

Corporate Islam: Sharia and Capitalism among the Gujarati Muslim Commercial Castes, c. 1850-1940

In a series of pieces written in the 1870s, the Bengali Muslim scholar, Dilwar Hussain, set out to discover why Muslims were, as a rule, “less industrious than the Hindus,” a constant trope, however misplaced, of Indian Muslim writers until the end of empire. To his modernist mind, the culprit for this divergence was Islamic law, and especially the colonial state’s eccentric implementation of it in the form of Anglo-Muhammadan Law, which Hussain believed obstructed the traditional capacity of ‘custom’ to shape the character of ‘law.’ This came across clearly in his analysis of the yawning gap between prevailing customs of inheritance and succession among Muslims, and the colonial state’s privileging of a form of Islamic law purged of customs and ‘Hindu law’ alike:

In many districts of Northern and Eastern Bengal, inheritance and succession among the convert descended Moslems were regulated neither by Mohammadan nor Hindu Law, but by rules derived from both. Daughters obtained no share of their father's property except that given away at time of marriage. Younger sons got smaller shares than older sons. In course of time these rules would have acquired the force of law in Bengal as they have done amongst the Bohras, Qhojas [Khojas], or Maemans [Memons] of Bombay. But the English Government established courts of justice in the interior: Vakeels and Moqhtaars appeared and multiplied, ordinary people became acquainted with the laws of Mohammadan inheritance, and succession being determined in accordance with those laws stipulated the excessive division and led to the rapid destruction of property.¹

Hussain’s remarks were an early formulation of the idea that the Gujarati Muslim commercial castes - the Bohras, Khojas, and Memons - lived under a cloud of legal exceptionalism. In this narrative, the basis of legal exceptionalism was the colonial state’s recognition of the supremacy of ‘Hindu’ customs in matters of inheritance and succession over and above

¹ Sultan Jahan Salik ed., *Muslim Modernism in Bengal: Selected Writings of Delawarr Hosaen Ahamed Meerza, 1840-1913* (Dacca: Centre for Social Studies, 1980), pp. 67-68.

‘Islamic’ law. By dint of this classification, these three groups - so colonial-era Muslim and non-Muslim commentators held - were not only set apart from the plurality of Indian Muslims, but owed their disproportionate economic success to it.

Though unaware of this longer genealogy, historians have followed in the footsteps of Dilwar Hussain by rooting both the ersatz Muslim identity of the Gujarati Muslim commercial castes and their economic prowess in this supposed legal exceptionalism.² But lumping these three communities together into a common pot is not only misleading, but belied by the facts. Each of these castes - and even individual sub-castes - bore distinct legal histories that demand careful reconstruction. For one, at the very moment Dilwar Hussain wrote these words, factions within the Kachchhi Memon and Sunni Khoja *jamā‘ats* were engaged in struggles to change their legal status as defined by the colonial order, with some even calling for the repudiation of the very privileges Dilwar Hussain identified as inherently advantageous to them.³ A constant refrain of the Kachchhi Memons was that they wished only to be treated no different than their Halai Memon brethren, who were governed in all personal law matters by Islamic law.

The narrative of legal exceptionalism misses another crucial point. Custom and law within each caste corporation (*jamā‘at*) became ever more divisive throughout the period of colonial rule, with discontent operating at several levels: the internal *jamā‘at* level, the intra-*jamā‘at* level, and *jamā‘at*-state level.⁴ Henceforward, what institutional economists might identify as the efficiency gains of having customary practice recognized

² Timur Kuran and Ananddeep Singh, “Economic Modernization in Late British India : Hindu-Muslim Differences,” *Economic Research Initiatives at Duke* (erid) Working Paper 53 (2010), pp. 1–50.

³ But one example, Ghulam Ali Ghulam Hussain ed., *Khojā Sunatjamātnā Navā Kayedā vīrūdh Khojā Abdallā Hāji Alārakhiānā Ūrdu Copāniāno Tarjumo* (Mumbai: Kāsīd Mumbai Pres, 1880).

⁴ There is no space here to discuss my conceptualization of the *jamā‘at* as a ‘corporation,’ but I am happy to discuss it at the workshop.

over and above Islamic law were frittered away by internal *jamā'at* conflicts over legal exceptionalism. Exceptionalism thus turned out to be double-edged, threatening to fracture as much as to solidify community. It also earned the censure of other Muslims: no solitary voice was one Deoband scholar who, in reply to a petitioner asking if a *jamaat* could rightly fine members for obtaining a divorce, exclaimed “Muslim *jamā'ats* should abandon such practices and their own *jamā'at* standards, and revert to Islamic *sharia* rules and regulations.”⁵

The concern in this paper is less with explaining the disproportionate economic success of the Gujarati Muslim commercial castes (though that is a preeminent concern in my book project). Rather, the aim is to analyze how the *jamā'ats* associated with these three communities served as crucibles for three developments often neglected in accounts of Islamic law in the modern period: the intersection and elaboration of diverse forms of Sunni and Shī'ī law among groups usually deemed apathetic to ‘law’; the role played by Muslim corporate institutions like the *jamā'at* in adjudicating disputes, enforcing legal decisions, debating the legitimacy of custom, maintaining caste boundaries, and bridging the realms of colonial law and Islamic jurisprudence; and, finally, the manner in which these groups simultaneously embodied archetypes of a *sharia*-inflected modern capitalist ethics, while also serving as a discursive pretext for other commentators to put forward competing *sharia*-inflected solutions to intra-Muslim economic disparities.

In that latter instance, the question of how to ensure equitable access to private property sheltered in *awqāf*, while simultaneously preserving its legal impregnability, was a subject that animated Indian Muslim commentators throughout the interwar period. It was pursued with singular

⁵ “2210: Talāk āpavā badala jamātī daṇḍa,” *“Muslima-Gujarāta” fatāvā-saṅgraha*, Vol. III (Surat: Halal Buk Haus, 1955), pp. 949-950.

vigor in relation to the Gujarati Muslim commercial castes, and the conclusions reached by commentators are instructive for thinking about the gradual de-legitimization of the Islamic capitalist ethics these communities exemplified and their substitution by new paradigms of Islamic finance.

