


ORIGINAL ARTICLE

Between Law and Politics: Islamic Judges in the South Indian Littoral, 1808–1885

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Abstract

This article offers a fresh account of the colonial processes that upended Muslim juridical regimes in South Asia between 1808 and 1885. Based on unexplored sources in Arabic and English, the discussion is set in the South Indian coastal towns of today's Kerala and Tamilnad, where Muslims practiced Shafi'i law and were not subject to continuous Muslim rule at any point in history. Given their *longue-durée* experience of non-Muslim rule, the Shafi'i jurists had to rethink classical jurisprudential norms to empower the learned Muslims (the *ʿulama*) as alternative sources of authority, so that they could elect and dismiss Islamic law judges (*qazis*) as their local leaders in the coastal towns. *Qazis* thus emerged and operated as a bastion of Shafi'i power and Shafi'i religious authority in the region. Once the British Empire claimed the mantle of the Mughal Empire that practiced Hanafi law, it could not as easily bring these Shafi'is into its imperial fold. Their juridical autonomy provoked fears of political subversion for the British Empire in the wake of the 1857 rebellion, prompting its officials to bring the Shafi'is under direct government control and reconfigure the community-elected *qazis*, which were the foci of Shafi'i leadership.

Keywords: Qazi; South India; dar al-Islam; Shafi'ism; legal pluralism

On March 1, 1870, the Madras High Court of Judicature faced a knotty issue. A claimant to the office of the chief *qazi* (Islamic law judge) or *qazi al-quzat* in the town of Madras on the Tamil coast questioned a piece of British colonial legislation that had declared the office “abolished” in India in 1864. Qamar al-Din Ahmad claimed *qaziship* as a lineal descendant of the Shafi'i *qazi* Muhammad Abu Bakr, the first government-appointed *qazi* in Madras and adjoining areas since the 1740s.¹ But the Board of Revenue refused to recognize

¹ Qamar al-Din appears in colonial records as “Mahomed Abbabucker (or Aboobauker) Hafiz Kummer-ood-deen Ahmed.”

his claims to village endowments because the *qazi*'s office no longer existed in India. A perplexed Qamar al-Din took the matter to the Madras High Court, where he reasserted his right to the office against rival claimants by the force of tradition: that he had been voted in by local Muslims in a "popular election" which the neighboring Prince of Arcot had also ratified.²

The Madras High Court dismissed the election not only on the ground that the prince was a British subject, but it also declined to consider any other legal tradition that the Muslims in Madras may have invoked to appoint their *qazi*. It explicitly ruled out any instance of a *qazi* elected by people as legally admissible. The Chief Justice C. Collett recognized the problem of Madras Muslims as "one of difficulty,"³ while colonial officials writing from the Calcutta *madrasa* in Bengal opined that some "purely local" circumstances must have influenced the town's Muslims to act that way.⁴ Yet, instead of accounting for any of the local customs of the Muslims in question, the Madras High Court bluntly read off the problem in terms of the Hanafi school of Islamic law that formed the basis of British understanding of Muslim law in India and the empire. Accordingly, it invoked the twelfth-century Central Asian Hanafi text, Burhan al-Din al-Marghinani's *al-Hidaya* that lay at the heart of the colonized Hanafi or Anglo-Muhammadian law, to unambiguously rule that the prerogative to appoint *qazis* exclusively belonged to the ruling power or the government.⁵

The case was dismissed. But the questions it raised troubled the Madras High Court. The legal suit filed by Qamar al-Din questioned the British Empire's jurisdictional claims over its Muslim subjects and triggered their long-held dilemmas about managing the *qazi*'s office in India. How could a non-Muslim (British) government justify "abolishing" an office that was created and sustained by Muslim law?⁶ The question of appointing *qazis* in British India was now heavily debated, with the concern primarily emanating from the town of Madras. This article examines the debate that opened up the competing jurisprudential traditions of Indian Muslims and shaped the colonial processes that transformed the institution of the *qazi* in India. Attention to these processes has hitherto eluded historical writing in the field.

Key to the debate on the appointment of *qazis* was a little-known but long-standing juridical tradition of Muslims in the south Indian coasts, especially in the Tamil and Malabar (Kerala) region. These Muslims practiced the Shafi'i school

² National Archive of India (NAI), Home Judl A. (HJA.), 7th January 1871, No. 1-3.

³ *Ibid.* Judgement of Mr. Justice Collett attached to Letter No: 153, from J.D. Mayne, Esq. Asst Secy to the Govt of Madras, Legislative Dept. to E.C. Bayley, Esq., CSI Secy to the Govt of India, dated Fort St. George, 13th October 1870.

⁴ NAI, HJA., Feb 1876, File 42-81, K.W. Letter from H. Blochmann, Esq., M.A., Asst Professor, Calcutta Madrassah to the Offg Junior Secy to the Govt of Bengal, dated Calcutta, January 25th 1871.

⁵ On the *Hidaya* and Anglo-Muhammadian law, see Scott Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35 (2001): 272-73.

⁶ See NAI, HJA., 19th Jan 1865, File No. 48-108. Letter from Commissioner of the Bhaugulpore Division to the Secretary to the Government of Bengal, No: 101Ct., dated 11th March 1859, 18-19 and NAI, HJA., 7th January 1871, No. 1-3. Letter No: 2223 to 2231 from the Offg. Secy. to the Government of India to the Chief Commissioner of Oudh, Central Provinces, British Burma Mysore & Coorg, as well as the Resident at Hyderabad, dated 23rd of December 1870.

of Islamic law, unlike the Hanafi school followed by Sunni Muslims in most of India, and the tradition entailed the learned Muslims or the 'ulama electing and appointing a town's *qazi* as the local leader of the community. This regional tradition would escape British colonial control until about the end of the nineteenth century. Such a practice of appointing *qazis* was, however, an anomaly. In the Islamic tradition, appointing a *qazi* as the dispenser of justice is the sole prerogative of the Muslim ruler, like the caliph or the sultan.⁷ And the prevalence of this tradition in South India was largely because of the fact that these Muslims had historically not been a part of sovereign Muslim regimes or imperium. Islamic kingship in southern India was consolidated in the upper Deccan region with the establishment of the Bahmani Sultanate in the fourteenth century and was followed by the Sultanates of Ahmadnagar, Bijapur, and Golconda, and then the Mughal Empire in the late sixteenth century. But the lower half bordering the sea—what is today Kerala and Tamilnad—did not witness any long-standing tradition of Muslim rule. With the exception of the brief interlude of the Turkish Sultanate at Madurai in the fourteenth century and the reigns of the Arackal 'Ali *rajas* with their own little domain in the town of Kannur since the fifteenth, a sustained attempt to build an Islamic political structure was not found in the region until the eighteenth century, when Muslim kingship emerged in the Tamil country under the Nawabs of Arcot and in Malabar under the Mysore sultans Hyder Ali and Tipu.⁸

Islam had arrived in South India by sea, not by land, reputedly in the hands of Arab traders, navigators, and *sufi* saints who settled in the eighth or ninth century C.E., while territorial invasions from central Asia established the sultanates of Northern India. The Arab(ized) trading families on the coasts and their later descendants controlled the spice, rice, and textile trade between West and Southeast Asia, owned ships or boats, and had extensive mercantile relations with the Arab world.⁹ Referred to as Maraikkayars and even Labbais in the Tamil country and the later Tangals in the Malabar region, these Muslims practiced the Shafi'i law and lived in petty principalities controlled by Hindu warrior chiefs and commercial magnates. No well-defined tradition of kingship held them together.¹⁰ David Washbrooke notes that South India consisted of a "peculiar collection of autonomous territories" that lacked the cultural homogeneity found in the United Provinces or the forms of regional identity of Bengal and Bombay.¹¹ And the littoral of these Shafi'is—from Cochin and

⁷ Wael Hallaq, *An Introduction to Islamic Law* (Cambridge University Press, 2009), 53 and 73; Patricia Crone, *God's Rule: Government and Islam: Six Centuries of Medieval Islamic Political Thought* (New York: Columbia University Press, 2004), Chapter 16, 20–21; Knut Vikor, *Between God and the Sultan: A History of Islamic Law* (London: Hurst & Company, 2005), Chapter 9.

⁸ See Susan Bayly, *Saints, Goddesses and Kings: Muslims and Christians in South Indian Society, 1700–1900* (Cambridge University Press, 1989), Chapter 4, 151.

⁹ *Ibid.*, Chapter 2.

¹⁰ See, for instance, Ibrahim Kunju, *Medieval Kerala* (Thiruvananthapuram: University of Kerala, 2007), Chapters 4 and 12; Binu John Mailaparambil, *Lords of the Sea: The Ali Rajas of Cannanore and the Political Economy of Malabar, 1663–1723* (Brill, 2011), Chapter 2.

¹¹ David Washbrook, *The Emergence of Provincial Politics* (Cambridge University Press, 1976), 14–17 and 123–24.

Calicut to Kollam on the southwestern coast and stretching up from Nagore, Pulicat to Kilakkarai and Kayalpattinam on the southeastern front—did not receive any systematic patronage of Muslim sovereigns either.

Once the British Empire claimed the mantle of the Mughal Empire with its practice of Hanafi law, it could not easily bring these Shafi'i Muslims into its imperial fold. Shafi'i legal corpus and juridical practices lay beyond the colonial codification of Hanafi law (the Anglo-Muhammadan law) that was adopted by British common law courts.¹² The British had to devise alternative means to domesticate the Shafi'is. The case of Qamar al-Din Ahmed, a Labbai of Maraikkayar lineage, surfaced the need to bring these South Indian Shafi'is under control. The town *qazi* of Madras is a useful case in this regard. As the administrative center of the Madras Presidency, Madras brought together influential Shafi'is both from the region and the Indian Ocean rim—the Arabs, the Tamils, the Malayalis or Mappilas, and the Navaiyat Shafi'is of the Konkan coast. This article shows how *qazis* in the littoral historically operated as a bastion of Shafi'i power and became the site where the religious authority of the 'ulama was crafted, contested, and disciplined.¹³ The Shafi'is and their elected *qazis* would thus be a source of power for the British after colonial policy ceased to recognize government-appointed *qazis* in 1864.

Much has indeed been written on the collapse of the *qazi* in British common law courts in India by 1864, which marked off the Shari'a as religious, personal law separate from the secular, public domain of the law in courts.¹⁴ This article counterargues; it shows that Muslims deemed the *qazi's* office a religious necessity that the British Raj could not do away with. Officials of the Raj had to reckon with the relationship of religious practice with territoriality of a land as "abode of Islam" (*dar al-Islam*) and reconstitute *qazis* on fresh political grounds. Elizabeth Lhost writes that *qazis* were reappointed to serve as registrars of Muslim marriages and divorces.¹⁵ I contend, instead, that the reappointment was political. *Qazis* were reinstalled in 1880 as a disciplinary measure to control the Shafi'is and qualify British India as *dar al-Islam*, in order to quell possibilities of Muslim political subversion. The colonial processes that shaped the legislation are, therefore, my concern here.

