2003): 287–314.

Hull, Matthew S. *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan*. Berkeley: University of California Press, 2012.

———. "Ruled by Records: The Expropriation of Land and the Misappropriation of Lists in Islamabad." *American Ethnologist* 35, no. 4 (November 1, 2008): 501–18.

Hume, L.J. *Bentham and Bureaucracy*. Cambridge Studies in the History and Theory of Politics. New York: Cambridge University Press, 1981.

Hunter, Shireen. *The Politics of Islamic Revivalism: Diversity and Unity*. A Midland Book. Bloomington: Indiana University Press, 1988.

Huntington, Samuel P. *The Clash of Civilizations and the Remaking of World Order*. 1st Touchstone ed. New York: Touchstone, 1997.

Husain, Syed Mahdi. Bahadur Shah Zafar and the War of 1857 in Dehli. Dehli: Aakar Books, 2006.

Hussain, Nasser. *The Jurisprudence of Emergency Colonialism and the Rule of Law*. Law, Meaning, and Violence. Ann Arbor: University of Michigan Press, 2003.

Hussain, Sabiha. "Shariat Courts and the Question of Women's Rights in India." *Pakistan Journal of Women's Studies* 14, no. 2 (December 2007): 73–102.

Hussin, Iza. "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State." *Law & Social Inquiry* 32, no. 3 (July 1, 2007): 759–88.

Hussin, Iza R. *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State*. Chicago: The University of Chicago Press, 2016.

Ibn Hasan. *The Central Structure of the Mughal Empire and Its Practical Working up to the Year 1657*. London: Oxford University Press, H. Milford, 1936.

İhsanoğlu, Ekmeleddin, and Humphrey Davies. *The Turks in Egypt and Their Cultural Legacy*. Cairo: American University in Cairo Press, 2012.

Ilbert, Courtenay. *The Government of India, Being a Digest of the Statute Law Relating Thereto.* Oxford: The Clarendon press; London and New York, H. Frowde [etc.], 1907.

ʿInāyatullāh, Muftī., Muḥammad Ḥāmid. Anṣārī, and Muḥammad Shāhid. Anṣārī. *ʿUlamāʾe Firangī Maḥall: mabnī bar Tazkirah-yi ʿUlamāʾe Firangī Maḥall*. Lakhnaʾū: Muḥammad Shāhid Anṣārī, 1988.

Ingram, Brannon D. "Deobandis Abroad: Sufism, Ethics and Polemics in a Global Islamic Movement." Ph.D., The University of North Carolina at Chapel Hill, 2011.

———. "Sufis, Scholars and Scapegoats: Rashīd Aḥmad Gangohī (D. 1905) and the Deob..." 99, no. 3 (July 2009): 478–501.

Islam, Sirajul. *The Permanent Settlement in Bengal: A Study of Its Operation, 1790-1819*. 1st ed. Dacca: Bangla Academy, 1979.

ʿIzzatī, Abū al-Faẓl. *Islam and Natural Law*. London: ICAS Press, 2002.

Jackson, Will, and Emily J. Manktelow. *Subverting Empire: Deviance and Disorder in the British Colonial World*. Cambridge Imperial and Post-Colonial Studies Series. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2015.

Jafri, Saiyid Zaheer Husain. *Studies in the Anatomy of a Transformation: Awadh from Mughal to Colonial Rule*. New Delhi: Gyan Pub. House, 1998.

Jain, M.P. *Outlines in Indian Legal History*. 3rd ed. Bombay: N.M. Tripathi, 1972.

Jamal, Arif A. "ADR and Islamic Law: The Cases of the UK and Singapore." *NUS Law Working Paper Series* 2015/004 (May 2015). http://law.nus.edu.sg/wps.

Johansen, Baber. *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*. Leiden: Brill, 1999.

Johns, Adrian."How to Acknowledge a Revolution." *The American Historical Review* 107, no. 1 (February 1, 2002): 106–25. doi:10.1086/ahr/107.1.106.

———. *The Nature of the Book: Print and Knowledge in the Making*. Chicago, IL: University of Chicago Press, 1998.

Jones, Justin. *Shiʿa Islam in Colonial India: Religion, Community and Sectarianism*. Vol. 18. Cambridge Studies in Indian History and Society. Cambridge: Cambridge University Press, 2012.

Jones, Kenneth W. "Religious Identity and the Indian Census." In *The Census in British India: New Perspectives*, edited by N. Gerald Barrier, 73–102. New Delhi: Manohar, 1981.

———. *Socio-Religious Reform Movements in British India*. Cambridge [England]: Cambridge University Press, 1989.

Jones, William, translator. *The Mahomedan Law of Succession to the Property of Intestates, in Arabick, Engraved on Copper Plates from an Ancient Manuscript, with a Verbal Translation and Explanatory Notes*. (London: J. Nichols, for C. Dilly, 1782).

Joshi, Priya. *In Another Country: Colonialism, Culture, and the English Novel in India*. New York: Columbia University Press, 2002.

Jung, Mahomed Ullah ibn Sarbuland. *A Digest of Anglo-Muslim Law, Compiled from the Original Arabic Authorities.* Allahabad: Juvenile, 1932.

Kafka, Ben. "Paperwork: The State of the Discipline." *Book History* 12, no. 1 (August 16, 2009): 340–53. doi:10.1353/bh.0.0024.

———. *The Demon of Writing: Powers and Failures of Paperwork*. New York: Zone Books, 2012.

Kahf, Monzer. "Islamic Banks: The Rise of a New Power Alliance of Wealth and Shari'a Scholarship." In *The Politics of Islamic Finance*, 17–36. Edinburgh: Edinburgh University Press, 2004.

Kaicker, Abhishek. "Unquiet City: Making and Unmaking Politics in Mughal Delhi, 1707-39." Ph.D. Dissertation, Columbia University, 2014.

Kalpagam, U. *Rule by Numbers: Governmentality in Colonial India*. Lanham, Maryland: Lexington Books, 2014.

Kaye, John William. *The Administration of the East India Company: A History of Indian Progress.* London: R. Bentley, 1853.

Keshavjee, Mohamed M. *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community*. Vol. 6. Library of Islamic Law, London: I.B. Tauris, 2013.

Kessler, Daniel P., and Anne Morrison Piehl. "The Role of Discretion in the Criminal Justice System." Working Paper. National Bureau of Economic Research, November 1997. *http://www.nber.org/papers/w6261*.

Khalfaoui, Mouez. "Al-Fatāwā l-'Ālamgīriyya." *Encyclopaedia of Islam, Three, e*dited by Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, and Everett Rowson. Leiden: Brill Online, 2012. Available: *http://referenceworks.brillonline.com.proxy.uchicago.edu/entries/encyclopaedia-of-islam-3/al-fatawa-l-alamgiriyya-COM_27028?s.num=0&s.f.s2_parent=s.f.cluster.Encyclopaedia+of+Islam&s.q=Khalfaoui*.

Khan, Fareeha. "Maulana Thanawi's Fatwa on the Limits of Parental Rights over Children." In *Islam in South Asia in Practice*, edited by Barbara Daly Metcalf, 305–16. Princeton: Princeton University Press, 2009.

———. "Traditionalist Approaches to Shari'ah Reform: Maulana Ashraf 'Ali Thanawi's Fatwa on Women's Right to Divorce." Ph.D. Dissertation, University of Michigan, 2008.

Khare, Ravindra S., ed. *Perspectives on Islamic Law, Justice, and Society*. Lanham, MD: Rowman & Littlefield, 1987.

King, Christopher Rolland. *One Language, Two Scripts: The Hindi Movement in the Nineteenth Century North India*. Bombay: Oxford University Press, 1994.

Kinra, Rajeev. *Writing Self, Writing Empire: Chandar Bhan Brahman and the Cultural World of the Indo-Persian State Secretary*. Berkeley: University of California Press, 2015.

Kolff, D.H.A. *Grass in Their Mouths: The Upper Doab of India under the Company's Magna Charta, 1793–1830*. Brill's Indological Library 33. Leiden: Brill, 2010.

Kolsky, Elizabeth. "Codification and the Rule of Colonial Difference: Criminal Procedure in British India." *Law and History Review* 23 (2005): 631–84.

———. *Colonial Justice in British India: White Violence and the Rule of Law*. 1st ed. Cambridge Studies in Indian History and Society 17. New York: Cambridge University Press, 2010.

Korson, J. Henry. "Some Aspects of Social Change in the Muslim Family in West Pakistan." *Contributions to Asian Studies* 3 (January 1, 1973): 138–155.

Koya, Riyad Sadiq. "The Campaign for Islamic Law in Fiji: Comparison, Codification, Application." *Law and History Review* 32, no. 4 (November 2014): 853–881. doi:10.1017/S073824801400042X.

Kozlowski, G. C. "A Modern Indian Mufti." In *Islamic Legal Interpretation: Muftis and Their Fatwás*. Ed. Muhammad Khalid Masud, B. Messick, D.S. Powers, 242–250; 361. Cambridge: Harvard University Press, 1996.

