The Campaign for Islamic Law in Fiji: Comparison, Codification, Application

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In September 1939, Fiji's Legislative Council debated a testamentary disposition bill, patterned after the English Inheritance (Family Provision) Act of 1938. The bill's introduction followed a routine procedure of the transplantation of English legislation to colonial jurisdictions.[1] The bill empowered the court to modify wills in which the testator had deprived the spouse and children of reasonable maintenance. As debate ensued, Said Hasan, the

1. For the concept of a legal "transplant," see Alan Watson, "Introduction to Legal Transplants," in *Legal Transplants: An Approach to Comparative Law*, 2nd ed. (Athens and London: University of Georgia Press, 1993), 21–29; and Alan Watson, "From Legal Transplants to Legal Formants," *American Journal of Comparative Law* 43 (1995): 469–76.

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recently nominated Muslim Member of the Legislative Council, rose to offer his support. He noted that the bill gave partial effect to "the underlying principle of Mohammedan law." The "policy" of Mohammedan law, he argued, was to prevent the testator from interfering with the devolution of property to family members in "fixed and definite shares." A testator was entitled to will only a "bequeathable third" of the estate beyond the fixed shares assigned to dependents. Hasan further declared that the bill was a "tacit admission" of the injustice suffered by dependents excluded from their rightful share in family property.[2]

Hasan proposed a minor amendment to the bill, naming the parents of the testator as additional beneficiaries.[3] A European Member, H.B. Gibson. commented: "I think this is something really beautiful which we have learned from the Mohammedan law that a testator has an obligation in addition to providing for his widow and children to provide for his father and mother. I do sincerely hope that the Government will see their way to insert the amendment." Hasan corrected Gibson, stating that Mohammedan law did not obligate the testator to provide for his parents; rather, the father and mother were entitled to a fixed share of the testator's property "in their own right." Gibson replied, "I will say then that it is a beautiful suggestion on the part of my honourable and learned friend."[4] Hasan's amendment was adopted and incorporated into Ordinance 21 of 1939.[5]

As he offered his amendment, Hasan reminded Governor Arthur Richards of the broader scope of his concern. He cited earlier "assurances" received from Governor Murchison Fletcher, that "the personal law of the Mohammedans" would be made applicable to Fiji Muslims. At the invitation of Fletcher, Hasan had prepared three draft ordinances for the application of Islamic law in 1934. The drafts were circulated to the Government of India for comment, and then redrafted by Hasan in 1938. One week prior to his exchange with Gibson, Hasan had been asked introduce new "safeguards" within the bills and to demonstrate a "general desire" for the legislation by Fiji Muslims.[6] Hasan then assisted in drafting to draft a third set of bills in 1946, which were rejected by the Colonial Office. With his brother Muhammad Hasan, Said Hasan carried the appeal

2. *Fiji Legislative Council Debates,* September 7, 1939, 112–13.

3. Under the English Act, the beneficiaries entitled to maintenance included the surviving spouse, an infant or otherwise incapacitated son, and an unmarried or incapacitated daughter. "Inheritance (Family Provision) Act, 1938," *Modern Law Review* 3 (1939): 53.

4. *Fiji Legislative Council Debates,* September 7, 1939, 112–15.

5. Ibid., September 11, 1939, 136–37.

6. Letter from the acting colonial secretary to Hasan, dated August 31, 1939, excerpted in a letter from C.R.W. Seton to attorney general, dated August 29, 1946, located in the National Archives at Kew (hereinafter, "NA"), Colonial Office (hereinafter "CO"), 83/240/6.

to Pakistan in 1950, arguing that Fiji Muslims were denied religious freedom and human rights. Although this ultimately unsuccessful campaign is mentioned only briefly in historical works on Indo-Fijians, it generated a plenitude of archival correspondence tracking an imperial, transnational, and international debate on the mobility of religious personal laws within the British Empire.[7]

Hasan's attempt to apply Islamic law in Fiji recalls Metcalf's work on the transmission of Indian codes within the Indian Ocean arena.[8] As Metcalf recounts, a wave of post-1857 codification made available a body of "Indian law" for application in Indian Ocean jurisdictions.[9] British settlers resisted Indian codes, arguing that they failed to incorporate common law liberties. Colonial officials also refused Indian codes where "native" systems of law, including Islamic law, were preferred. Metcalf observes an "enduring tension" between Colonial Office and local officials on the transmission of Indian codes.[10] Metcalf also notes, significantly, that "distance from India mattered too."[11] However, unlike various codes of contract, criminal law, and civil and criminal procedure, the religious personal laws of British Indian subjects were not codified into legislative enactment. Anglo-Muhammadan law and Anglo-Hindu law instead were entextualized within various digests, handbooks, treatises, and law reports.[12] This growing corpus was not so readily transplanted across jurisdictions.

7. For discussion of the campaign, see Ahmed Ali, "Muslim Separatism," in *Fiji and the Franchise: A History of Political Representation, 1900–1937* (New York: iUniverse, Inc., 2008), 195; see also Adrian Mayer, *Peasants in the Pacific: A Study of Fiji Indian Rural Society* (London: Routledge & Kegan Paul, 1961), 152. There is brief mention of the demand for recognition of "separate Islamic law" by Guru Dayal Sharma in *Memories of Fiji: 1887–1987* (Suva: Guru Dayal Sharma, 1987), 112. John D. Kelly discusses the earliest stages of the campaign in *A Politics of Virtue: Hinduism, Sexuality, and Countercolonial Discourse in Fiji* (Chicago and London: University of Chicago Press, 1991), 189.

8. Thomas R. Metcalf, "Governing Colonial Peoples," in *Imperial Connections: India in the Indian Ocean Arena, 1860–1920* (Berkeley/Los Angeles/London: University of California Press, 2007), 26–27.

9. For a further account of Indian codification, see Mahabir Prashad Jain, "Codification of Law (1833–1882)," in *Outlines of Indian Legal and Constitutional History,* 6th ed. (New Delhi: LexisNexus Butterworths Wadhwa Nagpur, 2012), 417–62.

10. Metcalf, "Governing Colonial Peoples," 31.

11. Ibid., 30.

12. Fyzee defines "Muhammadan law" as "that portion of the Islamic Civil Law which is applied to Muslims as a personal law." Asaf A.A. Fyzee, *Outlines of Muhammadan Law*, 4th ed. (New Delhi: Oxford University Press, 1999), 2. In this article, I hew to the language of various officials and petitioners in employing terminology such as "Mohamedan law," "Muhammadan Law," "Sheria," "Shariat," "Muslim Personal Law," and "Islamic law." A fulcrum point for this usage was the passage, in British India, of the Muslim Personal

Hasan's quest for the application of Islamic law instigated a broader legal debate on the codification of Anglo-Muhammadan law for application in Fiji. In colonial India, attempts to codify religious personal laws often met with claims of religious interference. Former Law Member for the Government of India Courtenay P. Ilbert commented: "It is easy enough to find an enlightened Hindu or Mahommedan like Sir Syed Ahmed Khan, who will testify to the general desire of the natives to have their laws codified. The difficulty begins when a particular code is presented in a concrete form."[13] Uncertainty as to how religious personal laws might be applied in new colonial jurisdictions provoked comparative inquiries into how Muslim populations were governed within the British Empire. Hasan, who had practiced law in East Africa, turned to Kenyan legislation as a model for Fiji. Colonial Office officials instead referred to legislation in British Guiana and Trinidad, where, like Fiji, local Muslim populations originated from the transportation of indentured laborers from British India in the nineteenth century.

This article explores the difficult question of applying the religious personal laws of British Indian subjects beyond the jurisdiction of British India. I argue that the Fiji debate on the application of Islamic law provoked a politics of jurisdictional comparison. I highlight how comparisons were effected in spatial and temporal registers. Fiji was geographically "distant" from India and from the Indian Ocean world where Islamic law was readily applied to Muslims as "natives." By the duration of their residence in Fiji, colonial officials argued that Fiji's Muslims no longer retained their domiciliary attachment to British India. They further argued that Fiji was a distinctive jurisdiction with the authority to override imperial precedents that Hasan argued had committed the Fiji government to religious noninterference. Hasan vigorously contested both the authority of local jurisdictions to override imperial precedent and the gendered terms in which officials argued Islamic law was repugnant to English legal principles. However, Hasan did not seek autonomy from the law; he sought recognition. His search for a form in which Islamic law might be codified for application in colonial Fiji illustrates both the mobility of law and constraints upon its transmission within and beyond the Indian Ocean world.

Law (Shariat) Application Act of 1937, which began, but did not necessarily complete, a shift from "Muhammadan" to "Muslim" and "Islamic" in legal debates.

13. Courtenay Ilbert, "Application of European Law to Natives of India," *Journal of the Society of Comparative Legislation* 1 (1896–1897): 225.