The following sections first outline the tradition of electing *qazis* in South Indian coastal towns, to then address the form of legal pluralism it entailed in South Asia, the political threat they posed to British sovereignty, and the imperial rationale that reconfigured the *qazi*.

¹² Wael Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press, 2009), 371–383; Iza Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (University of Chicago Press, 2017), 47; Nurfudzilah Yahaya, *Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia* (Cornell University Press, 2020), Chapter 1.

¹³ On Shafi'is being in control of the office, see Muhammad Abu Bakr Badhib, *Ishamat 'Ulama Hadhramawt fi Nashr al-Islam wa 'Ulumihi fi al-Hind* (Jordan: Dar al-Fath, 2014), 186–187.

¹⁴ See, for instance, Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge University Press, 2018), 51–53; Elizabeth Lhost, *Everyday Islamic Law and the Making of Modern South Asia* (University of North Carolina Press, 2022), Chapter 3, 89–93; Jeffrey Redding, *A Secular Need: Islamic Law and State Governance in Contemporary India* (University of Washington Press, 2020), 68–69.

¹⁵ Lhost, *Everyday Islamic Law and the Making of Modern South Asia*, Chapter 6.

Qazis as Local Community Leaders of Coastal Towns

European travelers have left us important clues to reconstruct the life of Muslims in Indian port towns. When the Portuguese official Duarte Barbosa visited the city of Kayal (or Qa'il) on the Tamil coast in the sixteenth century, for instance, he noted that its Muslim merchants and natives were ruled by a very "wealthy and distinguished Moor" who collected duties levied on pearls and delivered justice and judgments on Muslims, without any intervention of the king of Kollam to whom the town was otherwise subject.¹⁶ To this he added that the Muslims in Calicut on the Malabar Coast too had "a Muslim governor of their own" who ruled and punished them without any interference from the king.¹⁷ I suggest that the "Moorish governor" was none other than the *qazi* elected by local Shafi'i notables in order to "govern" their community affairs. Elizabeth Lambourn certainly recognizes the unique agency enjoyed by *qazis* as they mediated between different "interest groups" on the Malabar Coast, at least since the tenth century, while Michael Pearson writes that these Muslims had "their own heads" who settled disputes and contentions, with political authorities like the Samutiri Raja or any sultan rarely interfering, even in criminal cases.¹⁸

The legal culture of the coastal Shafi'is coalesced around the Jum'a *masjid* in localities called the *mohallas* and in traditional households called *taravatus*, where cases were adjudicated.¹⁹ Legal expertise was the preserve of the Tamil Maraikkayars and their contemporaries, the Makhdum family of jurists, who had migrated from Arabia and the Tamil coast to settle in the port of Ponnani, and *qazis* were selected from within the local influential families of the 'ulama. While capital punishment was administered by the warrior chiefs or Hindu kings, the *qazis* worked towards the upkeep of order and well-being in the community.²⁰ They would arbitrate commercial, social, and religious matters and conflicts, even handle minor criminal offenses, issue *fatwas* as jurisconsults (*muftis*), read the Friday prayer (*khutba*) in the mosques, and conduct marriages. Whether hereditary or chosen from locally influential learned families, the *qazis*

¹⁶ Dames, M. L., (ed. & trans.), *The Book of Duarte Barbosa*, Vol II (London, 1921), 123–24.

¹⁷ *Ibid.*, 26–27.

¹⁸ Elizabeth A Lambourn, "India from Aden – Khutba and Muslim Urban Networks in Late Thirteenth-Century India," in *Secondary Cities and Urban Networking in the Indian Ocean Realm, c. 1400–1800*, ed. Kenneth Hall (Lexington Books, 2008), 75; Michael Pearson, "Islamic trade, shipping, port-states, and merchant communities in the Indian Ocean, 7th–16th Centuries," in *New Cambridge History of Islam, Vol. III*, ed. M. A. Cook (Cambridge University Press), 325–26.

¹⁹ Thanks to V. Kunhali (University of Calicut) and Abdur Rahman Mangad (Mappila Heritage Library) for providing this information on January 6–7, 2020, at Malappuram, Kerala. For a discussion on *mohulla* and Maraikkayar houses in the commercial towns of the Tamil country, see Bayly, *Saints, Goddesses, and Kings*, 85.

²⁰ See Zayn al-Din ibn 'Abd al-Aziz al-Malibari *Tuhfat al-Mujahidin: A Historical Epic of the Sixteenth Century* translated by Muhammad Husayn Nainar (Kuala Lumpur: Islamic Book Trust, 2009), 46; Zayn al-Din al-Malibari, *al-Ajwiba al-'Ajiba 'an al-as'ila al-ghariba* (Kuwait: Dar al-Deyaa, 2012) for the functions of *qazis* and *fatwas* on a range of legal problems in sixteenth-century Malabar. This source is henceforth cited as *al-Ajwiba*; P.P. Mammad Koya Parappil, *Kozhikkotte Muslimkalute Charitram* (Calicut: Focus Publications, 2012), Chapter 13.

were elected and appointed by local Muslim notables who figure in Arabic sources from the sixteenth to the nineteenth centuries as *ahl al-hall wa-l-'aqd* (the people who loosen and bind), *ahl al-ikhtiyar* (the people who choose), and *'a'yan al-bilad* (notables of the country); and as *nagarakkar* (notables of town) and *pradhanikal* or *pramanikal* (eminent ones) in vernacular Arabi-Malayalam sources.²¹

These local notables comprised a group of scholars or the political elite, including the 'ulama, who chose or "elected" the most suitable candidate as the supreme leader of the community, like the caliph, and functioned as his counselors in the classical tradition of Sunni Islam.²² They held the power to select, appoint, and dismiss the supreme ruler. Adopting the institution that appointed the supreme ruler to appoint the *qazi* as a local leader indicates a form of quasi-political power that the 'ulama enjoyed in the South Indian littoral and what Duarte Barbosa had most likely witnessed. The election of *qazis* was also always ratified by the rest of the people in the respective locales. The election was thus said to be in the hands of the "people of the town" or the *ahl al-balad*. Occasionally, the elected *qazis* also received the nominal recognition of influential Hindu kings and warrior chiefs like the Samutiri Raja in Calicut who could even appoint and dismiss the *qazis* on their own and who most often remunerated the *qazis* for the services they offered in the towns. No wonder the leading Muslim jurist of Malabar, Zayn al-Din al-Malibari (d. 1583), who had himself been appointed the *qazi* by the "people of his town" (*ahl baldatihi*) in Ponnani,²³ held the region as part of "abode of Islam" or *dar al-Islam* where Muslims lived happily under the friendly non-Muslim *rajas*; they could fulfill their obligations, implement their laws, and even get the *rajas* to remunerate their *qazis* and muezzins.²⁴

Notably, though, juristic discourse stipulated community-elected *qazis* only as a measure of emergency and not a standard legal norm. Such *qazis* were valid only as a provisional measure, often as leaders during moments of interregnum

²¹ This category of Muslim notables appears in a wide range of sources. Zayn al-Din's *al-Ajwiba* offers most details. Among vernacular sources written in the Arabi-Malayalam script is a collection of fatwas titled *al-Radd al-Kontotti* compiled by KitaKatta Virankutty Musliyar between 1840 and 1860. Thanks to Muhammad Abdul Sathar for granting me access to the manuscript copied by his great-grandfather. Oral depositions and testimonies of Mappila traders in British Malabar preserved in the Kerala Regional Archives (KRA) offer another set of perspectives on the *qazi's* elections.

²² See Muhammad Qasim Zaman, "Ahl al-Hall wa-l-'aqd," in *Encyclopaedia of Islam, Three*, eds. Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, and Everett Rowson (Consulted online on 3/31/2019) https://doi.org.ezproxy.princeton.edu/10.1163/1573-3912_ei3_COM_0027; Wael Hallaq, "Ahl al-Hall Wa-al-'Aqd" in *The Oxford Encyclopedia of the Islamic World*, ed. John L. Esposito (Oxford University Press, 2009).

²³ al-Malibari, *al-Ajwiba*, 206.

²⁴ Sebastian Prange, *Monsoon Islam: Trade and Faith on the Medieval Malabar Coast* (Cambridge University Press, 2018), 145; Nainar trans. *Tuhfat al-Mujahidin*, 15, 45-46; and Mahmood Kooria, "An Abode of Islam under a Hindu King," *The Journal of Indian Ocean World Studies*, 1, (2017): 93-96. al-Malibari is said to have pioneered the matter, given the idea that non-Muslim sovereigns could rule within *dar al-Islam* was unprecedented in Shafi'i tradition at the time. See Kooria, *Islamic Law in Circulation: Shafi'i Texts across the Indian Ocean and the Mediterranean*. (Cambridge University Press, 2022), 249-50.

in history, until the *qazi* could be appointed by the Muslim sovereign in the region.²⁵ But the *longue-durée* absence of a Muslim sovereign in coastal South India turned measures of exception into long-standing customs. Shafi'i authorities in Cairo and Arabia validated *qaziship* practices in the region as legitimate and enforceable because it served the purpose of necessity (*al-darura*) to look after public interest and welfare (*masalih*).²⁶ It is reasonable to argue, then, that this custom of electing *qazis* was part of a littoral tradition of South India, in what Engseng Ho calls "creole" societies formed by Shafi'is in the region,²⁷ that offered the 'ulama an institutional framework to construct and legitimize their power and agency. The practice also limited the *qazi*'s jurisdiction to the town he served, which fitted into the fragmented political structure that characterized the littoral of Kerala and Tamilnad.

Even the Nawabs of Arcot (1698–1855) operating under the auspices of Mughal sovereignty in the Deccan did not bring the disparate legal norms of Tamil Shafi'is into a standardized sultanic order. Between 1710 and 1740, the Nawabs themselves were Navaiyat Shafi'is from the Konkan coast,²⁸ and the Urdu-speaking Wallajah Nawabs from 1744 reinforced the Tamil Shafi'is' legalism in the region. While the Wallajahs continued to recruit Navaiyats as *qazis* to serve their court—the *mahkama*—they appointed Tamil Shafi'is as town *qazis*, bestowing titles and remunerations on influential groups like the Maraikkayars to connect with the wider Muslim world and consolidate their rule in the region.²⁹ Nawab Anwaruddin Khan (r. 1744–49) had thus appointed the distinguished "scholar-jurist" Muhammad Abu Bakr, a Labbai of noted Maraikkayar lineage, as the *qazi al-quzat* of Madras and its surrounding districts who then received a *sanad* (deed of appointment) from the Nizam at Deccan to fulfill his duties.³⁰ He attended the public Courts of Justice in Madras and served the Muslim merchants trading at the port, with the English Governor of Fort St. George granting him another *sanad* in 1799.³¹ It is to this office of the *qazi al-quzat* that Qamar al-Din Ahmed would lay his claim some generations later in 1870. As an office rooted in a vernacular jurisprudential tradition recognized and endorsed by the region's Muslim-ruled states³² and then the East India

²⁵ Above references on Mawardi, Ibn Hajar, and Zayn al-Din all refer to this aspect. Also see Maribel Fierro, "The Qadi as Ruler," *Saber religioso y poder politico en el Islam*. (Granada: Agencia Espanola de Cooperacion Internacional, 1994), 71–116.