Kozlowski, Gregory C. "Imperial Authority, Benefactions and Endowments (Awqāf) in Mughal India." *Journal of the Economic and Social History of the Orient* 38, no. 3 (January 1, 1995): 355–70. doi:10.2307/3632482.

———. "Loyalty, Locality and Authority in Several Opinions (Fatāwā) Delivered by the Muftī of the Jami'ah Niẓāmiyyah Madrasah, Hyderabad, India." *Modern Asian Studies* 29, no. 4 (October 1, 1995): 893–927.

———. *Muslim Endowments and Society in British India*. Cambridge South Asian Studies. 35. New York: Cambridge University Press, 1985.

Kozma, Liat, Cyrus Schayegh, and Avner Wishnitzer, eds. *A Global Middle East: Mobility, Materiality and Culture in the Modern Age, 1880-1940*. Vol. 50. Library of Middle East History. London: I.B. Tauris, 2015.

Krüger, Hilmar. *Fetwa und Siyar: zur internat.-rechtl. Gutachtenpraxis d. osman. Ṣeyh ül-Islâm im 17. u. 18. Jh. unter bes. Berücks. d. "Behcet ül-Fetâvâ."* Wiesbaden: Harrassowitz, 1977.

Kugle, Scott Alan. "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia." *Modern Asian Studies* 35, no. 2 (May 1, 2001): 257–313.

Kumar, Ravivarma. "Caste Enumeration in Census: Constitutional Imperative." *Economic and Political Weekly* 35, no. 35/36 (September 26, 2000): 3100–3102.

Kuran, Timur. *The Long Divergence How Islamic Law Held Back the Middle East*. Princeton: Princeton University Press, 2011.

Kupferschmidt, Uri M. "On the Diffusion of 'Small' Western Technologies and Consumer Goods in the Middle East during the Era of the First Modern Globalization." In *A Global Middle East: Mobility, Materiality and Culture in the Modern Age, 1880-1940*, edited by Liat Kozma, Cyrus Schayegh, and Avner Wishnitzer, 50:229–260. Library of Middle East History. London: I.B. Tauris, 2015.

Kwarteng, Kwasi. *Ghosts of Empire: Britain's Legacies in the Modern World*. London: Bloomsbury, 2011.

Lal, Vinay. "Everyday Crime, Native Mendacity and the Cultural Psychology of Justice in Colonial India." *Studies in History* 15, no. 1 (February 1, 1999): 145–66. doi: 10.1177/025764309901500105.

Lapidus, Ira M. "Islamic Revival and Modernity: The Contemporary Movements and the Historical Paradigms." *Journal of the Economic and Social History of the Orient* 40, no. 4 (1997): 444–60.

Largent, Mark A. *Vaccine: The Debate in Modern America*. Baltimore: Johns Hopkins University Press, 2012.

Larson, Magali Sarfatti. *The Rise of Professionalism: A Sociological Analysis*. Berkeley, CA: University of California Press, 1979.

Latour, Bruno. *The Making of Law: An Ethnography of the Conseil d'Etat*. Cambridge, UK: Polity Press, 2010.

Lawrance, Benjamin N., Emily Lynn. Osborn, and Richard L. Roberts, eds. Intermediaries, Interpreters, and Clerks: African Employees in the Making of Colonial Africa. Madison, WI: University of Wisconsin Press, 2006.

Layish, Aharon. "'Waqfs' and Ṣūfī Monasteries in the Ottoman Policy of Colonization: Sulṭan Selīm I's 'waqf' of 1516 in Favour of Dayr Al-Asad." *Bulletin of the School of Oriental and African Studies, University of London* 50, no. 1 (1987): 61–89.

Lee, Geoffrey A. "The Coming of the Age of Double Entry: The Giovanni Farolfi Ledger of 1299–1300." *The Accounting Historians Journal* 4, no. 2 (1977): 79–95.

Lelyveld, David. *Aligarh's First Generation: Muslim Solidarity in British India*. Princeton: Princeton University Press, 1977.

Lelyveld, D. "Colonial Knowledge and the Fate of Hindustani." *Comparative Studies in Society and History*, 1993, 665–682.

Lemons, Katherine. "At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi." Ph.D. Dissertation, University of California, Berkeley, 2010.

Leonard, Karen. "The 'Great Firm' Theory of the Decline of the Mughal Empire." *Comparative Studies in Society and History* 21, no. 2 (April 1979): 151–67. doi:10.1017/S0010417500012792.

———. "Hindu Temples in Hyderabad: State Patronage and Politics in South Asia." *South Asian History and Culture* 2, no. 3 (July 1, 2011): 352–73. doi:10.1080/19472498.2011.577568.

Leonard, Karen Isaksen. *Locating Home: India's Hyderabadis Abroad*. Palo Alto, CA: Stanford University Press, 2007.

Leonard, Spencer Austin. "A Fit of Absence of Mind? Illiberal Imperialism and the Founding of British India, 1757--1776." Ph.D. Dissertation, University of Chicago, 2010.

Lévi-Strauss, Claude. *Tristes Tropiques*. Translated by John Weightman and Doreen. Weightman. Penguin Classics. New York: Penguin Books, 2012.

Likhovski, Assaf. *Law and Identity in Mandate Palestine*. Studies in Legal History. Chapel Hill [N.C.]: University of North Carolina Press, 2006.

Liu, Lydia He. *The Clash of Empires*. Cambridge, MA: Harvard University Press, 2004.

Lobel, Orly. "The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics." *Harvard Law Review* 120, no. 4 (2007): 937–88.

Loimeier, Roman. "Is There Something like 'Protestant Islam'?" *Die Welt Des Islams* 45, no. 2 (2005): 216–54.

Loomba, Ania. "Of Gifts, Ambassadors, and Copy-Cats: Diplomacy, Exchange and Difference in Early Modern India." In *Emissaries in Early Modern Literature and Culture: Mediation, Transmission, Traffic, 1550–1700*, edited by Brinda Charry and Gitanjali Shahani, 41–76. New York: Routledge, 2016.

Low, Michael Christopher. "Empire and the Hajj: Pilgrims, Plagues, and Pan-Islam under British Surveillance, 1865-1908." *International Journal of Middle East Studies* 40, no. 2 (2008): 269–90.

Lowenkron, Laura, and Letícia Ferreira. "Anthropological Perspectives on Documents. Ethnographic Dialogues on the Trail of Police Papers." *Vibrant: Virtual Brazilian Anthropology* 11, no. 2 (December 2014): 76–112. doi:10.1590/S1809-43412014000200003.

Lozowick, Yaacov. *Hitler's Bureaucrats: The Nazi Security Police and the Banality of Evil*. Translated by Haim Watzman. Eng. ed. London: Continuum, 2002.

Macaulay, Thomas Babington. *Essays on Lord Clive and Warren Hastings*. New York: Charles E. Merrill Co., 1910.

Macaulay, T.B., G.W. Anderson, and F. Millett. *The Indian Penal Code, as Originally Framed in 1837*. Madras: Higginbotham and Co, 1888.

Mack, Alexandra. "One Landscape, Many Experiences: Differing Perspectives of the Temple Districts of Vijayanagara." *Journal of Archaeological Method and Theory* 11, no. 1 (March 1, 2004): 59–81. doi:10.1023/B:JARM.0000014617.58744.1d.

———. *Spiritual Journey, Imperial City: Pilgrimage to the Temples of Vijayanagara*. Delhi: Vedams eBooks Ltd, 2002.

Macnaghten, W. H., and William Sloan. *Principles and Precedents of Moohummudan Law, Being a Compilation of Primary Rules Relative to Inheritance, Contracts and Miscellaneous Subjects*. 2nd ed. Madras: Higginbotham, 1882.

MacKeown, P. Kevin. *Early China Coast Meteorology: The Role of Hong Kong*. Aberdeen: Hong Kong University Press, 2011.

Madan Gopal. *Freedom Movement and the Press: The Role of Hindi Newspapers*. New Delhi: Criterion Publications, 1990.

Mahdi, Muhsin. "From the Manuscript Age to the Age of Printed Books." In *The Book in the Islamic World : The Written Word and Communication in the Middle East*, edited by George N. Atiyeh, 1–15. New York: State University of New York Press, 1995.

Major, Andrea. *Sovereignty and Social Reform in India: British Colonialism and the Campaign against Sati, 1830-60*. Routledge/Edinburgh South Asian Studies Series. Abingdon, Oxon: Routledge, 2011.

Malik, Ikram Ali. "Muslim Anjumans and Communitarian Consciousness." In *Five Punjabi Centuries: Polity, Economy, Society and Culture, C. 1500-1990, Essays for J.S. Grewal*, edited by Indu Banga, 112–125. Delhi: Manohar, 1997.

Malik, Jamal. *Islam in South Asia: A Short History*. Leiden: Brill, 2008.

Mallampalli, Chandra. "Escaping the Grip of Personal Law in Colonial India: Proving Custom, Negotiating Hindu-Ness." *Law and History Review* 28, no. 4 (November 2010): 1043–65. doi: 10.1017/S0738248010000763.

