

## Adjudicating Muslim Intestate Succession: *Shariat* versus Customary Law

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This article argues the colonial state used the differences between Islamic law and customary law by creating bureaucratic and legalist classification of the Indian people along religious/temporal, official/public, minority/majority spheres, making it compatible with colonial understanding of legal and religious categories to reinforce and consolidate the conceptual and political hegemony of colonial secular modernity. Drawing on previously unexplored archival sources, the article examines the debate in judicial and bureaucratic circles of colonial Punjab on Muslim intestate succession bill 1937, moved by Sir Muhammad Yakub for controlling Muslim intestate assets by Muslim community itself and not by the state law. British bureaucratization of administration of law established the primacy of 'customary law', crucial for British imperial power over religious law. The bill contested the imperial hierarchical structure, thus represented a contradiction between the Islamic law and customary law. In Punjab's public spaces, the relevance of Islam was proclaimed, challenged these distinctions, articulated by colonial government to use religion as administrative category of identification and classification.

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### Introduction

This article documents an understudied subject of Muslim intestate succession in the extended legislative history of colonial Punjab. Muslim intestate succession bill 1937 was an attempt to contest the primacy of customary law that this article examines. It questioned the imperial authority of controlling the Muslim financial assets in the form of intestate property but more to the system of political integration in which idiom of tribal solidarity and kin-based loyalties were adopted for the articulation of colonial authority. In colonial Punjab, the matters of succession and inheritance among Muslims were administered and decided partly by Islamic law and partly by state-supported local customary law, which tied

the British administrative and legal system to an indigenous tribal foundation (Gilmartin, 1988: 43-62; Boulnois & Rattigan, 1867: 68-72). Most of the provisions of customary law were opposed to the binding injunctions of Muslim law, subsequently contested the primacy afforded to customary law by the Punjab Laws Act of 1872 (Tupper, 1881; Powell, 1892: 10-16).

This article argues the colonial state used these differences between Islamic law and customary law by creating bureaucratic and legalist classification of the Indian people along religious/temporal, official/public, minority/majority spheres, making it compatible with colonial understanding of legal and religious categories to reinforce and consolidate the conceptual and political hegemony of colonial secular modernity. The article demonstrates, the bureaucratic and legalist classification of the Indian people along religious lines provided a framework for political elites to use legal categories for their politically motivated ends. The blurred boundary between these jurisdictional domains rendered the colonial legal sphere a locus of constant negotiation, and an authorised space for intervention. Mussalman Wakf Validating Act 1913, Maulvi Abul Kasem Waqf registration bill 1923 and Muslim Personal Law (*Shariat*) Application Act, 1937 are a few examples. The drive behind the control of Muslim endowment by Islamic law had a reformist bent, however the thrust of interventions by Muslim legal and political elite and politico-religious associations aimed to protect the community's financial assets against the state encroachment.

On contrasting system of *shariat* (Islamic law) and customary law and its relevance for Imperial system of control, scholars like David Gilmartin, George Rankin, Mathew Nelson and Abbasi discussed shariat as derived from revelation and the latter from the obligations of tribal kinship, therefore the provisions of custom are counter to the binding injunctions of Muslim law (Gilmartin, 1988: 46-47; 1989: 12; Rankin, 1939: 89-118; Nelson, 2011: 146-148). The areligious nature of customary law and the existing juridical and social tensions between customary law and Islamic helped in consolidating the colonial control. Other scholars elaborated that British land revenue authorities codified and enforced the patriarchal laws under customary law in colonial Punjab which denied the female right to inheritance enunciated by Islamic law. Acceptance of right to inheritance of property would lead to the fragmentation and subdivisions of holdings and subsequently threatening the colonial order (Batoool and Zia-ul-Haq 2019: 13; Kaul, 1992; Kaur, 1984; Sharma, 200: 685-

692; Kaur, 2011: 828-835). On legislation and enforcement of shariat and Islamic law, Gregory Kozlowski, Robert Ivermee and Asad Ahmad argued the application of Muslim law was meant to construct distinct Muslim identity, based on modernist conceptions of Muslim community (Kozlowski, 1985; Ivermee, 2021; Ahmad, 2006). Gilmartin further elaborated, the adherence to shariat was rather a matter of defining the cultural foundations for the state and integration of society as a whole (Gilmartin, 1988: 58).

The literature has been instrumental in providing insight in understanding the legislative politics in British India, however this article adds a new dimension in the historiography of colonial Punjab and argues the colonial state intervened in the discursive space of Classical Islamic institution and tradition and redefined by creating binaries of religious/temporal and public/private, majority/minority through the hermeneutics of religious authenticity, enshrined in original authoritative Islamic text. These binaries were articulated by using intra-Islam conflicts and employing the liberal discourse of citizenship, diversity and heterogeneity to reinforce colonial state's mechanism to authorize its sovereignty as liberal secular state.