²⁶ al-Malibari, *al-Ajwiba*, s'ual (question) 166, 198–207; I draw the definition of "darura" from Hallaq, *Authority, Continuity, and Change in Islamic law*, 212.

²⁷ Engseng Ho, *The Graves of Tarim: Genealogy and Mobility across the Indian Ocean* (University of California Press, 2006), 99–102.

²⁸ Bayly, *Saints, Goddesses and Kings*, 97–100 and 152–154.

²⁹ *Ibid.*, 173. I thank Sylvia J. Vatuk for information about the *mahakama*.

³⁰ India Office library and Records (IOLR)/P/240/44, Madras Public Consultations, 29th July to 31st December 1777.

³¹ NAI, HJA., Feb 1876, File 42–81, K.W. Petition attached to Letter No.380 from the Chief Secy to the Govt of Madras to the Secy to the Govt of India, dated Fort St George, 13th March 1873.

³² Prior to the Nawabs of Arcot, during the brief campaign of Delhi sultan Ala al-Din Khalji (1310–11) in Madura that added the port town of Kayal to its territory, the sultan had conferred *qaziship* on the sons and grandsons of the Shafi'i 'alim Jamal al-Din Ma'bari al-Mufti who was sent from Egypt to South India in the early thirteenth century to serve as the *qazi* of the Tamil coast. His son Sayyid Ala

Company (henceforth Company), *qaziship* in colonial Madras would become the focal point of contending traditions of Indian Muslims in the latter half of the nineteenth century.

The Colonial Bureaucracy and the Appointment of Qazis

Company officials did not or, rather, could not easily bring under control the community-elected *qazis* of Madras Presidency. As historian Margaret Frenz notes for Malabar, the jurisdiction of British courts introduced in the region always followed the Bengal code, overriding practices of local authority.³³

The regulation on *qazis* in the Presidency appeared in 1808, following the 1801 annexation of the Carnatic and the major reorganization of the judicial system in 1802. But the regulation followed the precedent from Bengal and fully replicated the Regulation XXXIX of 1793, the earliest colonial regulation on *qazis* in British India issued by the Governor-General Lord Cornwallis. In keeping with the Mughal administrative practice of appointing *qazis*, the Company could only appoint those *qazis* who had already received royal patronage like the Madras *qazi al-quzat*. In a region that had not received systematic sultanate patronage, however, most South Indian *qazis* did not receive permanent *sanads* issued by the Nizam, Nawab, or the precolonial regimes.³⁴ The vast majority of them were customarily “elected” by the “Mohamedan community.” They either sustained on their own mercantile wealth or—as was often the case—were remunerated by the regime that exercised jurisdiction over those *qazis*.³⁵

As such, after 1808, the Governor-in-Council could appoint only a small number of *qazis* in South India (as few as 80 *qazis*), including the *qazis* appointed to serve the British styled courts. The latter were almost exclusively drawn from Muslim scholars of Northern India visible in the Carnatic region from the time of Wallajah Nawabs who hailed from the service gentry of Gopamau in Awadh.³⁶ The Tamil- and Malayalam-speaking Muslim scholars remained largely alienated from the British court structure.³⁷ Their scholarship in law, theology, and literature continued to

al-Din was appointed the *qazi* of Kayal and his brother Sayyid Taj al-Din (or his son Taj al-Din bin Jamal al-Din) the *qazi* of Madura and the Khalji army. See Mehrdad Shokoohy, *Muslim Architecture of South India: The Sultanate of Ma'bar and the Tradition of Maritime Settlers on the Malabar and Coromandel Coasts* (Routledge, 2003), 70 and 50–52.

³³ Margaret Frenz, *From Contact to Conquest. Transition to British Rule in Malabar, 1790–1805* (New Delhi: Oxford University Press, 2003), 102–103.

³⁴ My conclusions are based on two sets of lengthy proceedings on *qazis* in British India: Madras Judicial Progs (MJP), 20th August 1867, Prog No. 230—251; NAI, Home Judl A, 19th Jan 1865, File 48—108, handwritten notes, 21—35.

³⁵ *Ibid.*, 21–22.

³⁶ Kokan, *Arabic and Persian in the Carnatic*, 9; Sylvia Vatuk, “Islamic Learning at the College of Fort St. George in Nineteenth-century Madras,” in *The Madras School of Orientalism: Producing Knowledge in Colonial South India*, ed. Thomas Trautman (Oxford University Press, 2009).

³⁷ Vatuk, “Islamic Learning at the College of Fort St. George in Nineteenth-century Madras,” 57–60.

flourish in their own regional centers of learning while sharing affinities with contemporaries in Arabia and Southeast Asia.³⁸

The policy on *qazi* appointment by the Governor-in-Council was overturned in 1811 and the duty was vested with the civil court (Sadr Adalat).³⁹ But that policy was itself rescinded in 1822, leaving the mode of appointment undefined.⁴⁰ Company officials presided over the appointment of those *qazis* wherever the office was hereditary but the *qazi's* office otherwise remained devolved on the community.⁴¹ The vast majority of *qazis* (estimated to be 672) continued to be customarily “elected” by community members. The Company did not reorient or interfere in this tradition after 1808. For that matter, the 1808 Regulation even ascribed to the *qazis* the duties they performed under the preceding “native government.”⁴² The Company endorsed some of the *qazis* only in so far as continuing their land endowments (*inam*) and monetary payments wherever indigenous regimes had granted them.⁴³ It did no more than nominally uphold the *qazi's* office in select towns like Madras.

Matters came to a head when the British Raj revoked official appointments and remunerations of *qazis* in the Indian territory in the 1860s because the functions of indigenous law officers had become redundant in British colonial courts.⁴⁴ The tradition of community-based Muslim judgeship now opened up a new can of worms. *Qaziship* as an institution bewildered the British and became a site where the precarious balance between religion and territoriality was tested for the British Raj.

Dismantling the Office of the Qazi—Dilemmas, Delusions, and Difficulties

As the British Crown assumed direct rule over India following the 1857 Rebellion in North India, it pledged to withdraw all forms of interference from religious and customary domains of Indians. Accordingly, it annulled all official appointments of *qazis* by the Act XI of 1864.

The rebellion was a set of large-scale and widespread military and civilian uprisings that broke out in Meerut in Northern India on May 10–11, 1857.⁴⁵ The sepoys in the Company army had mutinied. Although rooted in deep socioeconomic grievances, the immediate trigger was religious discontent against

³⁸ *Ibid.*, 62.

³⁹ Tamil Nadu Archives (TNA), Trichinopoly District Collectorate, Vol. 4391, dated November 28, 1826, 261–70.

⁴⁰ *Ibid.*

⁴¹ TNA, Malabar District Collectorate, Vol. 4385, dated 1831, 181–85.

⁴² Regulation contained in *Regulations and Acts in Force In, Or Applicable to the Madras Presidency, Relating to Revenue Matters, from 1802 to 1882* (Higginbotham, 1882).

⁴³ NAI, HJA., 19th Jan 1865, File 48-108, Handwritten notes, 21.

⁴⁴ *Ibid.* Letter from Commissioner of the Bhaugulpore Division to the Secretary to the Government of Bengal, No: 101Ct., dated 11th March 1859.

⁴⁵ See Sugata Bose and Ayesha Jalal eds., *Modern South Asia: History, Culture, Political Economy* (Routledge, 1998) Chapter 9, and Erik Stokes, *The Peasant and the Raj: Studies in Agrarian Society and Peasant Rebellion in Colonial India* (Cambridge University Press, 1980).

earlier reforms that the Company had introduced. Many ‘ulama allegedly played a role in the rebellion too, and British officials deemed the uprising a conspiracy fomented by Muslim fanatics. They were therefore wary of appointing them in any official capacity like *qazis*. And in doing so, the British, in a signal error, perceived *qazis* as “priests”—a mistaken assumption of a theological head that does not exist in the Muslim world. The Secretary of State for India, Lord Stanley, extended the separate spheres of government and theological belief in the Western world to the “Mahomedan religion.”⁴⁶ And the colonial government wanted to stay away from this imagined “sacerdotal” office of the *qazi*.⁴⁷

The decision to dismantle the *qazi*’s office was fraught. The Government of North India (the Northwestern Frontier Province) argued that the office of the *qazi* was created and sustained by “Mahomedan law” and that the British Government did not have the capacity to dismantle or remake an institution that it did not create in the first place.⁴⁸ The Lieutenant-Governor of Bengal disagreed. He recommended that the *qazis*’ power be regulated by simply altering their appointment deeds (the *sanads*) so they become nothing more than registrars for marriage and divorce for the Muslim populations. This would serve the British the crucial purpose of keeping *qazis* as the sole preservers of marriage, dower, and divorce deeds—documents indispensable to the management of property. But this measure nonetheless carried the risk of intervening in the indigenous, religious matters of Muslims, from which the British Government pledged to stay away.

This dilemma over managing the *qazi*’s office shaped the confused way in which the Act XI of 1864 was framed. The Act withdrew all forms of government support for *qaziship* but did not specify anything about the *qazis*’ redefined role in the administration of Muslim marriages and divorces. “Kazis, whether those who have heretofore been appointed by the Government or those who have established themselves to the satisfaction of the community in which they live,” the legislation stated, “will be free to discharge their functions subject only to a reference to a court of justice in case of dispute.”⁴⁹ It reflected the British government’s hesitancy and skepticism in handling indigenous institutions in the colony.⁵⁰ For it also stated that it did not intend any “direct or express prohibition or abolition” of any office prescribed by Mahomedan law.⁵¹ It did not want to cause Muslims any inconvenience.

The 1864 Act, thus, caused a great deal of confusion both for the British Crown and Indian Muslims. The problem of registering Muslim marriages and

⁴⁶ NAI, HJA., 19th Jan 1865, File 48-108. Letter from Commissioner of the Bhaugulpore Division to the Secretary to the Government of Bengal, No: 101Ct., dated 11th March 1859.

⁴⁷ NAI, HJA., 7th Jan 1871, File 1—3. Circular titled “Appointment of Cazies.”

⁴⁸ *Ibid.*, 18-19. NAI, HJA, Feb 1876, File 42-81, K.W. Letter No: 525, from H.R. Madocks, Esq., Offg Commissioner of the Bhagalpore Division to the Offg Secy to the Govt of Bengal, Judicial Department, dated Bhagalpore, 24th April, 1871.

⁴⁹ *Ibid.*

⁵⁰ NAI, HJA., 19th Jan 1865, File 48—108. Memorandum, 18.

