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"The Rules of God": The Practice of Religion and Law in Rural Bangladesh

By

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and Law in Rural Bangladesh

By

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M.A., Indiana University, 2007
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An abstract of
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2016.

Abstract

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By Tiffany A. Hodge

This study examines religious and legal authority within the Muslim community of Char Fasson in rural Bangladesh, paying particular attention to the discursive and performative aspects of social actors' engagement in legal systems that operate alongside the formal judicial system of the modern nation-state. Furthermore, I analyze ways in which agency and decision-making are experienced and negotiated within the context of multiple legal authorities, particularly by women. This dissertation contextualizes legal decision-making in everyday life, within historical and textual frameworks, and emphasizes the religious aspects of family law as it adjudicated in Bangladesh.

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Chapter One: Introduction

"Manusher mitru, keo keo bolte para na. hotat kichu [One's death, no one can say [when it will happen], [it might happen] suddenly]." The young mother, not even a year older than me, solemnly declared this statement to me following an incident in which her brother-in-law sustained a traumatic fall from a third story landing. She often spoke with me on this topic, emphasizing, through short stories and morality tales, humans' lack of foreknowledge about the events of the future – and, in contrast, God's omniscience. I thought I could understand her sense of precariousness, particularly considering her position as the wife of a poor, local man with no land and few connections. Despite her education and middle class natal family, her own household—including her husband, mother-in-law, brother-in-law, and two young boys—often perched perilously on the margin of food insecurity. Over the next year, I began to realize, however, that my assumption that her views related only to her economic status was based on a shallow reading of what were, in fact, deeply held religious beliefs that directly influenced her daily actions.

I had come to Bangladesh to conduct field research on the interactions of one community with *shari'a*, or what Islamic Studies scholars usually gloss as "Islamic law," through the mechanisms of community courts and religious authorities. Throughout my year and a half of fieldwork in rural Bangladesh, as I arranged meetings with local leaders and religious authorities, I spent many hours chatting with and listening to women, and, to a lesser extent, men, discuss a number of topics. While these informal conversations helped me to understand better the religious concerns of Muslims in the area, I did not, at first, see them as especially pertinent to my research. I was, instead,

hoping to steer conversations toward the specific topic of Islamic law and how each respondent had interacted with *mufti*s (those who can give religious opinions in law), the informal community courts (*salish*), or Sufi masters (*pir*s) and their shrines.

But instead, I often heard concerns voiced about the actions of the present that could influence one's position following death,[1] concerns that reflected careful attention to how one should live piously on a daily basis. Women, men, and children vigorously described the punishments awaiting those who did not follow God's will. A woman who is greedy about her material goods might be sent to Hell (*Jahannam*), and wrapped in all of her expensive *sari*s, only to have those saris unwound at lightning speed, peeled off along with her skin. When a local man showed me a question-and-answer book about such actions and punishments, written by a *mufti,[2]* it occurred to me that, of course, even the informal narratives shared with me were directly related to views on *shari'a*. The *shari'a* is, first and foremost for this community, a set of guidelines for living one's life correctly on a daily basis, detailed down to the most minute points. Indeed, the phrase "Allah-ar hukum (the rules/authority/providence of God)" is uttered frequently with respect to a variety of situations, including the one described at the beginning of this chapter.

These conversations demand a methodological and theoretical approach that questions the ontological status of the 'legal' as a separate sphere that can be cleaved

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[1] Concern about paradise and the hell-fire is certainly not the *only* motivation for making particular decisions related to one's comportment and behavior, and I have tried throughout this dissertation to emphasize other interests that influence decision-making within this community.

[2] It was, in effect, a *fatawa* text, but not in the format of that genre and was obviously meant for mass distribution.

from other parts of daily life.[3] They also require a perspective that is complex and sympathetic in its view of the lives of rural Muslims who, in the eyes of their urban, educated counterparts, cannot possibly engage in a discourse about living piously because they do not interact directly with the written, scholarly tradition of Islam.

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There were many who warned me that, in addition to the difficulty in reaching my field site in Char Fasson, on an island in the Bay of Bengal, I would not learn what I wanted to learn about Islam, because the inhabitants of such a remote and depressed area would surely be ignorant of correct Muslim practice. Why would I go to study Muslims who do not practice "true Islam," who only follow their ignorant *mullah*s'[4] instructions and exhortations?

But Char Fasson is a rich place in which to examine authority, Islamic law, and the relationship of lay Muslims to the law. For example, women in the town of Char Fasson, which I first visited in 2001, interact with multiple institutions of religious and state law on a number of issues, including marriage, divorce, the use of birth control, and custodianship of children following divorce. *Fatwa*s—religious edicts that are of great concern to the Bangladeshi urban elite today—may be employed, but they are by no means the only method of religious, legal resolution in the village. Char Fasson is also a growing town, in which one comes into contact with many contrasting views about religion: there are those who have never left the island, alongside those who regularly

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[3] As I will discuss below, many of the academic texts written today on Islamic law focus on court systems or on the place of Islamic law within the political system.
[4] Learned Muslim men, sometimes used derogatorily in Bangladesh for those who actually are illiterate.

visit the capital, Dhaka, as well as those who have migrated to the Middle East and returned.

In this dissertation, I examine religious and legal authority within the Muslim community of Char Fasson in rural Bangladesh, paying particular attention to the discursive and performative aspects of social actors' engagement in legal systems that operate alongside the formal judicial system of the modern nation-state. Furthermore, I analyze ways in which agency and decision-making are experienced and negotiated within the context of multiple legal authorities, particularly by women. This dissertation contextualizes legal decision-making in everyday life, within historical and textual frameworks, and emphasizes the religious aspects of family law as it adjudicated in Bangladesh.

Saba Mahmood's work on the women's mosque movement in Egypt, *Politics of Piety* (2005), has been theoretically and methodologically significant for my own research. She seeks to understand Muslim piety as a practiced, intentional way of being and interacting in the world. The women with whom Mahmood worked often disagreed about the forms of piety: critics of the mosque movement participants condemned it as the "'mere performance of rites and rituals'" (Mahmood 2005, 146); the participants of the movement, however, view their participation as a deepening of their faith through action. One of Mahmood's contributions to the study of piety is her attention to its creation and shaping through the performance of certain behaviors and emotions, in contrast to the notion that interior piety *causes* one behave in certain ways. Primarily depending on what her interlocutors *say* about their performances of piety, Mahmood analyzes practices of veiling, prayer, and the mosque lessons (education).

Mahmood describes piety—in Arabic, *taqwa*—as being intertwined with "fear of God" (Mahmood 145). She goes on to note that, "[i]n the Quran, the eschatological fear of God and the Day of Judgment is held to be almost synonymous with true belief, and piety is at times almost indistinguishable from the capacity to fear" (Mahmood 145, citing Izutsu 1966, 164-72).

What then 'counts' as piety? The people in the community in which I worked were generally not explicitly concerned with piety of the sort Mahmood describes. Some of them do attend *mahfil*s (religious gatherings) and Tablighi-associated study circles in which piety and its performance are explicitly discussed, but most people simply engage in Islamic practices, such as giving to the poor, prayer, ways of eating, as part of their everyday lives. They also follow parts of Islamic law—inheritance, marriage, funereal practices—as an expression of their faith. Do such activities 'count' as piety? Can the desire to follow Islamic law, without the ongoing, sophisticated conversations about practice and performance, also be understood as piety?[5] If so, then we may begin to think of piety as the desire to live legally, according to Islamic law.

To study Islamic law in this way, I have used several theoretical and methodological frameworks offered by legal anthropology. Below, I first discuss the use of ethnography in Religious and Islamic Studies; I then explain the use of the term 'legal' and 'law' in both legal anthropology and Islamic Studies; and finally I identify ways in which the ethnographic study of Islamic law can illuminate the two fields.

Studying Religion Ethnographically

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[5] Indeed, Mahmood argues that the view of those within the mosque movement is that "bodily acts (like weeping in prayer), when performed repeatedly, both in public and private, endowed the self with certain qualities: bodily behavior was therefore not so much a sign of interiority as it was a means of acquiring its potentiality" (Mahmood 2005, 147).

In 1993, Brinkley Messick observed the dearth of work in Muslim societies that included both ethnography and textual study; it remains true today. Islamic Studies scholars are, by and large, textualists.[6] In addition, in Islamic Studies, and Religious Studies more generally, many scholars are still unsure about how ethnographic fieldwork should be used and how it is different from other methods of interviewing or fieldwork. Such fieldwork involves long-term interaction with a community that includes observations and participatory interactions in all aspects of daily life, not just the aspect of the culture on which the ethnographer is particularly focused. So, for example, ethnographers of religion live in the communities they are studying and participate in a wide range of community activities, not just religious festivals or events. As Malinowski asserted, "[a]n ethnographer who sets out to study only religion, or only technology, or only social organization cuts out an artificial field for inquiry, and he will be seriously handicapped in his work" (Malinowski 1922, 11; quoted in Nader, 17, 1965). Through participation in the community's daily activities, the ethnographer can build far stronger relationships than if she only comes every once in a while, for religious events. As Monaghan and Just describe it, it is "by living among the people of the community as they themselves live, [that] the ethnographer stands the best chance of becoming established" (Just and Monaghan 23).