A Historiographical Note

Before studying these themes in detail, some additional historiographical scaffolding is in order. After all, as applied to these communities, the argument of legal exceptionalism takes many forms besides that advanced by Dilwar Hussain. The Bohras and Khojas (unfortunately, the Memons have yet to be an object of extended scholarly study) tend to be studied in two interrelated, but contradictory, ways. One school sees these communities - or at least their religious leadership - as incubators of stable Ismaili Shī'ī legal traditions handed down in an uninterrupted chain of transmission from the Fatimid period.⁶ The other school tends to see the Bohra and Khoja turn towards law as part of a process of neo-traditionalism or “Islamicization,” constructed in large measure on a repudiation of ‘Indic’ customs. This “Islamicization” narrative has distinct valence in the scholarship on the Bohras and the Khojas. For the Bohras, “Islamicization” refers specifically to the period in the third half of the twentieth century when the *dai al-mutlaq*, Muhammad Burhan al-Din (r. 1965-2014), introduced all manner of reforms in the Bohra *jamā'at* intended to combat ‘Hindu’ customs and inculcate ‘Islamic’ modes of comportment based on *sharia*.⁷ What is more, Islamicization among the Bohras is

⁶ Critique in Nile Green, *Bombay Islam: The Religious Economy of the Western Indian Ocean, 1840-1915* (Cambridge: Cambridge University Press, 2011), p. 156

⁷ Jonah Blank, *Mullahs on the Mainframe: Islam and Modernity among the Daudi Bohras* (Chicago: University of Chicago Press, 2001), p. 268.

understood as a development tied to ‘modernization’, is based largely on ethnographic observation, and to a far lesser extent on the study of texts produced by the community over the past centuries.⁸

As for the Khojas, the import of “Islamicization” has more varied meanings. Typically, the Khojas are said to have embodied a particular ‘Indic’ Islam - syncretic in outline, conspicuous for its borrowings from Hinduism, and the antithesis of so-called normative, ‘Middle Eastern’ Islam, purportedly legalist and scripturalist.⁹ The two most numerous Khoja communities, the Ismaili and the Twelver, are held to embody these two camps, with the Ismaili Khojas acting as the representatives of Indic/vernacular Islam, and the Twelver Khojas, normative/‘Middle Eastern’/Arabized Islam. Confusingly, the Ismaili Khojas are sometimes also seen as undergoing a transmogrification from an ‘Indic caste’ to a ‘Muslim denomination.’¹⁰ That crisp developmental arc says little about the actual content of the Khojas’ Islam over time. Were one to apply the Islamicization paradigm to the Memons, presumably one would paint the labors of Kachchhi Memons from the 1850s through the 1930s to be re-categorized as full Muslims before the law as an effort to subsume themselves in a deracinated Sunni Islam.

Ultimately, the Islamicization paradigm rests on a conception of these three communities as “self-enclosed” - to borrow the words of one Bohra dissident who studied them in unison - divorced from larger shifts in Islamic intellectual life.¹¹ What remains unanswered is how one is to harmonize that image with the reality that sustained economic success in

⁸ Ibid., pp. 184-185.

⁹ For further criticism see M. Reza Pirbhai, *Reconsidering Islam in a South Asian Context* (Leiden; Boston: Brill, 2009), p. 8.

¹⁰ Ali Asani, “From Satpanthi to Ismaili Muslim: The Articulation of Ismaili Khoja Identity in South Asia,” Farhad Daftary, *A Modern History of the Ismailis: Continuity and Change in a Muslim Community* (London, UK: I.B. Tauris, 2011), p. 97.

¹¹ Ashgar Ali Engineer, *The Muslim Communities of Gujarat: An Exploratory Study of Bohras, Khojas, and Memons* (New Delhi: Ajanta Publications, 1989).

any environment ultimately demands transcending community.¹² The two cannot stand together. Moreover, once one pops the hood on the *jamā'ats* of the Bohras, Khojas, and Memons and starts examining the sources produced by them - in Arabic, Gujarati, and Urdu - one sees near-constant concerns with *sharia* norms, however broadly defined. The media of debate were diverse: *farmans*, epistles, handbills, pamphlets, *jamā'at* proceedings, formal legal treatises. Collectively, these convey that at a purely institutional level, *jamā'at* law operated in three registers - in relation to the *sarkar* (executive political authority, not necessarily colonial), community precedent, and *sharia*.

Incessantly, new inputs - whether in the form of printed Gujarati legal texts from c. 1900 or quotidian interaction with those outside the caste - were brought to bear on the discourse around *sharia* in the *jamā'ats*. In fact, the production of texts in Gujarati was a sensitive subject for many Gujarati Muslim commentators from at least the last quarter of the nineteenth century, for it revealed both the promise and the peril of a wide readership. Writing in 1894, one Sunni commentator bemoaned the fact that since so many Gujarati-speaking Muslims did not know Arabic, Persian, or Urdu, they were not studying the tenets of the faith.¹³ That deficit also stoked anxieties that Gujarati-speaking Muslims would access the wrong type of Islamic knowledge: in his preface to a Gujarati translation of an Urdu work on Sunni jurisprudence, one Surat-based scholar evoked this anxiety: “It is necessary for me to issue a warning to pious brothers: several adherents of the Shī'ī faith, that is Khojas and Bohras, are selling Islamic printed books in Gujarati. And members of the Sunni *jamā'at* are buying these books. As

¹² Tirthankar Roy, *A Business History of India: Enterprise and the Emergence of Capitalism from 1700* (Cambridge: Cambridge University Press, 2018).