Fiji Muslims and Muslim Separatism

The system of indentured labor transported more than 1,300,000 laborers from India to colonies in Africa, the Caribbean, the Indian Ocean, and the Pacific from 1834 to 1920.[14] Colonial Fiji was the recipient of 60,553 Indian indentured laborers from 1879 to 1920. Brij Lal estimates the proportion of Muslims at 16.8%.[15] A small minority of Muslims arrived in Fiji as "free" migrants, including clerks, interpreters, teachers, lawyers, and missionaries.[16] Although most Muslims from north India subscribed to the Hanafi school of law, a small minority arrived from South India identifying with Shafi`i legal doctrine.[17] Shi'a migrants also migrated to Fiji, as evidenced by the promotion of *Mohurrum* processions during the indentured period.[18] Political organization by Fiji Muslims was evident by the early twentieth century.[19] In 1909, Muslims petitioned the Education Commission for Urdu education, with several Anjumans forming within the following decade for the promotion of schools and mosques.[20]

14. For an individual breakdown by recipient colony, see Colin Clarke, Ceri Peach, and Steven Vertovec, "Introduction," in *South Asians Overseas: Migration and Ethnicity,* ed. Colin Clarke, Ceri Peach, and Steven Vertovec (Cambridge: Cambridge University Press, 1990), 9.

15. Brij V. Lal, *Girmitayas: The Origins of the Fiji Indians* (Canberra: Journal of Pacific History, 1983), 2, 104. Lal's study is based on emigration passes from Calcutta. For a study of South Indian Muslim migration through the port of Madras, see Lance Brennan, John McDonald, and Ralph Shlomowitz, "The Origins of South Indian Muslim Indentured Migration to Fiji," *Journal Institute of Muslim Minority Affairs* 13 (1992): 402–9.

16. Kenneth L. Gillion, "The Sources of Indian Emigration to Fiji," *Population Studies* 10 (1956): 139–57.

17. The background of the Keralite Muslim community of Fiji is elaborated in a Golden Jubilee publication of the Ma'unatul Islam Association of Fiji (1995).

18. On Muhurram or "tazia," see Sudesh Mishra, "Tazia Fiji!: The Place of Potentiality," in *Transnational South Asians: The Making of a Neo-Diaspora*, ed. Susan Koshy and R. Radhakrishnan (New Delhi: Oxford University Press, 2008), 71–94. John D. Kelly contrasts *tazia* to Hindu festivals in "From Holi to Diwali in Fiji: An Essay on Ritual and History," *Man*, New Series 23 (1988): 40–55.

19. For assessments of Fiji's Muslim population, see especially the work of Ahmed Ali, including "The Emergence of Muslim Separatism in Fiji," *Plural Societies* 8 (1977): 57–69; "Muslims in Fiji: A Brief Survey," *Journal Institute of Muslim Minority Affairs* 2 (1980–1981): 174–82; "Remembering," in *Bittersweet*, ed. Brij V. Lal (Canberra: Pandanus Books, 2004), 71–87; and "Muslim Separatism" in *Fiji and the Franchise: A History of Political Representation, 1900–1937* (New York: iUniverse, Inc., 2008), 185–201. See also Ghulam M. Haniff, "The Status of Muslims in Contemporary Fiji," *Journal Institute of Muslim Minority Affairs* 11 (1990): 118–26; and Jan Ali, "Islam and Muslims in Fiji," *Journal of Muslim Minority Affairs* 24 (2004): 141–54.

20. Among these Anjumans were the Anjuman-i-Hidayat-Islam (1915), the Anjuman Ishait El Islam (1916), and the Anjuman-e-Islam (1919). Ali, "The Emergence of Muslim Separatism," 59.

Life under indenture was typically harsh, with the pass system limiting the mobility of laborers between plantations. However, religious activity within and between religious communities was evident in the form of prayer groups, *milad* recitals, *katha* readings, *puja* rituals, bazaar preaching, Sufi worship, *bhajan* singing, *Ramlila* festivals, *Mohurrum* processions, and Holi celebrations.[21] Oral histories of ex-indentured laborers collected by Ahmed Ali and his colleagues in the 1970s convey a strong sense of conviviality and shared religious practice. Din Mohammed, an ex-indentured laborer related: "There was no religious conflict. We were all one. Whether Hindu or Muslim we all ate each other's food. We were friendly towards each other except when it came to prayers. Hindus did not come to our mosques but then this was to be expected because each practiced his own religion. But if we had religious celebrations or readings in our home they would come."[22] The distinction between the religion of the home and the religion of the mosque is suggestive, though Mishra notes that donations for mosque and temple construction were made across religious boundaries in the early years of indenture.[23]

Khan's *History of Islam* argues a more distinctive conception of Muslim religious identity under indenture.[24] Khan describes the role of itinerant early "preachers" in binding Muslims across localities and promoting the observance of "shariat laws." Buddha Khan obtained a hawker's license after the expiration of his labor contract, enabling him to travel freely between plantations. Maulvi Ali Hussein traveled between the islands of Fiji to visit homes, farms, and bazaars for "proselytization." Mirza Mulla Khan, known for his strict observance of the "shariat laws of Islam," used "horse-drawn sulkies" to travel to the interior of the island of Viti Levu and spread faith. Khan also lauds efforts at mosque construction, first out of thatch, and then out of "wood and iron," praising Kariman Bifaia Sardarin for her "ardour of faith" in constructing a Koronovia

21. For a contemporary account, see Brij V. Lal and Yogendra Yadav, "Hinduism Under Indenture: Totaram Sanadhya's Account of Fiji," *Journal of Pacific History* 30 (1995): 99–111. From the perspective of a Methodist missionary, see John Wear Burton, *The Fiji of Today* (London: Charles H. Kelly, 1910).

22. "Din Mohammed," in *Girmit: The Indenture Experience in Fiji*, ed. Ahmed Ali (Suva: Fiji Museum, 1979), 13.

23. Vijay Mishra, *The Literature of the Indian Diaspora: Theorizing the Diasporic Imaginary* (London and New York: Routledge, 2007), 32.

24. Al Haj Sher Mohammed Khan, *History of Islam and the Muslims in Fiji* (Suva: Fiji Muslim League, 197-), 37. The *History* is available at the Alexander Turnbull Library in Wellington, New Zealand. Unconventional in style, Khan's *History* is an interesting source on early Muslim religious activity in Fiji. In a "Preface" to the volume, Fiji Muslim League President S.M.K. Sherani indicates that Khan relied on oral testimony from early "pioneers." My thanks to Teresa Teaiwa for retrieving a copy of the work.

mosque.[25] Notably, in Khan's account the mobility of "shariat laws" was a question of personal conduct and not reliant upon legislative intervention.

Scholars have argued that postindenture religious contestation contributed to the emergence of Muslim separatism in Fiji.[26] The Fiji Muslim League was formed in 1926 in response to an atmosphere of proselytization and social boycott, with early League resolutions lamenting the anti-Islamic propaganda of Arya Samaj missionaries.[27] A public campaign against a slaughterhouse in Koronovia also provided impetus for mobilization. Internal debates over doctrine and practice also simmered. To counter Arya Samaj and Christian missionaries, Fiji Muslim League leaders recruited Muzaffar Beg from Lahore in the early 1930s. However, Beg was soon revealed to be an Ahmadi adherent, leading to the expulsion of Ahmadiyya supporters from several mosques. Contesting for the leadership of Fiji Muslims, Ahmadiyyas formed the Anjuman Ishaat-i-Islam and, in 1938, the Muslim Association.[28] Sunnis also boycotted *Mohurrum* by the late 1920s.[29]

Debates over electoral representation provided crucial impetus for the emergence of Muslim separatism. In 1929, Fiji Indians first were permitted to elect their own representatives to three electoral seats. Following upon the elections, Vishnu Deo led a boycott of the Council, demanding a common electoral roll for "Indian settlers."[30] Disappointed at the failure to elect a Muslim candidate and concerned with ongoing social boycotts by the Arya Samaj, Muslim leaders petitioned Fletcher in 1930 for separate representation as a safeguard against "Hindu dominance."[31] Charles Freer Andrews, an emissary of the Indian National Congress, travelled to Fiji to mediate the conflict over the common roll demand in 1936. Meeting with Said Hasan, Andrews proposed that a nominated member represent Muslims at Fiji's Legislative Council. Hasan replied that the proposal "was self-destructive since it admitted the principle of

25. Khan, *History of Islam*, 14–21.

26. See especially Ali, "The Emergence of Indian Separatism." See also Kenneth L. Gillion's *The Fiji Indians: Challenge to European Dominance* (Canberra: Australian National University Press, 1977); John D. Kelly's discussion of the Arya Samaj–Sanatan Dharm rivalry in *A Politics of Virtue*; and Brij V. Lal, *Broken Waves: A History of Fiji in the Twentieth Century* (Honolulu: University of Hawaii Press, 1992), 77–79.

27. Ali, "The Emergence of Muslim Separatism," 61.

28. Khan, *History of Islam*, 23–24.

29. Kevin Luke Daley, "Communalism and the Challenge of Fiji Indian Unity," (PhD diss., University of Hawai'i at Manoa, 1997), 306.

30. "Extract from Debate in Legislative Council, November 5th, 1929," National Archives of India (hereinafter "NAI"), Education, Health and Lands Department, Lands & Overseas Branch (hereinafter "EHL-L&O"), 1932, File No. 276.