———. *Race, Religion, and Law in Colonial India: Trials of an Interracial Family*. Cambridge Studies in Indian History and Society, no. 19. New York: Cambridge University Press, 2011.

Manger, Leif O. *Muslim Diversity: Local Islam in Global Contexts*. Vol. 26. NIAS Studies in Asian Topics. Richmond, Surrey: Curzon, 1999.

Mansoori, Muhammd Tahir. "Is 'Islamic Banking' Islamic? Analysis of Current Debate on Sharī'ah Legitimacy of Islamic Banking and Finance." *Islamic Studies* 50, no. 3/4 (2011): 383–411.

Mantena, Karuna. *Alibis of Empire Henry Maine and the Ends of Liberal Imperialism*. Princeton, N.J.: Princeton University Press, 2010.

Manucci, Niccolao. *Storia Do Mogor: Or, Mogul India, 1653-1708*. Translated by William Irvine. With an introduction and notes by William Irvine. Calcutta: Editions Indian, 1965.

Mares, G. C. *The History of the Typewriter: Being an Illustrated Account of the Origin, Rise and Development of the Writing Machine*. London: G. Pitman, 1909.

Marshall, Peter. "The Making of the Hybrid Raj, 1700-1857." *History Today* 47, no. 9 (1997): 4–9. doi:Article.

Masud, Muhammad Khalid. "Ādāb Al-Muftī: The Muslim Understanding of Values, Characteristics, and Role of a Muftī." In *Moral Conduct and Authority: The Place of Adab in South Asian Islam*, edited by Barbara Daly Metcalf, 124–145. Berkeley: University of California Press, 1984.

———. "Adab al-Muftī." In *Encylcopaedia of Islam, Three*, edited by Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson. (Leiden: Brill Online, 2013 [2008]). http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/adab-al-mufti-COM_26301.

———. "Adab al-qāḍī." In *Encylcopaedia of Islam, Three,* edited by Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson. (Leiden: Brill Online, 2013 [2007]). http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/adab-al-qadi-COM_0106.

———. "Apostasy and Judicial Separation in British India." In *Islamic Legal Interpretation: Muftis and Their Fatwas*, edited by Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, 193–203. Harvard Studies in Islamic Law. Cambridge, Mass: Harvard University Press, 1996.

———, ed. *Travellers in Faith: Studies of the Tablīghī Jamā'at as a Transnational Islamic Movement for Faith Renewal*. Leiden: Brill, 2000.

Masud, Muhammad Khalid, Brinkley Morris. Messick, and David Stephan. Powers, eds. *Islamic Legal Interpretation: Muftis and Their Fatwas*. Harvard Studies in Islamic Law. Oxford: Oxford University Press, 2005.

Masud, Muhammad Khalid, Rudolph Peters, and David Stephan Powers, eds. *Dispensing Justice in Islam: Qadis and Their Judgements*. Vol. 22. Studies in Islamic Law and Society. Leiden: Brill, 2006.

Mathew, Dinoo Anna. "Panchayats Alone Are Not to Blame." *Economic and Political Weekly* 37, no. 18 (2002): 1767–68.

Mawani, Renisa, and Iza Hussin. "The Travels of Law: Indian Ocean Itineraries." *Law and History Review* 32, no. 4 (November 2014): 733–747. doi:10.1017/S0738248014000467.

May, Stephen. *Get Started In Creative Writing: Teach Yourself*. London: Hodder & Stoughton, 2010.

McDonnell, Michael. *Masters of Empire: Great Lakes Indians and the Making of America*. New York: Farrar, Straus and Giroux, 2015.

McLaren, John. *Dewigged, Bothered, and Bewildered: British Colonial Judges on Trial, 1800-1900*. Toronto: University of Toronto Press, 2011

McLaughlin, Kevin. *Paperwork: Fiction and Mass Mediacy in the Paper Age*. Philadelphia: University of Pennsylvania Press, 2011.

McLuhan, Marshall. *Understanding Media: The Extensions of Man*. 1st MIT Press ed. Cambridge, Mass.: MIT Press, 1994.

Mehta, Uday Singh. *Liberalism and Empire : A Study in Nineteenth-Century British Liberal Thought*. Chicago: University of Chicago Press, 1999.

Menski, Werner. *Hindu Law : Beyond Tradition and Modernity*. New York : Oxford University Press, 2003.

Merry, Sally Engle. "Anthropology, Law, and Transnational Processes." *Annual Review of Anthropology* 21, no. 1 (1992): 357–77. doi:10.1146/annurev.an.21.100192.002041.

———. *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*. Chicago: University of Chicago Press, 1990.

———. "Law and Colonialism." *Law & Society Review* 25, no. 4 (1991): 889–922.

———. "Legal Pluralism." *Law & Society Review* 22, no. 5 (1988): 869–96. doi:10.2307/3053638.

Merwick, Donna. *Death of a Notary: Conquest and Change in Colonial New York*. Ithaca: Cornell University Press, 1999.

Messick, Brinkley Morris. *The Calligraphic State: Textual Domination and History in a Muslim Society*. 1st. pbk. ed. Comparative Studies on Muslim Societies 16. Berkeley: University of California Press, 1996.

———. "The Mufti, the Text and the World: Legal Interpretation in Yemen." *Man*, New Series, 21, no. 1 (March 1, 1986): 102–19. doi:10.2307/2802649.

———. "The Taqwiyyat Al-Iman (Support of the Faith) by Shah Isma'il Shahid." In *Islam in South Asia in Practice*, edited by Barbara Daly Metcalf, 201–11. Princeton: Princeton University Press, 2009.

Metcalf, Barbara. "Islam and Power in Colonial India: The Making and Unmaking of a Muslim Princess." *The American Historical Review* 116, no. 1 (February 1, 2011): 1–30.

Metcalf, Barbara Daly, *India, Islam and Everyday Jihad*. Egham: Royal Holloway, University of London, 2004.

———. *Islamic Revival in British India: Deoband, 1860–1900*. Princeton, N.J: Princeton University Press, 1982.

———. *Perfecting Women: Maulana Ashraf 'Ali Thanawi's Bihishti Zewar, A Partial Translation with Commentary*. Berkeley: University of California Press, 1990.

———. *"Traditionalist" Islamic Activism: Deoband, Tablighis, and Talibs*. Leiden: ISIM, 2002.

———. "Two Fatwas on Hajj in British India." In *Islamic Legal Interpretation: Muftis and Their Fatwás*. Ed. Muhammad Khalid Masud, B.Messick, D.S.Powers, 184-192-356. Cambridge: Harvard University Press, 1996.

Metcalf, Barbara Daly, ed. *Moral Conduct and Authority: The Place of Adab in South Asian Islam*. Berkeley: University of California Press, 1984.

———, ed. *Islam in South Asia in Practice*. Princeton: Princeton University Press, 2009.

Metcalf, Thomas R. *Ideologies of the Raj*. Cambridge: Cambridge University Press, 1994.

Miller, Flagg. *The Moral Resonance of Arab Media: Audiocassette Poetry and Culture in Yemen*. Cambridge, Mass.: Distributed for the Center for Middle Eastern Studies of Harvard University by Harvard University Press, 2007.

Mir, Farina. "Introduction." *The American Historical Review* 120, no. 3 (June 1, 2015): 844–51. doi: 10.1093/ahr/120.3.844.

Miran, Jonathan. "Endowing Property and Edifying Power in a Red Sea Port: Waqf, Arab Migrant Entrepreneurs, and Urban Authority in Massawa, 1860s-1880s." *The International Journal of African Historical Studies* 42, no. 2 (2009): 151–78.

Mitchell, Timothy. *Colonising Egypt*. Berkeley: University of California Press, 1991.

———. *Rule of Experts: Egypt, Techno-Politics, Modernity*. Berkeley: University of California Press, 2002.

Mohiuddin, Momin. *The Chancellery and Persian Epistolography under the Mughals, from Bábur to Sháh Jahán, 1526-1658: A Study on Inshá', Dár Al-Inshá', and Munshīs Based on Original Documents*. Calcutta: Iran Society, 1971.

Moir, Martin. "Kaghazi Raj: Notes on the Documentary Basis of Company Rule: 1783–1858." *Indo-British Review* 21, no. 2 (1983): 185–93.

Mooney, Linne R., and Estelle Stubbs. *Scribes and the City: London Guildhall Clerks and the Dissemination of Middle English Literature, 1375-1425*. Rochester, NY: York Medieval Press, 2013.

Moreno, Paul. "Racial Classifications and Reconstruction Legislation." *The Journal of Southern History* 61, no. 2 (1995): 271-304.

Moosa, Ebrahim. "Introduction." *The Muslim World* 99, no. 3 (July 1, 2009): 427–34. doi: 10.1111/j.1478-1913.2009.01285.x.