The account in this article is based on the original detailed colonial record of Punjab Home Department and Judicial proceedings on Sir Muhammad Yakub Muslim intestate Succession bill 1937 which is available at Punjab archive, Civil Secretariat Lahore. The documents include the debate conducted in the official letters and reports of colonial bureaucracy, district and session judges, legal remembrancer, socio-religious organisations like Anjuman Himayat-i-Islam, Anjuman-i-Islamia Lahore and Amritsar, Anjuman-i-Punjab, Anjuman-i-Lahore, Punjab Muslim League and Legislative debate on intestate succession bill 1937. The controversy surrounding Muhammad Yaqub's bill 1937, the debate in the bureaucratic circle and socio-political organisations, mentioned in these previously untapped archival documents, has not been discussed in the existing scholarly work on intestate succession issue.

### **Contextualizing the Muslim Intestate Succession Bill 1937**

A late nineteenth century crisis of indebtedness among Punjabi land holders and large-scale expropriation by moneylenders of peasants' land, precipitated the passage of Alienation of Land Act of 1900 which

restricted transfers of land from peasants to money lenders. (Banerjee, 1982: 86-93; Dungen, 1972: 104). The Punjab's rural political tradition of loyalty to the colonial regime and cross-communal collaboration of leading landowners of the Punjab culminated in the emergence of the Unionist Party in 1923, built on the foundations of the agriculturalist ideology (Talbot, 1996: 80; Barrier 1966: 112). As the twentieth century unfolded, the legal tension between custom and *shariah* was followed by dichotomy in legal identities, Muslims who follow custom, and Muslims who follow *shariah*. These conflicts surfaced quite explicitly in the confrontation between and among competing political factions, the Punjab Unionist Party, on the one hand; the All-India Muslim League, on the other (Nelson, 2011: 104-105; Kaul, 1996: 193). This conflict led to the passage of series of acts and bills to protect Muslim laws, which Muslim League and Muslim socio-political organisations supported.

The political controversy surrounding the introduction of shariat in Punjab first crystallized in the early 1930s when Sir Umar Hayat Khan Tiwana of Shahpur, one of the most influential landowners in colonial Punjab, introduced a bill in the Punjab Legislative Council seeking to make primogeniture the special custom of inheritance in his family. This pitted Umar Hayat, who favoured a strict defence of 'tribal' custom, against the *shariah* (Kaul, 1996: 393-436; Ahmad, 1977: 23). As Umar Hyat's bill was passed within the Legislative Council, another member of the Council, Malik Mohammad Din introduced a second bill calling for the complete abolition of custom (Rai, 1984: 191-192). The bill only reinforced the existing divisions, pitting the views of the Punjab Unionist Party against those affiliated with the (Punjab) Muslim League (Robinson 1993, 273). This was followed by a third bill, known as the Muslim Personal Law (shariat) Application Bill 1937, moved by All India Muslim League and strongly supported by its president, Mohammad Ali Jinnah (Anderson, 1993:165-185; Malik, 1996:12-16). After more than five years of political agitation and legislative deliberation, Jinnah succeeded in having the Muslim Personal Law (shariat) Application Act of 1937 enacted (Gilmartin, 1991: 106-129; Nelson, 2011:108). However, this law was only applied to intestate succession and had no application to testate succession. According to this enactment, the customary law contrary to Islamic law was abrogated with the exception of the agricultural land contained in the act of 1937 (Fyzee, 1965: 4-8). Fazl-i-Husain, the leader of Unionist party, played an important part in bringing the concerns of individual Muslim landowners from the Punjab to bear on the terms of

the Muslim Personal Law (shariat) Application by excluding agricultural land from the scope of the bill.

The enforcement of Shariat Application Act 1937 heralded the opening of the Muslim intestate succession issue. With the enactment of Muslim personal law, Sir Muhammad Yakub, member of the central legislative council, moved the Muslim intestate succession bill in 1937. According to the Indian Succession Act 1925, if a Muslim dying intestate has left no heir who are of even distant kindred to him, his property shall go to the Government. It is important to note that customary law had provided for the succession of agricultural land to quite distant collaterals. The intestate succession bill made a reference to the rule of Muhammadan Law, whereby the properties of a Muslim dying intestate and without any heir should go to Bait-ul-Maal, an institution for the welfare of Muslim community, instead of being escheated to the crown (Home Dept Proceedings, 1937: 6-8). The bill was circulated to elicit public opinion from bureaucracy, the judiciary and Muslim civil society including legal activists and urban Muslim associations. There was a clear division in bureaucracy along communal and ideological lines as Muslim bureaucracy, mostly in central Punjab supported the bill, whereas the British officials opposed it, calling it a clash between already prevalent customary law and Muslim personal law (shariat).