31. "The Question of a Separate Muhammadan Representation in the Legislative Council," NA, CO 83/192/11.

nomination."[32] After a lengthy debate, Fiji officials instituted a compromise constitution mixing electoral and nominated representation in 1937. Notwithstanding his support for the elective principle, Hasan was nominated by Governor Richards to the Legislative Council in 1938. Ahmadi leader A.R. Manu succeeded Hasan in 1943. This "precedent" was observed until the Legislative Council was expanded prior to the 1963 elections.[33] Fiji had recast its model of "represented communities," and in the transition, Hasan had helped to secure separate, if nominated, representation for Fiji Muslims.[34]

Said and Muhammad Hasan arrived in Fiji by 1930.[35] Khan describes them as "extraordinary Muslim personalities who had great influence in the moulding of religious ideas amongst the Muslim communities of this country."[36] Ali stresses their sectarian orientation against the Ahmadiyya community, terming them "fanatical Sunnis."[37] Their leadership was not unquestioned; a 1937 petition, partially spearheaded by Ahmadiyya leaders, urged against the appointment of "men who are mere 'birds of passage'" to the Legislative Council.[38] Said Hasan's legal acumen, however, was beyond doubt. Philip Snow described him as of the "cream of their profession" among the lawyers of Fiji.[39] In 1943, Governor Philip Mitchell argued that "on the grounds of ability and general capacity," Hasan was the most qualified Indian candidate for appointment to the governor's Executive Council.[40] The secretary for Indian Affairs, Victor McGusty, agreed.[41]

32. Victor McGusty here paraphrases Hasan's report on the meeting in "Note on an Interview with the Acting Colonial Secretary," May 12, 1936, NA, CO 84/215/1.

33. Ali, "The Emergence of Muslim Separatism," 68; and Lal, *Broken Waves*, 91–97.

34. For an important argument regarding the centrality of community to British rule, see John D. Kelly and Martha Kaplan, *Represented Communities: Fiji and World Decolonization* (Chicago and London: University of Chicago Press, 2001).

35. Chief Justice Seton suggested that they arrived in Fiji at the end of 1930. Seton to Alexander Grantham, December 28, 1945, NA, CO 83/240/6.

36. Khan mistakenly dates their arrival from Amritsar, Punjab to 1936. Khan, *History of Islam,* 26.

37. Ali, "The Emergence of Muslim Separatism," 67.

38. A.R. Sahu and others to Governor Fletcher, March 4. 1935, NA, CO 83/210/7. See also Ali, "Muslim Separatism," 195.

39. Philip Snow, *Years of Hope: Cambridge, Colonial Administrator in the South Seas, and Cricket* (London: The Radcliffe Press, 1997), 39. Hasan's status as a superior "legal scholar" is also confirmed by Fiji lawyer Karam Chand Ramrakha, a former member of the colonial Legislative Council. Brij V. Lal, *A Vision for Change: A.D. Patel and the Politics of Fiji* (Canberra: Australia National University E Press, 2011), 31.

40. Mitchell to Secretary of State for the Colonies (hereinafter "SSC"), September 23, 1943, NA, CO 83/235/5.

41. "Memorandum on Proposed Constitutional Changes, Reorganisation of Native Affairs Administration, and abolition of post of Secretary for Indian Affairs," NA, CO 83/235/5.

Scholars have described the Hasan brothers as "Punjabi Muslims," but an anecdote from Urdu short story writer Sadaat Hasan Manto suggests Kashmiri origins.[42] Manto writes with a touch of irony of a "serious-minded barrister," his brother Said Hasan, who "had spent his entire life reading his law books and fighting legal battles in Lahore, Bombay, east Africa, and the Fiji Islands."[43] Said and Muhammad Hasan are revealed as the elder half-brothers to Manto. Unlike Manto, Said and Muhammad Hasan were educated in England, following their father Ghulam Hasan into the legal profession.[44] A Manto biographer describes them as refined in conduct, pious in manner, and having occupied a large, elegant home in Bombay prior to emigrating to Fiji.[45] A few more biographical details may be gleaned from a 1954 interview with Said Hasan conducted in Pakistan.[46] Hasan had begun his law practice in Lahore 30 years previously. He had appeared as legal counsel to Mohamed Ali in the "Free Press Journal Defamation Case" at the Bombay High Court. He also revealed that in Zanzibar "he secured judicial recognition for the Khojas to be governed by Islamic law 'whether alive or dead.'"[47]

Following Sharafi's insights into "colonial lawyering," I stress Hasan's role as an interpreter of Muslim communities in Fiji, creating his own distinctive "legal portrait" of their aims and aspirations.[48] That portrait insisted on separate representation and the application of Islamic law as key safeguards for the consolidation and constitution of a unified Muslim community in the aftermath of the modifying experience of indenture. Although he argued, in 1934, that English law "tends to disrupt the

42. Gillion terms them "Punjabi brothers." Gillion, *The Fiji Indians* 113.

43. Sadaat Hasan Manto, "Nur Jehan," in *Stars from Another Sky: The Bombay Film World of the 1940s*, trans. Khalid Hasan (New Delhi: Penguin Books, 2010), 161. I thank Rohit De for this reference.

44. Ayesha Jalal mentions the two brothers briefly in her biography of Manto, *The Pity of Partition: Manto's Life, Times, and Work across the India–Pakistan Divide* (Princeton and Oxford: Princeton University Press, 2013), 30. On the Kashmiri origins of the family, see page 29.

45. Jagdish Chander Wadhawan (trans. Jai Ratan), *Manto Naama: The Life of Sadaat Hasan Manto* (New Delhi: Roli Books, 1998), 16.

46. "Fijian Muslims want to be governed by Islamic Laws," *Dawn*, December 12, 1954.

47. Khojas were governed partially by customary law, with the capability to testate the whole of their property at death. Fyzee, *Outlines,* 65. For recent treatments of Khoja custom, see Teena Purohit, *The Aga Khan Case: Religion and Identity in Colonial India* (Cambridge and London: Harvard University Press, 2012); Amrita Shodhan, *A Question of Community: Religious Groups and Colonial Law* (Calcutta: Samya, 2001); and Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights* (Cambridge: Cambridge University Press, 2012), 198–210.

48. Mitra Sharafi, "A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire," *Law and Social Inquiry* 32 (2007): 1062.

family life particular to Indians," Hasan made limited reference to extant social conditions particular to Fiji in his various petitions and memoranda.[49] His critique of English law and the doctrine of coverture, expressed most forcefully in the later stages of the campaign, recalls the earlier "apologetics" of Ameer Ali.[50] However, he did not appear to consider the pragmatics of how distinctive inheritance rights under Islamic law might be claimed by Muslim women.[51] Hasan enjoyed a particularly mobile legal career, traversing multiple jurisdictions and conducting particular conceptions of Islamic law and Muslim identity derived from his experience of India and the Indian Ocean arena to Fiji and the Pacific.

Codifying Islamic Law

Hasan coordinated his campaign for the application of Islamic law in colonial Fiji in the shadow of indenture era legal precedents. Labor mobility had engendered a new form of legal pluralism in the British Empire, as indentured laborers and their descendants claimed the right to retain their religious personal laws when migrating beyond the jurisdiction of British India.[52] By the end of the nineteenth century, Indian marriages were governed under distinctive marriage and immigration ordinances in colonies such as Mauritius, Natal, British Guiana, Trinidad, and Jamaica.[53] Fiji's

49. Said Hasan, "Preliminary Observations," NA, CO 83/211/12.

50. On Ali's apologetics, see Avril A. Powell, "Islamic Modernism and Women's Status: The Influence of Syed Ameer Ali," in *Rhetoric and Reality: Gender and the Colonial Experience in South Asia*, ed. Avril A. Powell and Siobhan Lambert-Hurley (New Delhi: Oxford University Press, 2006), 282–309.

51. For a cautionary account of the difficulties for Indian women claiming property rights, see Srimati Basu, *She Comes to Take Her Rights: Indian Women, Property, and Propriety* (Albany: State University of New York Press, 1999).

52. I distinguish the case of the mobility of law for Indian indentured laborers from the typical "encounter" between European and indigenous law described by scholars of legal pluralism. M.B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-colonial Laws* (Oxford: Clarendon Press, 1975), 2; see also the edited volume by Wolfgang J. Mommsen and Jaap A. de Moor, *European Expansion and Indigenous Law in 19th- and 20th-Century Africa and Asia* (Oxford and New York: Berg, 1992). Wael B. Hallaq also uses the term "encounter" to describe the interaction of the European nation-state with Sharìa: *Sharìa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 359–60.