This long-term interaction within various contexts enables the ethnographer to recognize and analyze the social processes that connect what might appear to be unrelated incidents. So, for example, Max Gluckman admits in the introduction to the edited volume, *The Craft of Social Anthropology,* that he had initially treated the legal

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[6] There are notable exceptions, and scholars within the field are increasingly interested in ethnographic approaches.

cases that came before the Barotse judges[7] as isolated incidents; as he continued to reflect

on his research, he realized that "each case was obviously but an incident in a long

process of social relations" (Gluckman in Epstein 1967, *xvi*). Peter Just makes a similar

argument for the long-term involvement within ethnographic fieldwork when he

describes an assault case that went before a court of elders of the Dou Donggo. He notes

that the punishment for the crime appeared to be unjust, but, once he had been filled in on

the 'back story'—"what everyone else knew"—a different account was revealed

(Monaghan and Just 200, 16). Just argues that a historian, criminologist, or sociologist

would not be able to "see beyond the superficial evidence of the case, or, more

importantly, to uncover the notion that [the] conviction" was "'more true than what really

happened'" (17).

The ability of Just to learn more about the case was not simply about the length of

'time in the field.' As he points out, even when he was not specifically asking research-

related questions, he was "chatting" with the people with whom he lived, full-time; and

these conversations provided equally rich "data" and context as did the answers to more

direct research questions. Similarly, some of the most significant information gained

during my fieldwork was recorded as I sat on a tiny stool in the low-roofed, smoke-filled

'kitchen' sheds, chatting with women from neighboring homes. For example, when I

asked a well-reputed member of many *salish* courts about dower, he showed me the

official *nikah* (wedding) registration form that every couple is to fill out.[8] On these forms,

the amount of both immediate and deferred dower is specified in monetary amount (in

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[7] From the research for his monograph, *The Judicial Process among the Barotse of Northern Rhodesia,* 1955.

[8] This process is still not followed by many families, making it difficult to know how many marriages actually occur in any particular area.

this case, Bangladeshi *taka,* the unit of currency in Bangladesh). Yet when I talked with

many women in the area, I was informed that few men even pay the 'up-front' dower;

instead, their wives 'forgive' them of the debt. It was not clear what would happen to the

claimed dower amount should such couples go through divorce procedures. Thus, in a

court proceeding (and many divorces are brought before the *salish*), official

documentation would show an amount changing hands, but there is a high possibility that

the money was never actually given to the wife.

Photograph 1.1: A kitchen shed, built on to a two-room house. The cooking tools are set atop a wood-fired stove made of dried mud.

The contribution of ethnography is not simply that it enables us to understand the

'lived experience' of Muslims. With respect to authority, it is only through ethnography

that we can examine how such authority is produced, accepted or not, and interpreted

within a community. Discursive analysis of the writings of religious scholars can tell us little about who or whether or not anyone reads their work or views those scholars as worthy of attention. Even when we know that a particular text is popular, such as a *fatawa* text or the *shari'a* manuals and commentaries studied by Brinkley Messick in Yemen, we can understand little about how it is used within a community without ethnographic research. If the research focus is on authoritative ideas, rather than individuals or institutions, ethnographic research is one of the few ways that can reveal which ideas are viewed as worthy of respect by the population.

Legal Anthropology and Islamic Studies

As one reads scholarly works from both the anthropology of law and the study of Islamic law, it becomes clear that scholars in these two fields are often talking past one another. While the anthropology of law moved in the 1960s beyond the notion of 'law' as social norms that are enforced through force, Islamic studies scholars who write about law often preface their work with the caveat that *shari'a* (Islamic law) is more than just law in the conventional sense. Kevin Reinhart's comments are emblematic of this tendency: because it provides "insight into how one ought to act and live as a Muslim," Reinhart writes, "the scope of Islamic law is much broader than one would ordinarily expect from the concept, 'law'" (Reinhart 1996, xxxiii). Perhaps, not surprisingly, despite the disclaimer made by Reinhart and others, the study of Islamic law has focused primarily on those aspects which are justiciable. Their definitions of law often mirror those of the 'rule-centered' scholars: law is "'social control through the systematic application of the force of politically organized society'" (quoted in Comaroff and Roberts, 6).

Other scholars who engage in the theoretical study of law within the realm of religion, like the political scientist Austin Sarat, have also failed to utilize the insights of legal anthropology. Sarat, while questioning definitions of religion and the sacred, does not critically examine the use of the term 'law.' In his edited volume, *Law and the Sacred* (2007), he treats law in the same way that Islamic Studies scholars have: as rules that are embedded in and part of the machinery of the modern state. The volume, in probing the relationship between law and the sacred in the modern state, is primarily concerned with the sacred within law and not so much the law within the sacred. Marion Holmes Katz's contribution to the volume is an exception, but because of the dichotomy set up in Sarat's introduction, she, too, identifies law as "the realm of judicially enforceable rules and the conduct of the state," thus excluding the parts of *shari'a* that "extend . . . to realms of ritual practice and of private ethics" (Katz in Sarat 2007, 91). In her chapter, Katz provides a useful critique of the idea that, historically, the jurists always understood *shari'a* to "function . . . *comprehensively* to imbue the articulation and exercise of the law with the sacred" (Katz, 91; italics added), in the sense that the jurists recognized some areas in which temporal powers would introduce and enforce government rules.[9] Despite arguing that within *shari'a,* law is not completely synonymous with the sacred, she ends with the assertion that "shari'a is certainly law in the sense that it offers authoritative norms for the behavior of individuals and society" (Katz, 107).

Legal anthropology, with its concern both with the definition and nature of law, is a valuable field within which to study authoritative norms and can provide theoretical and methodological options not widely studied by Islamicists. As I will explore in this

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[9] She is responding here to scholars, like Bernard Lewis, who characterize *shari'a* as "embrac[ing] the whole range of human activities, and is therefore naturally concerned with the conduct of government in all its aspects" (Katz 91, citing Lewis 1988, 28).

dissertation, the inclusion of "ritual practice and private ethics" does not make *shari'a* any less legal in nature. I argue that such aspects are in fact legal and should not be separated from other, justiciable parts.

Yet despite the contribution that the anthropology of law could make to the study of Islamic law as it is practiced, we have a surprising lack of recent monographs on Muslim communities that do not focus on the courts, thus augmenting the sense that Islamic law can only refer to the law in the sense of rules. Working within these two fields of study has compelled me to ask how best to utilize the insights of both. I will begin first by describing movements within the study of legal anthropology; I will then provide an explanation of *shari'a,* its component parts, and how its study might help us to provide better theoretical models for what constitutes the 'legal.'

Anthropology of Law

In the 1970s and early 1980s, legal anthropologists began to take issue with the notion that law is defined, as Hoebel had argued, by social norms whose neglect or infraction is met with force (Comaroff and Roberts 1981, 7). Paul Bohannan (and those who agreed with Hoebel's position) contended that "there may simply be no analogues of [the Anglo-American legal categories] in another culture, and, even if there are, their sociological significance in that context may be quite different" (Comaroff and Roberts 8). Empirical inquiry, often in the indigenous categories of the subject population, was necessary. This is exactly what his students and those who agreed with his position proceeded to do. Jane F. Collier, for example, describes how she went to her field site, ready to "isolate and analyze the Tzotzil words that Zinacantecos used to talk about the disputing process" (Collier in Starr and Goodale 2002, 74). But Bohannan's approach

entailed more than the intense examination of the culturally-specific ways in which judicial processes move forward; his theoretical position also "asserted that the Western models typically employed by legal anthropologists have been *folk* rather than *analytical* ones and that the essentially arbitrary organization of ethnographic description in terms of such folk categories involves serious pragmatic dangers" (Comaroff and Roberts, 9).[10] However, as I will illustrate below, many Islamicists have assumed the folk categories of (Western) modern state law as universals.

But even as the study of law moved from rules to disputes (and the logic behind those disputes), scholars have often presupposed the presence of two parties, one or both of which harbor "a sense of grievance that arises out of an assumed or alleged breach of entitlement" (Epstein 1967, 206). Scholars have investigated legal spaces outside of the defined boundaries of the courtroom, including, but not limited to, disputes amongst family or community members. These "rules of conduct," of which transgression provokes a sense of grievance, are not necessarily "invariably obeyed," nor do they "remain valid for all time" (Epstein 1967, 207).

Law, Culture, and Power

In their seminal work on law in Tswana, *Rules and Processes* (1981), Comaroff and Roberts write "norm and reality exist in a *necessary* dialectical relationship, a relationship that gives form to the manner in which Tswana experience and navigate their universe" (247, italics in original). According to these scholars, rules are an important aspect of the study of law, but only in so much as they help us to recognize the 'logic' of dispute and the ways in which such rules are appropriated at particular moments of the

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[10] Laura Nader claims in her edited volume, *Law in Culture and Society,* that their conference had definitively 'closed' this argument through the realization that Gluckman and Bohannan's differences were actually based on a disagreement about analysis, not about description of categories (see page 3-6).

dispute. Other scholars have emphasized that cultural practices can shape legal practices (see Greenhouse 1986, Merry 1990, Rosen 1989), and vice versa. Greenhouse, Yngvesson, and Engel have explored "the local experience of courts as sites where worlds are not only made but also unmade" (1994, 10), emphasizing the capacity of courts to shape cultural discourse.

Lawrence Rosen, as a student of Geertz, sees law itself as a cultural system that not only addresses disputes, but "help[s] maintain the sense of cosmological order" (Rosen 2000, 171). Rosen, with his emphasis on *law as culture*, notes that "custom is indeed, and has always been, a source of Islamic law" (Rosen 2000, 96). It has not imposed itself upon *shari'a,* but was accepted within *shari'a* from its very inception.[11] This conception of law is also very helpful in thinking about the relationship of religious law to culture, as it does not focus (only) on dispute. For example, Rosen analyzes the Islamic concept of justice (in an Arab context, specifically in Sefrou, Morocco) and underscores the Qur'anic assurance that "those whose well-intended acts accord with divine prescription will indeed receive divine reward" (Rosen 2000, 155). As I will discuss below, the specter of the divine reward in Paradise—and the possible punishment in Hell—serves as a potent enforcer of norms.