### **Conflict between Customary law and Shariat**

The universalism of new Islamic community (*ummat*) based on faith rather than blood cut across the particularism of the tribal system. (Gilmartin, 1988: 45). The articulation of authority in tribal idiom, tied rural administration with local units of administration, strengthened by land alienation act 1901, linked with customary law (Malik, 1995: 293-323; Metcalf, 1994: 22-27). The requirements of kinship separated shariat, that dictated right of inheritance to daughters, clashed with common village usage (Ali, 2003: 87). The vast majority of Muslims ignored the shariat in favour of custom, as this provision would cause fragmentation of land holding and reduction in collection of land revenue which was the primary interest of the colonial state (Jones, 1792; Lateef, 1990; Carroll, 1991:791-809; Worth, 1983: 182-216). The statement of Deputy Commissioner Gurdaspur vividly indicated this concern that the 'bill would affect the local laws in very material particulars. If Muslim intestate succession bill is passed into law in its present form, the landed property

of member of notified agricultural tribe, dying intestate and without legal heir, would devolve on the Muslim community as a whole and would defeat the spirit of land alienation act, in force in the Punjab'. (Chandra, 1937:12).

Ayesha Jalal is dismissive of the relevance of debates over the administration of *shari'at* to Muslims in the Punjab. Jalal noted the supremacy of customary over religious law in the Punjab after 1872 and suggested that *shari'at* was unimportant to the Punjab's Muslims. To verify this assertion, she cites extensively from the responses of Anglo-Indian judges in the Punjab to the National Muhammadan Association's memorial (Jalal, 2000: 148-153). As opposed to it there was a clear division between Muslim bureaucracy and the British officials on intestate issue in the archival sources used in this article.

The Muslim officials of East and West Punjab, deputy commissioners of Sheikhpura, Shahpur, Jehlum, Mianwali, Jhang, Muzafargarh, Multan, Ferozepur, Karnal, Rohtak and Ludhiana declared the bill in agreement with the provisions of the shariat and asserted, 'under the customary law and shariat, crown has no right to escheat the property of Muslim proprietor, apart from general or universal law which gives a right to crown to inherit such property. There is a clear provision in Islamic law to send such property to Bait-ul-Mal' (Noor, Ahmed; Hussain, Soofi, Abdul Rabb, Muhammad, Singh, 1937: 4-8). Nasser Ahmed, deputy commissioner Multan mentioned that this view was supported by Syed Ameer Ali's Muslim Law volume 2, p.147 and Wilson's Anglo Muslim law article 265 3<sup>rd</sup> edition p. 293(Ahmed, 1937: 7-8). He further suggested, bill should be applicable to all Muslims whether following customary law or shariat. Demand for the application of Muslim law from Muslim officials indicated they were acting on behalf of an envisaged religious community within the public space. Keeping in view the agro-economic conditions of south-west Punjab, K.H Henderson, deputy commissioner Dera Ghazi Khan strongly opposed the bill to dismiss the threat of rural revolt in heavily Muslim south-western Punjab, due to large scale expropriation of land by moneylenders (Darling, 1925: 23; Dewey, 1991; Douie, 1899). Several deputy commissioners suggested that religion was a convenient guide to the division between agriculturists and non-agriculturists, as few non-Muslims of the agricultural tribes lived in the area.

S.S.Thorburn was the first official in south-west Punjab who warned in the early years of 1900s that it was not wise to invite the antagonism of

strong Muslim tribes in west Punjab, it would imperil the imperial stability of British empire (Rai, 1984: 45). Later, Arthur Brandreth, commissioner Multan division, stressed the political danger of transfer of land from hereditary landholders to the Hindu trading castes in 1937 (Brandreth, 1937: 5-7). F.M Innes, the deputy commissioner Gurdaspur, while opposing the bill stated, the Muslim community aimed at setting aside the provisions of law of escheat by crown. The right of the state to succeed to the estate of a person dying intestate without any heir has been recognized in India from time immemorial, so government should not forego the right (Innes, 1937: 6). Defending the tribal structure of village community of the Punjab and joint management of land premised on customary law, the deputy commissioners stated that 'The most important rules of Punjab customary law is, when a person dies intestate, before the government takes over, it is the right of village communities to succeed it. In most of the Punjab villages land is held by a male proprietor as a member of a village community which at no distant period held the whole of their lands jointly, recognising in the individual member only a right of usufruct' (Tandon, 1937: 3-4). That is a right to enjoy the profits of a portion of the common land actually cultivated by him and his family and to share those of the portion still under joint management. In such a community the proprietary title and the power of permanently alienating parts of the common property is vested in the whole body (Rankin, 1939: 89-118). It would 'not be proper that the village community should be disrupted by introducing the whole Muslim community into it. This would generate jealousy and conflict' (Lincoln, 1937: 6-7). These statements clearly indicate that throughout the 1930s the logic of local politics in the Punjab was so clearly dominated by the rural priorities of the Punjab Unionist Party. (Gilmartin, 1988: 37; Kessinger, 1975: 9-44). The intestate bill which emphasized application of Muslim law, contested the indigenous structure of kin-based social organization based on the system of mediation.

