
*Islamic Law
and the Colonial Encounter
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Islamic Law and the Colonial Encounter in British India¹

Michael R. Anderson

In contemporary debates regarding Muslim identity in South Asia no issue is as prominent or as hotly contested as the character and social role of Islamic law. Though the controversies are directly relevant to present-day concerns the questions themselves are neither new nor innocent of colonial influence. The existing corpus of Islamic law in the subcontinent owes a great deal to the legacy of colonial jurists who systematised and gave shape to Anglo-Muhammadan law over many decades. In this essay the history of Anglo-Muhammadan scholarship is considered in light of the colonial need for precise and reliable information about indigenous laws. In their preference for textual sources the courts were inclined to endorse highly orthodox forms of Islamic law which were applied more widely and rigorously than in the precolonial period ultimately contributing to a new politics of Muslim identity in the twentieth century.

British statesmanship determines from time to time how much of Oriental precept is to be treated as Law in the English sense, how much left to the consciences of those who acknowledge it as religiously binding, how much forcibly suppressed as noxious and immoral; and when this has been determined, European scholarship sifts and classifies the Oriental authorities, the mental habits of English and Scotch lawyers influence the methods of interpretation, and Procedure Codes of modern European manufacture regulate the ascertainment of the facts and the ultimate enforcement of the rule (Sir Roland Knyvet Wilson)².

1 Published in Arnold, David and Peter Robb (Eds.). *Institutions and Ideologies: A SOAS South Asia Reader*. (London: Curzon Press Ltd.) 1993, pp. 165-185.

2 R.K. Wilson, *An Introduction to the Study of Anglo-Muhammadan Law* (London, 1894), p. 2. Footnotes omitted.

As the tentacles of colonial rule stretched into the Indian subcontinent in the eighteenth century, the British had a minimal knowledge of Islamic legal arrangements. Yet in 1947, when the trunk of colonial power was formally chopped off, it left behind an elaborate system of administrative roots, including a working understanding of Islamic legal precepts. Since the same administrative roots have given succour to the post-colonial states of India, Pakistan, and Bangladesh, it is important to inquire into their provenance. The colonial courts charged with administering what had come to be called 'Anglo-Muhammadan law' were able to rely upon a legal scholarship that included translations of Arabic and Persian texts, a handful of commentaries, as well as the precedent of hundreds of cases.

In some senses, the corpus of Anglo-Muhammadan law was simply the inevitable by-product of the colonial encounter. But its remarkable volume, produced at considerable cost and effort to successive colonial regimes, raises questions concerning the role of law in the establishment and maintenance of colonial power. If the genesis of Anglo-Muhammadan law lay in the quest to establish a definable and reliable relation between government and the governed, it entailed more than new legal institutions. It also demanded the formulation of a body of knowledge about the legal organisation of colonised peoples, including those professing adherence to Islam. Since the formidable amount of legal scholarship that accumulated under British rule was produced in an explicit complicity with colonialism, questions of its bias and validity are bound to be asked. What role did Anglo-Muhammadan scholarship assume in defining and mobilising colonial power? By what techniques was this scholarship created? How did the process of creating the Anglo-Muhammadan law affect its substantive content and application? In which ways did the substantive content mesh with understandings of identity and social order among the colonised peoples?

I. Indigenous law and the early colonial state

The imperatives of the Company's account-books required that administrators remain mindful of two broad goals first, to extract economic surplus, in the form of revenue, from the agrarian economy, and second, to maintain effective political control with minimal military involvement³. For the most part, the various administrators of the East India Company (and later, the British Crown), followed the path of least resistance, relying upon co-opted indigenous intermediaries as well as military and police power to secure control. Throughout the subcontinent, the British exercised power by adapting themselves to the

3 See D. Washbrook, 'Law, state, and agrarian society in colonial India', *Modern Asian Studies* 15, 3 (1981).

contours of pre-colonial political systems, including law. The result was that in many of its structural features, as well as its substantive policies, the colonial state sustained what were essentially pre-colonial political forms until well into the nineteenth century⁴. Although lacking in military and financial power, the edifice of the Mughal empire provided a source of *de jure* authority long after its *de facto* demise. Mughal administrative ranks, honours, rituals, and terminology persisted in muted although significant form even after Crown had supplanted Durbar in 1858. Yet while recent historiography has emphasised the continuities between the *ancien régime* and the early colonial state⁵, it is clear that colonial rule brought a host of entirely new political institutions⁶, and that when indigenous mechanisms were adapted to colonial purposes, they were incorporated within new institutional fora⁷.

One of these new fora was the colonial law court. The Hastings Plan of 1772 established a hierarchy of civil and criminal courts, which were charged with the task of applying indigenous legal norms 'in all suits regarding inheritance, marriage, caste, and other religious usages or institutions'. Indigenous norms comprised 'the laws of the Koran with respect to Muhammadans', and the laws of the Brahmanic 'Shasters' with respect to Hindus⁸. Although the courts followed British models of procedure and adjudication, the plan provided for *maulavis* and *pandits* to advise the courts on matters of Islamic and Hindu law, respectively. By the early nineteenth century, the system of courts had been expanded, a new legal profession had been established⁹, and a growing body of statute and court practice extended the influence of the colonial state.

The actual social impact of the courts was constrained by the reluctance expressed by many colonial administrators to interfere in agrarian society unless presented with a compelling need. Moreover, the resilience of pre-colonial political systems meant that actual authority was shared among a number of entities, so that most disputes were settled at the local or

4 See *ibid.*, and R.E. Frykenberg, 'Company circari in the Carnatic, 1799-1859: the inner logic of political systems in India', in R.G. Fox (ed.), *Realm and Region in Traditional India* (New Delhi, 1978).

5 See *ibid.*, but also the work of C.A. Bayly, *Rulers, Townsmen and Bazaars: North Indian society in the age of British expansion, 1770-1780* (Cambridge, 1983); and *Indian Society and the Making of the British Empire* (Cambridge, 1988).

6 D. Arnold, *Police Power and Colonial Rule: Madras 1859-1947* (Delhi, 1986).

7 See the sensitive discussion by N.B. Dirks, 'From little king to landlord: property, law, and the gift under the Madras permanent settlement', *Comparative Studies in Society and History* 28, 2 (1986).

8 Hastings' initial formulation reappeared, in modified form, in all the constitutive legal documents of the early colonial period.

9 Bengal Regulation VII of 1793.

community level¹⁰. In urban as well as rural areas, local bodies had acquired privileges of legal autonomy under Mughal rule that persisted during the colonial period. The autonomy of legal arrangements sheltered a diversity of legal norms, even among peoples professing a strict adherence to the same orthodoxy.