In the 1990s and early 2000s, legal anthropologists began to acknowledge the potential for law both to oppress and empower. For example, Sally Engle Merry asserts that law is "both a system of meaning and an institutional structure backed by the political power of the state" (2000, 17); this definition is particularly useful for the examination of colonial and postcolonial societies. Law is capable of transforming society "through its texts, its performances, and its violence" (261), meaning that law

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[11] Custom, or 'urf.

does not simply control society but actively alters it. The emphasis on hegemonic power encourages the researcher to consider the forms of authority that *are* respected as legitimate (and followed) and those that must coerce residents through force.

Legal Anthropology in Muslim Communities

Four anthropologists in particular have conducted extensive research on law in majority-Muslim contexts. I have discussed Rosen's work in Morocco above; in addition, Erin Moore (India), Michael Peletz (Malaysia), and Susan Hirsch (Kenya) have published significant monographs on law in Islamic contexts.

Erin Moore (1985, 1993, 1994, 1998) has produced some of the most significant works in the area of legal anthropology in Muslim communities in India; she has studied the village *panchayat* (council) in Rajasthan[12] and is particularly concerned with what she calls the "law's patriarchy." While she argues that the "law contributes to the making of cultural hegemony by legitimating and enforcing a particular vision of the social order" (1998, 4), she is careful to emphasize the agency of individual women in challenging these visions in particular contexts. Moore is not concerned with Muslim religious authority as a historically-produced phenomenon, which frames the practices she analyzes. But her inclusion of the *maulavi*'s[13] healing practices, in addition to petitions about land and other disputes, highlights another dispute-processing forum in which "a scholar [the *maulavi*]. . . calls upon God to bring peace to the mind, body, and community" (Moore 1993, 533). Like many of the people I met in Char Fasson, the

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[12] Not unlike the *salish* that I describe below, in Bangladesh.
[13] The *maulavi,* in Moore's work, is described only as a 'healer.' She does not explain his scholarly background, but simply calls him a "Muslim religious teacher." See Moore, 1993.

people with whom Moore worked 'shopped' between healers, often going to multiple

ones, as *maulavi*s "were thought to have differing degrees of power" (533).[14]

While Moore emphasizes the barriers to women in going to courts, Michael

Peletz's work on Islamic courts in Malaysia demonstrates that such spaces can actually

provide for new, individual subjectivities for women (and sometimes greater justice)

(2002). While Peletz acknowledges his debt to Geertz, he also argues how his work

clearly differs from that of Geertz (and Rosen and Greenhouse). He "accords political

variables a very specific and determinate role in shaping the direction and content of

cultural change and of religious (and legal) rationalization in particular" (Peletz 18) by

connecting specific, national political projects in modernity to the decisions made in the

Shariah Courts. Methodologically, Peletz examines the ways in which the Islamic court's

magistrate interprets the cases brought before him and devises strategies to "effect

outcomes that are compatible with . . . the interpretations and objectives" of the

magistrate and his staff (18): examining both the performances of the judge and the

litigants.

In contrast, Susan Hirsch's book, *Pronouncing and Persevering* (1998), highlights

the performances of the litigants. Using socio-linguistic analysis, Hirsch examines the

"language of disputing" in the cases brought before the Kadhi's court (a court which is

state-sanctioned) in two Swahili towns in coastal Kenya, Malindi and Mombasa. Like

Merry, she observes the processes by which subjects are constituted (although in Hirsch's

work, the focus is much more on women). Hirsch, however, unlike Merry and Peletz,

does not situate herself firmly within legal anthropology. While she briefly reviews the

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[14] I do not, however, necessarily agree with Moore's analysis that the physical ailments brought to the healer by women are, by and large, the body's way of resisting power relations.

work of Comaroff and Roberts and S.F. Moore, she spends much more time in her literature review on gender and linguistic pragmatics. She then turns to studies of narrative and performance (Bauman and Briggs), before returning briefly to the work of other legal anthropologists. She observes that "attention to the negotiation of gender becomes all the more complex, and critical, in postcolonial societies where states are inflected by competing and conflicting imperatives associated with multiple regimes of order and domination" (Hirsch 1998, 31).

All four of these scholars writing on Muslim communities contend with the existence of multiple legal regimes and their relationship to Islamic norms. Muslims all across the world live under multiple legal regimes, with *shari'a*-based legal codes struggling for ascendancy over other structures of justice.[15]

Legal Pluralism

It is no surprise that Muslims, like citizens around the world, engage with legal pluralism. In her book, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa,* Kamari Maxine Clarke (2009) argues that some Muslims in Nigeria criticize what they believe is a hegemonic legal regime in the form of international law human rights law. They view international law as having a basis in Judeo-Christian morality, despite the fact that it presents itself as secular and universal. In many Muslim countries, international statutes, like the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW), have a contested status. In response to the perception, both on the national and international level, that Judeo-Christian legal codes are being forced upon Muslim populations, areas

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[15] See, for example, Katherine Lemon's dissertation on legal pluralism in India, specifically as it relates to the Muslim community in Delhi.

like Northern Nigeria have instated and sought to enforce *shariʻa*-based codes (Clarke 185).

Clarke's analysis of the Nigerian *hudud* (limits; punishment) cases—involving the punishment of stoning for adultery—seeks to understand why Muslims in Nigeria submit themselves to the shariah courts, even as they question the ability of such courts to provide impartial justice. Perhaps because of its extreme nature, Clarke's study in Nigeria highlights the devotion of Muslims to *shariʻa*. In choosing to submit to the punishments, including amputation of limbs and stoning, the accused in Clarke's case study are participating in "an act of assessing the divine," through the "production of both individual redemption and the subjectivity of the pious Muslim" (Clarke 186). They do so, recognizing that the court itself, in making decisions based on uneven power relations, overwhelmingly punishes indigent citizens. Their respect for, and submission to, *shariʻa* as divine law transcend even its humanly flawed application. As I will discuss in Chapter Six, this case study, although very helpful in thinking through the relationship between piety and submission to injustice, focuses on the extreme instances of adjudication under Islamic law.[16] While this case is similar to the acts of violence committed against women in Bangladesh through the venue of the *salish/fatwa*, it does not address the more mundane, daily situations within which Muslims must "manage" their religious duties "in relation to other obligations and constraints" (Clarke 171).

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[16] In addition, Clarke's definition of a *fatwa* represents it as a "call to *jihad*. . . a political or military struggle to further the Islamic cause" (Clarke 157). It is not clear to me why she views it this way, unless she is using it in the way, for example, that Osama bin Ladin used it. This might represent a modern perspective on the *fatwa*—it is by no means the most prevalent form that it takes.

Law in Islamic Studies

Bernard Weiss, a scholar of Islamic Studies, describes *shari'a* as the "right path" that "constitutes an entire way of life" (Weiss 18). Despite the ways in which the term is often used, *shari'a* does not refer to a body of rules, collected in an easily disseminated form. Rather, it is the totality of God's directives for human action, and it exists fully only with God. This conception of "the law" means that humans can only *attempt* to discern God's will, through *fiqh* (jurisprudence). Historian Stephen Humphreys describes *fiqh* as the "constant interplay between the pragmatic demands of social reality, the traditional norms and values of the Community in being, and the transcendent ideals of Scripture" (Humphreys, 210). *Fiqh* might be described as 'praxic understanding,' as it is the attempts by legal scholars to derive the law from the Qur'an and *sunna* (the 'transcendent ideals of scripture'), even as they acknowledge that such attempts can never be fully successful (Weiss 117).

Scholars who look at *shari'a* as a "type of "total discourse" (Messick 1993, 3, citing Mauss 1967, 1), as Brinkley Messick does in *Calligraphic State,* are not grounded in the discourses of legal anthropology. Messick, using a conception of law that seems to be synonymous with "Western law," argues that *shari'a* is instead the type of discourse described by Marcel Mauss, "wherein 'all kinds of institutions find simultaneous expression: religious, legal, moral and economic'" (Messick 1993, 3, citing Mauss 1967, 1). One is left with two possibilities: either *shari'a* is incommensurate with the "western" definition of law as state-enforced legal injunctions (with only some parts that are comparable), thus making it impossible to call it 'law,' or such a conception of law should be questioned and reformulated. My goal below is to argue for the latter, not only

because this conception has been rejected by scholars of legal anthropology, but because

shari'a, as it is practiced in many Muslim countries, is understood to have equal if not

more authority than state codes.

It is partly because of this notion of 'law' that I argue that the study of Islamic law

can add to the understanding of what 'counts' as law, beyond dispute and grievance.

Shari'a, for Muslims, includes a large category of duties that are obligations to God, not

directly to other human beings. Furthermore, these obligations—indeed, "rules of

conduct"—cannot be "amended or discarded and replaced by others" (Epstein 1967,

207), as they are the rules set down by God through the sacred texts.

This does not mean, of course, that in practice, *shari'a,* is 'timeless.' The way that

shari'a is deciphered by scholars (*fiqh,* and its four major schools of law) and even by

laypersons has changed over time and throughout the world. But *shari'a* itself is

perceived by Muslims to be unchanging and universal. Legal anthropology provides

additional methodological options, in order that those who study Islamic law can

examine, not just how such law differs from state to state, but how it is practiced within

local communities, how and where disputes are handled, and the changing notions of

correct practice and behavior for Muslims.[17]

A Categorization of Fiqh

In order to understand the use of the term 'law' in Islam, it is helpful to utilize the

three categories of *fiqh* that were established by medieval Muslim scholars. First are

those crimes that are punished through *hadd* (pl. *hudud).* There are surprisingly few

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[17] In her 1978 book, *Dispute and Settlement in Rural Turkey: An Ethnography of Law,* June Starr makes the similar claim that Islamic Studies scholars have done a great deal to make the origins and development of Islamic law more clear, but have not studied the interaction between text and context in contemporary societies. Since the late 1970s, those working on such a topic have been, by and large, anthropologists.

activities in this category, which forms a subset of penal law in Islam. The *hudud* are the only crimes with corresponding punishments to be performed by the political leader; they include *zina* (illicit sex), theft, highway robbery, and apostasy. The *hudud* form the state law in only a few Muslim countries, including Nigeria and Saudi Arabia.