———. "Shari'at Governance in Colonial and Postcolonial India." In *Islam in South Asia in Practice*, edited by Barbara Daly Metcalf, 317–25. Princeton: Princeton University Press, 2009.

Morony, Michael G. *Universality in Islamic Thought: Rationalism, Science and Religious Belief*. Vol. 52. Library of Middle East History. London: I.B. Tauris, 2014.

Moulds, Elizabeth F. "Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System." *Western Political Quarterly* 31, no. 3 (September 1, 1978): 416–30. doi: 10.1177/106591297803100311.

Mukherjee, Mithi. "Justice, War, and the Imperium: India and Britain in Edmund Burke's Prosecutorial Speeches in the Impeachment Trial of Warren Hastings." *Law and History Review* 23, no. 3 (2005): 589–630.

Mukherjee, Nilmani. *The Ryotwari System in Madras, 1792-1827*. Calcutta: Firma K. L. Mukhopadhyay, 1962.

Mulla, Dinshah Fardunji. *D.F. Mulla's Principles of Muhammadan Law : With Survey of Case-Law from the Superior Courts, 1906-2008*. 1st ed. Lahore: al-Qanoon Publishers, 2009.

Mulla, I. *Commentary on Mohammedan Law.* Allahabad : Dwivedi Law Agency, 2006.

Mullaney, Thomas. "The Moveable Typewriter: How Chinese Typists Developed Predictive Text during the Height of Maoism." *Technology and Culture* 53, no. 4 (October 2012): 777–814.

Müller, Simone M. *Wiring the World: The Social and Cultural Creation of Global Telegraph Networks*. New York: Columbia University Press, 2016.

Munavvar Sulṭān Nadvī. *Fatāvá Nadvatul'ulamā'*. Lucknow: Majlis-i Ṣaḥāfat o Nashriyāt, Nadvatul'ulamā', 2012.

Muttalib, M. A. *Administration of Justice under the Nizams, 1724-1948*. Hyderabad: State Archives, Andhra Pradesh, 1988.

Nair, Janaki. *Women and Law in Colonial India: A Social History*. New Delhi: Kali for Women in collaboration with the National Law School of India University, 1996.

Nakassis, Constantine V. "Materiality, Materialization." *HAU: Journal of Ethnographic Theory* 3, no. 3 (December 23, 2013): 399–406.

Nānābhaī, Jam 'īyatram, and Setalvad, Chimanlal Harilal. *Bombay Acts and Regulations, with Notes, Decisions, Notifications, &c.* Bombay: Ripon Printing Press, 1894.

Narain, Vrinda. *Reclaiming the Nation: Muslim Women and the Law in India*. Toronto: University of Toronto Press, 2008.

Narayan, B. K. *Finances and Fiscal Policy of Hyderabad State (1900-1956); a Study in Economic History*. Vol. no. 2. Andhra Pradesh Government. Regular Monograph Series of State Archives. Hyderabad: Govt. of Andhra Pradesh, 1970.

Naono, Atsuko. *State of Vaccination: The Fight against Smallpox in Colonial Burma*. Hyderabad: Orient Blackswan, 2009.

Neptune, H. Reuben. "The Irony of Un-American Historiography: Daniel J. Boorstin and the Rediscovery of a U.S. Archive of Decolonization." *The American Historical Review* 120, no. 3 (June 1, 2015): 935–50. doi:10.1093/ahr/120.3.935.

Newbigin, Eleanor, Leigh Denault, and Rohit De. "The Codification of Personal Law and Secular Citizenship: Revisiting the History of Law Reform in Late Colonial India." *The Indian Economic & Social History Review* 46, no. 1 (January 1, 2009): 83–104. doi: 10.1177/001946460804600105.

Newbury, Colin. "Patronage and Professionalism: Manning a Transitional Empire, 1760–1870." *The Journal of Imperial and Commonwealth History* 42, no. 2 (March 15, 2014): 193–214. doi: 10.1080/03086534.2013.851872.

Nevill, H.R. Meerut: *A Gazetteer, Being Volume IV of the District Gazetteers of the United Provinces of Agra and Oudh*. Allahabad: Government Press, United Provinces, 1904.

Nobuaki, Kondo, ed. *Persian Documents: Social History of Iran and Turan in the Fifteenth to Nineteenth Centuries*. New Horizons in Islamic Studies. London: RoutledgeCurzon, 2003.

Nussdorfer, Laurie. *Brokers of Public Trust: Notaries in Early Modern Rome*. Baltimore: Johns Hopkins University Press, 2009.

Oberauer, Norbert. "'Fantastic Charities': The Transformation of 'Waqf' Practice in Colonial Zanzibar." *Islamic Law and Society* 15, no. 3 (2008): 315–70.

Ocko, Jonathan K., and David Gilmartin. "State, Sovereignty, and the People: A Comparison of the 'Rule of Law' in China and India." *The Journal of Asian Studies* 68, no. 1 (2009): 55–100. doi:10.1017/S0021911809000084.

Odorico da Pordenone. *Elogio storico alla gesta del Beato Odorico: dell'ordine De Minori Conventuali, con la storia da lui dettata de' suoi viaggi asiatici*. Venezia: Antonio Zatta, 1761.

———. *Les merveilles de la terre d'outremer: traduction du XIVe siècle du récit de voyage d'Odoric de Pordenone*. Edited by Jean de Vignay. Translated by D. A. Trotter. Exeter, England: University of Exeter, 1990.

———. *Les Voyages En Asie Au XIVe Siècle Du Bienheureux Frère Odoric de Pordenone.* Edited by Henri Cordier. Paris: Ernest Leroux, 1891. http://hdl.handle.net/2027/mdp.39015025117923.

Odorico of Pordenone. *The Travels of Friar Odoric*. Translated by Henry Yule. Grand Rapids, Mich.: W.B. Eerdmans Pub. Co., 2002.

Ogborn, Miles. *Indian Ink: Script and Print in the Making of the English East India Company*. Chicago: University of Chicago Press, 2007.

O'Hanlon, Rosalind, and David Washbrook. "The Social Worth of Scribes: Brahmins, Kāyasthas and the Social Order in Early Modern India." *The Indian Economic & Social History Review* 47, no. 4 (October 1, 2010): 563–95. doi:10.1177/001946461004700406.

Orbay, Kayhan. "Account Books of the Imperial Waqfs (Charitable Endowments) in the Eastern Mediterranean (15th to 19th Centuries)." *The Accounting Historians Journal* 40, no. 1 (2013): 31–50.

Orsini, Francesca. *The Hindi Public Sphere 1920-1940: Language and Literature in the Age of Nationalism*. New Delhi: Oxford University Press, 2002.

———. *Print and Pleasure: Poplar Literature and Entertaining Fictions in Colonial North India*. New Delhi: Permanent Black, 2009.

———. "What Did They Mean by 'Public'? Language, Literature and the Politics of Nationalism." *Economic and Political Weekly* 34, no. 7 (February 13, 1999): 409–16.

Otto, Jan Michiel. *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Law, Governance, and Development. [Amsterdam]: Leiden University Press, 2010.

Pakistan Constituent Assembly (1947-1954). Legislature. "Starred Questions and Answers." *Constituent Assembly (Legislature) of Pakistan Debates* (1951).

Panda, Chitta. *The Decline of the Bengal Zamindars: Midnapore, 1870-1920*. Delhi: Oxford University Press, 1996.

Parkes, M. B. (Malcolm Beckwith). *Scribes, Scripts, and Readers: Studies in the Communication, Presentation, and Dissemination of Medieval Texts*. London, UK: Hambledon Press, 1991.

Pearson, M. N. "Symposium: Decline of The Mughal Empire." *The Journal of Asian Studies* 35, no. 2 (February 1976): 221–35. doi:10.2307/2053980.

Peabody, Norbert. "Cents, Sense, Census: Human Inventories in Late Precolonial and Early Colonial India." *Comparative Studies in Society and History* 43, no. 4 (2001): 819–50.

Pearson, Susan J. "'Age Ought to Be a Fact': The Campaign against Child Labor and the Rise of the Birth Certificate." *Journal of American History* 101, no. 4 (March 1, 2015): 1144–65. doi: 10.1093/jahist/jav120.

Peirce, Leslie. *Morality Tales: Law and Gender in the Ottoman Court of Aintab*. Berkeley: University of California Press, 2003.

Perkins, Christopher Ryan. "Partitioning History: The Creation of an Islami Pablik in Late Colonial India, C. 1880--1920." Ph.D., University of Pennsylvania, 2011.

Perti, R. K., ed. *Descriptive List of Acquired Documents*. New Delhi: National Archives of India, 1982.

Peterson, E. N. "The Bureaucracy and the Nazi Party." *The Review of Politics* 28, no. 2 (1966): 172–92.

Phalen, William J. *How the Telegraph Changed the World*. Jefferson, North Carolina: McFarland & Company, Inc., Publishers, 2015.

Peirce, Leslie. *Morality Tales: Law and Gender in the Ottoman Court of Aintab*. Berkeley: University of California Press, 2003.