Nevertheless, British courts had a broad appeal to the landed gentry and other local notables. If colonial legal institutions appeared to have less impact at the lower levels of society, they did establish a new framework for disputes among the local and regional elite, who were able to use courts to mediate disputes among themselves and to reinforce their dominance over agrarian producers. In British India, as elsewhere, individuals with superior economic and political resources often manipulated institutions to their advantage. Early district administrators in the North, for example, were frequently able to appropriate considerable amounts of land under their political control and then have themselves recorded as the proprietors under British legal authority¹¹. Personages who had held political office in the pre-colonial regime often thrived under the law of private property, exercising political control by virtue of their new legal rights¹². The prevalence of corruption and mini-despotisms allowed the well-heeled to use Company courts when it suited their purposes, but to exercise extra-judicial power when the law was inconvenient or contrary to their interests¹³.

Where the landed gentry and certain merchant groups were organised according to the dynastic principles of family and clan, the administration of family law played a role in broking wealth and power at the local level, ultimately underpinning the very intermediaries whose cooperation was essential to effective colonial rule. Property and labour were often regulated under the aegis of family law. The organisation of production in the family firm, including divisions of labour according to gender and age, presupposed the legal regulation of marriage, dissolution of marriage, inheritance, and endowments. For the Islamic gentry, material subsistence as well as political authority rested on the property grants of earlier rulers that were maintained under a variety of legal arrangements¹⁴.

10 B. Cohn, *An Anthropologist Among the Historians and Other Essays* (Delhi, 1987), chs. 19, 22.

11 E. Stokes, *The Peasant and the Raj* (Cambridge, 1978), p. 84.

12 See Dirks, 'From little king to landlord'.

13 For a scathing indictment of the colonial courts, see J.B. Norton, *The Administration of Justice in South India* (Madras, 1953).

14 For contrasting views on these processes, see Bayly, *Rulers, Townsmen, and Bazaars*, pp. 129-3, 351, and G.C. Kozlowski, *Muslim Endowments and Society in British India* (Cambridge, 1985).

In such circumstances, the administration of Anglo-Muhammadan law was more than a concession to 'native opinion'. Systems of personal law served to consolidate the authority of certain community groups, and thus incorporate community-based forms of surplus extraction into the colonial state¹⁵. The position of the landed gentry rested on pre-colonial patterns of family organisation. As much as it rankled the sensibilities of Macaulay and others who sought a uniform legal code¹⁶. Anglo-Muhammadan law conserved and even strengthened aspects of community organisation on which colonial rule rested.

Yet at the same time, colonial administration of pre-colonial personal laws brought important changes. The autonomy of intermediaries operated in the context of state patronage and the ever-present threat of armed intervention. Moreover, the hierarchies of community and family grew more onerous as they were linked to an extractive state that could make unprecedented demands for economic surplus. If Company courts lacked the moral qualifications demanded by orthodox theories to interpret and enforce legal norms of Islamic inspiration, they carried the threat of a military power that, after the battles of 1818, could effectively put down any serious resistance.

Company administrators were increasingly able, as the nineteenth century wore on, to intervene in areas of Anglo-Muhammadan law that most threatened their authority. At the same time, they were less hesitant to prohibit practices which offended their sense of morality¹⁷. As the apparatus of the colonial state became more refined and administrators more capable of policing various forms of resistance, large portions of the Anglo-Muhammadan law were supplanted by laws of British origin. The earliest Anglicising trends were latent in the 1772 doctrine that in cases where indigenous laws seemed to provide no rule, the matter should be decided according to the Roman law formula of 'justice, equity, and good conscience'¹⁸, which by 1887 was held 'to mean the rules of English law if found applicable to society and circumstances'¹⁹. Continual alterations of Islamic criminal law stepped up

15 Washbrook, 'Law, state and agrarian society', pp. 654-70. For a more generalised discussion of this point, see P. Fitzpatrick, 'Law, plurality and underdevelopment' in D. Sugarman (ed.), *Legality, Ideology and the State* (London, 1983).

16 E. Stokes, *The English Utilitarians and India* (Delhi, 1959), pp. 184ff.; M.P. Jain, *Outlines of Indian Legal History* (2nd ed., Bombay, 1966), ch. 24.

17 B. Hjejle, 'The Social Policy of the East India Company with regard to Sati, Slavery, Thagi, and Infanticide, 1772-1858', unpublished D. Phil. dissertation, Oxford University, 1958.

18 See J.D.M. Derrett, 'Justice, Equity and Good Conscience', in J.N.D. Anderson (ed.), *Changing Law in Developing Countries* (London, 1963).

19 *Waghela v. Sheikh Masludin* (1887) 14 IA 89, at 96.

punishments for crimes against private property, while modifying other forms of punishments to conform with British preconceptions²⁰. However, the most dramatic overturning of Anglo-Muhammadan law emerged by way of statute. Slavery was abolished in 1843; Islamic criminal law and procedure were replaced entirely by colonial codes in the early 1860s, and Islamic canons of evidence were supplanted by British-based rules in 1872²¹. By 1875, new colonial codes had displaced the Anglo-Muhammadan law in all subjects except family law and certain property transactions. The codes reflected a longstanding frustration with Islamic law, but they also furnished the state with a more precise and reliable legal apparatus to maintain and regulate its police power.

Nevertheless, as an administrative technique, the enforcement of separate systems of personal law was never eliminated entirely. If personal laws had been important to the early raj as a means of maintaining political control, they assumed a new significance in the emerging communal politics of the twentieth century. Throughout the colonial period, Anglo-Muhammadan law was taken seriously as a politically sensitive and technically complex subject for legal scholarship. But there was an irony in this, for what the Company courts applied as Islamic law was often more alien than familiar to putatively 'Muslim' groups. Anglo-Muhammadan scholarship often distorted its subject matter, frequently reflecting British preoccupations more accurately than indigenous norms. Indeed, colonial administrators may never have changed Islamic legal arrangements quite so profoundly as when they were trying to preserve them.

II. Anglo-Muhammadan scholarship

Following Hastings' plan, the limited bureaucratic machinery of the Company state found itself with an urgent need for a serviceable knowledge of indigenous legal arrangements. Apart from the language difficulties and the limitations of a small British administration juxtaposed with a substantial colonised population, the task was complicated by the fragmented and contingent quality of the sources of legal obligation.

Colonial scholars drew heavily upon pre-colonial legal scholarship. Adapted forms of the *shari'a* had been administered in South Asia for centuries, first by the various Sultanates, next under the authority of the

20 J. Fisch, *Cheap Lives and Dear Limbs: the British transformation of the Bengal Criminal Law, 1769-1817* (Wiesbaden, 1983).