53. For discussion of legislation in British Guiana and Trinidad, see Prabhu P. Mohapatra, "'Restoring the Family': Wife Murders and the Making of a Sexual Contract for Indian Immigrant Labour in the British Caribbean Colonies, 1860–1920," *Studies in History* 11 (1995): 227–60; Keith W. Patchett, "Some Aspects of Marriage and Divorce in the West Indies," *International and Comparative Law Quarterly* 8 (1959): 632–77; and Jagdish

Indian marriage legislation was modeled on such legislation. Both Fiji Ordinance No. 2 of 1892 and Ordinance No. 5 of 1918, amended by Ordinance No. 1 of 1919, presumed that marriages conducted in India were valid under Indian law. This provision facilitated the mobility of religious personal laws, now attached as a right of entry for immigrant indentured laborers. Colonial marriages were effected by civil registration, and subject to rules for capacity to marriage derived from English law. At the prompting of the Government of India, Fiji's 1918 ordinance gave further legal standing to religious marriages and exempted them from penalties for nonregistration. The Government of India continued to insist on religious noninterference and the retention of Indian domicile.[54]

Following the abolition of indentured labor in 1920, Fiji colonial officials sought to distinguish the Fijian legal system from imperial and Indian precedents. These efforts were consistent with a project of modernizing the Fijian state: general laws would be applicable to all persons within Fijian territory, establishing the "supremacy" and "independence" of Fiji's legal system.[55] Attorney-General Percy A. McElwaine insisted that the acquisition of voting rights made it appropriate to bring Indian marriages under the general laws of the colony.[56] He argued that the difficulty of proving personal laws as "fact" under the indenture era ordinances left uncertain whether incestuous or polygamous marriages were punishable under Fijian law.[57] He helped to secure the passage of Fiji Ordinance No. 27 of 1928, which made compulsory the registration of

Chandra Jha, "The Background of the Legalisation of Non-Christian Marriages in Trinidad and Tobago," in *East Indians in the Caribbean: Colonialism and the Struggle for Identity,* ed. Bridget Brereton and Winston Dookeran (Millwood, NY: Kraus International Publications, 1982), 117–39. For Mauritius, see Marina Carter's *Lakshmi's Legacy: The Testimonies of Indian Women in 19th Century Mauritius* (Rose-Hill, Mauritius: Editions de L'Ocean Indien, 1994); and *Servants, Sirdars & Settlers: Indians in Mauritius, 1834–1874* (Oxford: Oxford University Press, 1995).

54. John D. Kelly, "Fear of Culture: British Regulation of Indian Marriage in Post-Indenture Fiji," *Ethnohistory* 36 (1989): 375. See the remarks of Diwan Bahadur M. Ramachandra Rao and Acting Advocate General S. Srinivasa Iyengar, respectively, for this position, in NAI, Commerce and Industry Department, Emigration Branch, June 1916, Nos. 10–23.

55. Herbert L.A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), 21, 24.

56. Kelly, *A Politics of Virtue*, 176. McElwaine to colonial secretary, June 2, 1928, NAI, Education, Health and Lands Department, Overseas Branch (hereinafter "EHL-OS"), February 1929, Nos. 32–33.

57. Kelly, *A Politics of Virtue*, 176.

marriage for legal recognition.[58] Subsequently, Fiji Ordinance No. 35 of 1929 criminalized bigamous marriages conducted in Fiji.[59]

Fiji's Ordinance No. 1 of 1930 appeared to expunge all reference to religious personal law from Fijian law.[60] These measures were endorsed by Indian representatives, including A.G. Sahu Khan, a Fiji civil servant consulted by Fiji officials on matters of Muslim personal law.[61] The Government of India conceded Fijian jurisdiction over colonial marriages, but insisted that polygamous marriages conducted in India retain validity.[62] The proposed ordinance was held in suspension, given divisions between the Arya Samaj and the Sanatan Dharm on the age of consent and registration of marriage.

"Demand" for the application of Islamic law arrived with an early petition from the Fiji Muslim League. In 1928, the League requested that the Fiji government procure legal texts on both "Hindoo" and "Mohammedan" law and prepare handbooks for district commissioners for the administration of personal law.[63] In 1929, a League petition sought exemption from the English law of divorce, noting that the Fiji marriage ordinance failed to permit divorce under religious personal laws. This demand was amplified by 1931, when Said Hasan and A.R. Sahu Khan met with Governor Fletcher to request the application of a "Muslim code" governing marriage, divorce, and inheritance.[64]

Fiji Muslim League petitions led to a search for comparable legislation. Governor Fletcher wrote to the Colonial Office requesting a "survey" of existing legislation from colonies with large Indian populations. The Office replied with a "collection" entitled "Indian and Mohammedan Marriage and Divorce Laws in Force in those British Dependencies which have Hindu Populations," reporting on legislation in East Africa, Southeast Asia, Mauritius, and the West Indies.[65] It also forwarded Fletcher's request to the India Office, which in turn transmitted the Colonial Office correspondence to the Government of India. The

58. NAI, EHL-OS, August 1926, Nos. 7–11.

59. NAI, EHL-OS, May 1930, Part B, Nos. 107–10.

60. Kelly, *A Politics of Virtue*, 187.

61. Those consultations are summarized in a memo from the McElwaine to the colonial secretary, dated April 4, 1930. Copy in NAI, EHL-OS, January 1932, Part B, Proceedings Nos. 21–27.

62. This position was outlined in Ram Chandra, joint secretary to the Government of India (hereinafter, "GOI") to the under-secretary of state, Economics and Overseas Department, India Office, dated January 5, 1931, in NAI, EHL-OS, January 1932, Part B, Proceedings Nos. 21–27.

63. Quoted in Daley, "Communalism," 299.

64. Fletcher to SSC, January 26, 1932, NA, CO 83/196/13.

65. Fletcher to SSC, January 26, 1932.

Government of India then prepared its own summary of "Marriage Law applicable to Indians in the various Colonies of the British Empire."[66]

If Fletcher reached for imperial comparisons, Pearson was committed to Indian precedents. Pearson reported on the Muslim League demand to Girja Shankar Bajpai of the Government of India. He expressed his disagreement with Ordinance No. 1 of 1930, suggesting that Indian representatives endorsing the legislation had not understood its provisions. Paralleling Fletcher's request, Pearson also solicited information on special legislation for colonies with "similar conditions," including "East African colonies, British Guiana and Mauritius."[67] In a subsequent letter, Pearson requested that the Government of India provide a copy of Ameer Ali's *Mohammedan Law* and of India's Special Marriage Act and the 1931 Baroda Divorce Act.[68] Although Pearson advocated separate legislation for Hindu and Muslim marriages, there remained the difficult question, as Kelly notes, of "writing" such legislation.[69] Pearson eventually lost the support of Governor Fletcher, but in a parting memorandum, he endorsed the interconnection of marriage with questions of intestacy, the protection of minors, and guardianship.[70] Here Pearson anticipated the development of a broader "code" of Islamic law to be developed by Hasan.

In April 1933, a committee appointed by Governor Fletcher reported the need for a comprehensive "code" to address questions of marriage, divorce, and inheritance for Fiji's Muslims. By December 1933, the committee had produced a marriage and a divorce bill, which Fletcher prepared to forward to the Colonial Office for approval. However, the new attorney general, Ransley S. Thacker, and Pearson's replacement, Victor McGusty, objected that Islamic divorce was foreign to English law. They also argued that divorce procedure would be complicated by customs prevailing among different Muslim sects. The bills were suspended pending further consultation.[71]

66. E.J. Turner, secretary, Economic and Overseas Department to secretary to GOI, Department of Education, Health and Lands, April 12, 1932, NAI, EHL-L&O, File No. 292.

67. Pearson to Bajpai, July 20, 1931, NAI, EHL-OS, Part B, January 1932, Nos. 21–27. In a reply to Pearson, dated January 6, 1932, Ram Chandra of the Overseas Branch noted that such information "does not appear to have been collected."

68. For Pearson's request, see NAI, EHL-OS, Part B, February 1932, Nos. 102–5. The GOI supplied information for the purchase of the fifth edition of Ameer Ali's two volume treatise. The fourth edition is entitled *Mohammedan Law: Compiled from the Authorities in the Original Arabic* (Calcutta: Thacker, Spink and Co., 1912–1917).

69. Kelly, *A Politics of Virtue*, 188–189.

70. J.R. Pearson, "A Survey of the Position of Indians in Fiji, September 1932," NA, CO 83/199/14.

71. This paragraph draws from a "Memorandum" summarizing the longer campaign for the application of Islamic law enclosed in Grantham to SSC, October 2, 1946, NA, CO 83/240/6.

In October 1934, Fletcher invited Said and Muhammad Hasan to draft new bills.[72] Said Hasan quickly submitted three draft bills including a "Mohammedan Guardian and Ward Ordinance," a "Mohammedan Inheritance and Succession Ordinance," and a "Mohammedan Marriage and Divorce Ordinance." The bills essentially adapted the rules of decision used by Indian courts, with the provisions therein applicable to "persons professing the Mohammedan religion."[73] The courts were to apply the "principles" of Mohammedan law when appointing a guardian, adjudicating questions of inheritance and succession, or determining the validity of a marriage. Such principles were not elaborated within the bills; absent the codification of religious person laws in colonial India, it was treatise literature which was to lend facticity to "Mohammedan law" for its application in Fiji. Like his counterparts in British India, in the parallel campaign for the passage of the Muslim Personal Law (Shariat) Application Act in 1937 (hereinafter, "Shariat Act"), Hasan declined the opportunity to codify Islamic law prior to its application.

Hasan justified the bills on the basis of imperial precedent. He submitted a memorandum arguing the Fiji government's duty to respect the "ancient rights and laws" of "Indian British subjects." He located precedent in the Hastings Regulations of 1772 and Queen Victoria's Proclamation of 1858. Citing the latter, Hasan wrote: "It may be argued that the Proclamation in question was confined to India. But to put such a narrow construction on the wordings of the Proclamation is to go against its spirit altogether." Hasan also cited a variety of Indian statutes applying religious personal laws, which, he argued, had derived their authority from the "Imperial Parliament." Hasan thus asserted imperial sanction for Indian law and the authority to override the local, territorial law of Fiji. Interestingly, Hasan cited the Punjab Laws Act 4 of 1872, the Central Provinces Act 20 of 1875, and the Oudh Laws Act 18 of 1876, all of which applied customary law prior to the religious personal laws of British Indian subjects.[74] Given his earlier opposition to Khoja customary law and contemporary Indians debates on the passage of the Shariat Act, he surely would have been aware of the rules of decision provided for by these acts.