¹³ Mir Sayyid Ali, *Hidāyatul muslimīn* (Surat: Rising Star Printing Press, 1894), p. 2.

such, those who buy books must pay attention to who the printer is. Even if done by mistake, buying these books will accordingly destroy the faith.”¹⁴

Surely, that did not mean that knowledge of *sharia* was spread evenly across the *jamā‘at*. Enforcing hierarchies of religious knowledge was common practice, particularly in the Ismaili Khoja and Bohra *jamā‘ats*. During a debate with Twelver Khojas, the Agha Khan assured his interlocutors that access to *marifat* was above their station, further ridiculing one of their number when the Twelver admitted he did not know Arabic, Persian, English, or French.¹⁵ Predictably, maintaining exceptional access to religious knowledge was not possible at all times, both within *jamā‘ats* and among *jamā‘ats*. After the Bohra *dai al-mutlaq* was caustically reproached by dozens of prominent Sunni and Shī‘ī scholars for an Arabic religious polemic he composed, those defending the *dai* maintained that the text was meant only for Arabic-conversant Bohra religious scholars, not the Bohra laity, let alone the wider Muslim public.¹⁶

This and other episodes are important reminders that, for all the historiographical emphasis on the Bohras, Khojas, and Memons as closed communities, intellectual boundaries were porous. Boundary maintenance was more easily enforced in cases of *jamā‘at* membership and marriage, but the quotidian realities of economic exchange and textual circulation guaranteed cross-pollination and comparison. Consequently, it is best to think of the intra-Muslim exchanges that the Bohras, Khojas, and Memons participated in as instantiations of “familiar juxtaposition,” to borrow a phrase from Tony Judt.¹⁷ “Familiar juxtaposition” is a concept that captures both the particularities of Bohra, Khoja, and Memon legal histories, while also acknowledging the prevalence of intellectual exchanges that violated

¹⁴ Mir Sayyid Ala Kadri, *Majamuā hajāra māsāyela* (no publication data), p. 2.

¹⁵ Edalji Dhunji Kaba ed., *Kilavānā savāla javāba yane āftābe hīdāyata*, pp. 19, 22-23.

¹⁶ Munshi Fateh Khan Ahmed Khan Dilkash, *Islāmanā bē bōla* (Bombay/Ahmedabad [?]: n.p.), p. 8.

¹⁷ Tony Judt, *Postwar: A History of Europe Since 1945* (New York: Penguin, 2006), p. 9.

the boundaries of the *jamā'at*. Scholars of Islamic law are accustomed to juxtapositions - Islamic vs. human rights law, Islamic vs. colonial law, Islamic vs. Jewish Law, etc. What perhaps is still largely unpursued, and highly relevant to these communities, is the juxtaposition of disparate forms of Islamic law in a singular institutional setting, one that bridged the state/scholar divide and was distinct from the *sharia* court: the *jamā'at*.

Familiar juxtaposition was also heightened by the frequency of Bohra, Khoja, and Memon interaction outside the *jamā'at*. Instead of encouraging assimilation, it did the opposite. A Twelver Khoja writer embarked on his prolific career of polemicizing against the Ismaili Khojas after his two Memon business partners asked him about the history of the Khojas. His later works on comparative Shi'ism likewise tried to parse out the differences among Bohras, Twelver, and Ismaili Khojas. One of that same individual's foremost opponents, an Ismaili Khoja writer, echoed something similar in his foreword to a work titled *Vedic Islam*, "the practitioners of the Twelver sect, in regards to the caste, *jamā'at*, and religious matters of our own [Ismaili] brothers, are like a mirror held up before our gaze."¹⁸ Elsewhere, a Khoja reflection on the authority of a living *imam* could not avoid a comparison with the all-together more modest authority claimed by the Bohra *dai al-mutlaq*.¹⁹ Of course, there were limits to familiar juxtaposition: a later Bohra text on Yemen might speak at length about sites related to the Fatimids, Sulayhids, and the *dais*, but make little or no mention of the Zaydi tradition.²⁰

Such juxtapositions underscore that far from being the unified prototype of the non-intellectual "Muslim trading caste" of many accounts, the three communities were deeply invested in networks of religious

¹⁸ E.J. Varteji, *Vedika Islāma* (Bombay: Mukhi Laljibhai Devraj, 1921), p. 2.

¹⁹ Muhammad Ali Chunara, "Dā'ī anē imāma vaccēnō taphāvata," *Īmānanī rōśanī* (Bombay: Young Ismaili Vidhavinod Club, n.d. [1919?]), p. 3.

²⁰ Shaykh Kalim al-Din Abd al-Hussain Hussaini, *Mansurul yamānanī akhabāra*, Vol. 1 (Mumbai: Saifi Art Printing Warks, 1962).

scholarship and exchange, and held within their *jamā'ats* irreconcilable ideas about *sharia*. Subscribing to disparate accounts of caste ethnogenesis, possessed of disparate traditions of historiography and legal scholarship, and marked by structural discrepancies in their organization of religious authority, it could not have been otherwise. Whether knowledge of *sharia* was especially complex outside circumscribed circles is another matter entirely. What can be said confidently is that *sharia* was appealed to regularly, and possessed a semantic valence that buttressed *jamā'at* custom rather than universally working against it.

Consumer and Producer: Varieties of *sharia* in the *jamā'ats*

Though each *jamā'at* was both consumer and producer of law, institutional divergences stemming from the structure of religious authority ensured that the goalposts determining the relationship between *sharia* and *jamā'at* shifted over the course of the colonial period. It is useful to recapitulate the main trends, at least in the period c. 1850-1930. Briefly stated, the Bohras were transformed from a decentralized *jamā'at* where the position of the *dai al-mutlaq* was muted to a highly centralized one wherein the *dai* acquired a monopoly over both religious interpretation and community wealth. (This is a potential overstatement, but until we gain a better sense of nineteenth-century Bohra religious works, especially those composed by the *dais*, it will have to serve as a stand-in). In the interim, the power of leading community merchants, formerly independent, was subordinated to the religious hierarchy, though at considerable cost to the integrity of the community. Upon embracing print in the 1910s, the *dais* sought to propagate a wide variety of *sharia* norms in the *jamā'at*, though one has to be careful in concluding this was 'Islamicization' since the content of these texts was self-consciously Ismaili-specific.