21 Act V of 1843; *Code of Civil Procedure* (Act VIII of 1859), *Indian Penal Code* (Act XLV of 1860); *Criminal Procedure Code* (Act XXV of 1861); *Indian Evidence Act* (Act 1 of 1872).

strong Mughal empire, and finally by the successor states that arose during the eighteenth century²². Especially under the Mughals, the administration of *shari'a* formed an important part of the symbolisation of imperial legitimacy; its dispensation was viewed as a sacred duty. Legal scholarship thrived in these circumstances; the imperial court patronised the '*ulama*, or legal scholars, and Aurangzeb commissioned the influential *fatwa Alamgiri*, a collection of legal opinions in the *fiqh* tradition. On the administrative side, the *shari'a* was supplemented with a comprehensive set of imperial regulations as well as a cadre of officially sponsored *qadis* drawn primarily from the '*ulama*²³.

Paradoxically, the decline of the Mughal empire appears to have stimulated a moral and cultural competition among successor powers that fuelled an increase in Islamic legal scholarship²⁴. A sign of some status, legal study was widespread. Predominantly of the Hanafi school, orthodox legal specialists seem to have focused study on *al-Hidaya*, a twelfth-century text of Central Asian origin that primarily relied upon Abu-Yusuf and ash-Shaybani, the two pupils of Abu-Hanifa. Study of the Qur'an and the *hadith* seems to have been less important for the orthodox Hanafis²⁵. But the cultural vitality of the period also gave rise to more innovative scholars, including Shah Wali Ullah (1703-62) who advocated an eclectic approach to the Sunni schools, insisting that the gates of *ijtihad*, or interpretive reasoning, had never closed²⁶. Shi'i scholarship was also alive. In Bengal, for instance, two Nawab supported *madrasas* drew a wide range of legal students, some from as far away as Iran²⁷.

There is no reason to doubt that pre-colonial legal scholarship was coupled with an earnest effort to enforce the *shari'a*. Unlike the 'Hindu' *dharmaśāstra* texts²⁸, Islamic legal theory did not formally recognise custom as an independent source of law. So although *al-Hidaya* accorded

22 A.A.A. Fysee, 'Muhammadan law in India', *Comparative Studies in Society and History* 5 (1963).

23 K.M. Yusuf, 'The judiciary in India under the Sultans of Delhi and the Mughal Emperors', *Indo-Iranica* 18 (1965).

24 See B.D. Metcalfe, *Islamic Revival in British India: Deoband, 1860-1900* (Princeton, 1982), ch. 2.

25 Metcalfe, *Islamic Revival*, p. 31.

26 See Mohammad Daud Rahbar, 'Shah Wali Ullah and *ijtihad*', *Muslim World* 45 (1955), and more generally, Wael B. Hallaq, 'Was the gate of *ijtihad* closed?', *International Journal of Middle Eastern Studies* 16 (1984).

27 P.J. Marshall, *Bengal: the British bridgehead* (Cambridge, 1988), p. 31.

28 Cf. J.D.M. Derrett, *Religion, Law and State in India* (London, 1968), chs. 6, 7.

custom a role in the absence of textual norms²⁹, orthodoxy frowned on deviations. Yet the social impact of Mughal legal institutions remained limited to particular groups, especially the Islamic gentry and the urban merchants based in the *qasbah* towns. Many communities jealously guarded their autonomy, operating under the umbrella of imperial tolerance to retain localised institutions, practices, and norms which operated in derogation of a strict application of the *shari'a*³⁰. Local leaders seem to have settled disputes with varying degrees of deference to textual norms.

The British confrontation with myriad forms of legal authority and variegated local practices highlighted one of the foremost problems of colonial control: how to obtain simple, reliable, and reasonably accurate understandings of indigenous social life without sacrificing great labour and capital³¹. Law and legal institutions provided a solution. Equipped with indigenous advisers, colonial courts served as mechanisms of inquiry, while the classical religious-legal texts, whatever their genuine relevance, were taken as the key to understanding colonised cultures and societies. Most British intellectuals of the early colonial period stressed the importance of law in regulating social life. 'The rule of law' was a common piece of ideological baggage that linked law to public sentiments as well as political order. Law was more than an arm of sovereignty: it was employed as a proto-sociology that could guide policy. Accordingly, the first century of colonial rule witnessed the birth of an Anglo-Muhammadan jurisprudence comprising legal assumptions as well as law officers, translations, textbooks, codifications, and new legal technologies.

Basic assumptions

The Hastings plan rested on the notion that indigenous norms could be plugged into British-based legal institutions without significantly compromising the integrity of either. Coming to understand that the *shari'a* was authoritative for Islamic legal scholars, many British administrators glossed over its internal contradictions and finely

29 T. Mahmood, 'Custom as a source of law in Islam', *Journal of the Indian Law Institute*, 7, (1965), p. 104.

30 For a more general treatment of this theme in South Asia, see K.I. Ewing (ed.), *Shari'at and Ambiguity in South Asian Islam* (Berkeley, 1988).

31 The problem took various guises throughout colonial legal history. In 1856, Lord Harris viewed one of the main functions of the new police force as 'the procuring [of] continued accurate information on the state of the country and the feelings and sentiments of the population'. Quoted in Arnold, *Police Power*, p. 24. For a detailed twentieth-century account, see P. Mason, *Call the Next Witness* (London, 1945).

distinguished levels of moral approbation, and set about applying it as a set of more or less homogenous legal rules.

The presumption that a single set of legal rules could apply to all persons professing adherence to Islam violated both Islamic theory and South Asian practice. Hastings had subsumed all indigenous legal arrangements under two categories: Hindu (earlier, *Gentoo*), and Muslim (Muhammadan)³². From the outset, this binary categorisation was inadequate to contain the diversity of legal life on the subcontinent. Not only did it fail to acknowledge the distinction between Shi'i and Sunni, and the differences among the schools within each; it also failed to address adequately the practices and beliefs of the many groups that adopted an eclectic approach to Islam and various forms of Hinduism. Backed by the literalist legalism of colonial administration, 'Hindu' and 'Muslim' became an important part of a new bureaucratic vocabulary of colonial control - a vocabulary that drew upon indigenous terms, but imbued them with a Procrustean quality as they were deployed in governance.