72. Accounts of this meeting also drawn from the memorandum enclosed in Grantham to SSC, October 2, 1946. Kunwar B. Singh, elected to the Council in 1932, also attended the meeting.

73. Here quoting from the Guardian and Ward Ordinance. The bills, Hasan's covering letter of October 31, 1934, and his memorandum entitled "Preliminary Observations" are located in NA, CO 83/211/12.

74. On the rules of decision for civil courts, see Tahir Mahmood, *Muslim Personal Law: Role of the State in the Subcontinent* (New Delhi: Vikas Publishing House, 1977), 12–15.

A further memorandum submitted by A.G. Sahu Khan further emphasized the imperial reach of "Islamic law."[75] His memorandum shows evidence of a respectable library of works on Anglo-Muhammad law, with citations from Abdur Rahim, Dinshah F. Mulla, Ameer Ali, and Muhammad Ali's translation and commentary on the Qur'an.[76] Such a library no doubt contributed to his reputation as a local expert on Islamic law. Sahu Khan noted a "serious anomaly" with bigamy being criminalized within the colony under Ordinance No. 35 of 1929, but permitted for Muslims emigrating into the colony by the 1918 Marriage Ordinance. Whereas the Government of India was prepared to concede that the two jurisdictions were distinct, Sahu Khan argued that imperial precedent permitted polygamous marriages conducted in Fiji.[77]

Echoing McElwaine's earlier campaign for legal uniformity, Thacker raised immediate objections to the 1934 bills. He argued that immigrant Muslims "should be prepared to abide by the existing laws." He expected that district commissioners would encounter difficulties following customary rules of succession.[78] In a separate minute, Thacker was skeptical of the facticity of Mohammedan law, arguing that the term was "vague." Thacker contended that after many years living in Fiji governed by the common law of England, the customs of Indian immigrants had been modified. "I doubt," he wrote, "if there are more than a very few amongst them who can state with any degree of certainty what their so called 'customary' law is on any subject." Thacker argued that the bills "might almost be regarded as a code," but that it could not be adapted to conditions in Fiji. "Mohammedan law," he insisted, "has no meaning in Fiji."[79]

75. A.G. Sahu Khan, "Memorandum on 'Divorce,' 'Marriage,' and 'Inheritance' as affecting the Moslem community in Fiji," NA, CO 83/211/12. Sahu Khan apparently had now reversed his earlier approval of Ordinance No. 1 of 1930.

76. Abdur Rahim, *The Principles of Muhammadan Jurisprudence, According to the Hanafi, Maliki, Shafi`i and Hanbali Schools* (London: Luzac and Co., 1911); Dinshah F. Mulla, *Principles of Mahomedan Law,* 9th ed. (Bombay: J.M. Pandia & Company, 1929); Ameer Ali, *Mohammedan Law*; Ali, Mohammed, *The Holy Qur-án, containing the Arabic Text with English Translation and Commentary* (Lahore: Ahmadiyya Anjuman-I-Ishaat-I-Islam, 1920). The editions I cite here are approximated; referencing within the correspondence cited is limited.

77. Ram Chandra, Joint Secretary to GOI to under-secretary of state for India, January 5, 1931, NAI, EHL-OS, Part B, January 1932, Nos. 21–27.

78. Ransley S. Thacker, "Minute," December 12, 1934, NA, CO 83/211/12.

79. See "Minute by the Attorney General," ND, NA, CO 83/211/12.

India Consultation and the 1938 Bills

With opinion divided in Fiji, reference was made to the Government of India. India Office officials surmised that the "general question" raised was whether "special legislation" was required for the Muslim community of Fiji.[80] The Government of India suggested that the "personal and customary laws" of the manifold Sunni and Shi'a "sects" and "sub-sects" in India would be difficult to administer in Fiji.[81] However, the United Provinces government, in consultation with Allahabad Chief Justice Shah Muhammad Sulaiman, recommended a "*via media*" modifying certain provisions of "Muslim law" through a legislative enactment.[82] The Muslim law of marriage was to include "safeguards" prohibiting polygamy, child marriage, and marriages within prohibited degrees of relationship. Further, marriages and divorces were to be registered as a condition of their validity. The United Provinces also recommended that Fiji Muslims should have the option to marry and divorce under the general laws of the colony, suggesting that British Guiana legislation might be adapted for such a purpose.

The Government of India's recommendations undermined Hasan's claims for the imperial reach of British Indian precedents. Indian officials conceded that religious personal laws were to be modified by local law and local demand. The Government of India had also failed to sustain Hasan's claim that the refusal to recognize Islamic law in Fiji was necessarily harmful or injurious. Echoing views in Fiji and London, Sulaiman argued that freedom of testation gave Muslims the option to testate property according to personal law. "If a Muslim dies leaving a will that the person entitled under the Muslim law to inherit should take his estate, I presume that the Muslim law will have to be applied."[83] The United Provinces government concurred: "Those Muslims who wish to apply the Muslim laws of inheritance can do so by making a will to that effect."[84] Hasan's position was expressed in the debate on the 1939 Testamentary Dispositions Bill: the devolution of property in "fixed shares" was compulsory and

80. Draft letter from R. Peel to the secretary of the Education, Health and Lands Department, January 6, 1934, in India Office Records, Public & Judicial Department, 8th Series, File No. 232 of 1935. (Format for citation hereinafter: "IOR L/PJ/8/232–35"; all such files held at the British Library.)

81. No. F. 73/36, Girja Shankar Bajpai to under-secretary of state for India, India Office, December 17, 1936, NA, CO 83/217/8.

82. Extract of letter No. 248-I from the Government of the United Provinces, July 1, 1936; Shah Muhammad Sulaiman, "Opinion," May 26, 1936, NA, CO 83/217/8. The full range of consultations made by the GOI is not evident in the Colonial Office file. Parallel files at the National Archives of India were not located upon request in 2010.

83. Sulaiman, "Opinion," May 26, 1936.

84. Letter from the Government of the United Provinces, July 1, 1936.

not optional, and the testator could assign only a "beqeathable third" of an estate.

Apprised of India's position, Hasan produced new draft bills in 1938, prepared in print rather than typescript for introduction to Legislative Council, pending approval from the Colonial Office. The earlier three bills were now consolidated into "A Bill Relating to Mohammedan Marriage Divorce and Succession" and "A Bill Relating to the Appointment of Guardians of Mohammedan Wards."[85] The bills each featured a "Comparative Table of Clauses," which noted the correspondence of the Fiji bills to other legislation. Absent an Indian code of Muslim personal law, Hasan borrowed liberally from Kenya's "Mohammadan Marriage Divorce and Succession Ordinance" and "Mohammadan Marriage and Divorce Registration Ordinance," both revised in 1926. In addition to the Kenyan legislation, the guardianship bill drew from India's Guardian and Wards Act of 1890 and the Majority Act of 1875.

In drafting the new bills, Hasan adopted certain recommendations of the Government of India. Polygamy was made punishable, with imprisonment up to 5 years; the relevant clause provided that "Mohammedan law shall have no application." The age of marriage was established at 16 years for males and 13 years for females—identical to the 1918 Ordinance but below the threshold of 18 and 15 proposed by the Indian Reform League of Fiji in 1928.[86] However, no "safeguard" was introduced to prevent marriages within prohibited degrees of relationship. All marriages and divorces were to be registered with a district officer appointed under the ordinance, although, in a further departure from India's recommendations, the validity of marriage and divorce did not depend upon registration. A provision was introduced to apply the law of specific sects where "ordinary principles of Mohammedan law" did not apply.

Forwarding the bills to the Colonial Office, Governor Richards argued for their introduction to Fiji's Legislative Council. He claimed that demand for Muslim personal law had been "steady and consistent." "It is peculiarly true of the Muslim," Richards wrote, "that for him the legal, religious and social systems are inextricably fused into a homogenous whole." To refuse the recognition of their personal laws, he argued, was to deny Fiji Muslims the "opportunity to be good Muslims." For Richards, the adherence of this population to a "world religion" was more significant than a "dubious local

85. See NA, CO 83/223/2.

86. Indian Reform League to colonial secretary, December 20, 1928, NAI, EHL-OS, January 1930, Part B, Nos. 20–23. India's Child Marriage Restraint Act, passed in 1929, set the minimum ages of marriage at 18 and 14. Geraldine Forbes, *Women in Modern India* (Cambridge: Cambridge University Press, 1999), 88.

patriotism."[87] A note on the file at the Colonial Office confirmed the significance of Richards' support: "There is ample precedent for the application of Muslim law to Mohammedans in regard to Marriage Divorce and Succession in India and in the Colonies: and if, as is apparently the case, there is local demand from the Mohammedans for their own law in these matters, I cannot see any ground on which the S[ecretary] of S [tate] would be justified in questioning a recommendation from the local Government that the demand should be met."[88]

London and Fiji officials opposed Hasan's use of Kenyan precedent in framing his legislation. Hasan appeared to defy India's recommendation to consult British Guiana legislation. Trinidad's recently passed Ordinance No. 29 of 1935, "An Ordinance relating to the registration of Muslim Marriages and Divorces," also appeared more appropriate for adaptation to Fiji.[89] Secretary of State W. Ormsby Gore had forwarded the Trinidad ordinance in 1937, while also recommending British Guiana legislation as a model for Fiji.[90] In his reply to Richards, the new Secretary of State Malcolm McDonald reiterated that "corresponding legislation" from British Guiana and Trinidad was appropriate to Fiji, and that Hasan's bills lacked "the restrictions and safeguards which have been deemed desirable in those Colonies."[91]