By contrast, the Memons have remained a decentralized *jamā'at*, both as a consequence of their Sunni identity and the fact that the Sufi saints and legal scholars they patronize are not generally native to the group. That has not precluded the Memons from being regularly tied up in conflicts among the range of competing Sunni *masalik* that emerged in South Asia in the decades after 1857, and which fragmented Indian Muslim diaspora communities in Burma, Sri Lanka, Mauritius, South Africa, and other places. The Khojas, divided as they are between the Ismaili and Twelver *jamā'ats*, stand somewhere in the middle of the Bohra and Memon *jamā'ats* when it comes to the exercise of religious authority. From the Agha Khan Case of 1866 onwards, both Ismaili and Khoja *jamā'ats* have been locked in a contest with one another over the articulation of an 'authentic' Khoja Islam. Even so, the boundaries between the two have been fuzzier than either side has cared to admit, and more has to be done to provincialize the role of the colonial courts in determining the content of Khoja religious life. Still, it can generally be said that the Ismaili Khoja *jamā'at*, by elevating the Agha Khan to the status of 'apex cleric' and articulating a publicly confident, streamlined form of modern Ismaili Shi'ism, resembled the Bohras, but only in the shallowest of senses. On the other hand, the Twelver Khoja *jamā'at* resembled the Memons insofar as they patronized Twelver Shi'i *mujtahids*, but they also imitated the Bohras by creating pilgrimage institutions centered on the Shi'i shrine cities. Unlike the Bohra dissidents, the Twelver Khojas managed to multiply the *jamā'ats* under their care and to articulate a convincing alternative to the Agha Khan.

From the first, it is necessary to acknowledge that creating a refined genealogy of legal scholarship and interpretation in these three communities is very difficult. There are two obstacles. For one, except for the rich tradition of Ismaili jurisprudence produced by the Bohra religious hierarchy in Yemen and India from the late medieval period until today,

there is scarcely a surviving tradition of Islamic jurisprudence associated with these groups before 1850. For the Khojas and Memons especially, one has only corporate memory and hagiographic texts to go by. Matters are complicated still more by the regular intellectual exchanges with other Muslims, non-Muslims, and colonial officials after 1850, and the profusion of texts from the last decade of the nineteenth century onwards. Thus, when a turn-of-the-century Bohra legal scholar, writing in Gujarati, cited Bozorgmehr one cannot be confident that this was gleaned from a venerable text of Ismaili jurisprudence, particularly when one finds copious references to Edward Gibbon in the same pages.²¹ By extension, what does one do with references in that same text to Qadi al-Numan, *Ikhwan al-Safa*, al-Mutannabi, or Jafar al-Sadiq? Surely, it is not good enough to say it was all invented or borrowed from Orientalist or more contemporary non-Bohra Islamic sources, but neither can it be understood as passed down in an unbroken chain of transmission.

The problem of knowledge of the *sharia* plays out rather differently among the Khojas and Memons given the paucity of legal scholarship produced by them. Borrowings from other legal and theological texts were common. As an illustration, Ismaili Khoja scholars in the colonial period never showed any great proclivity for *ahadith* scholarship, but that did not prevent them from deploying traditions of the Prophet from canonical Sunni collections in their frequent polemical combats with Twelver Khoja enemies. Even if a Memon transmitted a *fatwa* containing references to two famous Sunni legal compilations, but could not remember the circumstances in which the *fatwa* was composed - protesting all the while that “I am no maulvi” - it is noteworthy that legal scholarship was consumed and debated within the *jamā'ats*.²² One might even say that the *jamā'ats* were

²¹ Shaykh Tahirbhai Muhammad Ali Hamadani, *Risālatul Mumīnīna* (Mumbai: Di Mustafai Printing Press, 1900).

²² See Harun Kabli's text cited below.

promiscuous, even voracious, consumers of Islamic legal scholarship, and thus are a potential contender for writing a ‘reception history’ of Islamic law.

Nevertheless, much is lost if the *jamā'ats* are merely branded as consumers of a *sharia* elaborated for them by those outside the caste. For one, the establishment of sustained links between, on the one hand, Twelver Khoja *jamā'ats* and networks of Twelver Shī'ī scholars, and Memon *jamā'ats* and rival Sunni *masalik*, on the other, led to the coalescing of distinct traditions of Shī'ī and Sunni legal scholarship. The Twelver Khojas in particular produced their own class of prolific legal scholars, trained by Twelver Shī'ī scholars from Iraq, Iran, and India. Though the polemical clashes between Ismaili and Twelver authors were incessant, Twelver Khoja *jamā'ats* were not immune to in-fighting. As an illustration, from the 1890s Zanzibar's two Twelver Khoja *jamā'ats*, each swearing loyalty to individual Twelver Shī'ī scholars, clashed over all manner of issues, not least conception of *sharia*.²³ Attempts to reconcile them encompassed the gamut of local legal fora, from *jamā'at khanas* to the colonial court, and eventually a Twelver Khoja merchant from Madagascar healed the rift. Similarly, in Mauritius in the first two decades of the twentieth century, Ahmadiyya, Barelwi, and Deoband scholars earned the loyalties of separate Memon *jamā'ats*.²⁴ Clashes among the Memon *jamā'ats* pivoted upon questions of not only caste status, but also which *maslak* personified the ‘authentic’ norms of *sharia*. Although Memons did not produce many scholars equivalent in rank to their Twelver Khoja peers, their allegiance to the *maslak* induced the further institutionalization of clashing Sunni legal identities in the Indian Ocean. A greater appreciation for the *jamā'ats'* productive capacities in the

²³ *Yādgarē Sarīf* (no publication data).

²⁴ Patrick Eisenlohr, *Sounding Islam: Voice, Media, and Sonic Atmospheres in an Indian Ocean World* (Berkeley: California University Press, 2018), p. 35.

realm of law can be gained when one examines their own procedures of adjudication and boundary maintenance.