Looking for a unified 'Muhammadan' law that could be slotted into the Company court system, administrators made the much-celebrated mistake of treating certain classical Islamic texts as binding legal codes. To apply 'the laws of the Koran with respect to Mohamedans', was a project that mistook the Qur'an for a code of law. The Qur'an, and even more specifically legal texts such as *al-Hidaya* had never been directly applied as sources of legal precept. Their legal relevance had always derived from a properly authoritative *qadi* whose moral probity and knowledge of local arrangements could translate precept into practice. *Qadis* in the Mughal period had left much to what Bayly calls 'the sense of the neighbourhood'³³. Even the most sophisticated textbound approach was subject to grave error, simply because texts were applied in ignorance of social circumstances.

Colonial judicial administration soon developed a more sophisticated treatment of textual sources. Nevertheless, it was accompanied by a basic prejudice that accorded primacy to text over interpretive practice.

32 It seems that in the formation of this plan, Hastings simply drew on the strategy that had been adopted during the Mughal period and remained in force in the successor states. What was new, however, was the rigid legalism that now accompanied the binary Hindu/Muslim divide. See Fyzee, 'Muhammadan law', p. 402.

33 Bayly, *Merchants, Townsmen and Bazaars*, p. 353.

'Native law officers'

Until Anglo-Muhammadan law was consolidated in textbook and precedent, court-appointed maulavis provided fatwa to guide the British judges. Collaborating with colonial rule in the most overt sense, these clerics drawn from indigenous centres of learning were charged with responding to the courts' questions on matters of Islamic law. When faced with a question of law, British judges would present the maulavi with a question formulated in an abstract, hypothetical manner, often shorn of relevant details. The resulting fatwa, necessarily in an abstract form, was then applied to the case at hand. This procedure resulted in a highly formalised and rigid application of legal rules. In 1935, Abur Hussain wrote of the early colonial judges that they applied the law 'mechanically to the causes before them, practically on third-hand information of the law from the Moulvis whose sense of justice born and bred in the native social environment was not available to the Judges'³⁴.

It is not surprising that the maulavis were mistrusted. British accusations of inconsistency stemmed partially from genuine questions of probity that may have been linked to a low official salary³⁵. More importantly, suspicions arose from the diversity of opinion that any number of legal questions might generate. Islamic legal theories had always provided leeway for judicial discretion in applying *shari'a* principles³⁶. Operating with their own preconceptions, British judges seemed unable to accept that there might be genuine differences of opinion on a point of law. When maulavis did disagree, their opinions often simply reflected the inherent inadequacies of the British textbased approach.

Together with pandits, the maulavis of the colonial courts were gradually eclipsed by the precedent of case law and the accrual of British expertise. In 1864, under Crown rule, the Court maulavis were dispensed with altogether³⁷, so that the official administration of Anglo-Muhammadan law was severed completely from the judgment of men of distinguished moral authority. Yet *qadis* performed a wide variety of non-legal functions, acting as marriage registers and notaries as well as providing guidance on religious matters. In the vacuum created after 1864, conflicts arose as to the proper appointment of *qadis*, and pressure was put on the

34 A. Hussain, *Muslim Law as Administered in British India* (Calcutta, 1935), p. 14.

35 Wilson, *Introduction*, pp. 96-7. William Jones expressed a distrust typical of other British judges: 'I could not with an easy conscience concur in a decision merely on the written opinion of native lawyers in any cause in which they could have the remotest interest in misleading the court'. Quoted in Hussain, *Muslim Law*, p. 30.

36 Cf. J. Makdisi, 'Legal logic and equity in Islamic law', *American Journal of Comparative Law* 33, 1985, and L. Rosen, 'Equity and discretion in a modern Islamic legal system', *Law and Society Review*, 15 (1980).

37 Act XI of 1864.

government to reinstate appointments for non-religious matters³⁸. Despite the revival of a state-sponsored system of qadis in 1876, the laity took recourse in the private *'ulama* who increasingly were responsible for settling disputes at an informal level³⁹.

Translations

Given the assumed centrality of legal text, and a persistent distrust of native law officers, it followed that legal administrators were eager to have Islamic texts in English translation so that indigenous laws could be applied directly by British judges. Sir William Jones, the great polymath of early Orientalism, proposed that Hastings should endeavour to compile 'a complete Digest of Hindu and Muhammad laws after the model of Justinian's inestimable Pandects'⁴⁰. The model of the Roman legal system lent credence to the emphasis on a rule-based legality. At the insistence of Hastings, *al-Hidaya*, the influential compilation of Hanafi opinion, was translated by three maulavis from Arabic to Persian, and then into English by Charles Hamilton in 1791. But *al-Hidaya* lacked any treatment of inheritance, regarded by the British as the most intractable and politically important of Muhammadan law subjects. Accordingly, in 1792, *al-Sirajiyya*, a treatise on inheritance, was translated direct from the Arabic by Jones personally.

The courts continued to rely upon advice from indigenous legal specialists for some time, so the translations made little impact on colonial administration until the early nineteenth century. Their primary significance lay in the understandings they engendered of an essentialist, static Islam incapable of change from within. They established, in the crucible of colonial rule, that a proper knowledge of India - and of the Orient more generally - could be had only through a detailed study of the classical legal texts⁴¹.

The translations had greater legal effect as judges began to rely upon them more directly. Although produced in haste, and with imperfect language skills, the unrevised eighteenth-century translations remained authoritative. A number of translating errors were discovered in

38 U. Yaduvansh, 'The decline of the role of the qadis in India, 1793-1876', *Studies in Islam*, 6, (1969).

39 T. Mahmood, *Muslim Personal Law: role of the state in the sub-continent* (Delhi, 1977), pp. 60-9.

40 Quoted in Hussain, *Muslim Law*, pp. 30-1.

41 The legal need for a settled universal rule that can be applied generally to a broad range of individuals may have given rise to a hypostatising trend in Orientalist scholarship. The institutional links between colonial legal institutions and Orientalist scholarship demand further exploration. In the meantime, for a suggestive discussion, see E.W. Said, *Orientalism* (London, 1978), pp. 77-9.

Al-Hidaya but corrections were made only to the Persian version in 1807. The English version remains uncorrected. The project of translating a broader range of texts, including non-Hanafi texts, never reached fruition, and was cancelled due to financial constraints in 1808. The nineteenth century saw only one additional major translation - an abbreviated version of the fatwa *Alamgiri* and a portion of an Itna 'Ashariya (Shi'a) text - translated by Neil Baillie and published in 1865 under the title of *A Digest of Mohummudan Law*.

Together, these three translations formed the textual basis of Anglo-Muhammadan law. Their inadequacies and blatant errors have been partially recorded in court cases and commentaries⁴², but sustained research on the ideological biases of their rendering remains to be pursued. Even a basic text on the *usul al-fiqh*, or roots of jurisprudence, that would be basic to any detailed understanding of Islamic law, did not appear until 1911⁴³. It is not surprising that those few texts which were translated came to be treated as authoritative codes rather than as discrete statements within a larger spectrum of scholarly debate.