### **Temporal or religious: Redefining the Muslim**

Despite the colonial state's claims to neutrality and formal principle of non-interference, legal interventions and interplay between liberal Anglo-Saxon law and the application of Muslim personal law, had a significant impact on the conceptual delineation of religion and the self-understanding of a number of religious communities (Asad, 1993: 56;

Anderson, 1971: 1-21). The British government in a bid to oppose the intestate bill, defined the scope of the 'religious' or personal domains, in order to fix the limits of the slippery boundary between personal law and state law. These legal domains were divided along the lines of race and religion (Anderson, 1993: 165-185). The colonial state intervened in the Muslim traditions and institution i-e Bait-ul-Mal, by redefining them in the light of classical Islamic texts (Tareen, 2013: 13-15; Powers, 1989: 535-571). In response to the claim of Muslim legal and political elite, that the intestate property and all unclaimed interests should be devolved to Muslim religious institution, the Bait-ul-Mal, the British officials attempted to define Bait-ul-Mal, a common treasury under Muslim state in Arabia ruled by Muhammadan laws, whereas, there did not exist any religious institution (Bait-ul-Mal) corresponding to the state treasury in India. If Muslim law was strictly observed in colonial India, the property would go to Bait-ul-Mal which meant state treasury, that is the crown.

Declaring Bait-ul-Mal as a universally recognized institution for Muslim Umma across the Muslim world, the British maintained, in India the property was owned by a person as citizen of the country who was living in a bounded territory, governed by Anglo-Saxon laws, hence Muslim law could not be applicable. The British argued, 'the ownership of property was not a religious matter, it rather was held by virtue of citizenship' (ibid). Hence the disposition of intestate estate was a matter of civil law of the state and not religious. The colonial state sought to establish itself as the sovereign caretaker of religious difference by mobilising a discourse of tolerance, equality and diversity of religions.

To interpret Muslim intestate property, the distinctions between official/public and religious/temporal were articulated so that land could be conceptualized as temporal and inalienable official property. In making land inalienable, the British considered the intestate bill, as contrary to colonial conception of property. Domain of personal law was ceded to the religious community, therefore Muslims called intestate property, religious. Commenting on the modern Muslim elite's attempt of making equivalences between Umma and nation, K.H Henderson, deputy commissioner Dera Ghazi Khan, remarked, the bill was based on misconception of divine sovereignty and assumed a theory of law which applied only to estates where Muslims were the sovereign power. It was not applicable in India where multiple communities, Hindu, Christian, Buddhist, agnostics, atheists etc existed (Henderson, 1937: 8).



The application of personal religious law was central to the new modernist conception of the Muslim community. Whereas the colonial bureaucracy and judiciary interpreted Islamic laws in such a way so as to make it consonant with their understanding of legal practices and categories, hence tried to tie the rights and rules of liberal legal discourse with Islamic classical laws (Ahmad, 2006: 88). This shows how bureaucratic and judicial discourse negotiated with secularism as a political commitment and how government grappled with indigenous religiosity while adjudicating religious issues. The government's conceptualization of classical Islam and Islamic laws in this context, was an attempt to establish its own sovereignty as the moderator of religious differences, helped in constructing categories and boundaries. In this way, establishing customary law, tied to imperial ideology and turning Islamic laws as irrelevant was the aim.

The minority/majority dichotomy, colonial ideals of equal and impartial protection of law for all and equality of rights of citizens represented a central tenet that sustained the liberal secular state. It was in this context to deny Muslims the right of control over intestate property, the colonial officials called them a homogeneous community. As opposed to Asad Ahmad's argument that colonial judiciary revived a legal imagination of Muslims as a singular public community (ibid), deputy commissioner of Ferozepur remarked, 'Muslims were divided into several religious denominations and sects. There was no such thing as a common treasury for all Muslims. Muslim community is not an integrate body or juristic person which could be entrusted with the administration of the property of intestate; the analogy of Baitul Maal under the Islamic shariat, does not apply to the present state of things.' He suggested, before the bill could be legislated, Muslim community should be redefined (Aminuddin, 1937: 3-4). He questioned, does it mean whether Qadianis and Ahmedis would constitute Muslim community and whether their intestate property would devolve to their communities exclusively. Does the word community mean community of the sect to which the intestate belonged, for instance if the Shia had died intestate, will his property devolve to Shia only or the general Muslim body? If the latter course was adopted, would it not lead to dissension and bickering among rival sections? (Henderson, 1937: 2-3; Kennedy, 1989: 71-108).

Diversity, heterogeneity of communities and majority/minority dichotomy allowed the state to establish its authority at one level, however at another level the state tried to maintain the homogeneity to

gain its ends. This shows how discursively the separate domains were constructed and defined. This is also evident from the remarks of bureaucracy that the control of intestate property by Muslims will disrupt the homogeneity and cross-communal harmony of Punjabi community which was preserved under customary law. Assistant legal remembrancer Nazir Hussain and P. K. Kaul, Deputy Commissioner Ambala remarked, giving Muslims the control over intestate property would affect the rights of Muslims belonging to different denominations and people of other faith groups. (Innes, 1937: 4; Kaul, 1937: 3). The government should be prepared to support a wider bill of other communities, abolishing the right of escheat to the crown, in this way giving preference to communities based on religion or caste over the crown in respect of intestate or heirless succession (Tandon, 1937: 5). Deputy Commissioner Hisaar said, the bill was motivated by a selfish desire of Muslim community to usurp all the benefits and a threat to national interests and an interference with the fundamental rights of the crown, universally recognized (Singh, 1937: 8-9; Khosla, 1937: 2-3). This would undermine India's national cohesion and would provoke communal division (Noon, 1937: 6-8).