Pierret, Thomas. "Merchant Background, Bourgeois Ethics: The Syrian ʿulama and Economic Liberalization." In *Syria from Reform to Revolt*, edited by Fred H. Lawson, 130–46. Volume 2: Culture, Society, and Religion. Syracuse University Press, 2015.

Pinch, Wiliam R. *Peasants and Monks in British India*. Chicago: University of California Press, 1996.

———. "Same Difference in India and Europe." *History & Theory* 38, no. 3 (October 1999): 389–407.

Poddar, Prem. "Passports, Empire, Subjecthood." In *Empire and After: Englishness in Postcolonial Perspective*, edited by Graham MacPhee and Prem Poddar. New York: Berghahn Books, 2007.

Pollock, Sheldon. *The Language of the Gods in the World of Men Sanskrit, Culture, and Power in Premodern India.* Berkeley: University of California Press, 2006.

Poole, Thomas. *Reason of State*. Cambridge, UK: Cambridge University Press, 2015.

Pomeranz, Kenneth. *The Great Divergence: China, Europe, and the Making of the Modern World Economy.* The Princeton Economic History of the Western World. Princeton: Princeton University Press, 2009.

Pomeranz, Kenneth, and Steven. Topik. *The World That Trade Created: Society, Culture, and the World Economy, 1400 to the Present*. 3rd ed. Armonk, N.Y.: M.E. Sharpe, 2013.

Poovey, Mary. *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society*. Chicago: University of Chicago Press, 1998.

———. "The Limits of the Universal Knowledge Project: British India and the East Indiamen." *Critical Inquiry* 31, no. 1 (2004): 183–202. doi:10.1086/427307.

Powell, Avril. "Questionable Loyalties: Muslim Government Servants and Rebellion." In *Mutiny at the Margins: New Perspectives on the Indian Uprising of 1857.*, edited by Crispin Bates, Andrea. Major, Marina Carter, and Gavin Rand, Vol. 5:82–102. New Delhi: SAGE Publications, 2013.

Powers, David S. "Fatwas as Sources for Legal and Social History: A Dispute Over Endowment Revenues From Fourteenth-Century Fez." *Al-Qantara: Revista de Estudios Árabes* 11, no. 2 (1990): 295–342.

———. "Kadijustiz or Qāḍī-Justice? A Paternity Dispute from Fourteenth-Century Morocco." *Islamic Law and Society* 1, no. 3 (1994): 332–66. doi:10.2307/3399235.

Powers, David S. "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India." *Comparative Studies in Society and History* 31, no. 3 (July 1989): 535–71.

Prakash, Om. "The Indian Maritime Merchant, 1500-1800." *Journal of the Economic and Social History of the Orient* 47, no. 3 (2004): 435–57.

Pratt, Mary. *Imperial Eyes : Travel Writing and Transculturation*. 1st publ. London: Routledge, 1992.

Price, Joseph. *Five Letters from a Free Merchant in Bengal, to Warren Hastings, Esq., Governor General of the Honorable East India Company's Settlements in Asia :conveying Some Free Thoughts on the Probable Causes of the Decline of the Export Trade of That Kingdom; and a Rough Sketch, or Outlines of a Plan, for Restoring It to Its Former Splendor.* London: [s.n.], 1783.

Proudfoot, Ian. "Mass Producing Houri's Moles: Or Aesthetics and Choice of Technology in Early Muslim Book Publishing." In *Islam: Essays on Scripture, Thought and Society: A Festschrift in Honour of Anthony H. Johns*, edited by Peter G. Riddell and Tony Street, v. 28:161–184. Islamic Philosophy, Theology, and Science. Leiden: Brill, 1997.

Purohita, Prakāśa. *Rājasthāna meṃ svatantratā saṅgrāmakālīna patrakāritā*. 1. saṃskaraṇa. Jayapura: Rājasthāna Hindī Grantha Akādamī, 2007.

Qasemi, S.H. "Harkarn Dās Kanbōh." *Encyclopædia Iranica*, (December 15, 2003). http://www.iranicaonline.org/articles/harkarn-das-kanboh.

Rabb, Intisar A. "Against Kadijustiz: On the Negative Citation of Foreign Law." *Suffolk University Law Review* 48 (2015): 343–377.

———. "Ijtihad." *The Oxford Encyclopedia of the Islamic World. Oxford Islamic Studies Online*. Accessed April 7, 2017. http://www.oxfordislamicstudies.com/article/opr/t236/e0354.

Raheja, Gloria Goodwin. "Caste, Colonialism, and the Speech of the Colonized: Entextualization and Disciplinary Control in India." *American Ethnologist* 23, no. 3 (August 1996): 494–513.

Rāhī, Muḥammad Raẓī. *Bābā'e Urdū Maulavī 'Abdulḥaq: ḥayāt aur uslūb*. Karācī: Idārah-yi Majlis Adabiyāt-i Pākistān, 1999.

Rahman, Munibur. "Ruswā." In *Encyclopaedia of Islam*, Second Edition, ed. by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Leiden: Brill Online, http://dx.doi.org/ 10.1163/1573-3912_islam_SIM_6350.

Rahman, Tariq. "Urdu as an Islamic Language." *Annual of Urdu Studies* 21 (January 2006): 101–19.

Raj, Sheela. *Mediaevalism to Modernism: Socio-Economic and Cultural History of Hyderabad, 1869-1911*. Bombay: Popular Prakashan, 1987.

Ramakrishna Reddy, V. *Economic History of Hyderabad State: Warangal Suba, 1911-1950*. Delhi: Gian Pub. House, 1987.

Raman, Bhavani. "Document Raj." In *The Madras School of Orientalism: Producing Knowledge in Colonial South India*, edited by Thomas R Trautmann. Oxford University Press, 2009.

———. *Document Raj: Writing and Scribes in Early Colonial South India*. South Asia across the Disciplines. Chicago: The University of Chicago Press, 2012.

———. "The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras." *Comparative Studies in Society and History* 54, no. 2 (2012): 229–50. doi: 10.1017/S0010417512000023.

Ramsay, Nigel. "Scriveners and Notaries as Legal Intermediaries in Later Medieval England." In *Enterprise and Individuals in Fifteenth-Century England*, edited by Jennifer Kermode, 118–31. Wolfeboro Falls, N.H.: Alan Sutton, 1991.

Rana, Aziz. *The Two Faces of American Freedom*. Cambridge, Mass.: Harvard University Press, 2010.

Rashid, Syed Khalid. "Alternative Dispute Resolution in the Context of Islamic Law." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, September 20, 2012. https://papers.ssrn.com/abstract=2149550.

Redding, Jeffrey A. "Secularism, The Rule of Law, and 'Shar'a Courts': An Ethnographic Examination of a Constitutional Controversy." *Saint Louis University Law Journal* 57, no. 2 (Winter 2013): 339–76.

Reddy, D. Subramanyam. "The Ryotwari Land Revenue Settlements and Peasant Resistance in the 'Northern Division of Arcot' of the Madras Presidency during Early British Rule." *Social Scientist* 16, no. 6/7 (1988): 35–50. doi:10.2307/3517274.

Redfield, Robert. *The Little Community: And Peasant Society and Culture*. Chicago: The University of Chicago Press, 1960.

Reichmuth, Philipp. "'Lost in the Revolution': Bukharan Waqf and Testimony Documents from the Early Soviet Period." *Die Welt Des Islams* 50, no. 3/4 (2010): 362–96.

Reiter, Yitzhak. "Family Waqf Entitlements in British Palestine (1917-1948)." *Islamic Law and Society* 2, no. 2 (1995): 174–93.

Repp, R. C. *The Müfti of Istanbul: A Study in the Development of the Ottoman Learned Hierarchy*. Vol. no. 8. Oxford Oriental Institute Monographs ; London: Published by Ithaca Press London for the Board of the Faculty of Oriental Studies, Oxford University, 1986.

Ricci, Ronit. "Conversion to Islam on Java and the Book of One Thousand Questions." *Bijdragen Tot de Taal-, Land- En Volkenkunde* 165, no. 1 (May 11, 2009): 8–31.

———. *Islam Translated Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia*. Chicago, IL: University of Chicago Press, 2011.

Richards, J. F. *The Mughal Empire*. The New Cambridge History of India, I, 5. New York, NY: Cambridge University Press, 1993.

Riddell, Peter G., and Tony. Street, eds. *Islam: Essays on Scripture, Thought and Society: A Festschrift in Honour of Anthony H. Johns*. Vol. v. 28. Islamic Philosophy, Theology, and Science. Leiden: Brill, 1997.

Roosa, John. "The Quandary of the Qaum: Indian Nationalism in a Muslim State, Hyderabad 1850-1948." Ph.D. Dissertation, University of Wisconsin–Madison, 1998.

Rosen, Lawrence. *The Anthropology of Justice: Law as Culture in Islamic Society*. The Lewis Henry Morgan Lectures 1985. New York: Cambridge University Press, 1989.

———. "Equity and Discretion in a Modern Islamic Legal System." *Law & Society Review* 15, no. 2 (1980): 217–45. doi:10.2307/3053603.