⁵¹ *Ibid.*, p. 53. Letter No: 501A, From George Couper Esq., Secy to Govt of Northwest Provinces to the Secy to GOI, Home Dept, Fort William, dated 10th March 1860. Emphases in the quote are mine.

divorces was most pressing. According to the Shari'a, no *qazi* is required to validate a Muslim marriage. Any '*alim* or learned Muslim could perform the ceremony. In Bengal and North India, *qazis* only registered marriages in the rural areas especially when an ordinary '*alim* could not be found to draw up dower deeds.⁵² The *qazi*'s register in Bengal and Bombay Presidencies was more "generic." It recorded the separation or termination of Muslim marriages among a range of familial agreements that often also included marital ties.⁵³ However, if *qazis* were not necessary to a Muslim marriage contract, they were universally required in validating the '*iddah* (the waiting period before the divorced or widowed can remarry) as well as in sanctioning divorce arrangements. So the Act of 1864 endangered the right of a Muslim woman to divorce and dissolve her marriage. This problem would plague Muslim lives in colonial India well into the twentieth century.⁵⁴

The community-based *qazis* of South India Shafi'is, on the other hand, were popularly regarded as the singular authority empowered to validate *all* Muslim marriages and marriage contracts, grant divorces, and maintain the records of births and deaths.⁵⁵ The Tamilian Labbais, for instance, were the sole custodians of marriage registers (*kaduttams*) that comprised the only written evidence of marriage, dower, and property, and proved extremely useful during any dispute or tribunal over marriage and property.⁵⁶ In the wake of the 1864 Act, endowments and monetary payments of South Indian *qazis* who had either been appointed or paid by the British were fully assigned to all the Muslim settlements so that they could endow and sustain their own *qazis*. This policy was uniformly enforced in British India. Although the Regulation III of 1808 had long declared the *qazi*'s office in the Madras Presidency to be non-hereditary, land endowments in practice continued "in the same family" for generations and took on a hereditary character as they did in most parts of India. The British did not want to deprive the "natural holders of property" of what had clearly been their means of subsistence.⁵⁷

The assigning of *all* powers of appointment and remuneration to the Muslim community thus bred a different set of problems after 1864. While it invalidated the *qazi*'s office for most Muslims, especially those who were bound by their school of law to have *qazis* appointed only by the ruling government, most *qazis*

⁵² Very commonly in Bengal and parts of Northern India, marriage ceremonies were performed or celebrated by self-proclaimed *qazis* or any '*alim*. It did not constitute a legal custom or necessity. See NAI, HJA., 19th Jan 1865, File 48—108, p. 53. Letter No: 501A, dated 10th March 1860 and NAI, HJA., Aug 1881, File no: 234—244. Note by Nawab Abdul Luteef on 19th January 1869.

⁵³ Elizabeth D. Lhost, *Between the Community and Qānūn: Documenting Islamic Legal Practice in Nineteenth Century British India* (PhD thesis: University of Chicago, 2017), 235 and Chapter 3, especially 235–241.

⁵⁴ See Rohit De, "Mumtaz Bibi's Broken Heart: The Many Lives of the Dissolution of Muslim Marriages Act, 1939," *Indian Economic and Social History Review*, Vol. 46 (1), 2009: 105–130.

⁵⁵ MJP, Prog no. 1123—1124. Enclosure 1; Major P. Holland-Pryor, *Mappillas or Moplabs compiled under the orders of the Govt of India* (Calcutta: Office of the Superintendent, Government Printing, 1904), 38–41.

⁵⁶ See NAI, HJ., Nov 1886, No: 273—282.

⁵⁷ NAI, HJA., 12th June 1865, File 15—17. Memorandum of Hon'able Mr. Taylor.

in South India retained their power and autonomy. Officials writing from Madras, though, could not tell who held the power to make valid appointments and how, when the government did not.⁵⁸ Those among them who had enjoyed government remuneration or appointment under the Regulation of 1808—like Muhammad Abu Bakr and his successors—now felt deprived of their newfound power and authority. At the death of the incumbent *qazi al-quzat* at Madras, Qamar al-Din Ahmad felt entitled to succeed as one of Abu Bakr's lineal descendants. But the British government refused to appoint any successor. When the Sunnis of Madras took to their tradition to elect their *qazi*, the British dismissed the procedure as invalid. This caused considerable confusion for Muslims who had long had a tradition of electing *qazis* by local Muslim notables wherever the state could not appoint one. They were in a stalemate.

Appointed and endowed by the Nawab of Arcot and the Nizam of Hyderabad, the Madras *qazi al-quzat* was among the very few Shafi'is that the British had appointed in South India prior to 1864. But they were now left without any legal means to ratify an office and its remuneration, which the British otherwise declared essential to the religious life of Muslims. This led to jurisdictional confusion among *qazis*, duplication and forgery of marriage registries, and even sanctioning of marriages and divorces not allowed in Islam. It also thus gave rise to tensions and disputes in Muslim households. Over the next decade, between 1870 and 1877, Muslims from Madras repeatedly petitioned the British government that the sudden lack of a legitimate *qazi* had caused them much "harm" and "damage," putting their religion of Islam at risk.⁵⁹

How could the British Government refuse Muslims their principal legal office, or indeed any institution maintained by their own laws and customs, while clearly acknowledging its continuity in their imperial legislation?⁶⁰ Was it not scandalous when the British in 1858 had just only pledged they would let such indigenous institutions be?⁶¹ By raising such questions, over two thousand Muslims from Madras invoked the anomaly of imperial proceedings:

Your petitioners humbly submit that, after the Proclamation of Her Most Gracious Majesty hereinbefore mentioned, they had a right to expect that such *laws and customs* as appertained only to themselves and *regulated and maintained their own social and religious institutions* and in no way affected any others of the subjects of this realm should be duly respected and that their society should not be suffered to grow *disorganised and demoralised* and permitted to become a scandal to the State by the hasty and ill-considered repealing of such laws and statutes as had previously maintained order, while existing endowments amply sufficient for the

⁵⁸ See, for instance, IOLR/L/PJ/5/28. (Paper No. 3) Letter no. 85, from the Hon. P. O'Sullivan, Advocate-General, to the Chief Secy to Govt., dated Madras, 18th February 1880.

⁵⁹ MJP, 4th May 1877, Prog. 1123—1124. Enclosure 1. Also see NAI, HJA., Feb 1876, File 42-81, K.W. Petition attached to Letter No. 380, from the Chief Secy to the Govt of Madras to the Secy to the Govt of India, dated Fort St George, 13th March 1873.

⁶⁰ MJP, 4th May 1877, Prog. 1123—1124. Enclosure 1.

⁶¹ *Ibid.*

maintenance of due order are diverted by the State *against the will of the community and without their consent* from their legitimate objects.⁶²

It must be noted here that Muslims at the time were a demographic minority in the Madras Presidency. According to the 1871 census, they only comprised 5 to 6 percent of the inhabitants of the Presidency.⁶³ Among these Muslims, the largest majority were the Shafi'is of Malabar, the Mappilas, accounting for one-third of all the Muslims, followed by the Tamil Shafi'is, the Tamil Hanafis and the Dakhnis. But none of these Muslims, or the 'ulama among them, had troubled the British Empire during the 1857 rebellion that officials would worry about appeasing them. Yet, their voice was significant enough to drive the British imperial government to re-enact its legislation.

Of course, Madras was a principal administrative center of British India, and voices of dissent drew attention. Besides, the *qazi al-quzat* as a Shafi'i stronghold was deemed one of the highest Muslim religious authorities in the region, even by the Mappilas.⁶⁴ Calls to restore it garnered considerable support from the 'ulama and leading Muslims of the region, with the likes of Nawaz Salar Jung (r. 1853-1883), the then prime minister serving the Nizam in Hyderabad, and the Prince of Arcot who would also endorse the later Kazis' Bill.⁶⁵ In various capacities, they had patronized the operations of Arab and Tamil Shafi'is in South India. Hyderabad in eastern Deccan had further attracted large-scale Arab immigrants since the late eighteenth century.⁶⁶ In fact, by the mid-nineteenth, Arabs were more numerous in Hyderabad than in any other Indian province, with Salar Jung's policies energizing their interests to pursue empire-building ambitions in south Arabia (Hadramawt).⁶⁷

It was in this context that the Tamil Shafi'i Qamar al-Din Ahmad pressed his claims to succeed to the chief *qazi's* office in 1870, questioning the British Empire's jurisdictional claim over the different legal traditions of Indian Muslims and their institutional operations. He implicitly tied the power of *qazis* to the question of territoriality of British India as *dar al-Islam* ("domain of Islam") and the Madras High Court could not shelve it too easily. It was this dynamic that would determine subsequent legislation on *qazis*, irretrievably transforming the institution.

⁶² *Ibid.* Emphases added.

⁶³ W.R. Cornish, *Report on the Census of the Madras Presidency, 1871*, Vol I (Madras: Government Gazette Press, 1874), 71.

⁶⁴ See *Peasant Protests and Revolts in Malabar*, ed. K.N. Panikkar (New Delhi: Indian Council of Historical Research, 1990), 97.

⁶⁵ For the former, see NAI, HJA., Feb 1876, File 42-81, K.W. Letter by Demi-Official of Salar Jung to Major W. Tweedie, dated Haidarabad, the 7th June 1871—forwarded with Letter no. 8 from the Resident at Haidarabad to the Secy to the Govt of India, dated 15th June 1871. For the latter, see IOLR/L/PJ/6/28. Enclosed in MJP of 19th March 1880. Prog No: 158. Letter from Ahmed Mohideen Khan Bahadur, Secy to His Highness the Prince of Arcot to the Chief Secy to Govt, dated Amir Mahal, 6th March 1880.

⁶⁶ Omar Khalidi, "The Hadrami Role in the Politics and Society of Colonial India, 1750s to 1950s," in *Hadrami Traders, Scholars, and Statesmen in the Indian Ocean, 1750s-1960s*, eds Ulrike Freitag and William Gervase Clarence-Smith (Brill, 1997), 72-75; Alavi, *Muslim Cosmopolitanism in the Age of Empire*, 93-94.

⁶⁷ Freitag, *Indian Ocean Migrants and State Formation in Hadramawt*, 217-218.

Reinstating the Qazi in the Colony: The Kazis' Act XII of 1880

The British Government put off the matter of the *qazis* for a while and sought to address the conundrum by appointing a Muslim for “voluntary” registration of Muslim marriages and divorces. The Mahomedan Marriage Act was enacted in Bengal in 1876 and appointed a Muslim official in the name of a “qazi” so that Muslims could register their marriage and divorce contracts with him *if* they so desired.⁶⁸ It had nothing to do with the institution of *qaziship* and failed to have any influence over rural Muslim populations.⁶⁹ The British probably already knew this. But they trod carefully, being aware of the difficulties that reviving a religious institution might potentially bring. By providing for “voluntary” registration, they hoped to stay away from enforcing any compulsion that could irritate Muslims. Writing in March 1880, Secretary to the Mahomedan Literary Society of Calcutta and member of the Legislative Council, Moulawi ‘Abd al-Latif recognized the problem and acknowledged that the Marriage Act did no good. The problem of registering marriages and their disputes could only be resolved, he argued, by reappointing the *qazis* so they could be *ex-officio* registrars as usual.⁷⁰ But how exactly should *qazis* be reconstituted in the colony that was the heart of the British empire?