The second category of *fiqh* compromises of the obligations Muslims have to God: prayer, hajj, ablutions, etc (*huquq Allah*, the "rights of God"). These are not enforceable by humans in most contexts, but are judged by God in the Hereafter, with punishment for those who do not adhere to correct principles. Indeed, the nature of Islamic law is "the conviction that God alone knows what is right and wrong in such cases. The individual conscience is considered a better guide for action [than the pronouncements of doctors and scholars of Islamic law], since it is ultimately the individual who will have to answer to God on the day of judgment" (Brockopp 2002, 15-16). Such ritual and worship rules are contained within the category of *'ibādāt*.

For example, Jocelyn Hendrickson has recently written on fifteenth-century *fatwa*s (opinions on questions pertaining to Islamic law) concerning the obligation for Muslims to emigrate from al-Andalus to Muslim north Africa because of the status of al-Andalus as 'enemy' land (non-Muslim) (Hendrickson 2009). These *fatwa*s came as a response to the *fitna* (chaos, civil war, dissension)-producing rhetoric of those who had emigrated and regretted the decision. In the more common use of the term 'law,' emigration might not be considered an obligation or justiciable offense (nor is it justiciable in Islamic law).[18] But such issues have been in the realm of the legal for centuries of Islamic law.

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[18] The Mudejars *were* taken before the court for inciting *fitna* for 'cursing' the call for emigration, not for the emigration itself.

*Mufti*s, those individuals who are qualified to give *fatwa*s, have long been the

experts to whom questions on *ibadat* have been posed, along with questions on

mu'amalat (bilateral contracts). *Mufti*s with whom I spoke in Bangladesh often noted the

frequency with which questions about ritual and worship are brought before them. Unlike

Pakistan, Bangladesh does not, for example, regulate *zakat* (tithes); such obligations are

thus incumbent upon the believer, but are not regulated by the state. Thus, it is non-state

actors who provide answers to those wanting to know how much and what should be

given in *zakat*.

Photograph 1.2: Funeral practice and rituals are part of *'ibadat*.

Scholars like Masud, Messick and Powers argue that the scope of modern *fatwa*s

has "become more specialized in 'religious' issues and, with the exception of the interest

maintained in family law, generally less concerned with strictly legal issues" (1996,

29).[19] Similarly, Humphreys writes of fatwas that "…the great majority deal with ritual issues rather than law in our senses" (218). By this, the scholars mean that *fatwa*s, especially in the modern period, are given on concerns over worship and religious practice in a narrow sense: hajj, prayer, purity, alms-giving, or zakat, as mentioned above. What they refer to as the 'legal' are issues of marriage, divorce, inheritance, and business contracts, as well as criminal matters like robbery, adultery, and apostasy. Such contracts between parties[20] —*mu'amalat*—account for the third category of *shari'a*. In contemporary Muslim societies, it is primarily discussed with reference to family law.[21] Ironically, scholars of the contemporary Muslim world within the Western academy have been more inclined to research these 'legal' issues at the expense of other areas within *fiqh.*

Shari'a as Legal and Moral System

Talal Asad describes *shari'a* as "the process whereby individuals are educated and educate themselves as moral subjects in a scheme that connects the obligation to act morally with the obligation to act legally in complicated ways" (2003, 241). This is a useful definition, in that it does not insist upon the moral and the legal as mutual exclusive spheres of Islamic law. However, to maintain the notion that *shari'a* is made up of 'religious' parts and 'legal' parts not only accedes the notion of 'legal' to 'Western' (Euro-Christian) configurations of social control; it also assumes, of course, that there exists differentiation between these segments in which some elements are more religious (sacred?) than others. It also assumes that Muslims themselves treat these as separate.

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[19] The authors are referring to transaction law, as a part of mu˙amalat, as 'strictly legal.'
[20] Between individuals. Contracts which include the state are not included.
[21] Marriage and divorce are, by some scholars, considered to be *'ibadat.*

The moral/religious nature of *shari'a* leads to a feature that differs from Western legal systems. All acts are imbued with a moral status along a hierarchy: obligatory, recommended (*sunna*), neutral, discouraged, and forbidden (*haram*). Acts are not understood as simply legal or illegal.[22] Despite this five-tiered system, I rarely heard anyone in Bangladesh talk about something as anything but obligatory, recommended, or forbidden.

Yet *shari'a* as a legal and moral system, as one might expect, is constantly discussed and debated amongst Muslims. John Bowen's work, *Muslims Through Discourse* (1993), offers one of the best examples of these debates, although Bowen himself does not employ the framework of the anthropology of law. In a chapter he titles, "Religious Disputes," Bowen describes and analyzes discussions about traditional practices among the Gayo of Indonesia, such as death practices that are no longer viewed as acceptable by reformist Muslim groups or individuals. Such discussions are very much about law, even as the participants rarely use the terms *shari'a* or *fiqh.* Instead, his interlocutors discuss a poem that admonishes listeners to "change their religious ways in accord with modernist teachings" (Bowen 18). The two men arguing over the use of traditional death practices mention *taqlid* (imitation)*,* a term that has obvious connections to Islamic law, but they use it to debate the necessity or virtue in following the practices of their fathers and ancestors.

Studying Law in Bangladesh

A 1997 study by the UN revealed that although 14% of rural households in Bangladesh were embroiled in legal disputes, only one-third of which were entered in

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[22] Although one could argue that, in the modern era, Islamic revivalism has tended towards this binary, jettisoning the middle categories.

formal courts (Siddiqui, 2: these might be district courts or the relatively new family courts). This means that a large number of disputants have chosen to go to other forums besides the formal courts. In my dissertation research, I examined not only the community-based courts in rural Bangladesh (*shalish*), but also a variety of other spaces where Muslims go to seek advice (*nasiha*) or resolution, such as Sufi shrines (and the *pir*s who often live nearby), *mufti*s, or other Islamic teachers. For the ethnographer of law, this multi-sited research can prove daunting, as one must move outside the predictable walls of the courtroom. But it is when we look at areas of Islamic law that are beyond 'dispute resolution'—including concerns about how to live correctly as a Muslim—that we find spaces unexplored by legal anthropology.

While I did not begin my research in Char Fasson with the intention of sitting at the government-run courts, I did expect that I would be able to witness legal processes in circumscribed settings like that of the *mufti*'s office. However as a female in a culture that observes strict gender segregation, this was not possible. I was able to interview several *mufti*s, but not to observe them in pronouncing *fatwa*s. What I understood through my interviews with *mufti*s is that we should recognize the "not strictly legal" (i.e. "ritual," "worship") categories of Islamic law as existing, intentionally in some cases, outside of the attempts of the nation-state to serve as the only source of law (further discussed in chapter five).

Katherine Lemons' work on the *dar ul-qaza* (Islamic law courts) and *mahila panchayat* (women's arbitration centers) in Delhi demonstrates that, in fact, these institutions are not unilaterally marginalized by the state. Rather, it appears that religious scholars themselves prefer not to be a recognized, official part of the Indian legal system,

as it gives them a flexibility in their decision-making (Lemons 2010): they have the "liberty to more fully explore the resources of *sharia* in their practice of adjudication" (Lemon 29, citing Tahir Mahmood, 2002). But, as Lemons notes, because these institutions are not presided over by lawyers and judges, "their judgments are not considered binding by the state. Their judgments cannot be appealed in the state's courts nor can they be enforced by the coercive arm of the state" (Lemon 1). Lemons' unique dissertation fieldwork in Delhi reveals the abilities of religious scholars to operate both alongside and in conversation with Indian state law.

These non-official, informal courts are often overlooked by scholars of law, even though, as June Starr (who conducted fieldwork in rural Turkey) points out, they might have far greater authority in the eyes of those in the surrounding community (see Starr 1978, 7). Such courts tend to receive public recognition only after public revelation and outcry against particular judgments. Following the revelation of several cases in shari'a courts in India in the 1990s and 2000s, many (non-Muslims) called for such courts to be regulated or banned altogether.

Similar events have occurred in Bangladesh. Following some vicious attacks against women upon whom *fatwa*s have been pronounced (in other areas of the country), some legal activists have sought to regulate this sphere as well.[23] These attempts have been contested by the *'ulama* in the courtroom, as an effort to carve out some areas in which the *fatwa* can still function as a legitimate source of law, even as it is not regulated or enforceable. The *mufti*s in Char Fasson never admitted to pursuing actions that are illegal under the state law, but clearly felt that they provided crucial religious and legal advice to petitioners, not regulated by the government.

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[23] See, for example, ….

In addition to research on *fatwa*s delivered by *muftis*, I also hoped to observe another kind of 'court, the *salish.* I assumed these community courts would have a more bounded nature in time and space, but I found very quickly that they are exceedingly informal. They could happen anytime, at any place, often with little notification to the ethnographer. They could last for hours, during which time tea and/or lunch was offered. Any number of people from the surrounding community could come to watch and sometimes participate in the proceedings; while various speakers were often told to be quiet, the general atmosphere was one in which participants could freely interrupt one another. The members of the court almost never came to a decision in one sitting.