Robinson, Francis. "The British Empire and Muslim Identity in South Asia." *Transactions of the Royal Historical Society*, Sixth Series, 8 (January 1, 1998): 271–89. doi:10.2307/3679298.

———. "Other-Worldly and This-Worldly Islam and the Islamic Revival. A Memorial Lecture for Wilfred Cantwell Smith." *Journal of the Royal Asiatic Society*, Third Series, 14, no. 1 (April 1, 2004): 47–58.

———. "Technology and Religious Change: Islam and the Impact of Print." *Modern Asian Studies* 27, no. 1 (February 1993): 229–51.

———. *The 'ulama of Farangi Mahall and Islamic Culture in South Asia*. New Delhi: Permanent Black, 2001.

Rochlin, S. A. "Early Arabic Printing at the Cape of Good Hope." *Bulletin of the School of Oriental Studies*, University of London 7, no. 1 (1933): 49–54.

Roff, William R. "Customary Law, Islamic Law, and Colonial Authority: Three Contrasting Case Studies and Their Aftermath." *Islamic Studies* 49, no. 4 (December 1, 2010): 455–62.

Romb, Anselm W. *Mission to Cathay; the Biography of Blessed Odoric of Pordenone*. Paterson, N.J.: St. Anthony Guild Press, 1956.

Roper, Geoffrey. "Arabic Printing and Publishing in England before 1820." *Bulletin (British Society for Middle Eastern Studies)* 12, no. 1 (1985): 12–32.

———. "The Printing Press and Change in the Arab World." In *Agent of Change: Print Culture Studies after Elizabeth L. Eisenstein*, edited by Sabrina Alcorn Baron, Eric N. Lindquist, and Eleanor F. Shevlin, 250–67. University of Massachusetts Press, 2007.

Rosett, Arthur I., and Donald R Cressey. *Justice by Consent: Plea Bargains in the American Courthouse*. Philadelphia: Lippincott, 1976.

Roychowdhury, Birendra Kishore. *Permanent Settlement and After.* Calcutta: Book Co., 1942.

Russell, Francis. *A Short History of the East India Company: Exhibiting a State of Their Affairs, Abroad and at Home, Political and Commercial.* London: Printed for J. Sewell, 1793.

Saha, Jonathan. "A Mockery of Justice? Colonial Law, the Everyday State and Village Politics in the Burma Delta, c.1890–1910." *Past & Present* 217, no. 1 (November 1, 2012): 187–212. doi:10.1093/pastj/gts019.

Said, Abdul Aziz, and Meena Sharify-Funk. *Cultural Diversity and Islam*. Lanham, MD: University Press of America, 2003.

Said, Edward W. *Orientalism.* 1st Vintage Books ed. New York: Vintage Books, 1979.

Sait, Siraj., and Hilary. Lim. *Land, Law and Islam: Property and Human Rights in the Muslim World*. London: Zed Books, 2006.

Salomon, Noah. *For Love of the Prophet: An Ethnography of Sudan's Islamic State*. Princeton: Princeton University Press, 2016.

Salvatore, Armando, and Dale F. Eickelman, eds. *Public Islam and the Common Good.* Leiden: Brill, 2004.

Sanyal, Usha. *Devotional Islam and Politics in British India: Ahmad Riza Khan Barelwi and His Movement, 1870-1920*. New York: Oxford University Press, 1996.

Sarat, Austin. "The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor." *Yale Journal of Law & the Humanities* 2 (1990): 343–379.

Sarat, Austin, and William L. F. Felstiner. "Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office." *The Yale Law Journal* 98, no. 8 (1989): 1663–88. doi: 10.2307/796611.

Sartori, Andrew. "A Liberal Discourse of Custom in Colonial Bengal." *Past & Present* 212, no. 1 (2011): 163–97. doi:10.1093/pastj/gtr007.

Saumarez Smith, Richard. "Rule-by-Records and Rule-by-Reports: Complementary Aspects of the British Imperial Rule of Law." *Contributions to Indian Sociology* 19 (1985): 153–176.

———. *Rule by Records: Land Registration and Village Custom in Early British Panjab*. Delhi: Oxford University Press, 1996.

Schacht, Joseph. *An Introduction to Islamic Law*. Oxford [Oxfordshire]: Clarendon Press, 1979.

Schneider, Wendie Ellen. *Engines of Truth: Producing Veracity in the Victorian Courtroom*. New Haven: Yale University Press, 2015.

Schulhofer, Stephen J. "Criminal Justice Discretion as a Regulatory System." *The Journal of Legal Studies* 17, no. 1 (January 1, 1988): 43–82. doi:10.1086/468121.

Schull, Kent F., M. Safa Saraçoğlu, and Robert Zens, eds. *Law and Legality in the Ottoman Empire and Republic of Turkey*. Indiana University Press, 2016.

Schultz, Bart and Georgios Varouxakis. *Utilitarianism and Empire*. Lanham, Md.: Lexington Books, 2005.

Schwartz, Hillel. *Culture of the Copy: Striking Likenesses, Unreasonable Facsimiles*. Revised and updated edition. New York: Zone Books, 2014.

Scott, David. "Colonial Governmentality." *Social Text*, no. 43 (1995): 191–220. doi: 10.2307/466631.

Scott, James C. *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*. Yale Agrarian Studies Series. New Haven: Yale University Press, 2009.

———. *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed*. Yale Agrarian Studies. New Haven, Conn.: Yale University Press, 1998.

Seeley, Sir John Robert. *The Expansion of England: Two Courses of Lectures*. Boston: Little, Brown & Co., 1922.

Sen, Sudipta. "Retribution in the Subaltern Mirror: Popular Reckonings of Justice, and the Figure of the Qazi in Medieval and Precolonial Bengal." *Postcolonial Studies* 8, no. 4 (November 1, 2005): 439–58. doi:10.1080/13688790500375116.

Sengoopta, Chandak. *Imprint of the Raj: How Fingerprinting Was Born in Colonial India*. London: Pan, 2003.

Shaham, Ron. "Christian and Jewish 'waqf' in Palestine during the Late Ottoman Period." *Bulletin of the School of Oriental and African Studies, University of London* 54, no. 3 (1991): 460–72.

Shakeb, M. Z. A. *A Descriptive Catalogue of Persian Letters from Arcot and Baroda*. London: India Office Library and Records, 1982.

———. *A Descriptive Catalogue of the Batala Collection of Mughal Documents, 1527-1757 AD*. London: British Library, 1990.

Sharafi, Mitra. "Judging Conversion to Zoroastrianism: Behind the Scenes of the Parsi Panchayat Case (1908)." In *Parsis in India and the Diaspora*, edited by John R Hinnells and Alan Williams, 159–180. London: Routledge, 2007.

———. *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947*. Studies in Legal History. New York: Cambridge University Press, 2014.

———. "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda." *Law and History Review* 28, no. 4 (November 2010): 979–1009. doi:10.1017/S073824801000074X.

———."A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire." *Law & Social Inquiry* 32, no. 4 (2007): 1059–1094. doi:10.1111/j.1747-4469.2007.00087.x.

———. "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism Meets Anglo-Islamic Dower and Divorce Law." *The Indian Economic and Social History Review* 46, no. 1 (January 1, 2009): 57–81.

Shaw, Graham. *Printing in Calcutta to 1800: A Description and Checklist of Printing in Late 18th-Century Calcutta*. London: The Bibliographical Society, 1981.

Shepard, Todd. "'Of Sovereignty': Disputed Archives, 'Wholly Modern' Archives, and the Post-Decolonization French and Algerian Republics, 1962–2012." *The American Historical Review* 120, no. 3 (June 1, 2015): 869–83. doi:10.1093/ahr/120.3.869.

Sherman, Taylor C. "Migration, Citizenship and Belonging in Hyderabad (Deccan), 1946–1956." *Modern Asian Studies* 45, no. 1 (2011): 81–107.

Shodhan, Amrita. *A Question of Community: Religious Groups and Colonial Law*. Calcutta: Samya, 2001.

Shofner, Jerrell H. "Custom, Law, and History: The Enduring Influence of Florida's 'Black Code'."*The Florida Historical Quarterly* 55, no. 3 (1977): 277-98.

Siddique, Osama. *Pakistan's Experience with Formal Law: An Alien Justice*. Cambridge Studies in Law and Society. New York: Cambridge University Press, 2013.

Silbey, S. S. "Legal Culture and Legal Consciousness." In *International Encyclopedia of the Social & Behavioral Sciences*, edited by Neil J. Smelser and Paul B. Baltes, Second Edition, 13:726–733. New York: Elsevier, 2015. http://dx.doi.org/10.1016/B978-0-08-097086-8.86067-5.

Sims-Williams, Ursula. *Handlist of Islamic Manuscripts Acquired by the India Office Library, 1838-85*. London: [The British Library], 1986.