This clearly reflected the British were concerned about maintaining a codified theory of authority, based on the idea of structuring a social order in which all subjects, English and Indian were integrated and ordered in a single hierarchy. This theory of single hierarchy underscored the colonial state's claim to exclusive authority. If the Muslim community sought to exclude the crown from the exercise of this right, the British feared it would disintegrate the social order and it would lead other communities to submit to the exercise of the same right (Cohn, 1989: 126; Gilmartin, 1988: 58). This would provoke one caste against the other and one faith group against another to augment caste divisions and foster communal sentiments which would inadvertently weaken the tribal fellowship and would put the religion in its room, inspiring the sense of brotherhood.

### **Muslim League and Anjuman Himayat-i-Islam**

It is interesting to note that the bill went in to lapse as the colonial state influenced the architect of the bill Sir Muhammad Yakub by offering him a position in the commerce department of the government in 1937 in lieu of stepping back from pursuing the bill (Home Dept proceedings, 1937: 2-

5). The bill was more assertively moved to the legislative assembly for debate by the Punjab Muslim League and adopted later on. The members of Punjab Muslim League, Mian Muhammad Shafi, Shaikh Abd-al-Aziz, Khalifah Imad al-Din and Sir Fazl-i Hussain of Unionist party were members of the Oriental College Council of Anjuman Himayat-i-Islam, strongly supported the intestate bill. Khan Bahadur Nawab Siddique Ali Khan, representing Punjab Muslim League, demanded that the number of unclaimed interests, lying in the possession of government should also be part of the bill by adding an additional clause and must be handed over to *Anjuman Himayat-i-Islam* as designated trust for Muslim community (Legislative Assembly Debate, 1940: 23). Anjuman Himayat-i-Islam explicated, 'Muhammadan law itself contemplated that a state can reasonably be called upon to use religious or quasi-religious funds for the public benefits, therefore the government should not shirk its responsibility by merely holding that it being a neutral government' (AHL, 1937: 5-8; Zahid, 2013: 7). Anjuman's major concern was to get funds to run its expanding educational institutions and publishing houses. Initially it guarded Muslim endowments and stemming apostasy, later took over a programme of reform and revival and strongly asserted Muslim rights to control their funds and properties (Fuchs, 2019: 24).

Anjuman claimed, despite the numerous charitable institutions, Muslim community was starving on account of lack of funds (Mustafa Khan Moinudin, 1937: 10-12). Earlier in 1923, Maulvi Abul Kasem as education minister of Bengal also moved waqf registration bill to get endowments out of the control of *mutawalis* (caretakers) of shrines (Kasem, 1924: 12). Anjuman suggested the government to constitute Board of Trust of Muslims or a recognized Muslim anjuman could work as trust. (Khan, Zafar, 1937: 9). Ali Haider Shah, honorary magistrate and member legislative council Rawalpindi suggested Aligarh College Trust could successfully manage the waqf property (Shah, 1923: 11). C.N Chandra, Deputy Commissioner Sialkot, remarked, under the present system of colonial government, the bill did not contain information on how a trust, or a legal entity would work. By merely giving the name of Bait-ul-Maal to funds of Anjuman Himayat-i-Islam, the application of the rule of Muhammadan Law cannot be altered (Chandra Macdonald, 1937: 5-7; Shanks, 1937: 34). Anjuman Himayat-i-Islam D.G Khan opposed any official control or interference with the funds and endowments as it was incompatible with religious freedom (Home Dept Proceedings, 1923: 4).

### Conclusion

For greater application of shariat, Muslim elites challenged the dominance of customary law in the Punjab and asserted the importance of religious community over and above tribal or village groups in the province's social structure. In 1937, the sharia act replaced customary law in the Punjab, superseding the customary differences indicated the importance of Islamic law in the constitution of Muslim public community. By the late 19th century, the domain of the law had emerged as an authorized space for Indian people to negotiate the workings of the colonial state. Encroachments against endowment holdings continued as the 20th century began, and legal arguments in defense of the autonomy of Muslim personal law proliferated. The discussion on Muslim endowments, intestate succession and Muslim charitable institutions entered Muslim public discourse and were elaborated upon in the institutions of civil society with the emergence of Muslim urban associations, idea of community managed endowments, increasing number of Muslim political elite and legal agents in the legislature, who stressed the centrality of Islam. Many scholars on colonial law argue that adherence to Islamic law was an attempt towards identity construction and Muslim community formation. This article explains how the colonial state encouraged the formation of religiously defined communities, through its use of religion as a legal and administrative category. Despite the formal principle of non-interference in religious domain, colonial legal interventions and decisions had a significant impact both on the conceptual delineation of religion and the self-understanding of a number of religious communities. Muslim legal agents used legal categories to define the issue of Muslim endowments and intestate properties. British defined the scope of religious and personal domains through hermeneutics of religious authenticity enshrined in classical Islamic text and law. In the absence of classical Islamic laws and institutions, the conceptual and political hegemony of colonial secular modernity would dominate in defining the legal, religious and personal categories. The minority/majority, Muslim/non-Muslim, homogeneous/heterogeneous dichotomies were created to articulate intra-Islam differences and to authorize colonial sovereignty in India. The process of re-defining Muslim and non-Muslim meant to establish customary law, tied to imperial ideology ended up turning Islamic laws as irrelevant under liberal secular state.