In my research on the *salish*, I found that a large portion of the cases brought for informal adjudication led by community members were inheritance and/or land cases. Such cases are intimately tied to Islamic law as it is understood by local Muslims and delineated by the Shariat Law of 1939 and the 1961 Muslim Family Law Ordinance (MFLO).

Reasons for going to the *salish* vary. Beyond concerns about the lack of resources necessary to go to formal court (which requires fees and often bribes) people go to *salish* because they believe that other local people will better know the situation—with less opportunity for lying in front of, for example, a court that is not familiar with local actors and circumstances. One interlocutor vehemently asserted that, "*This* (referring to actions that are observable and punishable by the community) is *ain* (law)." Here, Rosen's insistence on the study of law as a way of understanding how "facts [are] defined and truth received" is particularly useful (Rosen 2000, following Geertz [1983]). Studying the *salish* reveals the role of local cultural assumptions about human nature and

the subsequent development of evidentiary concepts by the community, outside of the courtroom.

Following the recommendations of Bohannan (1966), and, later Greenhouse (1994) and Bowen (1993), I listened for the ways in which community members discussed law, even when the term law (*ain*) was never used. As I will discuss in Chapter Four, people in Char Fasson often used *hadith* to explain and highlight correct behavior; these types of *hadith* (although not at all standard *hadith*) should be considered a source in the anthropological study of law. I also realized that Muslim scholars in rural Bangladesh do *not* assume that all issues in *shari'a* have been settled. As I listened to a *pir/mufti* talk one day, I heard him mention the term *motanoikko*. As I grasped the content of the discussion, I realized that this specialized Bengali term is similar to the Arabic term *ikhtilāf* for disagreement or difference of opinion, particularly amongst jurists. The use of the term *motanoikko* was a way of recognizing the assumed legal nature of the topic of discussion.

The methods developed in the anthropology of law can also be used to examine how Muslims today fashion themselves as moral subjects. In the eyes of my interlocutors, Reinhardt's assertion that there is no difference between a crime and a sin (Reinhart 1996, *xxxvi*) in Islamic law is quite powerful. Discussion of Paradise (*Jannat*) and Hell (*Jahannam*) at my field site were frequent. At first, I saw them as a distraction from talking about law; gradually the relationship between actions in this world and one's experience in the Hereafter became clear. Taking seriously the concerns and anxiety of Muslims about Judgment Day requires attention to a legal order that is in sharp contrast to the ones usually considered by legal anthropology.

An "Orthopraxic" Religion?

A perspective on law that is this expansive leaves one open to the argument that Islam becomes *all* about law, returning us to an old paradigm within which Islam and Judaism are referred to as orthopraxic religions, in contradistinction to Christianity, an orthodoxic religion. One could, following Jonathan Brockopp, describe Islamic law as "an ethical system [rather] than a legal one" (2003, 10), thus avoiding a rule-centric perspective that appears to delegitimize belief or even the ethics behind the 'rules.' Yet even he is forced to observe that "sharia is far too large a category to be reduced to ethics" due to its inclusion of ritual matters (Brockopp 2003, 11).

In the Afterword to Brockopp's edited volume, *Islamic Ethics of Life: Abortion, War, and Euthanasia,* Kevin Reinhart observes that "[t]he essays in this collection suggest that the ghost in the machine of Islamic ethics is Islamic law (sharia) and its legacy" (2003, 214). What this tells us is that the distinction between Islamic law and ethics is not clear, and the two may in fact be coterminous.

Contributions of this Dissertation

Katherine Lemons' dissertation work on informal courts in Delhi, India—"At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi" (2010)—relies on a theoretical and methodological framework similar to the one described above, insomuch as she utilizes legal anthropology to explore and analyze spaces within which urban Muslims seek resolution for anything from marital disputes to illness. However, both the environments within which we work differ and the questions we ask arise out of different research concerns. While both Lemons and I seek to understand particular

manifestations of legal pluralism, I situate my analysis within the context of Islamic legal

history and the nature of what counts as 'legal' within the *shari'a*. For Lemons, the

guiding question is: what is the function of these Islamic institutions within the modern,

secular nation-state? The notion that the practice of Islamic law is 'at the margins' is only

true in relation to the state, as it is very much central to the lives of those who come to the

mufti or the *mahila panchayat*s for advice or adjudication. My work, on the other hand,

argues for the centrality of the four sites or sources of authority that I explore in the

following chapters.

Our research contexts also differ significantly, in that Lemons' work in India

grapples with legal pluralism in a secular state that is overwhelmingly Hindu. While

public pressure against Muslim Personal Law and its attendant legal arenas does not

solely come from Hindus, the majority of those speaking out against them are not

Muslim, thus adding an extra layer of complexity to the debate over the place of Muslim

Personal Law within India. In Bangladesh, in contrast, Muslim Personal Law has an

assumed (although contested) legitimacy; even as the Muslim Family Law Ordinance of

1961 attempted to reform certain practices, politicians then and now continue to work

within the framework of Islamic Law. In addition, the Muslims with whom she works

live in an urban, mega-city environment, with at least some greater access to sources of

authority than the members of the rural community with whom I worked had access. In

fact, it is this sense of place, as I discuss in Chapter Two, that provides a significant

framework for the processes I observed at work in Bangladesh.

Within my own fieldwork, Islamic law and practice play a major, if not primary

role in the community, while state institutions are often unfamiliar and sometimes

irrelevant. My guiding questions are: what do Muslims at my field site consider to be religio-legal matters, and what factors produce the authority to speak on or adjudicate those matters? How does the fact that concerns of lay-persons are often ignored or neglected by the modern state necessitate the continuation of local institutions that can address those concerns?

Lemons worked directly with the legal officials and religious authorities involved in the institutions she describes (*dar al-qada, mahila panchayat*). The people who come to those authorities are, for the most part, examples of cases that exemplify particular types of legal reasoning. My own fieldwork examined the lives of the people who seek out authority; thus, in many ways, my concern is not the institutions themselves, but the multi-faceted lives of those who go to these authorities.

Both Lemons and I, however, work in contexts in which *shari'a* is perceived by educated elites as a negative, oppressive force. In both Bangladesh and India there exists a strong discourse within which alternatives are offered—and strongly defended—to the presence of *shari'a*-based institutions. Women's rights activists are particularly involved in promoting alternatives, which often include moving to a uniform personal code, in which citizens of all religions must follow the same set of personal laws.[24] Neither of us argues for a hierarchy in which religious law and associated institutions are better or more 'authentic' than the secular system (or vice versa). Rather, we both insist that it is necessary to understand why that secular system does not hold exclusive, hegemonic authority for its Muslim citizens.

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[24] In particular, see Faustina Pereira, *Fractured Scales,* Bhatkal and Sen: 2002 and Sultana Kamal, *Her Unfearing Mind: Women and Muslim Laws in Bangladesh,* Ain-o-Salish Kendro: Dhaka, 2001.

The contribution to Islamic studies of a still small number of scholars who are engaging in ethnographic study of Muslim communities is growing. Many of the ethnographies written thus far (like those discussed above) come out of Anthropology, where the overarching theoretical questions are aligned with that discipline. While ethnographic studies within Hinduism are common, the same cannot be said for Islamic Studies.[25]

Joyce Flueckiger's, *In Amma's Healing Room* (2006)*,* is a rare example of such a study. Religion here is not used as a vehicle to understand social life or political structures, but, rather, as a way in which people are brought together through the search for solutions to physical, social, and psychological problems, whether they are Hindu, Christian, or Muslim.[26] The work seeks to better understand the role of Amma, a female Sufi healer who sees a diverse clientele and makes recommendations based on her knowledge of Islamic mysticism. While Flueckiger's study primarily follows one person, theoretically she opens up a much larger discussion about the possibilities of women's authority within Islam and particularly in South Asia.

Because of the nature of my work, I am more focused on the types of texts used by those with whom I worked than is Flueckiger. I argue that it is knowledge of these texts, particularly in the Arabic, that provides certain people with more authority than

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[25] Anthropological works within Islamic studies include: Carla Bellamy, *The Powerful Ephemeral: Hindus and Others in an Ambiguously Muslim Place*, University of California Press, 2011; Afsar Mohammad, *Festival of Pirs: Popular Islam and Shared Devotion in South India,* Oxford: Oxford University Press, 2013; Robert Rozenhal, *Islamic Sufism Unbound: Politics and Piety in Twenty-First Century Pakistan,* Palgrave Macmillan, 2009; Reinhold Loeffler, *Islam in Practice: Religious Beliefs in a Persian Village,* SUNY, 1998; and Anna Bigelow, *Sharing the Sacred: Practicing Pluralism in Muslim North India,* Oxford, 2010. It is noteworthy that many of the ethnographic studies set in the subcontinent highlight shared religious spaces and practices.

[26] This is not to say, of course, that Flueckiger does not address theoretical and methodological questions pertinent to Anthropology.

others in the area of Islamic law. I am also more interested in the history of these texts and their use over time within South Asia.