Textbooks

Increasingly, the textual basis of Anglo-Muhammadan law lay with compilations of materials ordered in a thematic way. In the earliest of these, W. H. MacNaghten compiled a number of *fatwa* produced by the court *qadis* which he published in 1825 along with his own wide-ranging generalisations under the title *Principles and Precedents of Mohammadan Law*. He purported to present an authoritative distillation of opinion on various subjects. The effect was to gloss over areas of problematic interpretation and present a unified rule in place of genuine differences of doctrine. In the years that followed, colonial administration gave rise to a number of textbooks⁴⁴, which treated their subject with varying degrees of sophistication, but nevertheless following MacNaghten's basic model. The device of the textbook organised knowledge in a way that made the most of a limited amount of understanding. It minimised doctrinal difference and presented the shari'a as something it had never been: a fixed body of immutable rules beyond the realm of interpretation and judicial discretion.

42 *Gobind Dayal v. Amir Muhammad* (1885) 7 All 775; *Jafri Begam v. Amir Muhammad* (1885) 7 All 822; see Hussain, *Muslim Law*, pp. 45-52.

43 A. Rahim, *The Principles of Muhammadan Jurisprudence* (reprint ed. Lahore, 1974).

44 Nine major textbooks were published in the British period. In addition to MacNaghten, *Principles*; Wilson, *Introduction* and Hussain, *Muslim Law*; texts by W.H. Morley, S.G. Sircar, A. Ali, A. Rahim, A.F.M.A. Rahman, and Tyabji are of note.

Codification of custom

Frustrated by the inadequacy of religious texts and native law officers, British administrators in the latter half of the nineteenth century began to focus upon custom as a source of law. After the Punjab Laws Act of 1872, revenue collectors in the Punjab were directed to conduct surveys with a view to ascertaining customary practices in each village. The emphasis on custom remained strongest in the Punjab, but it gave rise to a reconsideration of legal administration at the all-India level. The Punjab surveys reflect a preoccupation with landholding rights since their main function was to assist in the collection of revenue⁴⁵.

Working with preconceived notions of custom as ancient and stable within a fairly static society, administrators took custom to be a fact in the world that could be ascertained and codified, glossing over the contingent and political nature of the arrangements that they sought to understand. In practice, custom was seldom fixed and permanent. Rather, to act according to custom necessarily entailed a reinterpretation of community standards and the interpreter's position within them. More than a simple rejection or affirmation of community standards, custom often involved very real struggle over what the standards were in the first place. If even a part of the recent anthropology of custom is to be believed, what the British called 'customary law' was inherently incompatible with the epistemological dictates of codification.

Much codification operated by way of a search for precedent and underlying principle in what sometimes appeared to the British as the chaotic incoherence of village life. A kind of juridical homogenisation took place, so that indigenous terms were adopted to describe a wide range of discrete practices⁴⁶. Codification distorted social life by way of selecting and interpreting material. The issue of land tenure, for instance, was a complex matter involving reciprocal rights and duties in a number of relationships; it could never be contained adequately within the simple question that preoccupied many British administrators —that of who would inherit the land⁴⁷. Nevertheless, codes of custom were used as guidelines for the collection of revenue and the formulation of state policy. The nineteenth century saw the compilation of both district-

45 N. Bhattacharya. 'Custom and rights: a conflict of interpretations', paper presented at Oxford University Centre for Indian Studies, 13 November 1987.

46 See P. Robb, 'Law and agrarian society in India: the case of Bihar and the nineteenth-century tenancy debate', *Modern Asian Studies* 22, 2, (1988).

47 Bhattacharya, 'Custom and Rights'.

specific and regional texts that could be used by administrators and courts alike⁴⁸.

At the level of legal administration, a number of tests were developed to establish the content, validity, and applicability of custom. In 1868, the Privy Council affirmed that in Hindu law, custom could outweigh the written text of the law⁴⁹. A similar doctrine was established in limited areas of Muslim law only much later⁵⁰. Nevertheless custom operated against the general presumption in favour of Anglo-Muhammadan law, so its applicability was strictly circumscribed. In accordance with British understandings of custom, a legally binding custom had to be enforceable, reasonable, and to have existed from time immemorial; scores of decisions recorded the fussy and detailed sifting of materials that courts used to establish the validity of custom⁵¹. Customs that were held to be immoral, illegal according to general legal principles, or contrary to public policy were unenforceable⁵².

The jurisprudence of customary law allowed the colonial state to recognise certain aspects of social practice that were important to particular classes, or groups. But its recognition was never allowed to extend beyond a point that would be incompatible with the political and economic imperatives of colonial rule. Above all, the codification and judicial application of custom supplied administrators with a set of devices for incorporating diverse practices within the political recognition of the colonial state⁵³.

48 For the Punjab, see A. Gledhill, 'The compilation of customary laws in the Punjab in the nineteenth century', in J. Glissen (ed.), *La rédaction des coutumes dans le passé et dans le présent* (Brussels, 1962). More generally, see S. Roy, *Customs and Customary Law in British India* (Calcutta, 1911); A. Steele, *The Law and Custom of Hindoo Castes (within the Dekhun Provinces subject to the Presidency of Bombay)* (London, 1868).

49 *Collector of Madura v. Mootoo Ramalinga* (1868) 12 MIA 397.

50 See S. Roy, *Customs*, ch. 10.

51 *Abdul Hussain v. Bibi Sona Dero* (1917) 45 IA 10. See S. Roy, *Customs*, ch. 18.

52 For example, it was held that customary prostitution conducted as a family business was immoral and contrary to Islamic precepts. *Ghasiti v. Umrao Jan* (1893) 20 IA 193. See also the general discussion at S. Roy, *Customs*, ch. 16.

53 Before long codification of custom was contested politically; D. Gilmartin, *Empire and Islam: Punjab and the making of Pakistan* (Berkeley, 1988).

New legal technologies

Colonial courts introduced a set of legal technologies, primarily bureaucratic procedure and methods of inquiry, that departed significantly from pre-colonial arrangements. Most of the new bureaucratic methods worked by way of categorising and systematising indigenous phenomena. Within a centralised bureaucratic framework, procedures were established for collecting information, making regular reports, and distilling data that could be used in Calcutta or London. A hallmark of the early nineteenth century was the increased use of standardised printed forms in district administration. After 1857, village records and district reports supplied detailed knowledge of the colonised society⁵⁴. On the legal side of things, perhaps the most striking innovation was the use of documentation in matters of law and evidence.