If legislation was to be adapted to Fiji, it seemed that it should be the "Islamic law" of "settler" rather than "native" Muslim populations. An office note explained that Kenya had a distinct system of native or "Kadis' Courts," that had "full jurisdiction on matters concerning personal status." Fiji had no such system of native courts in place, which would lead to such cases being tried in presumably inexpert British courts.[92] In debating the introduction of the 1938 bills, Fiji's Executive Council also rejected the East Africa comparison, arguing that "on the East African littoral and in Zanzibar there had been a predominant Muslim population since the 9th century (A.D.) and the legislation in force to-day recognized the status quo."[93] Governor Mitchell, who had previously served in Nyasaland,

87. Richards to SSC, February 25, 1938, NA, CO 83/223/2.

88. Office note, October 7, 1938, NA, CO 83/223/2.

89. See NAI, EHL-L&O, 1936, File No. 18 for a copy of the ordinance.

90. As indicated in W. Ormsby Gore to Arthur Richards, February 13, 1937, IOR, L/PJ/8/232-5.

91. McDonald to Fiji governor, October 14, 1938, NA, CO 83/223/2. Office notes in that file contained objections to the compulsory application of Muslim personal law in both guardianship and inheritance.

92. Office note dated May 15, 1938, NA, CO 83/223/2.

93. "Extract from the Minutes of a Meeting of Executive Council Held on the 5th of August …," NA, CO 83/232/3.

Tanganyika and as governor of Uganda, made a similar observation when forwarding a subsequent petition in 1943.[94] "The East African countries were of course," he wrote, "at one time part of the dominions of the Sultan of Zanzibar and on occupation by the British and the Germans … Mohammedan law for Muslims was in fact the law of the land - in so far as there was any law - and had been for a long time; and that is not the case for Fiji."[95] J.B. Sidebotham of the Colonial Office in 1944 echoed Mitchell's assessment: while "Mahommedan law" was "in force" in East Africa, those territories "were at one time predominantly Muslim and Mohammedan Law was the law of the land."[96] Fiji Chief Justice Owen Corrie argued that the comparison was "inadmissible."[97]

If Kenyan legislation was inappropriate for Fiji, Colonial Office officials were also ambivalent about the coordination of Fiji legislation to that of "similar communities" in British Guiana, Trinidad, or Mauritius. A. Bevir noted upon the file: "There are advantages in allowing each place to settle its own particular problem in its own way, as it makes it easier to resist demands for 'rationalization' made by the Government of India … On the other hand, there ought to be some value in the experience of other Colonies in dealing with their own communities, and there might be some advantages in having a certain degree of standardization."[98] Yet, Colonial Office officials were unmoved by a claim by Corrie that the administration of personal laws would be cumbersome. Kenneth Roberts-Wray wrote "if the Governor's proposal is adopted it would not be by any means the first time that Colonial Judges brought up on English law have been called upon to determine questions under a system of law with which they are unfamiliar," citing Roman Dutch Law and Ottoman Law as examples.[99] However, from this juncture, the possibility of coordinating with the Government of India was unrealized; no further consultations were made with the Government of India by the Colonial Office.

Testamentary disposition emerged as a key point of disagreement regarding the 1938 Bills. The Colonial Office was reluctant to "deprive" Muslims of their right of testamentary disposition, and instead proposed the application of "Mahommedan personal law" in cases of intestacy.[100]

94. Richard Frost, *Enigmatic Proconsul: Sir Philip Mitchell and the Twilight of Empire* (London and New York: The Radcliffe Press, 1992).

95. Philip Euen Mitchell to SSC, January 21, 1944, NA, CO 83/236/1.

96. Draft letter from J.B. Sidebotham to Grantham, December 13, 1944, NA, CO 83/240/6.

97. Seton to Grantham, December 28, 1945.

98. Note by A. Bevir, June 7, 1938, NA, CO 83/223/2.

99. Note by Kenneth Roberts–Wray, June 15, 1938, NA, CO 83/223/2.

100. Draft letter from McDonald to Richards, October 14, 1938, NA, CO 83/223/2.

Roberts-Wray observed: "... if Mohammedan law is merely imported by terms of a testamentary disposition, questions of Mohammedan law will be reared as matters of fact and determined upon evidence, whereas if Mohammedan law becomes, as it were, part of the law of the land by reason of its being applied directly under an Ordinance ..." He suggested that a judge might require the assistance of textbooks or assessors in order to apply Mohammedan law, recommending that such a provision be written into the ordinance.[101] McDonald proposed that a similar provision be included in the marriage and divorce bills.[102]

It was Fiji, rather than the Colonial Office, which ultimately postponed the introduction of the 1938 bills. Sensing a delay, Hasan appealed to the Fiji government. "If the Indian Muslims in Kenya, Uganda, Tanganyika, Zanzibar ..., are governed by their personal law ... there seems no reason why the same facility should not be extended to His Majesty's Muslim subjects settled in Fiji."[103] Hasan had apprehended the terms of the debate: the question was whether Indian settlers were entitled to the same protections as East African natives with respect to religious personal laws. Strikingly, no comparison was made to native administration in Fiji; this was rather a debate about the classification of Muslims as natives and settlers within different jurisdictions of the empire, within and beyond the Indian Ocean arena.[104]

The Executive Council subsequently invited Hasan to consider whether new legislation drafted to meet London requirements would meet the approval of the local Muslim community.[105] Subsequently Hasan agreed to suspend the campaign in 1940 pending the outcome of the war.[106] The arrival of Governor Mitchell provided a pretext for a new round of petitions in 1942. Meeting in February 1943, the Executive Council refused to alter the law of inheritance and guardianship, although it was prepared to consider modifications to marriage and divorce law given the demonstration of adequate demand.[107]

101. Note by Roberts–Wray, June 15, 1938.

102. McDonald to Richards, October 14, 1938. "Assessors" here refers to local experts.

103. Letter from Hasan, ND, excerpted in the "Memorandum" enclosed in Grantham to SSC, October 2, 1946.

104. Here recalling Kelly's discussion of the refusal to admit Indian "custom" while facilitating institutions of "indirect rule" for native Fijians. Kelly, "Fear of Culture."

105. "Minutes of a Meeting of Executive Council Held on the 5th of August ..."

106. Governor's Deputy to SSC, November 20, 1944, in NA, CO 83/232/3.

107. "Memorandum" enclosed in Governor Grantham to SSC, October 2, 1946.

Muslim Separatism Revived and the 1946 Bills

A Legislative Council debate on separate Muslim representation resuscitated the campaign for the application of Islamic law in Fiji. A European Member, Alport Barker, introduced a motion in 1943 requesting the abolition of nominated representation, an increase to six members for each represented community, voting rights for civil servants, and the extension of the franchise to women. Although Hasan offered his sympathy for Barker's motion, he asked that other members consider a certain "reality": "The fact is that, under an elective system, no Muslim representative can ever be returned to the Legislative Council. It has been tried twice, and on both occasions the Muslim candidates could not be returned to the Council; and I make bold to say that on both occasions the Muslim candidates were better qualified than their opponents to the Legislature."[108] Muslims in Fiji, he argued, would not willingly sacrifice the "safeguard" that they had secured in the debates leading up to the 1937 constitution. As a condition for his support of the motion, Hasan proposed that one third of the six electoral seats assigned to Indians be reserved for Fiji Muslims.

Hasan's proposal was opposed by common roll advocate Vishnu Deo. Deo argued that "politically, economically, educationally and in all other fields, all the Indians are together and have the same common interests."[109] H.B. Gibson, Hasan's erstwhile ally in the 1939 Inheritance Bill debate, added: "We presume that most of the motions he [Hasan] has moved in this Council have been made in the interests of Muslims and, if we reflect, it is wonderful to see how the Hindus have almost always to a man supported him. Indeed one spectator said to me: 'Those Hindu Members always back up the Senior Hindu Member.' I said: 'He is not a Hindu: he is a Muslim.' But if you go back through the records you will see that the Indians always vote together."[110] Brahma Dass Lakshman amplified the case, arguing that he had reviewed the Hansard reports from the previous 4 years and found no instance of Hasan speaking on "any special subject" that pertained to a "particular Muslim interest."[111]

Pressing the debate, Deo argued that there were no religious interests on the Council. There was one exception: marriage. Deo admitted, "we Arya Samajists and the other sections of the Indian community regard [it] as a sacrament." He continued:

108. *Fiji Legislative Council Debates*, August 26, 1943, 62.
109. Ibid., 64.
110. Ibid., 69.
111. Ibid., 73–74.