What came to be called the Kazis’ Bill and subsequently the Kazis’ Act XII of 1880 was a piece of legislation that was extended only to the Madras Presidency with the provision to enforce it, if necessary, in any region of British India. It repealed the Act XI of 1864 and empowered the colonial state to appoint a Muslim candidate as the *qazi al-quzat* of a city, town or pargana—in consultation with the “principal Muhammadan residents of such local area”—to be authorized to attend to any rites, rituals, ceremonies, and marriages held by the Muslim communities.⁷¹ This was, in essence, a revival of the colonial regulations on *qazis* from 1793 but it was deemed more outrageous by governors in provinces like Punjab, among others, because it did not ascribe any judicial power to the *qazis* whatsoever. It only offered a legal footing to the “customary practices” of Muslims that had previously been left undefined.⁷²

The Lieutenant-Governor of Punjab, for one, expressed some apprehension if the Kazis’ Bill became law.⁷³ He was opposed to its enactment unless the British government authorized the newly appointed *qazis* to perform duties that only a *qazi* could fulfill. Colonial officials from the Northwest Provinces and Oudh echoed similar sentiments, as did a considerable number of Muslims who were

⁶⁸ Details about the Bengal case are drawn from NAI, Home Judl B, January 1876, Files 88-91 and 92-102.

⁶⁹ See NAI, HJA., Aug 1881, File no: 234—244. Letter No: 2380J, dated Calcutta, 6th June, 1881.

⁷⁰ IOLR/L/PJ/5/28. Correspondence No: 9. Letter dated Sealdah Court, 10th March, 1880.

⁷¹ Act attached to IOLR/L/PJ/5/28.

⁷² IOLR/L/PJ/6/7, File 340 (Jan-Feb 1880), 13.

⁷³ IOLR/L/PJ/5/28. Paper No: 11. Letter No: 1643, from W.M Young, Esq., Secy to the Govt, Punjab and its Dependencies to D. Fitzpatrick, Esq., Secy to the Govt of India, Legislative Dept, dated Lahore, 27th April 1880.

opposed to the bill.⁷⁴ They thought it would arrogate to *qazis* a power that they were not supposed to enjoy and thereby open up possibilities for aggression. Most importantly, a Bill that intended to upend *qaziship* by raising hopes of reviving the actual office would inevitably annoy the Muslim community.

It is necessary, therefore, to appreciate the circumstances that warranted the British Raj to go ahead with the legislation in the face of stiff opposition. What prompted it to rethink its political wisdom of non-interference in the religious, customary matters of its subjects? To be sure, the British had thus far argued that continuing to appoint *qazis* would be a “grave political error” in the colony because the ‘ulama performed religious duties of Muslims anyway and there was no need to meddle in their affairs by formally handling their appointments to office.⁷⁵ To what extent would a *qazi*’s office be a “legitimate means of influence” among Muslims if a Christian government enacted laws to revive it?⁷⁶ The “Wahhabis” or reformers would not take it well, the District Superintendent of Police at Bankipur in 1871 had convincingly written to the officials in Bengal. Reappointing *qazis* would be a “dangerous experiment” for the British.

At the same time, however, Commissioners in Northern India disapproved of the high-handedness with which the Madras High Court ruled out *qazis* elected by people as legally void.⁷⁷ They called the verdict “pernicious” and hoped their courts would come up with a law that recognized such *qazis*. Muslim organizations like the Anjuman-i-Punjab in Lahore, on the other hand, insisted on the necessity of such *qazis*.⁷⁸ But the “bigots of that creed,” cautioned one Commissioner from Lucknow, would surely turn it into a “grievance” if they were to “so interfere with the Mahomedan religion.”⁷⁹

Opinions, then, were clearly divided on the necessity and propriety of the Act. Some colonial officials suggested reforming the 1864 Act rather than reversing a central policy of the British Raj.⁸⁰ The Legislative Department also observed that the new legislation might indeed generate “considerable conspiracy” in some parts if it was introduced in all of British India.⁸¹ Its “local extent” was therefore restricted to the territories of the Madras Presidency where misunderstanding and distress about the Kazis’ Act was least expected among the Muslim settlements.⁸² Evidently, the circumstances of

⁷⁴ *Ibid.* Paper No. 10. Letter No. 300, from the Secy to Govt, N.W. Provinces and Oudh to the Secy to the Govt of India, Legislative Dept, dated Naini Tal, 6th May 1880.

⁷⁵ NAI, HJA., Feb 1876, File 42-81, K.W. Opinions regarding the appointment of Kazis by Major MacAndrew, Offg Commissioner, Lucknow Division. Emphasis mine.

⁷⁶ *Ibid.* Letter No. 38 Ct, from J.H. Risley the District Superintendent of Police to the Offg Secretary to the Government of Bengal, dated 8th Feb 1871, paragraph 11.

⁷⁷ *Ibid.* “Opinions of Commissioners.”

⁷⁸ IOLR/L/PJ/6/28. Paper No 11. Proceedings of the *Anjuman-i-Punjab* in connection with the proposed Bill for the appointment of persons to the office of the Kazi, dated 22nd Feb 1880.

⁷⁹ *Ibid.* Opinion of Major MacAndrew, Offg Commissioner of Lucknow Division.

⁸⁰ *Ibid.*

⁸¹ NAI, HJA., December 1879, No: 185-189. Letter No: 1221, from the Govt of Madras to the Legislative Department, dated 24th May 1879. (see list of enclosures)

⁸² *Ibid.* Letter No. 31 of 1879, to the Rt Hon’able Viscount Cranbrook, Her Majesty’s Secretary of State for India, dated Ft. William, 19th Dec 1879, from several officials of the British Raj: the then Governor-General of India, Lord Lytton; Member of the Madras Executive Council, A.J. Arbuthnot;

South Indian Muslims were critical yet convenient for the British to go ahead with a controversial legislation like the Kazis' Act XII of 1880. What were the stakes?

The Territorial Status of British India and the Imperial Politics of Reappointing Qazis

I argue that the British Raj reinstalled directly appointed *qazis* to regulate the South Indian Shafi'is whose jurisprudential practices and legal learning had so far remained outside its direct colonial reach.⁸³ But in so doing, officials of the Raj took to the Hanafi legal opinion, then popular in the imperial circles, that British India was *dar al-Islam* (a "domain of Islam") where organizing a holy war (*jihad*) was unlawful and where Muslims ought to have a recognized *qazi's* office to be able to practice their religious duties and laws.⁸⁴ The exercise of reappointing *qazis* was thus deemed a "political necessity" for the British Empire to protect its territorial sovereignty in India.⁸⁵ British India as *dar al-Islam* helped craft a jurisprudential framework within which the British Raj could negotiate with its Muslim subjects their political possibilities in the colony.

The Sunni Muslims in the town of Madras were, of course, prime actors in this venture. But doubts and anxieties about the matter figure mostly in the correspondences of British officials operating from Northern and Upper India. After all, they had every reason to believe that any proposal or measure to reform institutions of Muslims would likely cause some stir in the region given how politically sensitive it was in the aftermath of the rebellion. The "preliminary question," as commissioners from Northern India urged in 1871, "which would underlie all action on the subject" of reappointing *qazis* was "whether in the estimation of the Muhammadan community or by law the territories subordinate to the existing Government of India are Moslem territory (Durool Islam) or foreign (Durool Harb)."⁸⁶ And the British government had reasoned in 1870 that the "existence of a Cazi" was deemed by "all Mahomedans" as "one distinguishing sign of *dar-ul-Islam*."⁸⁷

former Lieutenant-Governor of the North-Western Provinces and the then financial minister in the Governor-General's Council, J. Stratchey; Chief Commissioner of British Burma and soon-to-be Lieutenant-Governor of Bengal, Rivers Thompson; among others. Also see IOLR/L/PJ/6/2, File 76: Dec 1879-Mar 1880. Letter No. 31, from India, dated 19th Dec 1879.

⁸³ MJP, May 2, 1885, G.O. 1169-74, p. 26.

⁸⁴ NAI, HJA., 7th January 1871, File 1—3. Confidential Circular "Appointment of Cazies" addressed to several local governments; Rajarshi Ghose, *Politics for Faith: Karamat Ali Jaunpuri and Islamic Revivalist Movements in British India, circa 1800-1873* (PhD dissertation: University of Chicago 2012), 198-210.

⁸⁵ NAI, HJA., Feb 1876, File 42-81, K.W. Opinion of J.H. Reily, "Abstract of the reports submitted by the officers consulted on the proposal to renew by legislation the practice of appointing Kazis." Forwarded attachment to Letter No. 2898, from S.C. Bayley, Esq., Offg Secy to the Govt of Bengal, Judicial Dept, to the Secy to the Govt of India, dated Fort William, 23rd June 1871.

⁸⁶ *Ibid.* "Opinions of Commissioners regarding the Appointment of Cazies" attached to letter from Officiating Secy to the Chief Commissioner of Oudh to the Secy to the Govt of India, No: 1672, dated Lucknow, 31st March 1871. See the opinion of Mr. Capper.

⁸⁷ NAI, HJA., 7th January 1871, File 1—3. Confidential Circular "Appointment of Cazies."

This form of territorial categorization in the Muslim world implied that lands where the religion of Islam did not prevail would have to be eventually taken over by means of *jihad*.⁸⁸ And any territory was deemed *dar al-Islam* as long as the injunctions of the Shari'a operated therein and a legitimate *qazi* implemented them. Colonial officials thus viewed the restoration of *qazi*'s office as crucial to maintaining British India as *dar al-Islam* by obliterating the possibility of further political subversion or *jihad*. The territorial status of British India as *dar al-harb* or *dar al-Islam* was intensely debated in South Asia and remains the most controversial in the history of Islamic legal classification of colonized lands.⁸⁹ It offered a theoretical scaffolding to the exercise of restoring *qazis*.