Legal documents *per se* were not new. Mughal administrative manuals are testimony to the importance of documents in the political administration of the empire in the seventeenth century⁵⁵. So too, written contracts provided a flexibility of financial arrangements that enabled merchants to share risks and accumulate capital for participation in pan-Asian trading networks⁵⁶. But in matters of evidence, pre-colonial legal theory of Islamic inspiration seems to have placed a special emphasis upon oral testimony, and concomitantly, the probity of witnesses. In the evidentiary (and epistemological) theory of the *shari'a* only the spoken testimony of a morally reliable witness was admissible as evidence before the court. Theoretically, a document such as a deed or contract could serve to remind witnesses of what had transpired, but its veracity rested on actual oral deposition⁵⁷. Accordingly, *al-Hidaya* furnishes rules governing the admissibility of oral testimony, but makes no provision for documentary evidence. In practice, there is no reason to doubt that documents were important in Mughal and post-Mughal courts, reflecting their important role in politics and commerce. Nevertheless, it is clear that under British rule, the process of documentation and the role of the scribe were amplified.

54 R. Smith, 'Rule-by-records and rule-by-reports: complementary aspects of the British imperial rule of law', *Contributions to Indian Sociology* (n.s.) 19 (1985).

55 J.F. Richards, *Document Forms for Official Orders of Appointment in the Mughal Empire* (Cambridge, 1986).

56 See A.L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton, 1970), A. Das Gupta in D.S. Richards (ed.), *Islam and the Trade of Asia* (Oxford, 1970), and K.N. Chaudhuri, *Trade and Civilisation in the Indian Ocean: an economic history from the rise of Islam to 1750* (Oxford, 1985).

57 For a discussion of this general principle in *shari'a* theory, see J. Wakin, *The Function of Documents in Islamic Law* (Albany, 1972). It is unclear how far the principle was applied in South Asia. For a comparative discussion, see B. Messick, 'Just writing: paradox and political economy in Yemeni legal documents', *Cultural Anthropology* 4, 1, (1989).

Initially, colonial courts enforced the primacy of oral testimony over documentation, especially in criminal law⁵⁸. The state slowly chipped away at the doctrine, by continually modifying the rules governing oral testimony⁵⁹ and introducing forms of writing into adjudication. Starting in 1793, all depositions and examinations of witnesses were to be transcribed into the language of the deponent. Once taken, depositions, were then to be translated into Persian, checked for accuracy by the court officers, and then communicated in English to the Magistrate⁶⁰. In 1797, the text of the deposition, rather than the oral testimony itself, adopted as legally binding in the record of the court⁶¹. Gradually, the practice of formulating English summaries of the vernacular record was adopted, and English began to displace Persian as the official language of the court⁶². With the Criminal Procedure Code of 1861, and the Indian Evidence Act of 1872, adapted forms of the English law of procedure and evidence were introduced in systematised form.

The insistence on documentary evidence was 'unreal in the context of a largely illiterate society', serving to make legal institutions inaccessible to most of the population⁶³. Other effects were subtle but pervasive. Standardised forms for business transactions, contracts, and government agreements became more widespread. Increasingly, the government ruled by way of administrative circular order. The growth legal-administrative categories —inscribed into codes of custom, bureaucratic orders, mandates for investigation, and after 1871, into census forms— were symptomatic of a practical and ideological need a stable knowledge of the colonised society⁶⁴.

58 T.K. Banerjee, *Background to Indian Criminal Law* (Bombay 1963), p. 249.

59 The *shari'a* rules of evidence were modified so that Hindus could testify against Muslims and the strict evidentiary requirements for *hudud* offences were modified, although *hudud* punishments were also abolished gradually. See Fisch, *Cheap Limbs*, and Jain, *Outline*, ch. 21.

60 Regulation IX of 1793.

61 Regulation IV of 1797.

62 Banerjee, *Background*, p. 284.

63 Washbrook, 'Law, state, and agrarian society', p. 658.

64 Cf. Cohn, *An Anthropologist*, ch. 10.

III. Legal scholarship and state power

The devices of Anglo-Muhammadan scholarship had this in common: they served to fix the fluid practices of indigenous society in legal categories that could serve as a basis for political and legal decisions⁶⁵. Even when colonial legal institutions had minimal impact on actual social practice, they did operate to provide information about the colonised society⁶⁶. The reliance on texts over customary practices was a strategy that served to contain the contumacious complexities of indigenous mores. Colonial legal understandings were not strictly wrong, but they were arrested, frozen forms of representation. They often had more to do with a limited kind of textual accuracy than a genuine appreciation of the norms by which people actually lived. In simplifying indigenous legal arrangements to a form that could be administered by colonial courts, Anglo-Muhammadan scholarship reduced living norms to immutable concepts of purely divine inspiration⁶⁷.

IV. Colonial law and Muslim identity

The apparatus of Anglo-Muhammadan scholarship bore the imprint of eighteenth-century assumptions—even as it was refined, in the twentieth century. What this meant for the detailed administration of the law deserves further study. In the meantime, one point warrants sustained attention: the Anglo-Muhammadan law seems to have contributed to an environment in which a new politics of Muslim identity could flourish.

Assertions concerning ethnic and national identity warrant caution; processes of identity formation are not well understood⁶⁸. Nevertheless, some homologies between the administration of Anglo-Muhammadan law and the consolidation of Muslim identities in the late colonial period may be discerned.

65 See Robb, 'Law and agrarian society in India'.

66 See M. Anderson, 'Law as knowledge, law as control: sati in colonial India, ca. 1770-1840', forthcoming.

67 For a more general discussion, see Homi K. Bhabha, 'The other question: difference, discrimination and the discourse of colonialism', in F. Barker et al. (eds.), *Literature, Politics and Theory* (London, 1986).

68 For accounts that highlight the complexity of the topic, see S. Barnett, 'Identity choice and caste ideology in contemporary South India', in K. David (ed.), *The New Wind: changing identities in South Asia* (The Hague, 1977); and G.C. Beotley, 'Ethnicity and Practice', *Comparative Studies in Society and History* 29, 1 (1987).

Scripturalism

One of the most marked features of the late nineteenth and early twentieth centuries was the rise of a new kind of scripturalist Islam — a form of Islam that relied upon the textual sources of the Qur'an, *hadith* and *shari'a* commentaries as the only acceptable bases of religious authority⁶⁹.

The administration of Anglo-Muhammadan law, as we have seen, proceeded on the basis of textual understanding. The focus on texts allowed administrators to ascertain general legal rules quickly, and it may have meshed with understandings of Islam found among sections of the indigenous elite, but it misunderstood the role of the *shari'a* in the life of most South Asian Muslims. The legalist ideology of colonial judges erred on the side of applying clear rules in a consistent manner, regardless of whether people genuinely treated them as binding.