> I heard only yesterday—I thought it was so for the Muslims—but I was told by my honourable friend [Hasan] that the Muslim marriage was purely a question of civil contract and therefore there was no religious sanction behind it; but there were certain other matters connected with it sanctioned by the religion which he wanted to be recognised by the Government, which one Governor, Sir Arthur Richards, had agreed to do; but later on they were not brought about: and there were certain other matters, such as the Muslim law of divorce and inheritance, on which the honorable member on my right has been making recommendations to the Government since, I understand, 1934. But none of these things came before this Council for us to support or oppose.[112]

Although arguing that the Indian community was unified, Deo inadvertently highlighted an important contrast between Hindu and Muslim "interests." For Hasan, marriage was a civil contract; however, Deo insisted that marriage was a sacrament, with, as Deo noted, some "orthodox type Hindus" remaining opposed to registration. Deo's remarks also clarified that Hasan's campaign had remained outside of the purview of the Legislative Council; Indians, to that point, had been excluded from the Executive Council.

Within a week of Hasan's exchange with Deo, a new deputation of Muslim leaders approached Governor Mitchell. Their petition insisted that "we followers of Islam have our own social system and traditions with a civilization, culture, language and literature essentially different from the Hindus who form the majority community of the Colony." Hasan had abandoned his earlier argument for the disruptive effect of English law on the "Indian" family. The petition continued: "Muslims practically throughout the British Empire except Fiji are governed by Mohammedan law, which is their personal law based on their Holy Quran." The Muslim community of Fiji suffered a "grave injustice" in being subject to law repugnant to their faith. The petition asked for "early relief" and that the secretary of state be informed of their views. The petition also insisted upon separate representation as a "safeguard" for Fiji's Muslims.[113] Conceding that the application of "Mohammedan law" was of a longer duration in East Africa, Mitchell wrote to the Colonial Office that "I can personally advance no reasons why the same arrangements should not be made here."[114]

112. Ibid., 66–67.

113. Hasan et al. to Mitchell, September 2, 1943, in NA, CO 83/236/1. Mirza Salim Buksh, who would succeed A.R. Manu as the nominated Muslim member in 1947, was a signatory to the letter.

114. Mitchell to SSC, January 21, 1944.

Hasan, by now replaced at the Legislative Council by A.R. Sahu Khan, delayed any further action on the 1943 petition.[115] However, in 1944, on the Prophet's birthday, the governor received a telegram from Mirza Salim Buksh. "Muslims from all over Fiji" had assembled in Lautoka to ask that the secretary of state be informed of "their unanimous urgent demand that gross injustice in subjecting them to laws repugnant to their faith and religion be removed forthwith."[116] However, Mitchell's Executive Council decided against any measure to apply "Mohammedan law."[117] The Chief Justice, Owen Corrie, observed that during his 8 years as a probate judge, Fiji Muslims had failed to apply Muslim law in their wills. Corrie conceded, however, that Muslims should be "at liberty" to solemnize marriage according to religious rites. Citing Palestine experience, Corrie opposed the introduction of the Muslim law of divorce "into a territory where it is not already in force." He further insisted that "it cannot be said that we are imposing upon Muslims in Fiji a law of divorce which is strange to them. We are in fact administering the law into which they were born."[118] For Corrie, Islamic law belonged to other jurisdictions within the empire, and Indian domicile belonged to a remote past.

A new governor, Alexander Grantham, proved more sympathetic to the entreaties of Fiji Muslim leaders. His Executive Council approved the revision of the 1938 bills to incorporate objections registered by the Colonial Office.[119] Grantham relied on his new Attorney General, J.M. Vaughn, who had served in Tanganyika. Vaughan and Hasan proceeded to draft new bills, conferring with the Muslim Association on certain amendments.[120] These actions were taken over the objections of the new Chief Justice, Claude Ramsey Wilmot Seton, who believed that the issue was "mainly, if not entirely, political." Citing A.W. McMillan's recent publication highlighting sectarian differences between Sunnis and Ahmadis, Seton argued that Hasan's portrait of a unified Muslim community was misleading.[121] Seton amplified Corrie's concern that it would be unwise

115. Mitchell to SSC, May 13, 1933; Mitchell to SSC, July 14, 1944, in NA, CO 83/240/6.

116. Telegram from M.S. Buksh to Governor, March 13, 1944, in NA, CO 83/240/6.

117. Mitchell to SSC, September 19, 1944, NA, CO 83/240/6.

118. Owen C.K. Corrie to Governor's Deputy, September 1, 1944, NA, CO 83/240/6.

119. Grantham to Sidebotham, March 25, 1946, in NA, CO 83/240/6.

120. The "Memorandum" enclosed in Grantham to SSC, October 2, 1946, in NA, CO 83/240/6, suggests that Vaughan drafted the bills in "consultation" with Hasan. Sahu Khan took a more "liberal" position on inheritance, arguing that application in cases of intestacy was sufficient. See also Vaughan to Seton, August 12, 1946, NA, CO 83/240/6.

121. A.W. MacMillan, *Notes on Indians in Fiji* (Suva: Government Printer, 1944), 9–12. An article from the *Fiji Times and Herald* of December 21, 1944 attached to the volume indicates that Vishnu Deo asked for the withdrawal of the "booklet" as it promoted "ill-will and hostility" between peoples.

to change the "system" of law administered in Fiji. "He might have added," Seton wrote, "that if the law is certain, as it is today, people get their rights with a minimum of delay and expense."[122]

With new bills prepared, Grantham sought to conclude the debate on the application of Islamic law in Fiji. Forwarding the bills to the Colonial Office, Grantham observed that the introduction of the bills depended upon the existence of Muslim demand. Although he acknowledged the Sunni–Ahmadiyya divide, he argued that the latter community only numbered between 200 and 400 persons. Like Richards, Grantham characterized Muslim demand as "steady and consistent." Quoting from a 1942 memo by McGusty, he also cited the "stabilizing influence" of Muslims in Fiji—a tacit acknowledgment of their role in thwarting the common roll campaign. Grantham therefore recommended the approval of the bills for introduction into Fiji's Legislative Council.[123]

With new "safeguards" now elaborated, the 1946 bills now resembled a comprehensive code of Islamic law. As Vaughan noted regarding the Succession Bill, "it has been thought desirable to expand the provisions with a view to obtaining as much certainty as is possible."[124] At the insistence of A.R. Sahu Khan, the terminology of the bills shifted from "Mohammedan" to "Muslim" and "Islamic."[125] The bills submitted included a "Marriage and Divorce Ordinance," the "Succession (Islamic Law) Ordinance," and the "Guardians and Wards Ordinance." Each bill was accompanied by a detailed memorandum explaining revisions to the previous 1938 bills. A "Notes on Clauses" for the Marriage and Divorce Ordinance detailed the adaptation of clauses from the previous 1938 bills, the Trinidad Registration of Muslim Marriages and Divorces Ordinance of 1935, and Fiji's Births, Deaths and Marriage Registration Ordinance. The Guardian and Wards Bill was revised to more closely approximate the Indian Guardian and Wards Act of 1890, and expanded the discretion of the court to act on behalf of the welfare of the minor. The Succession (Islamic Law) Ordinance took the fifth edition of Roland Knyvet Wilson's *Anglo-Muhammadan Law* as its model, partially fulfilling a prophecy by Ilbert, who had asked, "And what, after all, is a code? It is a text-book enacted by the legislature."[126]

122. Seton to Grantham, December 28, 1946.

123. Grantham to SSC, October 2, 1946, NA, CO 83/240/6.

124. Vaughan, "Memorandum on the Succession (Islamic Law) Ordinance, 1946," NA, CO 83/240/6.

125. A.R. Sahu Khan had made this request in consulting with Vaughan and Hasan on the draft bills. See "Memorandum" enclosed in Grantham to SSC, October 2, 1946.

126. Roland Knyvet Wilson, *Anglo-Muhammadan Law, A Digest* (Calcutta and Simla: Thacker, Spink & Co., 1921); Ilbert, "Application of European Law," 226. The first edition referred to by Ilbert was published in 1895.

Controversially, the Marriage and Divorce bill did not prohibit polygamous marriages, an omission effected without comment by Vaughan. The age of consent for marriage remained unchanged from the 1938 draft; similarly, there was no provision to limit marriages within prohibited degrees of relationship. Vaughan argued that the expanded procedures and penalties for registration, adapted from Trinidad and British Guiana legislation, answered the call by the secretary of state for additional safeguards. He anticipated objections to compulsory registration as contrary to "sharia," but believed registration to be a necessary "safeguard."[127] Language was added to validate unregistered marriages conducted outside the colony "in accordance with the law of Islam," ensuring the validity of marriage for new immigrants. In a concession to local Muslim opinion, the bill did not require registration before a marriage officer, departing from Trinidad and British Guiana legislation. The registration forms also recorded dower—a suggestion from A.G. Sahu Khan in 1934—and the ownership or occupancy of the family home at divorce. Such measures proposed a degree of economic security for Muslim women not afforded under colonial Indian law.