For the British, the immediate point of reference was the well-known Hanafi *mufti* Maulana Karamat 'Ali Jaunpuri (1800–73) who had famously issued a controversial fatwa in 1860–61 that radically departed from declaring British India a “domain of war” to declaring all parts of British India “domain of Islam.”⁹⁰ The fatwa was issued in a treatise by Karamat 'Ali titled *Nasim al-Haramayn al-Sharifayn*. He was a follower of Shah 'Abd al-Aziz—son of Shah Wali Allah al-Dihlawi—and Syed Ahmad Barelwi, the architect of the Tariqah-i Muhammadiyah movement, who had called British India a “domain of war” and organized armed *jihad* in North India during Company rule.⁹¹ This opinion of British India as “domain of war” persisted in North India until the 1857 rebellion. Under the British Raj, there was a radical shift in the political view of Tariqah-i Muhammadiyah activists. They tried to denounce *jihad* and conciliate with the British. Karamat 'Ali's fatwa that had originated sometime in the 1850s, in the context of Islamic sectarian conflicts in Bengal, reflected this shift in political discourse.⁹² He now tried to focus on daily piety to help Muslims figure out their religious life within the framework set by the British Empire rather than perpetuate the necessity of *jihad*.⁹³

Invoking the authority of Imam Abu Hanifa, Karamat 'Ali ruled in 1860–61 that a territory did not necessarily become a “domain of war” when a non-Muslim government took it over, as long as Muslims could still implement their

⁸⁸ See Khaled Abou El Fadl, ‘Islamic Law and Muslim Minorities: The Juristic Discourse On Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth centuries’, *Islamic Law and Society*, Vol. 1, No. 2 (1994): 141–42.

⁸⁹ Sarah Albrecht, *Dār al-Islām Revisited: Territoriality in Contemporary Islamic Legal Discourse on Muslims in the West* (Leiden: Brill, 2018), 88.

⁹⁰ NAI, HJA., 7th January 1871, File 1—3. Circular “Appointment of Cazies”; Ghose, “Politics for Faith,” 187–88.

⁹¹ This fatwa is famously ascribed to Shah Abd al-Aziz (1746–1824), son of Shah Wali Allah (1703–1762), considered to be the spiritual guide of the Tariqah-i Muhammadiyah movement. After the English occupation of Delhi after 1803, Abd al-Aziz declared British India as *dar al-harb* which was no longer under Muslim control. However, scholars have argued that he did not issue the fatwa in order to give a call for *jihad* as such but simply to convey the sense that the injunctions of the Shari'a was no longer binding on the Indian Muslims. Abd al-Aziz also clarified his position on this. Harlan Otto Pearson, *Islamic Reform and Revival in Nineteenth Century India* (New Delhi: Yoda Press, 2008), 33–36.

⁹² Rajarshi Ghose, “Islamic Law and Imperial Space: British India as ‘domain of Islam’ circa 1803–1870,” *Journal of Colonialism & Colonial History*, Vol. 15, 1, (Spring 2014), 7–13.

⁹³ Ghose, *Politics for Faith*, 211–226.

law and practice their religion owing to an existing system of *qazis*.⁹⁴ He argued that a valid, recognized *qazi*'s office was the most indispensable feature of any *dar al-Islam*; and since the non-Muslim emperor appointed Muslim *qazis* to administer religio-legal matters in their respective jurisdictions, British India was actually *dar al-Islam* where *jihad* violated terms of the Shari'a and was therefore not legal.⁹⁵ Such an argument had massive political purchase for the British when they were suppressing Tariqah-i Muhammadiyah activists in Punjab and Bengal, the 'ulama who had allegedly rebelled in 1857 were being tried, and the fear of political sedition or "Wahhabism" reigned supreme in imperial discourse.⁹⁶

Soon after Qamar al-Din's legal suit in Madras High Court in March 1870 triggered the debate on *qazi* appointment in India, Karamat 'Ali broadcast his fatwa on November 23 in the Mahomedan Literary Society in Calcutta held under the auspices of its secretary 'Abd al-Latif (1828–1893).⁹⁷ As 'Abd al-Latif along with Sayyid Ahmed Khan (1817–1898) later introduced the bills leading to the Kazis' Act XII, Karamat 'Ali's opinions evidently informed legislative correspondences.⁹⁸ Sayyid Ahmed may not have agreed with Karamat 'Ali's fatwa that British India was *dar al-Islam*, but he acknowledged Great Britain's alliance with the Ottoman Empire at the time and, like 'Abd al-Latif, was invested in dissuading Indian Muslims from organizing or participating in any *jihad* against the British as lawful.⁹⁹ In fact, in 1872, he would opine that Indian Muslims must be allowed to practice their religion and call out the British for committing an "absolute error (*sakht galat*)" by dismantling the *qazis*' offices which many Muslims viewed as interference with their faith.¹⁰⁰ Given this disposition, he must have advocated for resurrecting government-appointed *qazis* as a disciplinary tool to quell anti-British sentiment and potential unrest among Muslims, especially in the Madras Presidency.

Indeed, in 1871, following Karamat 'Ali's speech, colonial officials reported a concerning reality. They narrated that most Muslims believed "Wahhabism" had taken precedence among them ever since the offices of the *qazi al-quzat* and Muslim law officers were dissolved.¹⁰¹ Describing the prevalent Muslim opinion on February 8, 1871, one District Superintendent of Police from Bengal wrote

⁹⁴ Albrecht, *Dār al-Islām Revisited*, 92.

⁹⁵ Ghose, *Politics for Faith*, 191.

⁹⁶ There is a well-developed literature on "Wahhabism" and "Wahhabi" trials in British India that is beyond the scope of this article. See Ayesha Jalal, *Partisans of Allah: Jihad in South Asia* (Harvard University Press, 2008), Chapter 4; Julia Stephens, "The Phantom Wahhabi: Liberalism and the Muslim Fanatic in Mid-Victorian India," *Modern Asian Studies*, Vol. 47, No. 1 (January 2013).

⁹⁷ Ghose, *Politics for Faith*, 193–97.

⁹⁸ NAI, HJA., 7th January 1871, File 1—3. Circular "Appointment of Cazies"; Shamim Firdous, "Role Of Nawab Abdul Latif in The Development Of Modern Education In Colonial Bengal," *Proceedings of the Indian History Congress*, Vol. 76 (2015): 503.

⁹⁹ Ghose, "Politics for faith," 208–09; Jalal, *Partisans of Allah*, 132–35.

¹⁰⁰ Syed Ahmed Khan Bahadoor, *On Dr. Hunter's "Our Indian Mussulmans—Are They Bound in Conscience to Rebel against the Queen?"* (London: Henry S. King & Co, 1872), 90–92.

¹⁰¹ NAI, HJA., Feb 1876, File 42–81, K.W. Letter no. 38 Ct., from the District Superintendent of Police on special duty to the Offg Junior Secretary to the Government of Bengal, dated Bankipur, 8th February 1871.

that “heretical moulvies” were perceived as “usurping” the place of *qazis*.¹⁰² In the same vein, J.H. Reily, the District Superintendent of Police at Bankipur in Bihar, raised alarm that Karamat ‘Ali and his followers now doubted if the obligatory Friday communal (*jumu’a*) prayers should be read in places where no *qazis* were appointed by the government while adherents of movements like the Faraizi, founded by Haji Shariatallah in Bengal, held a more extreme stand on the matter.¹⁰³ A number of Muslims, including the followers of Shariatallah in the districts of Faridpur and Backergunge, argued that *Jumu’a* and Eid prayers read in places without an officially appointed *qazi* would not be acceptable to God, and the latter then reportedly announced British India as “Daroolharub” or “domain of war.”¹⁰⁴ Followers of the Tariqah-i Muhammadiyah movement like Winayat and Enayat Ali, who were generally labeled as “Wahhabi,” followed suit in voicing the difficulties that arose from the absence of official *qazis*. But the latter also declared that Muslims in such places could appoint their own leaders (*sirdar*) to fulfill that want, a phenomenon that many Muslims argued was detrimental to the community’s interests. J. H. Reily called out these developments in the aftermath of the 1864 Act a matter of “serious” and “grave” concern.¹⁰⁵ Reappointing government-authorized *qazis* was expected to strike at the root of these feelings of antipathy by bringing these Muslims under the aegis of a “recognized leader.” As the Secretary of the State to the Government of India noted in 1871:

In fact there can be no doubt, as I have said, that a Mohamedan’s life can hardly be conducted *in conformity with the rules of his religion* where *no proper Cazies exist*; for not only do certain ceremonies require, according to custom, their sanction, but there are perpetually small questions of religious and formal law cropping up in connection with the every-day life of a Mahomedan which should properly be resolved by a Cazi. If no such exist, it gives *a broad opening for a man who is disloyal to the Government to press on a conscientious Mahomedan* that the Government is *not* one that he can properly live under; on the other hand, the use and recognition of a Cazi appointed by Government is virtually, no doubt, a sort of recognition of the authority and lawfulness of that Government. This argument has, I believe, been used freely since the Act XI of 1864, and I have reason to know that even loyal Mahomedans are much troubled on the subject.¹⁰⁶ (emphases mine)

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ On the legality of congregational prayers in *dar al-Islam*, see Yohanan Friedmann “*Dār al-Islām and dār al-harb in modern Indian Muslim thought*” C. Calasso and G. Lancioni ed.s, *Dar al-Islam/Dar al-Harb: Territories, People, Identities* (Leiden: Brill 2017), 355–57; and Ghose, “Politics for faith,” 212–214, for the position of Faraizis on this matter.

¹⁰⁵ NAI, HJA., Feb 1876, File 42–81, K.W. Letter No. 38 Ct., from the District Superintendent of Police on special duty to the Offg Junior Secretary to the Government of Bengal, dated Bankipur, 8th February 1871.

¹⁰⁶ NAI, HJA., 7th January 1871, File 1—3. Circular “Appointment of Cazies”.

Evidently, the British Government was barely reviving the institution in a genuine sense. In the face of Karamat 'Ali's assertion that British India was *dar al-Islam*, the British Raj sought to restore an Islamic institution in order to mitigate the possibilities of future subversion by ensuring that Muslim subjects felt safe in British India and viewed the colonial government as lawful, friendly, and responsible. The concern about formalizing the registration of Muslim marriage and divorce masked the more fundamental question relating to how *qaziship* operated and who held the right to appoint a *qazi* in British India. Indeed, as British officials argued, it would not suffice to merely settle by law or the executive government that British India constituted *dar al-Islam*.¹⁰⁷ The decision would affect every Muslim household and required the "assent of the Mahomedan community." And they figured that an obvious way of gaining such "assent" was to ensure that the everyday religious customs, rituals, and worship continued unfettered for the subject populations. The government appointment of *qazis*—however, nominal in British eyes and merely endorsing their ritual and ceremonial functions—thus carried the prospect of reaping benefits both for the British and their Muslim subjects.

At the same time, though, the British were aware that the circumstances of Muslims in Madras and the Presidency were likely "very different" from those of Awadh in Upper India, and their traditions little understood by their government.¹⁰⁸ Most of them were Shafi'is who appointed their *qazis* as local leaders and had been resisting British rule in Malabar since 1836. The British, in 1806, had also faced their earliest insurgency in the Indian territory at Vellore, in the Madras Presidency.¹⁰⁹ But South India had not caused trouble during the 1857 rebellion. The Nizam of Hyderabad and the Nawab of Arcot had remained loyal, though the Nizam was not without intense pressure from the rebels to join them and rise up.¹¹⁰ The Hadrami Arabs in the Deccan region, moreover, had never been a welcome presence for either the Company or the British Raj.¹¹¹ They were considered a formidable menace that would cause the British significant damage if they were to ever cause trouble. In the face of ongoing discontent from Sunni Muslims of Madras, British officials worried about the way in which they had, after all, dealt with the *qazi's* office. They could not afford to face another uprising. So they wanted to mitigate any possibilities it might have in a region where protests had long been brewing but not yet exploded on the scale they did in 1857 in the North Indian Gangetic plain and Central India. Given the fact that many 'ulama claimed they still enjoyed some

¹⁰⁷ NAI, HJA., Feb. 1876, File 42-81, K.W. Mr. Capper, Commissioner, O Rai Bareli Division, in "Opinions of Commissioners." Emphasis mine.