Qur'anic precepts and the texts of classical legal scholars were not followed as strictly as colonial administrators had presumed. When harnessed to the centralised bureaucracy of the colonial state, *shari'a* principles were administered with a uniformity and rule-bound consistency that was unprecedented on the subcontinent. The orthodox rules of the Hanafi school spread beyond specific urban and gentry groups, as the colonial courts disseminated a unified 'Muhammadan law' to every part of British India.

But it would be a mistake to ascribe too much importance to the effects of colonial law. A number of indigenous processes were also at work. Islamic scholars in Deoband, Aligarh, and elsewhere engaged in a 'self-conscious reassessment of what was deemed authentic religion' based on a rereading of the classical texts⁷⁰. Studies of the Qur'an and *hadith* gained a prominence that had been unknown during the Mughal period⁷¹. Popular understandings of Islam underwent profound changes during the late nineteenth and early twentieth centuries, so that a scripturalist approach to the *shari'a* spread from urban to rural areas, and from elite classes to middle classes⁷². Adherence to the *shari'a* became more widespread and was increasingly perceived to be central to the maintenance of Muslim identity.

69 The term 'scripturalism' is drawn from Clifford Geertz, *Islam Observed* (New Haven, CT, 1967), p. 65.

70 Metcalfe, *Islamic Revival*, p. 348.

71 Ibid.

72 See discussions in Metcalfe, *Islamic Revival*; Aziz Ahmad, *Islamic Modernism in India and Pakistan, 1857-1964* (London, 1967); and Rafiuddin Ahmed, *The Bengal Muslims, 1871-1906* (2nd ed., Delhi, 1988).

Colonial categories

Under the colonial state, the category of 'Muslim', or often 'Muhammadan', took on a new fixity and certainty that had previously been uncommon. In theory, each individual was linked to a state enforced religious category. Identities that were syncretic, ambiguous or localised gained only limited legal recognition; for the most part, litigants were forced to present themselves as 'Muhammadan' or 'Hindu'. Courts repeatedly faced the problem of accommodating the diversity of social groups within these two categories⁷³.

For the purposes of applying the law, who was a Muslim? It was established at a fairly early stage that the courts would recognise the important legal differences between Shi'i and Sunni Islam⁷⁴, but what of other more marginalised and syncretic groups? Could the Ahmadi and Wahhabi sects properly be classified as Muslims⁷⁵? What to make of Khoja, Memon, and Mappilla groups who professed adherence to Islam but were customarily governed by personal laws of Hindu inspiration⁷⁶? Finally, in 1922, the Madras High Court affirmed the principle that anyone who accepted the prophethood of Muhammad and the supreme authority of the Qur'an would be treated as a Muslim in the eyes of the law⁷⁷. The erroneous belief that diverse personal law arrangements could be subsumed under the two great classes of 'Muslim' and 'Hindu' was a failing inherent in Hastings' judicial plan, but despite the problems it posed for colonial courts⁷⁸, it did provide a framework; for legal rule. Many individuals and groups thus found themselves in a position of needing to operate within their state-defined social space in order to secure the economic, political, social, and religious patronage of the state. Previous to colonial rule, communities had been able to maintain a high level of autonomy within larger political agglomerations, but increasingly, local autonomy depended upon being able to influence

73 And more marginally, the categories of Christian, Parsi, and Jews. In general, see *Abraham v. Abraham* (1863) 9 MIA 195.

74 *Rajah Deedar Hossain v. Rane Zuhoornussa* (1841) 2 MIA 441.

75 See *Queen-Empress v. Ramzan* (1885) ILR 7 All 461; *Ata-Ullah v. Azim-Ullah* (1890) ILR 12 All 494; and *Hakim Khalil Ahmad v. Malik Israfi* (1917) 2 Patna LJ 108.

76 See the famous Aga Khan case: *Advocate-General of Bombay v. Mohammad Husen Huseni* (1866) 12 Bom HCR 323.

77 *Narantakath v. Parakkal* (1922) 45 Madras 986.

78 Its legacy has continued to pose problems for post-colonial courts. See *Yagnapurushdasji v. Muldas* AIR 1966 SC 1119; and comment by Derrett, 'The definition of a Hindu' (1966) 2 SCJ J 67. See also the more general discussion by M. Galanter, 'Hinduism, secularism and the Indian judiciary', *Philosophy East and West* 21, (1971).

matters of general policy at the all-India level. The search for political allies, both vertically and horizontally, fostered the formation of new coalitions based upon, among other things, Muslim identity⁷⁹.

The politics of personal law

The administration of Muslim law by a non-Muslim colonial power transformed personal law into a ground for organised political struggle. Not that this was entirely new in South Asia; Islamic idioms had served to translate economic discontent into focused political action for centuries⁸⁰. But in the late nineteenth century, various groups adopted a new approach to Islam, mobilising around Muslim identity in opposition to colonial rule⁸¹. In this process, a particular version of Islamic law came to be juxtaposed with colonial attacks upon it.

This was first evident in the law of *waqf*, or charitable endowment. Prior to colonial rule, the term '*waqf*' seems to have applied to a wide variety of royal and personal grant-giving arrangements operated among both 'Hindu' and 'Muslim' groups in South Asia. Mosques, Sufi shrines, and other religious institutions received income from the landgrants of the imperial nobility as well as the local gentry and prosperous merchants⁸². At the same time, a variety of legal techniques were used by Muslims in South Asia and elsewhere to transmit property from one generation to the next while protecting it from political appropriation⁸³. However, under British administration the tools of Anglo-Muhammadan scholarship were used to craft a single, *shari'a* based law of *waqf* used primarily for settling estates⁸⁴.

In the last century of colonial rule, disputes over *waqf* properties were commonplace. Reflecting inter-personal and doctrinal disputes on specific endowments, a number of cases were heard by the colonial courts in the latter half of the nineteenth century⁸⁵. They led up to the celebrated case of *Abul Fata v. Russomoy*, in which the Privy Council affirmed a High

79 See P. Hardy, *Muslims in British India* (Cambridge, 1972); F. Robinson, *Separatism among Indian Muslims* (Cambridge, 1974).

80 See D. Arnold, 'Islam, the Mappilas and peasant revolt in Malabar', *Journal of Peasant Studies* 9, 4 (1982).

81 Cf. C. Geertz, *Islam Observed*, p. 65.

82 Kozlowski, *Muslim Endowments*, ch. 1.

83 Ibid.; and D.S. Powers, 'The historical evolution of Islamic inheritance law' in Mallat and Connors (eds.), *Islamic Family Law*.