Singh, Anantdeep. "Women, Wealth, and Law: Anglo-Hindu and Anglo-Islamic Inheritance Law in British India." *South Asia: Journal of South Asian Studies* 40, no. 1 (2017): 40–53. doi:10.1080/00856401.2017.1258612.

———. "Zamindars, Inheritance Law and the Spread of the Waqf in the United Provinces at the Turn of the Twentieth Century." *The Indian Economic & Social History Review* 52, no. 4 (October 1, 2015): 501–32. doi:10.1177/0019464615603888.

Singh, Birinder Pal. "Ex-Criminal Tribes of Punjab." *Economic and Political Weekly* 43, no. 51 (2008): 58–65.

Singh, M. P. (Mahendra Pal). *Town, Market, Mint, and Port in the Mughal Empire, 1556-1707: An Administrative-Cum-Economic Study*. New Delhi: Adam Publishers & Distributors, 1985.

Singh, Rakesh Kumar. "Law of Dower (Mahr) in India." *Journal of Islamic Law and Culture* 12, no. 1 (April 1, 2010): 58–73. doi:10.1080/1528817X.2010.528594.

Singh, Ranbir. "The Need to Tame the Khap Panchayats." *Economic and Political Weekly* 45, no. 21 (2010): 17–18.

Singha, Radhika. *A Despotism of Law: Crime and Justice in Early Colonial India*. Oxford University Press Delhi, 1998.

———. "Colonial Law and Infrastructural Power: Reconstructing Community, Locating the Female Subject." *Studies in History* 19, no. 1 (2003): 87–126.

———. "The Great War and a 'Proper' Passport for the Colony: Border-Crossing in British India, c.1882–1922." *Indian Economic & Social History Review* 50, no. 3 (July 1, 2013): 289–315. doi:10.1177/0019464613494621.

———. "Punished by Surveillance: Policing 'dangerousness' in Colonial India, 1872–1918." *Modern Asian Studies* 49, no. 2 (March 2015): 241–269. doi:10.1017/S0026749X13000462.

———. "Settle, Mobilize, Verify: Identification Practices in Colonial India." *Studies in History* 16, no. 2 (August 1, 2000): 151–98. doi:10.1177/025764300001600201.

Skovgaard-Petersen, Jakob. *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār Al-Iftā*. Leiden: Brill, 1997.

Slate, Nico. *Colored Cosmopolitanism: The Shared Struggle for Freedom in the United States and India*. Cambridge, Mass.: Harvard University Press, 2012.

Smith, Wilfred Cantwell. "Hyderabad: Muslim Tragedy." *Middle East Journal* 4, no. 1 (1950): 27–51.

Solanki, Gopika. *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India*. Cambridge Studies in Law and Society. New York: Cambridge University Press, 2011.

St. John, Ian. *The Making of the Raj India under the East India Company*. Santa Barbara, Calif.: Praeger, 2012.

Stamp, Jimmy. "Fact of Fiction? The Legend of the QWERTY Keyboard." Smithsonian.com, May 3, 2013. http://www.smithsonianmag.com/arts-culture/fact-of-fiction-the-legend-of-the-qwerty-keyboard-49863249/.

Stark, Ulrike. *An Empire of Books: The Naval Kishore Press and the Diffusion of the Printed Word in Colonial India*. Ranikhet: Permanent Black, 2007.

———. "Associational Culture and Civic Engagement in Colonial Lucknow." *Indian Economic & Social History Review* 48, no. 1 (January 2011): 1–33. doi:10.1177/001946461004800101.

———. "Politics, Public Issues and the Promotion of Urdu Literature: Avadh Akhbar, the First Urdu Daily in Northern India." *Annual of Urdu Studies* 18, no. 1 (2003): 66–94.

———. "A Qur'an for Every Household: Mass Printing and the Commercialization of Islamic Sacred Texts in Nineteenth-Century Lucknow." In *Sacred Texts and Print Culture: The Case of the Qur'an and the Bible of the Eastern Churches, 18th and 19th Centuries*, edited by Nadia al-Bagdadi and Mushirul Hasan (Budapest: Central European University Press, forthcoming).

Stein, Sarah Abrevaya. "Black Holes, Dark Matter, and Buried Troves: Decolonization and the Multi-Sited Archives of Algerian Jewish History." *The American Historical Review* 120, no. 3 (June 1, 2015): 900–919. doi:10.1093/ahr/120.3.900.

Stephens, Julia."The Phantom Wahhabi: Liberalism and the Muslim Fanatic in Mid-Victorian India." *Modern Asian Studies* 47, no. 1 (2013): 22–52.

———. "The Politics of Muslim Rage: Secular Law and Religious Sentiment in Late Colonial India." *History Workshop Journal* 77, no. 1 (April 1, 2014): 45–64. doi:10.1093/hwj/dbt032.

———. "An Uncertain Inheritance: The Imperial Travels of Legal Migrants, from British India to Ottoman Iraq." *Law and History Review* 32, no. 4 (November 2014): 749–772. doi: 10.1017/S0738248014000443.

Stephens, Julia Anne. "Governing Islam: Law and Religion in Colonial India." Ph.D. Dissertation, Harvard University, 2013.

Stern, Philip J. *The Company-State: Corporate Sovereignty and the Early Modern Foundation of the British Empire in India*. New York: Oxford University Press, 2011.

Stillmann, N. A. "Khil'a." *Encyclopaedia of Islam, Second Edition.* Edited by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs. Leiden: Brill Online, April 24, 2012. http://dx.doi.org/10.1163/1573-3912_islam_COM_0507.

Stokes, Eric. *The English Utilitarians and India*. Oxford: Clarendon Press, 1959.

Stoler, Ann Laura. *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*. Princeton, NJ: Princeton University Press, 2009.

Stoler, Ann Laura. "Colonial Archives and the Arts of Governance." *Archival Science* 2 (2002): 87–109.

Stolz, Daniel A. "Positioning the Watch Hand: 'Ulama and the Practice of Mechanical Timekeeping in Cairo, 1737–1874." *International Journal of Middle East Studies* 47, no. 3 (August 2015): 489–510. doi:10.1017/S0020743815000513.

Stone, Robert. "The Trial of Warren Hastings." *American Bar Association Journal* 13, no. 7 (1927): 398–403.

Strom, Sharon H. *Beyond the Typewriter: Gender, Class, and the Origins of Modern American Office Work, 1900-1930*. Chicago, IL: University of Illinois Press, 1994.

Sturman, Rachel. *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights*. Cambridge Studies in Indian History and Society 21. New York: Cambridge University Press, 2012.

Suehiro, Akiko. "The Office of the Qazi in the Deccan: An Analysis of British Records." *The Icfai University Journal of History and Culture* II, no. 3 (2008): 77–88.

Subrahmanyam, Sanjay. "Further Thoughts on an Enigma: The Tortuous Life of Nicolò Manucci, 1638–c. 1720." *The Indian Economic & Social History Review* 45, no. 1 (January 1, 2008): 35–76. doi:10.1177/001946460704500102.

Tambe, Ashwini. *Codes of Misconduct: Regulating Prostitution in Late Colonial Bombay*. NED-New edition. University of Minnesota Press, 2009.

Tambiah, Stanley Jeyaraja. *Magic, Science, Religion, and the Scope of Rationality*. Cambridge [England]: Cambridge University Press, 1990.

Tarlo, Emma. *Unsettling Memories: Narratives of the Emergency in Delhi*. London: C. Hurst, 2003.

Ṭaḥāwī, Aḥmad ibn Muḥammad. *The Function of Documents in Islamic Law: The Chapters on Sales from Ṭaḥāwī's Kitāb Al-Shurūṭ Al-Kabīr*. Translated by Jeanette A. Wakin. [1st ed.]. Albany: State University of New York Press, 1972.

Thompson, E. P. *Whigs and Hunters: The Origin of the Black Act*. London: Allen Lane, 1975.

Tirmizi, S.A.I., ed. and National Archives of India. *Calendar of Acquired Documents*. New Delhi: National Archives of India, 1982.

Tivārī, Arjuna. *Svatantratā Āndolana Aura Hindī Patrakāritā: Pūrvī Uttarapradeśa Ke Sandarbha Meṃ*. 1. saṃskaraṇa. Vārāṇasī: Viśvavidyālaya Prakāśana, 1982.

———. *Svatantratā saġrāma kī patrakāritā aura Paṃ. Daśaratha Prasāda Dvivedī*. 1. saṃskaraṇa. Vārāṇasī: Viśvavidyālaya Prakāśana, 1998.

Tolen, Rachel J. "Colonizing and Transforming the Criminal Tribesman: The Salvation Army in British India." *American Ethnologist* 18, no. 1 (1991): 106–25.

Tomlins, Christopher L. *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865*. New York: Cambridge University Press, 2010.

Tracy, Walter. "Advances in Arabic Printing." *Bulletin (British Society for Middle Eastern Studies)* 2, no. 2 (1975): 87–93.

Trautmann, Thomas R, ed. *The Madras School of Orientalism: Producing Knowledge in Colonial South India*. Oxford University Press, 2009.