The *Jamā'at* as Legal Arbiter

The *jamā'ats'* role as a legal arbiter demands recognition, principally because formal legal status and vernacular texts reveal very little about the inner workings of Islamic law in these groups. For example, throughout the colonial era, the Dāwūdī Bohra *jamā'at*'s legal traditions perplexed many Indian Muslim scholars trained in British legal institutions, who were eager to neatly pin down the each Muslim constituencies' relationship with the edifice of Islamic law. The resulting observations were less than helpful. Faiz Badr al-Dīn Ṭayyibjī, himself a Sunni Bohra,²⁵ noted in his *Principles of Muhammadan Law* that the Dāwūdī Bohras did “[possess] their own system of jurisprudence by which they are governed.”²⁶ But as noted in the 1940 edition of his work, *Muhammadan Law: The Personal Law of Muslims* (first published in 1913) “The law of the Ismaili Shias as applicable to Daudi Bohoras and to the Sulaimanis is less easy to discover. Some of their texts have been printed and published and translated if at all, only quite recently, and in fragments.”²⁷

A productive substitute is a comparison of two tracts - one a Sunni *fatawa* collection, the other a Daudi Bohra legal digest - related to marriage practices. Stereotypically, a *fatwa* does not have coercive power, but is rather a non-binding opinion, a recommendation based on studied consideration of legal sources and the issue at hand. In modern South Asia scholars have

²⁵ Gregory C. Kozlowski, *Muslim Endowments and Society in British India* (Cambridge: Cambridge University Press, 1985), p. 117.

²⁶ Ismail K. Poonawala, *The Pillars of Islam: Mu'āmalāt: laws pertaining to human intercourse* (Oxford: Oxford University Press, 2002), p. xliii.

²⁷ Faiz Badruddin Tyabji, *Muhammadan Law: The Personal Law Of Muslims* (Bombay : N.M. Tripathi, 1940), p. 62.

had recourse to various kinds of coercive power to enforce legal decisions, such as public protests, boycotts, and smear campaigns, but these probably have been of a lesser order of magnitude than the coercive power available to the *jamā'at*. The *jamā'at*'s power was exercised through group pressure, stigma, strong-arming, dispossession, or excommunication from the caste. Individual religious scholars operating outside the confines of a well-bounded *jamā'at* could not lay claim to the same.

In the present instance one Ibrahim Suleiman Bemath, a Sunni Bohra inhabitant of Surat, published a treatise called *Fajhulī nikāhnō fatavāno javāb*. The treatise was supposedly so riddled with errors of legal misinterpretation and distortions of truth that another author, Ismail Suleiman Badat, was impelled to warn his fellow Sunni Bohras about the text.²⁸ Badat then published a variety of *fatwas* pertaining to marriage penned by eminent Sunni scholars from Rander and Delhi, as well as those associated with the Deoband *maslak*. Two scholars jostling for interpretive supremacy was a regular occurrence in colonial India, but was very different from the type of legal-interpretation-by-committee observable within the Daudi Bohra *jamā'at* in this same epoch. To be sure, arbitration among the Daudi Bohras was also handled often by *mullās* or *qazīs*, who also penned *fatwas*.²⁹ All the same, though this is an arguable point, their individual scholarly opinions had to be reconciled with the will of the *jamā'at* council writ large. Even if this particular source displays little evidence of this input, Bohra law was heavily conditioned by the towering figures of medieval Ismaili Shī'ī law, the texts of which were copied and commented upon in Bohra madrasas.

The best window into the Bohra *jamā'at*'s legal history in this era is a constitution (*dastur al-amal*) printed in Dhoraji in 1899 and containing a

²⁸ Khaksar Ismail Suleiman Badat, *Phajhulī nikhānō fātavā javāba* (Surat: Surat City Printing Press, nd), pp. 1-2.

²⁹ *Gazetteer of the Bombay Presidency: Kolaba and Janjira*, Vol. X (Bombay: Government Central Press, 1883), p. 78.

collection of *jamā'at* rulings on marriage disputes and community administration. The cases adjudicated by the *jamā'at* council - comprising leading Bohra merchants and legal scholars - extended throughout greater Gujarat and further afield to Karachi and Bombay. Presumably, the constitution was circulated in the Bohra diaspora, where it served as a procedural guidebook for *jamā'ats*. The text is itself a reminder that the community disputes that made it to the colonial courts were a numerical exception to the plurality of cases settled by the *jamā'at* itself. With that said, the *jamā'at*'s leaders repeatedly accented that their judgments were in accordance with the laws and customs of the *sarkar* (colonial state) and the *jamā'at*.³⁰ *Sharia* was occasionally invoked by the Bohra petitioners, though in vague terms, such as one individual who noted that his father-in-law did not execute the marriage "according to *sharia*."³¹

The Dhoraji constitution is of special value as it provides insight into the *jamā'at*'s procedures for legal deliberation and the means by which a collective judgment was reached. Every case involved a consideration of each party's position, and a final ruling, followed by signatures of the presiding members of the jury. Save for an invocation on the title page, the Bohra *dai al-mutlaq* is nowhere to be seen in the text. He need not have been, for the monitoring capacities and legal know-how of the *jamā'at* council were more than sufficient to the task. Indeed, monitoring capacity was a lynchpin of *jamā'at* justice, and regularly a separate investigation into the case was undertaken by agents of the *jamā'at* council. The coercive capacity of the *jamā'at* worked in tandem with these mechanisms of surveillance. Frequently, the threat of excommunication and ostracism from the *jamā'at* was invoked to compel one party to comply, and was implemented with a surprising frequency, if the 1899 constitution is any

³⁰ *Dasturūl amalanō vadhārō: Judā judā kesesnā phāinal jajamendṣ* (Mumbai: Dhī Mustaphāi Printing Pres, 1899), p. 7.

³¹ *Ibid.*, p. 32.

barometer. When three members of the Bohra *jamā'at* in Dhari were accused of financial malfeasance, a thorough investigation was carried out.³²

It is no revelation to discover that the women of the *jamā'at* never represent themselves in these disputes. Instead, husbands and fathers spoke in their stead, and another council of men decided their fate. Many of these make for difficult reading. Typical was the dispute between Ghulam Hussain Ibrahimji, a native of Jamnagar, and his father-in-law, Alibhai Jiwaji of Rajkot. As Ibrahimji's letter to the *jamā'at* recounts, his father-in-law refused to send his wife back home, and he was forced to care for their two young children at great personal cost. On three occasions several community leaders had traveled from Jamnagar to Rajkot to plead Ibrahimji's case - and that of the children - but to no avail. Alibhai Jiwaji's response, as recorded in the *jamā'at's* proceedings, was terse and defiant, unmasking facts that Ghulam Hussain dared not mention in his own letter: "My son-in-law beats my daughter regularly. and it hurts a great deal. Therefore, I will not send my daughter." The *jamā'at's* subsequent decision underscores its capacity to make community members fall in, even against their better judgment: "Should you hand over the wife of brother Ghulam Hussain, he will not harm you and there will be no grief. With the above decree, Alibhai Jiwaji...handed over his daughter to her husband."