Within the field of Bangladesh studies, this dissertation begins to fill a gap of ethnographic studies specifically concerned with Islam as a religious phenomenon. Since the 1960s (when it was still East Pakistan), Bangladesh has been at the center of a number of rich ethnographic works on village life. Yet these accounts have tended to focus on social and economic class, to the exclusion of religious concerns.[27] This trend has led anthropologist Sarah C. White to call for more studies that bring religion (*dhormo*) to the foreground (White, 1992).[28] In the two decades since her book, more work has been dedicated to religion[29], but has foregrounded its political use. In a later article, she notes the need for research that focuses on "everyday understandings and experiences of religion" and not solely on "abstract doctrines and beliefs or the role of religion in macro politics" (Devine and White 2009, 2). For example, Ali Riaz's book, *God Willing: The Politics of Islamism in Bangladesh* (2004) chronicles the rise of Islamist parties in Bangladesh, as well as the growth of *fatwa*-related violence. It is an important study of the complexity of political Islam within Bangladesh, but he does not attempt to explore Islam as a lived religion, nor is the discussion of *fatwa*s based on ethnographic study. Post-9/11, Bangladesh, along with other countries, has received more attention (mostly negative) as a populous Muslim country, and studies of the country's

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[27] See …

[28] In this dissertation, I do not mean to move to the opposite extreme. I ground my discussion of Muslim practices in the cultural, social, and political milieu within which my interlocutors live, work, and worship.

[29] Jitka Kotolova in her book, *Belonging to Others,* foregrounds religion, as she asks the question, '"How is it like to be a Bengali Muslim woman?"' (21), but her central question is about personhood and the social construction of gender.

Muslim population have engendered more facile works that discuss the "Talibanization" of Bangladesh.[30]

This aspect of Islam was never far from my mind during my fieldwork: a nearby "orphanage" run by an underground militant group was raided and a number of guns recovered. For months afterward, I met people who had either been detained or whose family members had been put in jail on charges of association with the group. The orphanage with which I was associated (described in Chapter Two) came under increased scrutiny after this event. But my research was not focused on this aspect of Islam. I felt strongly that the daily ritual and discussion of Islam was of greater importance to those with whom I lived and worked than the political or militant usages of it.

Organization of Dissertation Chapters

In Chapter Two, I provide a picture of the ethnographic field site, Char Fasson. I describe the setting, the socio-economic makeup of the population, and pertinent institutions. I also explain my relationships to the community, which began primarily through a local orphanage. Because of this relationship—and because of the nature of ethnography more generally—it is essential here that I discuss ethics in fieldwork and the choices I made. I also note the nature of most research in Bangladesh—through NGOs— and how it has affected local populations.

Chapter Three provides descriptions and analysis of a range of religious and legal authorities in the community within which I conducted my fieldwork. These authorities speak to overlapping concerns, although there are boundaries between them based both on the nature of the authority's role in the community as well as assessment of the

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[30] See, for example, Ruth Baldwin's article in *The Nation*, May 27, 2002, titled "The 'Talibanization' of Bangladesh" or …..

authority's abilities. The lay-population seeks guidance and sometimes dispute resolution from these figures, but individuals are not troubled by the sometimes contradictory answers provided through various disciplines of knowledge. Rather, they choose to appeal to certain authorities because of their perceived efficacy and ability to solve the issue at hand.

In addition to the male authorities—*shalish* chairmen, *mufti*s, *pir*s—there are female 'teachers,' who, in imparting their knowledge about the Qur'an and *hadith,* often answer their supplicants' questions.

In Chapter Four, I describe a *talim* (educational gathering)*,* in which an older woman leads a group of women in the examination of the Tablighi-text, *Faza'il-i-Sadaqa.* These teaching circles represent a major means through which Muslim women can learn more about their religion, and, particularly, correct behavior.

Analysis of the education of and conversation between women about Islamic authority and behavior is continued in Chapter Five. I employ Leela Prasad's methodology for understanding local perceptions of religious institutions and law/ethics (2007). Prasad insists that the 'texts' that we should be studying are those of living people; thus, she asks and listens to people describe their understanding of important stories and legal (shastric) frameworks within Hinduism. In analysis of several discussions of *hadith* (one of the sources of *shari'a*) within the context of conversations about daily life, I discern how Muslims in Char Fasson articulate authoritative legal concepts. The narrative portions of these discussions were often identified as *hadith,* even as they appeared to me to be moral stories not related to the life of the Prophet Muhammad. Some of these were deeply grounded in the context of Bangladeshi village

life. It is significant that these narratives, which demonstrate individual and community norms, are imbued with the sacred nature of *hadith*.

In Chapter Six, I examine the *salish,* particularly in the context of its association with *fatwa*-induced violence against women. The motives behind the rise in violence against women for alleged sexual indiscretion have been analyzed by several scholars, often with reference to the growing influence of NGOs and the declining authority of religious scholars (see Riaz, Shehabuddin). In Char Fasson, as noted above, I found that inheritance disputes formed a bulk of the *salish* cases; within the chapter, I describe one such case.

Map 2.1: Bhola District, Bangladesh. Prime Minister's Office Library.

Chapter Two: Fieldwork Site

In the spring of 2009, the advertisements for a popular film entitled, "Monpura," adorned many billboards in busy shopping areas in Dhaka, Bangladesh. The movie, a rather stereotypical romantic tragedy, included a number of songs that became instantly famous, including an extremely popular song, "Jao Pakhi Bolo" (Go, Bird, And Tell [My Lover]). Although not unlike other films about a woman in distress saved by a hero, "Monpura" was set on an island in the Bay of Bengal called Monpura. The story might have been fiction, but the setting is not; the island of Monpura is next to Char Fasson *upazila* (sub-district), separated from the island of Bhola by less than a kilometer of the Meghna River.

It is not unusual for Bangladeshi—or even more generally, Bengali—films to be situated in rural settings. But the popularity of "Monpura," and its rather unusual (supposed) location on an island on the Bay of Bengal, struck me as significant. I began to understand at least one possible reason for the choice of location as I rode in a dirty, polluting motorboat to another island in the *upazila*—Dhal Char—and listened to my travel companions speak in reverent tones about the beauty of the river as it meets the ocean and the simplicity of life on a reasonably populated, but small, island. These men had themselves grown up in a rural town, not far from this island, a town that would be viewed by their urban compatriots as similarly backward and quaint. But even they enjoyed some crucial distance from the *gram* (village) life and the lifestyle of those living on this tiny island, where life is often spent on wooden *nouka*s (small wooden boats),

with less access to the goods available in Char Fasson town, and where the largest structure was a two-story school that also functioned as a cyclone shelter.

The Meghna River[31] is immense and powerful. As it moves through the Shahbazpur Channel, to the west of Bhola Island, it can reach up to five miles from bank to bank. An estimated 1.7 billion tons of silt are carried to the mouth of the river during the monsoon, leading to both to addition and erosion of the island's banks.[32] Its annual water discharge is approximately 875 million acre-feet, second only to the Congo and the Amazon. The waters here at the estuary are brown with silt. Whereas my fellow travellers on the boats I took to and from my field site saw beauty, I felt only terror at the vast body of water spreading out before me.

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[31] Also called the GBM (Ganges-Brahmaputra-Meghna) system.
[32] Shamsuddoha, COAST publication.

Photograph 2.1 Near Dhal Char, south of Bhola Island, in the Bay of Bengal.

The appeal of the area was, for me, far less in the riverscape than in the new shoots of green in the rice paddies that often stretched for as far as I could see, broken only by groves of trees. In contrast to the chaotic urban scene of Dhaka, the area seemed quiet and invigorating. Leading off from the paved roads are small, bricked paths, leading to numerous homes, which are often tucked behind trees. Houses are rarely solitary: it is most common to see several houses, owned by relatives, circled together in a small area. Most of the houses in the area are made of corrugated tin and wood; a modest, middle-class home might have stone steps leading up into the house. Near to most of these

compounds are small ponds or tanks (*pukur*) in which men, women, and children bathe and clothes and cooking utensils are washed.

In this chapter, I will describe my field site and my relationship to the community within which I lived. My presence was generally welcomed, but my association with a local orphanage (*yeteemkhana*) created unique opportunities and barriers within the research process. I was also very cognizant of the difference between my research and methodology and that of the majority of researchers in Bangladesh, whose concerns are in development and public health.

Char Fasson

Precariousness defines the nature of life in Bangladesh generally, and in places like Char Fasson particularly.[33] As said at the beginning of chapter one, one has the sense that death or destruction can happen at any time. Natural disasters occur frequently in this rather poor region, and the island on which Char Fasson lies is constantly changing in shape and size. Even in 1989, scientists predicted that "global warming could make Bangladesh even more vulnerable to flooding in future years," saying that "if the oceans were to rise by three meters, a large portion of Bangladesh would be submerged" (Zaman 989, citing Bingham 1989). Political violence, as elsewhere in Bangladesh, is not infrequent. Approximately "76 percent of the population of Bangladesh lives in rural areas and almost 50 percent falls below the national poverty line" (Shehabuddin 6, citing UNDP 2004). While infant mortality has steadily decreased since the early 1970s, mothers and their babies still have little access to quality hospital care.[34] Government

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[33] The social structure itself has been described as "elusive" and "fluid" (Bertocci 1970) as well as "resilient" (van Schendell 1981) (cited in Kotolova 24).

[34] Current infant mortality rates in Bangladesh are at 31 per 1,000 live births, as reported by the World Bank. See http://data.worldbank.org/indicator/SP.DYN.IMRT.IN.

officials, including policemen, are afforded little confidence, especially by the poor. There is little belief in the efficacy of the government and its ability to protect its citizens.

It is, however, more than a sense of death at any moment that pervades life. Rather, it is the feeling of a lack of control over one's life. Baqee notes that 40 to 50 years ago, this was assumed to be a sort of "'traditional inborn fatalism'" (Baqee 6). While one might theorize that the repetition of the phrases, "*Allah jane*" (God knows") or "*Allah-r hukm*" (It's God's law/decree/verdict), highlights a certain sense of helplessness, Bangladeshis certainly do not sit around, waiting for God to bring something into their lives. They do, however, have the sense that at any moment, everything can be taken away. As Baqee puts it: *Char* dwellers have no alternative

> but to live with the hazardous environment. . . God alone knows about the genesis, growth, and decay of the *char* dwellers and their settlements. How many times in a century have the settlements collapsed and homes and lands eroded away only to emerge again down the river. How many times have men witnessed the shifting of the Padma (river) and along with it the migrating people with all their earthly belongings, the poles of their shattered hutments and their boats and rafts .The play of rhythm and balance with unkind nature, that we have yet to reckon with (Baqee 20).