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### References

Ahmad, Saghir. 1977. *Class and Power in a Punjabi Village*. New York: Monthly Review Press.

Ahmad, Asad. 2006. 'Adjudicating Muslims: Law, religion and the state in colonial India and post-colonial Pakistan', PhD diss., Department of Anthropology, University of Chicago.

Ahmad, Naseer. 1937. Deputy Commissioner Multan, 'Home Judicial Proceedings' File No. 921, endorsement No 6149 613/45 R. May 25, 1937. Lahore: Government Superintendent Printing Punjab.

Ali, Imran. 2003. *The Punjab under Imperialism, 1885-1947*. Karachi: Oxford University Press.

Aminuddin. 1937. Deputy Commissioner Ferozepur to Commissioner Jullunder, 'Home Department Proceedings' File No. 1128, 14 June. Lahore: Government Superintendent Printing Punjab.

Anderson, Michael R. 1993. 'Islamic Law and the Colonial Encounter in British India' in *Institutions and ideologies: A SOAS South Asia Reader* edited by Arnold, D. and Robb, 165-185. London: Curzon Press.

Anderson, J.N.D. 1971. 'Modern Trends in Islam: Legal Reform and Modernization in the Middle East'. *International and Comparative Law Quarterly*, 20 (1): 1-21.

*Anjuman-i-Himayat-i-Islam*. 1937. 'Home Department Proceedings'. File No. 376/GD, July 3. Lahore: Government Superintendent Printing Punjab.

Asad, Talal. 1993. *Genealogies of Religion*. Baltimore: John Hopkins University Press.

- Banerjee, Himadri. 1982. *Agrarian Society of the Punjab, 1849-1901*. New Delhi: Manohar.
- Barrier, Norman Gerald. 1966. *The Punjab Alienation of Land Bill of 1900*. Durham: Duke University.
- Batool Usmat and Zia-ul-Haq, Muhammad. 2019. 'Custom and Female Right of Inheritance', *Islamic Studies, Islamic Research Institute, International Islamic University, Islamabad*, 58(1): 51-82.
- Boulnois, Charles and Rattigan, William Henry. 1881. 'Notes on the Customary Laws of the Punjab' in *Punjab Customary Law* edited by C. L. Tupper. Lahore: Superintendent of Government Printing.
- Brandreth, Arthur. 1937. Commissioner, Multan Division, 'Home Judicial Proceedings' File No, 785, June 8. Lahore: Government Superintendent Printing Punjab.
- Carroll, Lucy. 1991. 'Daughter's Right of Inheritance in India: A Perspective on the Problem of Dowry.' *Modern Asian Studies*, 25 (4): 791-809.
- Charles, Worth Neil. 1983. 'The origins of Fragmentation of Landholding in British India: A Comparative Examination', in *Rural India: Land, Power, and Society under British Rule*, edited by Peter Robb, 182-216. Delhi: Oxford University Press.
- Chandra, C.N. 1937. ICS Deputy Commissioner Sialkot to Commissioner Lahore 'Home Department Proceeding' File No. 510, June, 01. Lahore: Government Superintendent Printing Punjab.
- Cohn, Bernard. 1989. 'Law and the colonial state in India', in *History and Power in the Study of Law: New directions in the legal anthropology*, edited by June Starr and Jane F. Collier. Ithaca: Cornell University Press.
- Darling, Malcolm. 1925. *The Punjab Peasant in Prosperity and Debt*. Delhi: Oxford University Press.

Dewey, Clive. 1991. *The Settlement Literature of the Greater Punjab: A Handbook*. London: The Riverdale Company.

Dungen, Van den. 1972. *The Punjab Tradition: Influence and Authority in nineteenth-century India*. London: Allen & Unwin.

Douie, J.M. 1899. *Settlement Manual*, 5th edition. Lahore: Mutaqi.

Fyzee, Asaf, A.A. 1965. *Cases in the Mohammadan Law of India and Pakistan*. Oxford: Clarendon Press.

Fuchs, Maria-Magdalena. 2019. 'Islamic Modernism in colonial Punjab: The Anjuman-i-Himayat-i-Islam, 1884-1923', PhD diss., Princeton University, 1-307.