84 Kozlowski, *Muslim Endowments*, ch. 5.

85 Ibid.

Court ruling that the *waqf* in question was not of the nature of a valid charitable endowment, but simply served to aggrandise the family⁸⁶.

The decision was symptomatic of a broader colonial attack on *waqf* as a hindrance to economic growth in a market economy⁸⁷. Despite genuine disagreements among Muslims concerning the merits of the case, the decision served as a rallying point for Muslim discontent. Following extensive agitation, Jinnah found his first major political victory in pressing for the Wakf Validating Act of 1913, that purported to overturn the Privy Council decision. But for all that Jinnah and others claimed that the Act would restore the purity of Islamic law, the Act was closer to a political statement than a restoration. In a field where even the orthodox Hanafi *shari'a* was marked by internal contradictions, a single 'Muhammadan' law on the subject of *waqf* was pure chimera. The 1913 Act simultaneously affirmed a scripturalist version of Islam as it protected the economic interests of certain propertied classes.

The culmination of the scripturalist influence on law came with the Muslim Personal Law (Shariat) Application Act 1937. The act originated in the efforts, primarily among some of the *'ulama*, to secure statutory enforcement of the *shari'a*. Their successful lobbying resulted in an Act that abrogated what were seen as 'non-Islamic' customs. The Act affirmed, in the political arena, the equivalence of Muslim identity and a certain form of *shari'a*. It was an Act of indigenous instigation, but its form and purpose reflected a view of the *shari'a* that had been reshaped in the British administration of Anglo-Muhammadan law.

Conclusion

From the outset, a deference to indigenous family laws marked colonial administration, and as a general policy, it was never set aside. And yet, despite the effectiveness of this policy, it contained the latent contradictions of a non-Muslim government administering a Muslim law, which threw up repeated instances of misunderstanding and simplification. Company administrators encountered a variety of legal norms and institutions that varied according to the determinants of locality and community life. In their search for effective and inexpensive modalities of rule, the British came to rely upon the devices of translation, textbook, and codification, to adapt indigenous arrangements to the dictates of colonial control. Given the constraints of language, financing, and a limited tradition of scholarship, colonial administrators developed a legal system that could secure the allegiance

86 (1894) 22 LR IA 76.

87 See D. Powers, 'Orientalism, colonialism, and legal history: the attack on family endowments in Algeria and India', *Comparative Studies in Society and History* 31 (1989).

of indigenous elites and collect revenue. In these circumstances, it is not surprising that colonial judges looked less for accuracy than for certainty and uniformity.

At the heart of Anglo-Muhammadan jurisprudence lay a conviction that Islam was a matter of religious rules, of a more or less inflexible nature, which were of equal relevance to all Muslims regardless of their cultures and histories⁸⁸. The internal contradictions, genuine differences of interpretation, and nuanced instances of discretion that often accompanied *shari'a* norms were, in the main, displaced by a rulebound legal system. If Anglo-Muhammadan scholarship endorsed a scripturalist version of Islam, that same vision was transformed into an oppositional Islam that could be used in the anti-colonial struggle. It is one of the ironies of British rule that a jurisprudence which first served to implement colonial rule in the eighteenth century could give form to a part of the independence movement of the twentieth century. Meanwhile, the intimate interaction of legal administration and indigenous identity formation lent scripturalist Islam an enduring quality that has continued into the post-colonial period.

88 A similar assumption seems to pervade much contemporary scholarship on Islamic law. See Enid Hill, 'Orientalism and liberal-legalism: the study of Islamic law in the modern Middle East', *Review of Middle East Studies* 2 (1976).

Further reading:

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Women living under muslim laws **النساء في ظل قوانين المسلمين** **Femmes sous lois musulmanes**

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Women Living Under Muslim Laws

is a network of women whose lives are shaped, conditioned or governed by laws, both written and unwritten, drawn from interpretations of the Koran tied up with local traditions.

Generally speaking, men and the State use these against women, and they have done so under various political regimes.

Women Living Under Muslim Laws

addresses itself
to women living where Islam is the religion of the State, as well as to women who belong to Muslim communities ruled by minority religious laws,

to women in secular states where Islam is rapidly expanding and where fundamentalists demand a minority religious law, as well as to women from immigrant Muslim communities in Europe and the Americas,

and to non Muslim women, either nationals or foreigners, living in Muslim countries and communities, where Muslim laws are applied to them and to their children.

Women Living Under Muslim Laws

was formed in response to situations which required urgent action, during the years 1984-85

The case of three feminists arrested and jailed without trial, kept incommunicado for seven months, in Algeria, for having discussed with other women the project of law known as "Family Code", which was highly unfavorable to women.

The case of an Indian sunni woman who filled a petition in the Supreme Court arguing that the Muslim minority law applied to her in her divorce denied her the rights otherwise guaranteed by the Constitution of India to all citizens, and called for support.

The case of a woman in Abu Dhabi, charged with adultery and sentenced to be stoned to death after delivering and feeding her child for two months.

The case of the "Mothers of Algiers" who fought for custody of their children after divorce.

amongst others...

The campaigns that have been launched on these occasions received full support both from women within Muslim countries and communities, and from progressive and feminists groups abroad.

Taking the opportunity of meeting at the international feminist gathering "Tribunal on Reproductive Rights" held in Amsterdam, Holland, in July 1984, nine women from Muslim countries and communities: Algeria, Morocco, Sudan, Iran, Mauritius, Tanzania, Bangla Desh and Pakistan, came together and formed the Action Committee of Women Living Under Muslim Laws, in support of women's struggles in the concerned contexts.

This Committee later evolved into the present network.

The objectives of **Women Living Under Muslim Laws** are

- * to create links amongst women and women's groups (including those prevented from organising or facing repression if they attempt to do so) within Muslim countries and communities,
- * to increase women's knowledge about both their common and diverse situations in various contexts,
- * to strengthen their struggles and to create the means to support them internationally from within the Muslim world and outside.

In each of these countries till now women have been waging their struggle in isolation.

Women Living Under Muslim Laws aims at

- * providing information for women and women's groups from Muslim countries and communities
- * disseminating this information to other women from Muslim countries and communities
- * supporting their struggles from within the Muslim countries and communities, and make them known outside,
- * providing a channel of communication amongst women from Muslim countries and communities.

These objectives are fulfilled through

- * building a network of information and solidarity
- * disseminating information through "Dossiers"
- * facilitating interaction and contact between women from Muslim countries and communities, and between them and progressive and feminists groups at large.
- * facilitating exchanges of women from one geographical area to another in the Muslim world.