The Succession Bill now fulfilled Hasan's earlier call for the compulsory application of the Islamic law of inheritance and succession. The bill enacted the principle "fixed shares"; only a "bequeathable third" was available for testamentary disposition. The bill featured an elaborate schedule of succession rules with tables of "Sharers," "Residuaries," and "Distant Kindred," to assist the court in defining shares. Non-Hanafi rules of administration were to be a question of fact; the court would apply Islamic law "upon the evidence before it" for non-Hanafi estates. The distribution of land was limited by the Fiji Sub-Division of Lands Ordinance, avoiding situations in which joint ownership was to the "detriment" of property owners. Commenting on the decision not to limit application to cases of intestacy, Vaughan wrote, "It is true that for many years the Mohammedan Community have enjoyed the right to dispose of the whole of their property by Will, subject now to the provision of the Inheritance (Family Provisions) Ordinance: but it is argued the right so enjoyed is a right to do something forbidden by their religion and therefore not one which should be continued." Noting the absence of a joint family system in Fiji to provide for women during the lifetime of the father, Vaughan concluded: "In the opinion of the writer the lot of Indian (Mohammedan) women of a certain class will in effect be bettered by the wider application of Mohammedan law."[128]

127. Vaughan, "Memorandum on the Muslim Marriage and Divorce Bill, 1946," NA, CO 83/240/6.

128. Vaughan, "Memorandum, The Succession (Islamic Law) Ordinance, 1946," NA, CO 83/240/6.

Hasan and Vaughan had succeeded in drafting a comprehensive code of Islamic family law based on appropriate Caribbean, rather than Indian Ocean precedents. Replying to Grantham, the new Secretary of State, Arthur Creech Jones, confirmed that "the whole problem primarily hinges on whether or not there is real demand by Muslims for the introduction of their personal law." Convinced that "pressure" had emanated primarily from Said Hasan, Creech Jones sought evidence of Muslim women's sentiments on the issue. Creech Jones now opposed the Bills on three key grounds: "triple *talaq*" divorce, the recognition of polygamous marriages, and the curtailment of testamentary freedom. Creech Jones objected to the permissive stance taken toward polygamy. He argued that the Muslim law of divorce placed "Muslim women in a position in which their marriages could be dissolved at the mere will of their husbands." He objected to the compulsory application of the Islamic law of succession, arguing that it constituted a "retrograde step" away from testamentary freedom.[129]

Creech Jones' refusal to sanction the introduction of the 1946 "Sheria Bills" prompted a concerted response from Hasan. In 1947, he organized Zenana Muslim Leagues and launched a petition campaign on the occasion of *Id-ul-Fitar*. Muslim women claimed their rights under the "Islamic Sheria," arguing that the passage of the "Sheria Bills" would "remedy" a "long standing wrong."[130] Muslim women petitioners argued that they were "disinherited" by laws that denied them their rightful share of property. This position reproduced an earlier rhetoric of disinheritance permeating the Shariat Act debates in India.[131] Hasan also contributed a sharp riposte to Creech Jones, critiquing the English doctrine of coverture while arguing that Muslim women enjoyed superior rights under Islamic law.[132] His polemic was not without merit: a Colonial Office official indicated in his review of the 1946 bills, "It does seem that what Muslim women lose on the roundabouts (i.e. the Marriage and Divorce Bill) they gain on the swings (i.e. this Succession Bill)."[133]

129. Draft letter from Creech Jones to Fiji governor, May 7, 1947, NA, CO 83/240/6.

130. The petitions are available in NA, CO 83/240/6.

131. A point emphasized by Azra Asghar Ali in *The Emergence of Feminism Among Indian Muslim Women, 1920–1947* (Oxford: Oxford University Press, 2000), 146–52. See also Dushka Saiyid, *Muslim Women of the British Punjab: From Seclusion to Politics* (New York: St. Martin's Press, 1998), 29–35; Gail Minault, *Gender, Language, and Learning: Essays in Indo-Muslim Cultural History* (Ranikhet: Permanent Black, 2009), 77–78; and Shahida Lateef, *Muslim Women in India: Political and Private Realities* (London and New Jersey: Zed Books Ltd., 1990), 70–71.

132. Hasan to acting colonial secretary, September 2, 1947, in CO 83/247/3.

133. Office Note, November 13, 1946, NA, CO 83/240/6.

In 1950, Said and Muhammad Hasan carried their campaign to Pakistan as a question of human rights and religious freedom. Fears that Pakistan's Foreign Minister, Zafrullah Khan, might raise the issue at the United Nations provoked a flurry of correspondence between the Government of Fiji, the Colonial Office, the Commonwealth Relations Office, Britain's United Nations delegation, and the Pakistan high commissioner. Khan ultimately deferred to the jurisdiction of the Commonwealth Relations Office, leaving the campaign to reach its denouement with a visit by Said Hasan to London in 1955. Hasan was prepared to concede the inapplicability of his "code" for marriage, divorce, and guardianship; he merely sought application in cases of intestacy. This modest gesture, endorsed by previous London and Fiji officials, met with the objection that it would lead to the "uneconomic fragmentation of small estates." Excessive subdivision of already meager landholdings would disturb the system of small farming promoted by the Colonial Sugar Refining Company in Fiji after the abolition of indentured labor.[134] Like the debates regarding India's Hindu Code Bills in the 1950s, the application of Islamic law in Fiji ultimately was circumvented by developmentalist imperatives.[135]

Conclusion

Hasan's commitment to Muslim separatism was kept alive by subsequent Muslim nominated members of the Legislative Council, including A.R. Sahu Khan and M.S. Buksh. Like Hasan, Sahu Khan and Buksh supported the elective principle, but they continued to insist upon separate electorates to represent Muslim interests. Hasan's 1943 speech was cited by both European and Muslim Members, and by Vishnu Deo, who continued to prosecute his debate with Hasan.[136] Later petitions for separate Muslim

134. Arthur George Lowndes stresses the "sound and economic size" of individual family farm plots as opposed to the excessive fragmentation of estates in impoverished Asia. Lowndes, "The Sugar Industry of Fiji, in *South Pacific Enterprise: The Colonial Sugar Refining Company Limited* (Sydney: Angus and Robertson, 1956), 72. Michael Moynagh argues that the "settlement" of Indians on individual farms relied upon uncompensated family labor. Moynagh, *Brown or White?: A History of the Fiji Sugar Industry, 1873–1973* (Canberra: Australia National University, 1981), 115.

135. Rochona Majumdar, "Nationalizing the Joint Hindu Family: The Hindu Code Debates, 1955–1956," in *Marriage and Modernity: Family Values in Colonial Bengal* (Durham and London: Duke University Press, 2009), 206–37.

136. For Hugh H. Ragg's remarks recalling Hasan's speech, see "Debate in Fiji Legislative Council on Motion to Amend the Constitution," December 21, 1946, NA, CO 83/239/4. A.R. Sahu Khan endorsed and amplified Hasan's remarks in that same debate, whereas H.B. Gibson claimed that Europeans and Muslims were both minorities needing

representation also cited Hasan's 1943 speech.[137] Hasan cast a shadow over Fiji's constitutional negotiations well into the 1960s, when, now resident in London, he continued to petition for separate Muslim representation on behalf of the Fiji Muslim League.[138] However, Hasan's portrait had not served as prophecy: the 1963 elections, the first under a new constitution featuring an expanded Legislative Council with a universal franchise, returned a South Indian Muslim candidate to an Indian seat. Yet the separatist demand again was raised in conjunction with negotiations for the Independence Constitution of 1970.[139] Fiji Muslim leaders continue to invoke Muslim separatist demands in postcolonial Fiji, although not without controversy.[140] The campaign for the application of Islamic law in Fiji evidenced an exchange or traffic not only in "law," but in political concepts and affective claims that had sustained a politics of Muslim separatism in British India.

I have emphasized here a process of comparison that ensued with the Muslim League demand for the application of Islamic law in Fiji. Given his legal experience in India and the Indian Ocean arena, Hasan was a pivotal figure in conducting "law" to Fiji. Although his contributions were significant, his failure to achieve a legislative enactment suggests constraints upon application, and, therefore, upon the mobility of the religious personal laws of Indian migrants. I emphasize here the importance of distance, including the spatial register in which Islamic law was conceived to be "of" certain jurisdictions within the Indian Ocean arena, or requiring modification in other jurisdictions beyond that arena. Distance was also registered temporally, as colonial officials measured the duration of Fiji Muslims' residence to calculate the loss of Indian domicile. Temporal metaphors were also deployed in the effort to cast Islamic law as "retrograde." These characterizations misapprehended, however, the time of Hasan's Islamic activism. In his desire for state recognition, his concession

to advance their own rights against the threat of Indian agitation. Buksh excerpted the speech in 1948; see *Extracts from Debates of September Session, 1948*, September 22, 1948, NA, CO 83/245/6. Deo recalled the debate at the Toorak mosque in *Fiji Legislative Council Debates*, December 9, 1949, at 365. A.D. Patel's rebutted Hasan's speech in "In Defense of Democracy, 2 December 1948," in *A Vision for Change: Speeches and Writings of A. D. Patel, 1929–1969*, ed. Brij V. Lal (Canberra: Australia National University E Press, 2011), 24–30. This list is not exhaustive.

137. Mohammed Hanif Khan, "Memorandum on Constitutional Changes in Fiji," in NA, CO 1036/1126. The memorandum dates from 1965.

138. See correspondence in NA, CO 1036/1124.

139. See NA, Foreign and Commonwealth Office File No. 32/584.

140. Robert Norton, "Reconciling Ethnicity and Nation: Contending Discourses in Fiji's Constitutional Reform," *The Contemporary Pacific* 12 (2000): 95–96.

to registration, and his proposals for the redistribution of family property, Hasan was emphatically an Islamic "modern." Hasan's "Sheria Bills" were a unique attempt to codify and transplant, with modifications, the religious personal laws of India beyond the Indian Ocean arena. Ultimately, Fiji, the "Little India" of the Pacific, was not receptive to Hasan's transmission.