Travers, Robert. *Ideology and Empire in Eighteenth Century India: The British in Bengal*. New York: Cambridge University Press, 2007.

Troll, Christian W. *Sayyid Ahmad Khan: A Reinterpretation of Muslim Theology*. New Delhi: Vikas Publ. House, 1978.

Turner, Bryan S. *Max Weber: From History to Modernity*. London: Routledege, 1992.

Tyabji, Faiz Badrudin. *Principles of Muhammadan Law: An Essay at a Complete Statement of the Personal Law Applicable to Muslims in British India*. 2nd ed. Calcutta: Butterworth, 1919.

———. *Muslim Law; the Personal Law of Muslims in India and Pakistan.* 4th ed. Bombay: N. M. Tripathi, 1968.

Tyan, E, and J.R. Walsh. "Fatwā." In *Encyclopaedia of Islam, Second Edition*, edited by P. Bearman, Th. Bianquis, C.R. Bosworth, E. van Donzel, and W.P. Heinrichs. Leiden: Brill Online, 2012. http://dx.doi.org/10.1163/1573-3912_islam_COM_0219.

Urofsky, Melvin I., and Paul Finkelman. *Documents of American Constitutional and Legal History*. 2nd ed. New York: Oxford University Press, 2002.

Vatuk, Sylvia. "Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law." *Modern Asian Studies* 42, no. 2/3 (2008): 489–518.

———. *Marriage and Its Discontents: Women, Islam and the Law in India*. New Delhi: Kali for Women, 2017.

———. "Moving the Courts: Muslim Women and Personal Law." In *The Diversity of Muslim Women's Lives in India*, edited by Zoya Hasan and Ritu Menon, 18–58. New Brunswisck, NJ: Rutgers University Press, 2005.

———. "'Where Will She Go? What Will She Do?' Paternalism toward Women in the Administration of Muslim Personal Law in Contemporary India." In *Religion and Personal Law in Secular India: A Call to Judgment*, edited by Gerald James Larson, 226–250. Indiana University Press, 2001.

Venkatacalapati, A. Ira. *The Province of the Book: Scholars, Scribes, and Scribblers in Colonial Tamilnadu*. Ranikhet: Permanent Black, 2012.

Vikør, Knut S. *Between God and the Sultan: A History of Islamic Law*. London: Hurst & Co., 2005.

Viswanathan, Gauri. *Masks of Conquest: Literary Study and British Rule in India*. The Social Foundations of Aesthetic Forms Series. New York: Columbia University Press, 1989.

Vogel, Frank E. *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden [The Netherlands]: Brill, 2000.

Von Benda-Beckmann, Keebet. *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau*. Dordrecht: Foris, 1984.

———. "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra." *The Journal of Legal Pluralism and Unofficial Law* 13, no. 19 (January 1, 1981): 117–59. doi:10.1080/07329113.1981.10756260.

Wakelin, Daniel. *Scribal Correction and Literary Craft: English Manuscripts 1375-1510*. Vol. 91. Cambridge Studies in Medieval Literature. Cambridge, UK: Cambridge University Press, 2014.

Walbridge, John. *God and Logic in Islam: The Caliphate of Reason*. Cambridge: Cambridge University Press, 2011.

Walker, Samuel. *Taming the System: The Control of Discretion in Criminal Justice, 1950-1990*. New York: Oxford University Press, 1993.

Walsh, Judith E. "What Women Learned When Men Gave Them Advice: Rewriting Patriarchy in Late-Nineteenth-Century Bengal." *The Journal of Asian Studies* 56, no. 3 (August 1997): 641–77. doi:10.2307/2659604.

Wasti, Syed Tanvir. "The Political Aspirations of Indian Muslims and the Ottoman Nexus." *Middle Eastern Studies* 42, no. 5 (September 1, 2006): 709–22. doi: 10.1080/00263200600826331.

Watt, Tessa. *Cheap Print and Popular Piety, 1550-1640*. Cambridge Studies in Early Modern British History. Cambridge, [England]: Cambridge University Press, 1991.

Weber, Max. *Economy and Society: An Outline of Interpretive Sociology*. Edited by Guenther Roth and Claus Wittich. Translated by Ephraim Fischoff. 3 vols. New York: Bedminster Press, 1968.

Weiss, Anita M. *Interpreting Islam, Modernity, and Women's Rights in Pakistan*. First edition. New York, NY: Palgrave Macmillan, 2014.

Weber, Max. *From Max Weber: Essays in Sociology*. Edited by Hans Heinrich Gerth and C. Wright Mills. New York: Oxford University Press, 1946.

Werner Christoph. "Formal Aspects of Qajar Deeds of Sale." In *Persian Documents: Social History of Iran and Turan in the Fifteenth to Nineteenth Centuries*, edited by Kondo Nobuaki, 13–49. New York: RoutledgeCurzon, 2003.

Wershler-Henry, Darren S. *The Iron Whim: A Fragmented History of Typewriting*. Toronto: McClelland & Stewart, 2005.

Wesselhoeft, Kirsten M. Yoder. "Making Muslim Minds: Question and Answer as a Genre of Moral Reasoning in an Urban French Mosque." *Journal of the American Academy of Religion* 78, no. 3 (September 1, 2010): 790–823. doi:10.1093/jaarel/lfq051.

White, W. *A Letter Addressed to the Proprietors of India Stock, Demonstrating British Justice in India.* London: J. Miller, 1823.

Will, Pierre-Etienne. *Bureaucracy and Famine in Eighteenth-Century China*. Stanford, Calif.: Stanford University Press, 1990.

Willimson, Arthur, "Review of *Nature of the Book*," H-Ideas. Available: http://www.h-net.org/reviews/showrev.php?id=3359. (Accessed 19 August 2016).

Wilson, Jon. *The Chaos of Empire: The British Raj and the Conquest of India*. New York: PublicAffairs, 2016.

Wilson, Roland Knyvet. *A Digest of Anglo-Muhammadan Law, Setting Forth in the Form of a Code, with Full References to Modern and Ancient Authorities, the Special Rules Now Applicable to Muhammadans as Such by the Civil Courts of British India.* 1st ed. London: W. Thacker, 1895.

Yadav, Bhupendra. "Khap Panchayats: Stealing Freedom?" *Economic and Political Weekly* 44, no. 52 (2009): 16–19.

Yaduvansh, Uma. "The Decline of the Role of the Qāḍīs in India—1793–1876." *Studies in Islam* 6, no. 2–4 (October 1969): 155–171.

Yamey, Basil. "Some Seventeenth and Eighteenth Century Double-Entry Ledgers." *The Accounting Review* 34, no. 4 (1959): 534–46.

Yang, Anand A. *Crime and Criminality in British India.* Tucson, Ariz: University of Arizona, 1985.

———. "An Institutional Shelter: The Court of Wards in Late Nineteenth-Century Bihar." *Modern Asian Studies* 13, no. 2 (1979): 247–64. doi:10.1017/S0026749X00008313.

Yannakakis, Yanna. *The Art of Being In-between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca*. Durham, NC: Duke University Press, 2008.

Zaidi, S. Akbar. "Contested Identities and the Muslim *Qaum* in Northern India: C. 1860-1900." DPhil., University of Cambridge, 2009.

Zaman, Muhammad Qasim. *Ashraf 'Ali Thanawi: Islam in Modern South Asia*. Makers of the Muslim World. Oxford: Oneworld, 2008.

Zaman, Muhammad Qasim. *Modern Islamic Thought in a Radical Age: Religious Authority and Internal Criticism*. Cambridge University Press, 2012.

———. *The Ulama in Contemporary Islam Custodians of Change*. Princeton: Princeton University Press, 2010.

Ze'evi, Dror. "The Use of Ottoman Sharīʿa Court Records as a Source for Middle Eastern Social History: A Reappraisal." *Islamic Law and Society* 5, no. 1 (January 1, 1998): 35–56.

Zia, Khaver. "A Survey of Standardization in Urdu." Accessed February 27, 2017. http://www.cicc.or.jp/english/hyoujyunka/mlit4/7-10Pakistan/Pakistan2.html.

Ziad, Waleed. "Mufti 'Iwāz and the 1816 'Disturbances at Bareilli': Inter-Communal Moral Economy and Religious Authority in Rohilkhand." *Journal of Persianate Studies* 7, no. 2 (November 5, 2014): 189–218. doi:10.1163/18747167-12341272.

Zubair Abbasi, Muhammad. "Islamic Law and Social Change: An Insight into the Making of Anglo-Muhammadan Law." *Journal of Islamic Studies* 25, no. 3 (September 2014): 325–49.

Zubrzycki, John. *The Last Nizam: An Indian Prince in the Australian Outback*. Sydney: Pan Macmillan, 2007.

Zuhur, Sherifa. "Review of *Speaking in God's Name: Islamic Law, Authority and Women* by Khaled Abou El Fadl." *The Arab Studies Journal* 10/11, no. 1/2 (Fall / Spring 2003 2002): 203–5.