Maintaining proper marriages according to notions of *sharia* and community custom was onerous enough in relationships involving male and female members of the same *jamā'at*. But the specter of marriage between a caste male and a non-caste female presented more challenges. Notably, while in East Africa in 1899, the Agha Khan made an *ex cathedra* statement that non-caste marriage was forbidden.³³ Such pronouncements were easily made, but how did one enforce them in a diasporic community

³² Ibid., p. 61.

³³ Iqbal Akhtar, *The Khoja of Tanzania: Discontinuities of a Postcolonial Religious Identity* (Leiden: Brill, 2014), p. 41.

dispersed across wide stretches of ocean? Still more, were they in accord with *sharia*? That quandary was an occasion for a Memon merchant, Saleh Muhammad Haji Harun Kabli, to write his *Pure or Impure, and Memon History*.³⁴ Featuring a fictitious debate in a Halai Memon *jamā'at*, *Pure or Impure* concerned a question that periodically reared its head in Bohra, Khoja, and Memon *jamā'ats*: were the “half-caste” children produced by the marriage of a caste father and non-caste mother full members of the *jamā'at*?

What is most compelling in the ensuing debate is the conflict over what *sharia* ordained in episodes of cross-community marriage, and how *sharia*-based rules stood in relation to five-hundred years of caste custom. For those advocating the legitimacy of cross-caste marriage, their argument was that all Muslims were equal and that no Memon male should be barred from cohabitation with a Muslim female of whatever origin. On the opposing side, appeals were initially made to the example of Zayd bin Hasham and Bibi Zainab, who were married for a period, despite not being from the same clan. The subsequent dissolution of their union was cited as an example that cross-community marriage did not adhere to the Prophetic exemplar, and that Memons must do no more than abide by it.

Their argument was clinched by a member of the *jamā'at* who produced an extended Urdu *istifta* and *fatwa*. The petitioner asked whether it was permissible for a *jamā'at* council to bar marriage between caste members and those outside it. The scholar, one Abu Bakr Faruqi Jaunpuri (it is unclear whether he was also fictitious), ruled that it was “correct and permissible” (*sahih aur jaiiz*) to do so since it was a measure taken out of regard for *kafā'āt* (equality of lineage between the husband and wife), the “limitation of corruption” and the “betterment of the community.” To

³⁴ Saleh Muhammad Haji Harun Kabli, *Śuddha kē asuddha ane Meman Tavārikha* (Bombay [?]: 1931).

buttress his conclusion, he included two extracts from al-Marghinani's *al-Hidaya* and al-Haskafi's *Durr al-Mukhtar*, which in their own ways confirmed that "that marriage (*nikah*) should not be consummated unless from the same clan," and that considerations of "lineage (*sharafat*) must be met by both the man and wife."³⁵ Though Abu Hanifa disagreed with succeeding Hanafi scholars over that latter point - something acknowledged in the present *fatwa* - these two rulings were put forward by the Memon opponents of mixed marriage as justification for the assertion that "five hundred years" of *jamā'at* custom was commensurate with *sharia*. If in this episode the boundedness of the *jamā'at* was regarded as in line with *sharia*, the conviction from the First World War that the *jamā'ats* were bastions of exclusive, even un-Islamic wealth became inseparable from contemporary concerns about intra-Muslim wealth disparities, Islamic commercial ethics, and *sharia*.

Wealth Disparity, Commercial Ethics, and *Sharia*

The Gujarati Muslim commercial castes exemplified traditions of Islamicate commercial capitalism and the persistence of its ethical and institutional dimensions well into the modern period. Whereas most scholarship remains concerned with challenge-response paradigms in the study of Islam and capitalism,³⁶ the example of the Bohras, Khojas, and Memons offers numerous instances in which the lexicons of market activity and Islam were intertwined. Economic analogies were second nature, with authors from these groups regularly analyzing religious matters in terms of profit and loss (*lābha*, *phāyadō*; *nukasāna*). It is disputable how much these ethical considerations inflected the character of business: for one, was the

³⁵ Ibid., pp. 47-48.

³⁶ Charles Tripp, *Islam and the Moral Economy: The Challenge of Capitalism* (Cambridge: Cambridge University Press, 2006)

stark under-representation of these groups in formal banking a consequence of Islamic disapproval of lending at interest? Arguably, concerns about financial interest/usury only became sensitive subjects in the interwar period and owed less in *sharia* norms than to the perceptions of a Hindu-Muslim wealth gap.³⁷

What is for sure is that participation in commercial activities deemed *haram* by the standards of *sharia* left one susceptible to *jamā'at* reproach. For example, when it was discovered that the leader of a breakaway Bohra sect ran an import-export business selling Hindu religious images, his Bohra opponents jumped on the opportunity to condemn his outright violation of *sharia*.³⁸ Equally worth mentioning is how the *jamā'ats* supplied the pretext for other Muslims to evaluate Islamic commercial ethics. From around the First World War, Indian Muslims increasingly pointed to Muslims' inadequate access to fluid capital as the prime cause of Muslim economic backwardness. Some attributed this to the dearth of Muslim-owned banks in the subcontinent, which as we have seen, was indeed a conspicuous attribute of Muslim economic life in colonial India.