Gilmartin, David. 1988. 'Customary law and Shariat in British Punjab', in *Shariat and Ambiguity in South Asian Islam*, edited by Katherine Pratt Ewing, 43-62. Delhi: Oxford University Press.

Gilmartin, David. 1988. *Empire and Islam: Punjab and the Making of Pakistan*. London: I. B. Tauris & Co.

Gilmartin, David. 1991. 'Divine Displeasure and Muslim Elections: The Shaping of community in Twentieth Century Punjab', in *The political inheritance of Pakistan*, edited by D. A. Low, 106-129. London: Macmillan.

Henderson, K. H. 1937. Deputy Commissioner Dera Ghazi Khan, 'Home Department Proceedings', File No. 114 S W, June 7. Lahore: Government Superintendent Printing Punjab.

Home Department Proceedings. 1937. Lahore: Superintendent Government Printing.

Home Department Proceedings. 1923. Lahore: Superintendent Government Printing.

Hussain, Syed Bunyad. 1937. Deputy Commissioner Muzaffargarh, 'Home judicial Proceedings' File No 473, endorsement No. 6149 -B. June 5. Lahore: Government Superintendent Printing Punjab.

Ivermee, Robert. 2021. 'Shariat and Muslim community in colonial Punjab', in *Perspectives in social history of colonial Punjab*, edited by Tahir Kamran and Hussain Ahmad Khan, 117-138. Lahore: Khaldunia Centre of Historical Research.

Innes, F.M. 1937. Esq ICS, Deputy Commissioner Gurdaspur to Commissioner Lahore, circular endorsement, 'Home Department Proceedings' File No. 40/72/453, 4, June. Lahore: Government Superintendent Printing Punjab.

Jalal, Ayesha. 2000. *Self and Sovereignty: Individual and Community in South Asian Islam Since 1850*. London: Routledge.

Jones, William. 1792. *Al-Sirajiyah, or The Mohammadan Law of Inheritance*. Calcutta: Sanskrit.

Kasem, Maulvi Abul. 1924. 'Waqf Registration Act 1923', Home Department Proceedings. Lahore: Government Superintendent Printing Punjab.

Kaul, Minoti Chakravarty. 1996. *Common Lands and Customary Law: Institutional Change in North India over the Past Two Centuries*. Delhi: Oxford University Press.

Kaul, P.K. 1937. Deputy Commissioner Ambala to Commissioner Ambala, 'Home Department Proceedings' File No. 699 C. May 31. Lahore: Government Superintendent Printing Punjab.

Kaur, Jatinder. 1984. 'Customary Laws of the Upper Bari and Bist Jalandhar Doab (1849-1947)', M.Phil. diss., Guru Nanak Dev University, Amritsar.

Kaur, Gurmit. 2011. 'Customary law and widow remarriage: its implications and effects on colonial Punjabi women', *Proceedings of the Indian History Congress*, (72)1: 828-835.



Kennedy, Charles. 1989. 'Towards the definition of a Muslim in an Islamic state', in *Religion and Ethnic Minority Politics in South Asia*, edited by Malik and Vajpeyi, D, 71-108. New Delhi: Manohar.

Kessinger, Tom G. 1975. 'Sources for the Social and Economic History of Rural Punjab', in *Sources on Punjab History* edited by W. Eric Gustafson and Kenneth W. Jones, 9-44. Delhi: Manohar Books.

Khan, Mian Saadat Ali. 1937. General Secretary, *Anjuman-i-Islamia*, 'Home Department Proceedings' File No. 2286 J-37/20547, 18 May. Lahore: Government Superintendent Printing Punjab.

Khan, Saidullah. 1937. Deputy Commissioner Jhelum to Commissioner Rawalpindi, 'Home Department Proceedings' File No.352, June 7. Lahore: Government Superintendent Printing Punjab.

Khosla, G.D.1937. District and Sessions Judge Attock, to Registrar High Court of Judicature, Lahore, 'Home Judicial Proceedings' File No. 981 D-2, 5 May. Lahore: Government Superintendent Printing Punjab.

Kozlowski, Gregory C. 1985. *Muslim Endowments and Society in British India*. Cambridge: Cambridge University press.

Lateef, Shahida. 1990. *Muslim Women in India: Political and Private Realities, 1890s-1980s*. London: Zed Books.

Legislative Assembly Debate Muslim Intestate Succession bill. 1937. 'Home Department Proceedings'. (10)5. New Delhi: Government of India Press,

Lincoln, E.H. 1937. Deputy Commissioner Jullunder to Commissioner Jullunder, 'Home Department Proceedings' File No. 831 15/D XVIII, May 26. Lahore: Government Superintendent Printing Punjab.

Macdonald, A.A. 1937. Deputy Commissioner Amritsar to Commissioner Lahore, File No.492.C, June 5. 'Home Department Proceedings', Lahore: Government Superintendent Printing Punjab.