¹⁰⁸ See NAI, HJA., 19th Jan 1865, File 48—108 and NAI, HJA., Feb 1876, File 42-81, K.W. Opinion of Mr. Ouseley in "Opinions of Commissioners."

¹⁰⁹ James W. Hoover, *Men Without Hats: Dialogue, Discipline, and Discontent in the Madras Army 1806-1807* (Manohar Publishers, 2007), Chapter 7.

¹¹⁰ Omar Khalidi, "The Hadrami Role in the Politics and Society of Colonial India, 1750s to 1950s," in *Hadrami Traders, Scholars, and Statesmen in the Indian Ocean, 1750s-1960s*, eds Freitag and Clarence-Smith (Brill, 1997), 77-78.

¹¹¹ *Ibid.*, 75-76.

juridical autonomy in the region, the British urgently wanted to bring them under control.

The fact of the matter was that the Shafi'i jurists of India and Arabia had traditionally deemed a territory under non-Muslim rulership to be *dar al-Islam*. It was so deemed as long as its settled, resident Muslims were protected and free to practice their rituals and worship, without the fear of losing the ability to do so.¹¹² First articulated by the Shafi'i jurist al-Mawardi (d. 1058), this view was fully developed later in the sixteenth century by Shams al-Din al-Ramli and Ibn Hajar al-Haytami, two noted Shafi'i jurists from Egypt who at the time were well-known among the Muslim settlements of South India.¹¹³ Such religious obligations were extraterritorial by nature and typically entailed everyday rituals, prayers, and private acts of worship.¹¹⁴ Unlike the Hanafis, the Shafi'is did not necessarily require Muslims to fulfill them within the jurisdiction of a Muslim political sovereign but certainly required officially appointed *qazis* to validate the necessities of Muslim life. And in the south Indian context, *qazis* operated as the overseers of Muslim religious life, appointed by a range of authorities beyond local Hindu sovereigns. Appointing a *qazi* was deemed obligatory for Muslims and doing otherwise sinful.¹¹⁵ In fact, Zayn al-Din al-Malibari, one of Ibn Hajar's supposed students, had cautioned the Muslims of the region that there would be *fitna* or disorder in their religion if, at any point, they failed to appoint a *qazi* or the non-Muslim ruler contradicted their decisions and invalidated all rules.¹¹⁶

This notion of Shafi'i *dar al-Islam* as a domain of non-Muslim rule was invoked by Muslims in British Malabar from 1836 onwards, when they attacked Company officials in what historians call "Mappila revolts" with the attacks being sanctioned by Muslim leaders who were elected *qazis* of particular localities.¹¹⁷ I refer here to the well-known collection of *fatwas* called *al-Sayf al-Battar* that is said to have been delivered in the 1840s during these protests by the Tangal Sayyid Fadl (1824–1900) or his father Sayyid 'Alawi (1753–1844), the most influential *qazis* in Malabar.¹¹⁸ Speaking of British India at the time, the *fatwas* had underscored that the territorial status of *dar al-Islam* did not change to that of a "domain of war/unbelief" (*dar al-harb/dar al-kufr*) when infidel forces seized and occupied it, as long as the resident Muslims were able to openly practice their religion (*izhar dinihi*) in the

¹¹² El Fadl, "Islamic Law and Muslim Minorities," 150.

¹¹³ *Ibid.*, 159.

¹¹⁴ *Ibid.*, 158–159.

¹¹⁵ al-Malibari, Zayn al-Din, *al-Ajwiba*, 206.

¹¹⁶ *Ibid.* 206.

¹¹⁷ For an account of these insurgencies, K.N. Panikkar, *Against Lord and State: Religion and Peasant Uprisings in Malabar, 1836–1921* (Delhi: Oxford University Press, 1989) and Stephen Dale, *Islamic Society on the South Asian Frontier: The Mappilas of Malabar, 1498–1922* (Oxford: Clarendon Press, 1980), Chapters 5–8.

¹¹⁸ *al-Sayf al-Battar 'ala Man Yuwalī al-Kuffar wa Yattakhidhuhum min Dun Allah wa Rasulihi wa al-Mu'minin Ansar* in Sayyid Fadl, 'Uddat al-Umara' wa-l-Hukkam li-Ihanat al-Kafara wa 'Abdat al-Asnam (MS in Mappila Heritage Library). For the sake of clarity, I refer to the printed version in Anwar b. 'Abdallah Salim Ba 'Umar ed., *Majmu' Thalath Rasa'il 'Ilmiyya* (Kuwayt: Dar al-Diya', 2018).

occupied territory.¹¹⁹ So the fatwas called on every Muslim to stay on in the occupied *dar al-Islam* and reinstate it by fighting the infidel colonists. It is difficult to know if Company officials had good knowledge of these *fatwas*, although they had deported Fadl to Arabia in 1852 for allegedly inciting the Muslims to rise against them.¹²⁰ But it is nonetheless significant that Fadl published the *fatwas* from the Ottoman territory of Cairo or Istanbul in 1856, right before rebellion broke out in Northern India in 1857, following which Karamat 'Ali's opinion that British India was *dar al-Islam*, largely corresponding with the Shafi'ite view of it, grew increasingly popular in British imperial circles.

When Sunni Muslims of Madras clamored for the reinstitution of their *qaziship*, from 1870 to 1877, they tacitly invoked the conception of *dar al-Islam* then extant among the 'ulama in India and Arabia, prompting officials of the British Raj to give in and restore the *qazi's* office in a way that would meet the needs of their imperial state. For one, Qamar al-Din's 1870 legal suit and accompanying petitions raised serious concerns about a principal institution of Muslims like *qaziship* that they realized they had not governed wisely—or governed rather loosely—and that was still operating on its own as a site of power in the Madras Presidency, disrupting their reality that the office had otherwise been dissolved by them. With discontent brewing since 1870, in the face of the Madras High Court's refusal to recognize the people's *qazi* in Madras, colonial officials had reasons to worry about potential unrest around the issue.

By 1866, there were growing signs of secret correspondence between seditious elements in Southern India and those in Bengal, Lucknow, and Delhi.¹²¹ The Commander-in-Chief of Madras army further pointed to many 'ulama whom he suspected as disloyal "Wahhabis" gaining influence among native soldiers.¹²² They would also attend "Wahhabi meetings" on Fridays, held in Triplicane, Vellore, and Muslim strongholds in Madras, with active assistance of town *qazis*. And in the Arcot region and various adjoining districts, the British deemed large populations of Labbais and Mappilas as "entirely Wahhabis."¹²³ Some relatives of the Nawab of Arcot in the Madras region were also suspected as such while the presence in Madras of the Tamil *sufi* Muhy al-Din Qadiri—a direct disciple of North Indian Tariqah-i Muhammadiya activists—ignited some old fears.¹²⁴ He had been tried as a "Wahhabi" agent in 1842, for allegedly plotting to drive out the East India Company from India, and still wielded considerable influence in Arcot.¹²⁵

Of course, such fears of potential unrest or uprising were usually exaggerated in the shadow of 1857. The British too admitted that the presence

¹¹⁹ *Ibid.*, 180–183, Fatwa 5.

¹²⁰ K.K.M. Abdul Sathar, *Mappila Leader in Exile: A Political Biography of Syed Fazl Tangal* (Calicut: Other Books, 2012), 98–109.

¹²¹ See, for instance, MJP, 13th July 1869, Prog. 52–54.

¹²² Madras Military Prog 14th March 1866, Prog. 375–385, 2299.

¹²³ MJP, 13th July 1869, Prog. 52–54, 1183–95.

¹²⁴ *Ibid.*, 1188–95.

¹²⁵ See Chandra Mallampalli, *Muslim Conspiracy in British India? Politics and Paranoia in the Early Nineteenth-Century Deccan* (Cambridge University Press, 2017), chapter 5.

of their suspected “Wahhabi” Muslims in the region was “numerically insignificant” and not as influential, nor did they carry clear doctrinal proof of being actual followers of Ibn Abd al-Wahhab in Mecca. But colonial officials working on the ground nonetheless alerted the imperial bureaucracy to worrisome consequences that the Act XI of 1864 had brought about in India. By 1870, they reported on the extent to which removing the “influential office” of the *qazi* from “all state control,” and vesting its nomination and remuneration in the hands of the Muslim society, had exacerbated the spread of a more “fanatical religion” among the populations.¹²⁶ What if they caused trouble? What if there was a rebellion again?

The fear of a “Wahhabi” rebellion by the ‘ulama is very palpable in the imperial discussions on reappointing *qazis*. To be sure, the British in India had thus far experienced both extremes of rebellious potentials of the *qazi*’s office. During the 1857 rebellion, the Company-appointed judge Qazi Mia Jan had utilized his religious authority and position as a government official to mobilize men and money in the Jessore District of Bengal and instigated a war against the British government.¹²⁷ The British had seized his papers and property and convicted him in the Ambala trial of 1864.¹²⁸ On the other hand, in the course of discussing the revival of *qaziship* in 1880, the *qazi* of the Khel family in Peshawar city recalled that the population in Kabul was once led by the ‘ulama to rebel against the government over the non-appointment of a *qazi* right after British forces took over the city.¹²⁹

In looking to find a way out of these quagmires and the possibilities of yet another uprising in India, stemming from the Shafi’is and their Arab companions around the Indian Ocean rim, the British Government now drew upon its very own apparatus of Muslim law—the colonized Hanafi or Anglo-Muhammadan law—to reassert and normalize, for once and all, the ruling government’s prerogative to appoint the *qazi*. If reappointing *qazis* was a “political necessity” for the British Raj, it is not surprising that the matter was deemed “urgent” to be enforced as law in the Madras Presidency to bring under control a tradition of autonomous *qaziship* that had long been the bulwark of Shafi’i power. As William Logan, the British Magistrate and Collector of Malabar, would remark in 1885, an “effective control” over the mosques and their *qazis* was the only serious way in which the power of the ‘ulama could be regulated in the region.¹³⁰ And the Kazis’ Act, to that end, sought to flatten the different traditions of religio-political authority that had governed South Indian Muslims. It was the colonial imperative to fulfill the “social and

¹²⁶ MJP, 13th July 1869, Prog. 52-54. Letter from District Magistrate of North Arcot to the Chief Secy to Govt, Fort St. George, dated Gudiattum, 27th January 1866, No. 4.