Whereas in the pre-war period the commitment of Muslim political activists like Muhammad Ali Jinnah was to maintaining the integrity of individual family endowments, from the 1920s the notion became that all pious endowments must be subordinated under a wider administrative umbrella that would carry out regular audits of these institutions and save them from the 'mismanagement' of trustees (*mutawallis*). The logic of that campaign entailed that Bohra, Khoja, and Memon endowments, hitherto seen as unassailable private property vested in the *jamā'at*, became susceptible to external inspection and demographic dilution. As never before, the "corporate Islam" of the Gujarati Muslim commercial castes

³⁷ Muhammad Jamil al-Din Gausi, *Islāmī hita hakōnā rakṣana kājē* (Rajkot [?]: 1933 [?]).

³⁸ Yusuf Ali Bakirbhai, *Āgalā pāchalā muddāionī tapāsa* (Surat: Nadir Printing Press, 1915).

clashed with a new brand of statist Islam propounded by the spate of emergent all-India Muslim political organizations eager to harness Muslim capital for the good of the imagined Muslim community.

The attempt to dilute the *jamā'ats*' hold on individual endowments assumed many different forms, running the gamut from small-scale reform to outright seizure. As shown in the the first section, a proponent of the former was the prominent Indian Muslim nationalist and journalist Maulana Abd al-Kalam Azad, who in 1920 penned a long legal judgment on the *Jama Masjid* in Calcutta. Founded by a Kachchhi Memon merchant in the mid-nineteenth century, in the 1910s the mosque and its accessory institutions became the source of two simultaneous legal spats, first between various Memon trustees, second, between Memon and non-Memon members of the congregation. Azad's participation demonstrated that outside mediators - whether in the form of colonial officials or Islamic legal scholars - were the sole recourse open to the *jamā'ats* after their own efforts at mediation failed. His aim in his treatise was to separate the management and financial resources of the mosque from the Memon *jamā'at*, without violating the sacred legal principles underpinning *awqāf*, the proprietary rights of which were, according to nearly all interpretations of Islamic law, inalienable and immemorial.

Maulana Abd al-Kalam Azad was one of the towering intellectual figures of South Asian Islam in the twentieth century. As John Willis has argued, Azad was a complex, even contradictory figure.³⁹ In the pages of his Urdu newspapers - *Al-Hilal* and later *Al-Balagh* - Azad pioneered an assertive, politically-conscious form of Muslim vernacular journalism. Here and elsewhere, he turned his prolific pen to assorted subjects, not least that of *awqāf*. In 1920, he published a full-length Urdu treatise titled *Decision in*

³⁹ John M. Willis, "Azad's Mecca: On the Limits of Indian Ocean Cosmopolitanism," *Comparative Studies of South Asia, Africa and the Middle East* (2014) 34 (3): 574–581.

the Case of the Jama Masjid, Calcutta that is not only a unique document in his collective writings, but also a singular document in the contemporary Indian Muslim intellectual scene.⁴⁰ More specifically, Azad's account helpfully highlights the knotty issues involved in divorcing the accounts of Memon *jamā'ats* from those religious institutions in which Memons had assumed an ownership stake and which provided services to Memons and non-Memons alike. But it also highlights the difficulties contemporary Indian Muslim faced in their bid to reform *awqāf* administration. How, for example, did one reform the management of *awqāf* in a way that did not ride roughshod over the proprietary privileges of the trustees? Outright expropriation was not an option for those conscious of Islamic legal rules governing these entities, even if there were plenty of voices - such as those in the Bohra 'dissident' *jamā'at* after 1915 - that called for just that.

Azad first supplied a useful survey of the *Jama Masjid's* history. Located on an expansive site in the north of Calcutta, it was variably called "Big Masjid" or "Nakhoda Masjid," the latter a reference to the many Memon shipping captains (*nakhodas*) who used to ply their trade out of Bombay.⁴¹ Before 1856, two separate mosques had occupied the site, with an open space between them. The land was owned by a Hindu. The northern side was constructed by one Roshan Hakak, the southern by Munshi Hasan Ali.⁴² Roshan Hakak decided to appoint a five-member trust to administer the mosque he constructed, while Munshi Hasan Ali held the title to his own during his lifetime. At the founder's death, trusteeship over Roshan Hakak's mosque passed to his daughter, Shams al-Nissa Begum.⁴³

In 1856, Shams al-Nissa Begum aimed to acquire both the mosque at the north end and the intervening land in order to build a congregational

⁴⁰ Abd al-Kalam Azad, *Faişla-i Muqaddama-i Jāma' Masjid Kalkata* (Calcutta: Haidari Press, n.d. [1920?]).

⁴¹ *Ibid.*, p. 1.

⁴² *Ibid.*

⁴³ *Ibid.*, p. 2.

mosque. She applied and was granted trusteeship over both mosques, which were now subordinated to a single trust, and a colonial court drew up an official title deed, the oldest document pertaining to the mosque.⁴⁴ The stipulations in the deed, among other points, clarified that if one of the four trustees of the new mosque changed religion or was absent from Calcutta for more than a year they would be deposed and a new person elected by popular acclaim.⁴⁵ From this Azad concluded that the trusteeship of the site passed out of the hands of Shams al-Nissa into the hands of the larger trust.⁴⁶ Afterwards, construction on the new mosque was begun (in 1856) and the land between the two mosques was also purchased.

It was at this point that the Memon magnate, Haji Zakariya entered into the picture. He seems to have come to Calcutta from Bombay, but it also is possible, based on references in Azad's text, that he and his business partner came to Calcutta directly from Medina. Since Haji Zakariya was also a leading member of the local Kachchhi Memon *jamā'at* in Medina, this ensured that he obtained an interest in the *jamā'at* and the mosque from 1856. The Memons, being the wealthiest Muslims in the northern part of the city, acquired a majority stake in the mosque.⁴⁷ The name of Haji Zakariya became so bound up with the mosque that locals began calling it Masjid Zakariya.⁴⁸ One senses here, and in his discussion of the typical practices of a Memon *jamā'at*, that Azad was less than enthusiastic about what he saw as the Kachchhi Memon *jamā'at*'s tendency to distinguish itself from other Muslims in everything from marriages to burials.⁴⁹

⁴⁴ Ibid.

⁴⁵ Ibid., pp. 3-4.

⁴⁶ Ibid., p. 4.

⁴⁷ Ibid.

⁴⁸ Ibid., p. 5.