Malik, Jamal. 1996. *Colonialization of Islam; Dissolution of Traditional Institutions in Pakistan*, South Asia Books.

Malik, Iftikhar. 1995. 'Identity Formation and Muslim Party Politics in the Punjab, 1897-1936: A Retrospective Analysis'. *Modern Asian Studies*, 29 (2): 293-323.

Metcalf, Thomas. 1994. *Ideologies of the Raj*. Cambridge: Cambridge University Press.

Muhammad, Khan Bahadur Sheikh Noor. 1937. Deputy Commissioner Sheikhpura to Commissioner, 'Home Department Proceedings' File, No.477, July 7. Lahore: Government Superintendent Printing Punjab.

Mustafa, Ch. Ghulam. 1937. Deputy Commissioner Rohtak to Commissioner Ambala, 'Home Department Proceedings', File No.345/ G June 5. Lahore: Government Superintendent Printing Punjab.

Moinuddin, G. 1937. Deputy Commissioner Shahpur to Commissioner Rawalpindi, File No. 795. June 3. 'Home Department Proceedings', Lahore: Government Superintendent Printing Punjab.

Nelson, Matthew J. 2011. *In the Shadow of Shari'ah: Islam, Islamic Law, and Democracy in Pakistan*. Columbia: Columbia University Press

Noon, Malik Sahib Khan. 1937. Deputy Commissioner Jhang, 'Home Judicial Proceedings' File No. 296 GB, endorsement No.6149 R 13/45. May 27. Lahore: Government Superintendent Printing Punjab.

Powell, B.H Baden. 1892. *Land System of British India*. Oxford: Clarendon Press.

Powers, David S. 1989. 'Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in *Algeria and India*,' *Comparative Studies in Society and History*, (31) 3, 535-571.

Rankin, George. 1939. 'Custom and the Muslim Law in British India', *Transactions of the Grotius Society, Problems of Peace and War*, (25) 1: 89-118.

Rai, Satya M. 1984. *Legislative politics and the freedom struggle in the Punjab 1897-1947*. New Delhi: Indian Council of Historical Research.

Rabb, K.S Mirza Abdul. 1937. District and Session Judge Multan to Registrar, High Court of Judicature at Lahore, 'Home Judicial Proceedings' File No. 2887, Letter No. 5366. 8, June. Lahore: Superintendent Government Printing.

Robinson, Francis. 1993. *Separatism among Indian Muslims: The Politics of the United Provinces' Muslims 1860-1923*. New Delhi: Oxford University Press.

Sharma, Harish C. 2001. 'Custom, Law and the women in the colonial Punjab', *Proceedings of the Indian History Congress*, (62)1: 685-692.

Soofi, M.A. 1937. Session Judge Ludhiana to Registrar High court of Judicature Lahore, 'Home Judicial Proceedings' File No.937, endorsement No. 5366 Gen / XV-C-15. June 06. Lahore: Superintendent Government Printing.

Singh, Bawa Nanak. 1937. Deputy Commissioner Ludhiana to Commissioner Jullundur, 'Home Department Proceedings' File No. Genl. X V.C-15, May 17. Lahore: Superintendent Government Printing.

Singh, Nawab. 1937. Deputy Commissioner Hissar to Commissioner Ambala, 'Home Department Proceedings' File No 515/56-18, June 12. Lahore: Superintendent Government Printing.

Shah, Haider Ali. 1923. Hon Magistrate and member legislative council Rawalpindi, 'Home Department Proceedings'. Lahore: Government Superintendent Printing Punjab.

Shanks, E. Sheep. 1937. Commissioner Jullander to Chief Secretary Punjab, endorsement no. 2286 J-37/20546, 'Home Judicial Proceedings' File No. 831/15-D XVIII, 21 June. Lahore: Superintendent Government Printing.

Talbot, Ian. 1996. *Khizr Tiwana: The Punjab Unionist Party and the Partition of India*. London: Curzon Press.

Talbot, Ian. 1988. *Punjab and Raj 1849-1947*. New Delhi: Manohar.

Tandon, B.R. 1937. Deputy Commissioner Kangra to Commissioner Jullandar, 'Home Judicial Proceedings' File No 441 R, June 01. Lahore: Superintendent Government Printing

Tareen, Sher Ali. 2018. 'Secularization and South Asian Islam', in *Islam, Judaism and Zoroastrianism* edited by Z. R. Kassam, Y. K. Greenberg, J. Bagli, 607-618. Dordrecht: Springer.

Tupper, C.L. 1881. *Punjab Customary Law*. Calcutta: Government printing.

Zafar, Maulvi Muhammad. 1937. Pleader and Honorary Secretary Anjuman-i-Islamia (Gurgaon) to D.C Gurgaon, 'Home Judicial Proceedings', June 2. Lahore: Superintendent Government Printing.

Zahid, Masood Akhtar. 2013. 'Islamia Anjumans and Educational Development: Perspectives on the 19<sup>th</sup> Century British Punjab', *Pakistan Journal of History and Culture*, (XXXIV) 2: 7