In addition, the rural poor of the *char*s realize "the limits of the *sarkar* (state or government) and its inability to provide them with essential services such as education, legal protection, and health care" (Shehabuddin 5). This is the world lived in by the people of Char Fasson.

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Char Fasson is both the name of the town and the sub-district (*upazila*). Char Fasson Town (approximately 400,000 in the *upazila*) lies at the southern-most tip of Bhola Island, Barisal district. It is a remote area of the country, primarily due to its location at the mouth of the Meghna River, as it flows into the Bay of Bengal. Char Fasson is only accessible by boat. It is, however, the fastest growing sub-district on the island. For visitors to the area, it is most common to enter the town from the north, on the main road that connects Char Fasson to Bhola Town. It is only 70 kilometers from one to the other, but this road was so damaged by floods and daily wear from 2008 to late 2009 that it was impossible for residents to travel back and forth with any great speed or efficiency. The local branches of the micro-credit organizations Grameen and BRAC are situated on this northern edge. The road continues through the town and south toward Char Aisha and the Bay of Bengal. In what might be called the center of town, another major road T-s into this main thoroughfare and crosses east, toward the Meghna. Near to and at this T-junction, lie the bus depot and most of the shops. Market days (*hat*) are Tuesday and Saturday, and a variety of goods from all over Bangladesh are sold. In a few permanent shops, it is now possible to buy refrigerators, sturdy motorcycles, and large color TVs.

The geographic spread of the town itself is not large: within minutes on any direction from the market, one has left the shops behind and again sees large rice paddy plots. A hospital, with its stone structure painted light yellow, is located a few blocks away from the busy main road. The town hosts a large government high school, as well as a similarly large *alia* (high school) madrasa (at the level of what locally would be called college, classes 10-12); it also has a girls' madrasa (at the level of university), the

only one in the district, and a college. The *upazila* is currently a part of Bhola district, but it might rise to the level of its own district within the next five years, as its population continues to grow; in addition to a district court, most residents expect that Char Fasson will become home to far more government institutions.

The offices of the local government lie north and west of the market, on a much quieter lane. The most powerful civil servant in this local government is the Upazila Nirbahi Officer (UNO; it was not long ago that he was called the TNO, for *thana,* or police district), although he is joined by a number of politicians, including the town mayor and the union presidents. The Member of Parliament, however, enjoys the most power, particularly over funds given to the *upazila* for development.

Over 400,000 people live in the sub-district, including those on the small, outer islands. According to the 2001 census, the literacy rate is 37.8%. Men work primarily in agriculture and fishing, although there are far more businesses (and businessmen) in the Char Fasson market than the other village markets. Very few opportunities exist for women to work outside the home. Those with sufficient education usually choose to become primary school teachers; otherwise, women work in the homes of others or in small, cottage industries such as sewing.

Photograph 2.2: Char Fasson road, heading east. To the left is the green building of a large primary-level *madrasa.*

General History of the Area

Char Fasson was not always a part of greater Bhola Island. As the name (*char,* meaning island) implies, the area was once a separate island. From government accounts of the Bakerganj area in the late nineteenth century (of which Bhola was a part), the main island was once called Dakhin Shahbazpur (*dakhin,* meaning south; Shahbazpur is the name of the channel); and this island was once separated by *khal* (canal) into two, North and South Shahbazpur. When Henry Beveridge was writing his book on the District of

Bakerganj in 1876, the island had "an area of about 800 square miles, and a population of about 220,000 persons" (Beveridge, 3). This island is clearly visible in maps dating back to at least 1853.[35]

Beveridge notes that even in the nineteenth century, the "district [was] of relatively recent origin" (5), and thus lacked an ancient history; he writes that the central town of Shahbazpur was Daulat Khan, which still exists today. He does not mention Char Fasson, nor had the man for whom it is named (he had not yet taken his post as district magistrate of Barisal). It seems that at the time of Beveridge, the area was still "tiny islands here and there" ("*kkhudro kkhudro ashongkha chor*")[36] that now form one large island.

It is not surprising that that island has changed shape over the last few hundred years, as earth is added and eroded from the coasts by the great river. Despite the human desire to cultivate and discipline the land, the Meghna is a powerful foe: "In areas where the rivers still exercise their delta-building functions, making and unmaking the landscape, man builds his settlement on the banks of a mighty river, but neglects to train the river and protect its banks. Then the river overflows and ravages the country" (Face of Bengal, 15). This creative process has not ceased; many families today still face the potential of losing their land as it falls into the river.

In the eighteenth century, Dakkhin Shahbazpur was home to a salt farm, which was discontinued in the nineteenth century.[37] Beveridge notes that only the small, southern *char*s were owned by the government; the greater part of the island was owed

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[35] The map from Ain-i-Akbari seems to show the island, but it is overlaid with British names.
[36] From the Char Fasson UNO office, January 2009: "Ek Nojore Char Fasson Upazila"(Char Fasson Sub-district in a glance).
[37] Beveridge, 123-125.

by absentee *zamindar*s (land-owners) and physically claimed by their *howladar*s and other middlemen.[38] It is this situation—in which the British colonial government claimed possession of the area—this situation seems to have led to the intentional settling of emigrants from other parts of Bengal to Bhola.

One man I interviewed claimed that his family had come from Barisal, across the channel to the west, to Bhola in the late nineteenth century and settled in the area of Char Fasson Town that is still called "Bhadra Para" (the gentleman's neighborhood). Most of the people I met claimed that their families had come from Barisal; a few pointed to Feni or Lakshmipur, on the eastern banks of the Meghna.

The town and sub-district are named after a British man who served as the district magistrate for Bakerganj from 1885 to 1887. J.H. Fashion initiated the government-led settling of the area: because he encouraged the development of what is now the main bazaar, it was named for him.[39] Today one sees a number of spellings of the town: Fashion, Fassion, Fasson. I have chosen in this text to use 'Fasson,' as it seems to be the spelling most often used by the Bangladeshi government, although not exclusively.

For a large part of the twentieth century, Bhola was considered part of the district that includes Lakshmipur. Following Partition, when East Bengal formed one wing of the country of Pakistan, the island was placed in Barisal district. In 1970, Bhola was hit directly by a cyclone, the response to which helped energize the movement for autonomy and later independence for Bangladesh.[40]

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[38] Beveridge, 126.

[39] Page 1, "Ek Nojore Char Fasson Upazila": Fashion "proshashonik bhabe e ancholer char-gulir proti drishti den ebong elakar pran kendro bortoman Char Fasson bajar-ti gothon koren."

[40] I am not arguing here that it is the sole reason behind the call for autonomy and later independence for Bangladesh. It was, however, a distinct moment in the building passion against West Pakistani rule, as it became clear that the central government was doing little to help the eastern wing in the aftermath of the horrific cyclone.

Map 2.2: "Map of Bengal, 1853," courtesy, Center for the Study of the Life and Work of William Carey, D.D. (1761-1834), William Carey University, Hattiesburg, Mississippi, USA.

Cyclones

"*When the water came it was different from other times. I could hear a roaring of water approaching even above the noise of the wind in the trees and then suddenly it was rushing around the trunk of the tree and pouring over the lower branches"* (King 1973, 5).

In November 1970, Clive King traveled to the Bangladesh delta to aid victims of a cyclone. While there, he interviewed two boys about their experiences during and after the cyclone and later wrote a children's book based on his interviews. The quote above particularly resonates with the stories I heard from those who lived through the tragedy. When I asked older residents of Char Fasson to tell me about the great 1970 cyclone (*borna*), they often mentioned that they could hear the noise of the water, which scared many people into climbing up trees. One elderly man described climbing up and then securing himself with a *sari*; he saw many around him, without such anchors, wrested away by storm surge levels that are believed to have reached a height over 20 feet.[41]

On 12 November 1970, the cyclone[42] headed toward the coast of Bangladesh. As a category 3 cyclone, it had wind gusts of over 130 mph. That the people I spoke with had not sought out shelter was not unusual: researchers estimate that, "over 90% of the people in the disaster area knew about the storm; yet less than 1% sought refuge in more

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[41] Frank and Husain note that the water gauges on Bhola marked levels around 12.5 feet above the tidal range, which was between 12 and 14 feet at the high stage. Researchers later described what they called "cyclone syndrome," which referred to injuries such as "severe abrasions of the chest, arms, and thighs, and testified to the tenacity with which survivors had clung to trees to withstand the buffering of the tidal bore" (Sommer, 1030).

[42] The cyclone is popularly called the Bhola Cyclone. It was not named by the India Meteorological Department. See http://docs.lib.noaa.gov/rescue/cd024_pdf/005ED281.pdf#page=10.

substantial buildings" (Frank and Husain 443).[43] To make the situation even worse, the cyclone hit at night, around 1 a.m.

The man above did not lose any immediate family members—even his grandparents "*uthe gese*"(climbed up the trees)--but he noted the number of small children who were drowned or carried away in the waters that moved westward. He shared a piece of information that was quite counterintuitive: those who had access to sturdy homes (i.e. the wealthy) fled to the second floors, but "*jara ghore chilo. . . pani-te, dui tolai paya uthe ges*e" (those who were in houses . . . the water rose above the second floor), drowning everyone. As the water receded, nothing was left, and it was impossible to recognize anything. For two days, the survivors stayed in the trees, and when they came down, there was no food, no clothing, and no fresh water.