⁴⁹ Ibid., p. 5.

In 1873, Haji Zakariya died, and his son, Haji Nur Muhammad, was appointed as his successor.⁵⁰ Unfortunately, Haji Zakariya's firm went belly up shortly after his death. Haji Nur Muhammad's financial status declined as a result, but thanks to the expansion of the Memon Fund in this period, which had substantial immoveable and moveable property in its coffers, he was able to offset his own personal losses while bringing the mosque to rack in ruin. Under Haji Nur Muhammad, the *de facto* amalgamation of the mosque and the Memon *Jamā'at* Fund, which had begun under Haki Zakaria's watch, was fully consummated.⁵¹ When senior members of the Kachchhi Memon *Jamā'at* discovered this they demanded that Haji Nur Muhammad share the account books with them, a request the latter refused on the pretext that the *jamā'at* had no right to ask for this.⁵² The *jamā'at* then filed a case against Haji Nur Muhammad in the Calcutta High Court in 1907. Unfortunately, Azad does not explain whether the plaintiffs' objection extended to Haji Nur Muhammad's fusion of the Memon *Jamā'at* Fund and the mosque - which seems unlikely - or whether it was limited to his refusal to share the accounts with them.

The 1907 case made clear that Haji Nur Muhammad had driven the finances of the Memon *jamā'at* Fund and the mosque into the ground, and the accounts were therefore ordered to be inspected by the court.⁵³ But, according to Azad, since the plaintiffs in the case were not aware of the full history of the mosque and the trust, their case was deficient.⁵⁴ Because their claims did not discuss the trust of Shams al-Nisa Begum, but only mentioned the Memon *jamā'at* trust, Haji Nur Muhammad glimpsed an opportunity to invalidate the entire case. For that reason, it was ruled by the court that the trustees of the mosque henceforth would only be appointed

⁵⁰ Ibid., p. 7.

⁵¹ Ibid., pp. 7-8.

⁵² Ibid., p. 8.

⁵³ Ibid., p. 9.

⁵⁴ Ibid.

from the family of Haji Zakariya.⁵⁵ Though Haji Nur Muhammad had died in 1915, the trust had operated on this basis from 1907 until 1918, when the matter made it to the court yet again.

The catalyst of the 1918 case was a conflict between the trustees and the *imam* of the mosque.⁵⁶ Azad first heard about the case when he returned to Calcutta in January 1920, when he was informed that both parties believed it to be against Islamic principles for a non-Muslim court to adjudicate a dispute pertaining to an Islamic legal issue.⁵⁷ Thus, Azad was given the chance to hear the dispute himself, and to write a studied judgment of it in accordance with Islamic legal rulings.⁵⁸ This bypassing of the colonial courts was a fascinating development, colored no doubt by the contemporary non-cooperation and Khilafat movements. But it was curious that the Memon trustees agreed to it, since it was more likely to threaten their corporate privileges than a colonial court system that had consistently upheld them.

In the end, Azad's ruling was a highly nuanced one, demonstrating his desire to protect the inviolability of *waqf*. For one, he concluded that the identity of the existing mosque trust was in accordance with Islamic law.⁵⁹ However, the defendants were incorrect that the mosque was built only by the Cutchi Memon *jamā'at* and that legally the trustees could only be from this group. This flatly contradicted the original title deed of Shams al-Nissa Begum, which stated that a trustee could be any member of the mosque's congregation, not merely an individual from a single *jamā'at*.⁶⁰ Having said that, he argued further that the plaintiffs were incorrect to say that the trustees were to be chosen by vote of the general Muslim population, just as

⁵⁵ Ibid., p. 11.

⁵⁶ Ibid., pp. 11-12.

⁵⁷ Ibid., p. 12.

⁵⁸ Ibid.

⁵⁹ Ibid., p. 47.

⁶⁰ Ibid.

in the 1907 case involving Haji Nur Muhammad was mistaken in its assertion that the trustee was to be chosen by the Kachchhi Memon *Jamā'at*. Rather, the original document said only that only the existing board of trustees had the capacity to elect a new trustee.

Even if he acknowledged that the Memon monopoly over the mosque from its beginning was less than ideal, Azad recognized that they had performed many services on its behalf in accordance with Islamic legal principles of “the common good” (*maṣlaḥa*).⁶¹ Therefore, Azad saw no legal means upon which to break the trust or to make the trustees non-Memons. Seemingly contradicting his portrait of Haji Nur Muhammad’s administration, he maintained that, by contrast with so many shabbily-administered mosques, funds, and trusts in India, this mosque had progressed substantially over the past fifty years under the management of the Memon *jamā'at*.⁶² Azad’s sophisticated handling of the Jama Masjid case was not matched by most other Indian Muslim activists in this period who turned their hand to *arwqāf* reform. If he represented one model, in which corporate privileges were protected and the colonial state was kept out of affairs, his peers were far more willing to use the colonial state and outright expropriation to achieve their aims. That inclination was expressive of a disdain for the perceived legal exceptionalism and economic oligopoly enjoyed by the Bohras, Khojas, and Memons.

Conclusion

The foregoing analysis has aimed to provide insight into the largely unstudied legal history of the three most prominent Gujarati Muslim commercial castes. The assumption that a hallmark of their history has

⁶¹ Ibid., p. 48.

⁶² Ibid.

been their legal exceptionalism - the notion that they stood apart from other Indian Muslims by virtue of their place in the colonial legal system or their apathy towards *sharia* - was rejected. If from the vantage point of the colonial courts they have tended to be reduced to 'Hindus' in all but name, that image falls apart upon inspection of the litany of sources they produced that touch upon legal matters. These relate that the *jamā'ats* operated as intermediary, 'corporate' institutions straddling the realms of colonial law and the jurisprudential worlds of the *ulama*. The resulting legal formulas they arrived at were multiplex, differing from one *jamā'at* to the next. Their engagement with *sharia* norms were neither instrumental, nor imitative, but constantly modulated by the shifting yardsticks of law and custom as variably determined by the caste corporation, the colonial civic order, Muslim institutions, and new jurisprudential inputs.