¹²⁷ NAI, HJA., Feb 1876, File 42-81, K.W. Letter no. 38 Ct., from the District Superintendent of Police on special duty to the Offg Junior Secretary to the Government of Bengal, dated Bankipur, the 8th February 1871, paragraphs 12-14.

¹²⁸ Ranabir Samaddar, *Emergence of the Political Subject* (Sage: Manohar Publications, 2010), Chapter 2, 50.

¹²⁹ IOL/L/PJ/5/28. Paper 11. Opinion of Kazi Khel family attached to letter no. 47, dated 13th March 1880.

¹³⁰ MJP, May 2, 1885, G.O. 1169-74, p. 26-27.

ceremonial wants”¹³¹ of Muslims and secure order in a territory where different sections of the ‘ulama, practicing Hanafi and Shafi’i law, held legal consensus that British India too was *dar al-Islam*.

The Kazis’ Act and its Political Utility for British India

As colonial officials deliberated the question of reappointing *qazis* through the 1870s, they widely weighed authoritative Hanafi opinions from the Indian context to assess whether or not the revival of *qaziship* by a Christian government would provoke any Muslims, particularly the ‘ulama. Besides Marghinani and Jaunpuri, they quoted in their discussions the *Durr al-Mukhtar* by ‘Ala al-din al-Haskafi (d. 1677) in 1871 that spoke of the theoretical permissibility of such appointments, and later the *Fatawa-i ‘Alamgiriyya* compiled by Emperor Aurangzeb (d. 1707) and the *Fatawa Tatarkhaniya* compiled by Shaykh Indarpati (d. 1381).¹³² The Sunni ‘ulama in Lahore offered further opinions to confirm such appointments as “legal” and “meritorious” as long as the *qazi* was not interfered with in his discharge of duties.¹³³

Yet, despite doctrinal support and theoretical endorsement from some ‘ulama, firm opposition from both learned Muslims and European officers remained forceful in different parts of Northern and Upper India. The British Government took heed and halted the possibilities of an active India-wide implementation of the Bill. Indeed, the British government would have taken on a separate religious mantle if they started appointing Muslim religious officials all across India. And that would have created immediate suspicion and surfaced a new set of troubles for the British Raj. After all, the Kazis’ Act finally fully vacated *qaziship* as a juridical institution and, aside from the Madras Presidency, its adoption by local governments remained partial and “piecemeal.”¹³⁴

In the Madras Presidency, by contrast, the British Raj acted in accordance with a long-standing tradition and practice of non-Muslim (Hindu) sovereigns who had either handled appointments of *qazis* or nominally recognized *qazis* already elected by Muslim notables and people of the towns.¹³⁵ The Kazis’ Bill, in a way, recognized that tradition albeit by subtly fixing and subverting it. While the British would not permit plural, overlapping legal or jural traditions in the colony, especially when such traditions authorized the ‘ulama to wield considerable authority, bringing them under direct government control was less likely to provoke them in the South Indian provinces. After all, there had

¹³¹ IOLR/L/PJ/6/7, File 340: Jan-Feb 1880, p. 12.

¹³² NAI, HJA., Feb 1876, File 42-81, K.W. Letter No. 38 Ct, from J.H. Risley the District Superintendent of Police to the Offg Secretary to the Government of Bengal, dated 8th Feb 1871, paragraph 11.

¹³³ IOLR/L/PJ/5/28. (Paper No. 11). Proceedings of the *Anjuman-i-Punjab* in connection with the proposed Bill for the appointment of persons to the office of the Kazi, dated 22nd Feb 1880. Appendix I.

¹³⁴ Lhost, *Everyday Islamic Law and the Making of Modern South Asia*, 98–102.

¹³⁵ Even in Mysore, following the overthrow of Tipu, *qazis* were nominated and appointed by a Hindu ruler. See NAI, HJA., Feb 1876, File 42-81, K.W. Letter No: 5 from C.B. Saunders, Esq., C.B., Resident of Haidarabad to the Secy to GOI, dated Haidarabad, 12th May 1871.

been persistent and active demand for it, with the Hyderabad Nizam's minister backing such demands. Moreover, if anything, the Bill sought to reinforce the local authority of the 'ulama. As the legislation of 1880 explicitly stated, government officials would always factor in the desire and choice of the leading Muslims of an area while appointing a *qazi* in that locale, and the 'ulama were not opposed to coming together in this regard. When opinions were collected on the Kazis' Bill from the Malabar region, for instance, the influential Shafi'is in Muslim majority localities, including those in the colonial bureaucracy at Tellicherry, were most excited about it and rallied around the Bill for its immediate enforcement.¹³⁶

While Lhost's insight that *qazis* were transformed into marriage registrars who produced "marital facts" and legal person of individuals speaks to the immediate reality of the matter,¹³⁷ it falls short of explaining the rationale behind the Kazis' Act. The post-1880 *qazis* were not required to attend *all* Muslim marriages, nor did they relieve Indian Muslims of their actual problems around divorce and re-marrying. This was the age of high imperialism and British officials paid little heed to the actual problems that their Muslim subjects faced. Rather, *qazis* were reintroduced out of an imperial need of the British Raj (to mitigate unrest) that upended the institution in the name of tradition, especially the South Indian tradition, that rendered just enough political legitimacy to the colonial overhaul of religious institutions.

The newly appointed *qazis* were expected to reap political dividends across British India, even in Bengal if the local government gave in to popular demand and chose to appoint *qazis*.¹³⁸ When enacted as law, the legislation provided for appointing learned persons of "exemplary, moral character" as *qazis* in "every centre of population" who would be subordinate to District officers. It was deemed an effective tool to keep the government and masses informed on vital religious matters and assist courts of justice on disputes about Muslim law and custom.¹³⁹ Above all, it was envisaged as a reliable interface between the government and the Muslim populations to weed out seditious activities and "Wahhabism." These *qazis* could exercise some measure of control over meetings and proceedings at mosques, during prayers, festivals, and ceremonies, where Muslims gathered in "thousands," to often intrigue against the government. In districts of Malabar that housed the majority of Shafi'is in the Madras Presidency who continued their agrarian protests against the British Raj, the measure was designed to "strengthen the executive."¹⁴⁰

¹³⁶ KRA, Revenue Bundle 15, SL. 21, File No. 32 dated 12/2/80. Letter no. 120 from Deputy Magistrate at Wayanad to the District Magistrate of Malabar, dated 3rd March 1880. Appended notes.

¹³⁷ Lhost, *Everyday Islamic Law and the Making of Modern South Asia*, Chapter 6; Lhost, *Between the Community and Qānūn*, 312-316.

¹³⁸ IOLR/L/PJ/6/28. Letter from Moulvie Abdul Latif Khan Bahadur to Under Secy to GOB, dated Sealdah Court, 10th March 1880.

¹³⁹ IOLR/L/PJ/8/13. Letter from Town Magistrate to Chief Commissioner, Mysore and Coorg (No: 36, dated 28th Feb 1880).

¹⁴⁰ *Ibid*, Letter No. 556 addressed from Acting Collector of Malabar to Chief Secy to Govt, dated Calicut, 1st March 1880.

Yet, to keep to its claims and rhetoric of non-interference in matters of indigenous customs, the British government recognized that it could not regulate a tradition of autonomous appointment of *qazis* in any absolute sense. The Kazis' Act stated that it would not entirely prohibit anyone from discharging the duties of a *qazi* outside of state appointment if they so wished.¹⁴¹ If the people of a particular mosque were "unanimously attached to any particular Kazi," the District Magistrate of Malabar would report, his removal or replacement by the state did not prevent the discharged *qazi*, once founded on the "good will of the people," to continue to function as such.¹⁴² And the British Raj was willing to grant some leeway in the matter while it transformed, in effect, the institution of the *qazi* as it had historically operated in South Asia.

Conclusion

The imperial politics of the *qazi* in British India have long eluded historical attention, and the colonial transformation of the office considered a dead-letter.¹⁴³ My purpose in addressing them is threefold. First, to foreground the plural legal traditions of Indian Muslims that do not figure in mainstream historical discourse; second, to show that the operation of *qaziship* was always tied to the territoriality of a land as *dar al-Islam* and how the Shafi'i tradition of electing town *qazis* remained a source of power for the British that could potentially create trouble any time; and finally, to demonstrate that the British Raj perceived the relationship between *qazis* and *dar al-Islam* as crucial to maintaining their territorial sovereignty in India. And in the cautious effort to uphold the dynamic, the Kazis' Act re-worked and transformed the juridical value of *qazis* for political exigencies of the British Empire. The titular *qazis* were now both the pawns and agents of the colonial bureaucracy. They would register Muslim marriages and divorces and be a useful intermediary to keep the British informed of their Muslim subjects.

The article, in this vein, recasts the discussion on colonial reform of *qazis* beyond the Act XI of 1864 that is said to have "abolished" the office for Muslims in colonial India. And in so doing, it moves away from the long-standing trend to describe the control and conquest of the Shari'a in South Asia as "totalistic," in terms of "jural colonization," and to speak of the Anglo-Muhammadan law as the only narrative that set the paradigm for governing Muslims across the Empire.¹⁴⁴ I show instead that the British Empire often compromised for convenience; it reconciled with specific regional traditions of Islamic law rather

¹⁴¹ Act attached to IOLR/L/PJ/5/28. See clause 4 (c).

¹⁴² NAI, Home (Judl), October 1887, File 141–142. Malabar District Magistrate's letter, dated 4th June 1887, No. 2789.

¹⁴³ See Uma Yaduvansh, "The Decline of the Role of the Qāḍīs in India, 1793–1876." *Studies in Islam* 6, no. 2–4 (October 1969): 155–171 and Akiko Suehiro, "The Office of the Qazi in the Deccan: An Analysis of British Records," *The Icfai University Journal of History and Culture*, Vol. II, No. 3 (2008): 77–88.

¹⁴⁴ Hallaq, *Shari'a*, chapter 4.1, 375–76.

than import common law principles to upend Muslim juridical regimes. The evidence I present here demonstrates how the British Raj had to accommodate, however unfairly or even uncannily, South India's long littoral tradition of non-Muslim sovereigns who had always recognized Shafi'is and their *qazis* as part of a veritable *dar al-Islam*.

This is not to deny that Muslims faced real legal difficulties after the *qazi's* office was invalidated in 1864. But the Kazis' Act did very little to solve such problems. Documentation in the colonial archive indicates that legislation on property relations was necessary to fully address the problems of Muslim marriage and divorce. And such measures could only be introduced in later years, in Ceylon and the Straits Settlement, once the political success of reviving a crucial institution like *qaziship* was tested and known in the region. The bargaining power that transformed *qaziship* in India was ironically shaped by the parameters of what comprised *dar al-Islam* under conditions of non-Muslim rule. An idea that once allowed for Muslim mobility in the Indian Ocean had morphed into useful discourse for the British Empire and its Muslim subjects to contest and negotiate their relations of power.

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