Another man, who was in his late teens in 1970, related to me his trip from Barisal to Char Fasson the day after the cyclone, in search of his family members. What should have been a bus ride was a boat ride, in which the boat moved through waters littered with dead bodies. Although estimates vary, it is believed that somewhere between 300,000 and 500,000 people died in the cyclone, with mean mortality rates in the affected sub-districts around 16.5%.[44] In Char Fasson upazila alone, the reported number of deaths was 38,000, 22% of the pre-cyclone population.[45]

The then West Pakistan government was criticized by the Bengalis for its slow response to the disaster. The dissatisfaction helped to elect Sheikh Mujibur Rahman of the Awami League in a landslide victory the next month, in December 1970. The

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[43] A number of the people I spoke with said they had not heard warnings, but noted that they heard the waters coming.
[44] Sommer, 1029.
[45] Sommer, 1035.

Pakistani obstruction of his ascent to the position of prime minister led to the military crackdown on March 26, 1971 and the beginning of the Liberation War.

During my fieldwork, the area experienced two cyclones, of varying intensity. In October 2008, Reshmi, a small but powerful storm, hit the islands near to Char Fasson, killing several people when their homes collapsed on top of them. Aila, a fairly major cyclone, hit West Bengal in May 2009, but caused widespread damage and flooding in areas west of, and including, Char Fasson. In chapter five, I describe the day on which Aila came.

Hindus and Muslims

The population of Char Fasson today is overwhelmingly Muslim, but it was not always so. Prior to the partition of India and Pakistan in 1947, between 25 and 50% of the population was Hindu (1931 Census)[46]; by 1961, it was between 10 and 25%. At the time of the 2001 census, the percentage had dropped to 6.3. Outright violence against Hindus in Bangladesh continued after the new state was declared independent in 1971, and Bhola has witnessed its fair share. As in many places in Bangladesh, Hindus were targeted by Pakistani forces and their Bengali allies (called *razakar*s, traitors) in Bhola during the Liberation War, although one senior member of the community noted that the Pakistani forces did not often come to Char Fasson because the road was impassible during the monsoon.

The violence did not end with the advent of the new nation: in 1992, after the destruction of the Babri Masjid in Ayodhya, India, Hindus in Char Fasson were again attacked. The Kali temple in the area was destroyed, and, by community estimates, at

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[46] http://dsal.uchicago.edu/reference/schwartzberg/fullscreen.html?object=130

least 17 houses were demolished, and far more looted. Those who decried the violence were jailed, which compounded the sense for Hindus that they could not receive justice from the state. Fewer than ten years later, following the 2001 parliamentary elections, members of the ruling party (Bangladesh National Party) attacked Hindus and other minorities. Most assume these actions were retribution for the perceived alliance of minorities with the Awami League, the opposing party. The local Hindu community estimates that at least fourteen people died during this violence, and an uncertain number of women were raped.

Hindus and Muslims continue to live side by side, although not without embittered memories: "My friend was killed by the man who still lives 100 yards away from me," one man told me (in English). Yet some situations that one might think would incite violence occur without incident. During Hindu *pujo*s (worship, here meaning festivals), drums are played, even when the *azan* (Muslim prayer to call) sounds. The area is home to five temples (*mandir*), but none of them are very large or elaborate. In 2009, the community was raising funds to install the Hindu goddess Kali in a larger space.

The Distinctive Nature of the Field Site

At the end of his text, Beveridge discusses what kind of municipal institutions into which Bakarganj should be divided; the village, he says, will not work in this area, as it does in Western Bengal, because of the the nature of relations, both physical and societal, in the lower delta. "The houses [in villages]," he says, "are not grouped together, and there is little feeling of companionship among the different householders. The old village boundaries have also been obliterated in many cases by the formation of chars or

by diluviation" (Beveridge 348). Quoting Colonel Gastrell's Report, he observes that "[i]n Backergunge the villages are more scattered and less defined than in Jessore and Faridpur" (Beveridge 348). The relative stability of Bhola Island over the last fifty years certainly solidified relations between residents (and the area is indeed administratively divided by villages, as well as unions and *mauza*s, or administrative unit comparable to the village boundaries), but I noticed several indications pointing to the more transient nature of life in Char Fasson.

A number of anthropologists have noted the existence of the *samaj*, a social unit in Bengal that encompasses all the male relatives descended from a distant male ancestor.[47] In West Bengal, Inden notes that the *samaj* orchestrated religious gatherings and activities; the local mosque might be comprised primarily of one *samaj*.[48] However, when I asked residents of the area about their *samaj,* no one understood the term to mean anything but the generic "society." This revelation made me wonder if, because of the more transient nature of life in this area, the more rigorous notion of the 'samaj' has been lost.

From the descriptions I have given thus far, one might imagine my field site as quite remote and isolated from the rest of the world, and developed countries in particular. It is indeed remote, but it is not isolated. Nearly every family has an immediate member who works in Dhaka or Chittagong (204 km away). It is also very common for families to have sent a young man in his late teens or early twenties to the Middle East: most often to Saudi Arabia, Kuwait, or Qatar. These men are migrant workers, and their stints last seven years. In the majority of the weddings I attended during my fieldwork,

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[47] Cf. Jitka Kotolova, *Belonging to Others*. In this text, Kotolova uses the *samaj* (her transliteration, *shomaj*) as the central unit of categorization in the neighborhood.
[48]

the groom was returning from or just about to leave for the Middle East. The employment of migrant workers abroad brings money into the area, but sets up situations in which newly married women have and raise their first child with absentee husbands.[49]

The Rural and The Global

Far fewer families in Char Fasson have relatives in the United States or Great Britain than in the Middle East, but I found great interest in the activities and news from the U.S. When I first arrived for my dissertation fieldwork, the American 2008 presidential election was just weeks away. Beyond the questions about which candidate I supported, I was surprised at how many (male) residents knew about the electoral college and its workings. Many of my questioners had high hopes that Barack Obama would be less antagonistic towards Muslims, and less zealous in the 'war on terror,' which many viewed as a war on Muslims.

The global concern over terrorism was brought right to the area when the elite military force, the Rapid Action Battalion (RAB) raided a nearby madrasa complex.[50] Inside, they found a stockpile of weapons. It was not clear whether the students of the madrasa and adjoining orphanage were involved in training. The benefactor of this madrasa, and the presumed leader of the organization, was a British citizen of Bangladeshi descent; the government linked this organization to the Jamiatul Mujahideen Bangladesh (JMB), a militant organization behind several suicide attacks against judges

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[49] Katy Gardner's work in Sylhet demonstrates the great effect of out-migration on communities. In the case of Sylhet, however, the majority of those who migrate leave for Great Britain, not the Middle East. In most situations, it does not appear that they intend to come back to Bangladesh. There is a great need to understand the impact of such migrant work on rural families and attitudes towards Islam.

[50] The Green Crescent Madrasa is located in Burhanuddin, which is two sub-districts north of Char Fasson.

and other violent acts.[51] The RAB began making arrests in the area, including arrests of journalists and other professionals. The raid itself provoked much discussion and tension, as the government subsequently directed all district police chiefs to increase surveillance of *qawmi* madrasas (non-governmental religious schools) across the country.

The Orphanage

The choice of field site is often serendipitous, as Ann Gold has so eloquently described (Gold 1984). I first travelled to Char Fasson, a remote town on the island of Bhola, in January 2001. I knew very little about Bangladesh or Bengali culture; I knew only a little more about Islam. I had chosen to participate in a service learning experience in Bangladesh, sponsored by DePauw University as part of a team that included 27 students, university advisers, and medical providers. We stayed at the orphanage for two weeks, during which time we ran a small health clinic and erected a small building for housing livestock. As I entered graduate school and formulated my research plans, I kept returning to this small dot on the Bangladesh map. Having established ties to the local community, I felt it seemed sensible to conduct my fieldwork in Char Fasson.

Since making that decision, I have often been asked why I did not choose to conduct my fieldwork in a place that would be easier to reach, some place closer to Dhaka or on a major route. As I sat on a ferry, travelling from Dhaka to Char Fasson,

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[51] Throughout 2004 and 2005, Bangladesh witnessed an unprecedented number of militant attacks. It seems that the group first began its reign of terror under the name Jagrata Muslim Janata, Bangladesh (JMJB) in the northwest districts of the country. Its commander, Siddiqul Islam, alias Bangla Bhai, may have undertaken arms training in Kandahar in the 1990s. Under his leadership, the JMJB took up its own vigilante justice program, targeting Communist cadres and minorities. They also set up social 'morals' policing, forcing all women to wear burqas and men to wear prayer caps. By 2005, the group had morphed into JMB, and they began to conduct activities across the country. They were behind the August 2005 multiple bomb blasts that exploded in 63 districts and the murders of law officials throughout the fall of 2005. The leaders, following capture and arrest, were executed in 2007, and the activity of the JMB has drastically decreased.

sometimes for upwards of sixteen hours as we sought our way through blinding fog on the river, I often wanted to reconsider my decision. Despite the beauty described above, living in Char Fasson was not easy for me. The problems I encountered were both augmented and significantly minimized by my close relationship with the largest orphanage in the district, located a ten-minute walk from the Char Fasson market, on the road heading east toward the Meghna River.

By the time I started my fieldwork, I had been visiting the orphanage periodically for seven years; I knew the staff well, and I was well aware of the resources and limitations in associating myself with the institution during my fieldwork. The director, Seraj, is a gentle, soft-spoken, middle-aged man who was himself once a child resident at the orphanage. His mother brought him and his brother to the orphanage, having left her husband when he took a second wife. This situation is a good example (and not uncommon) of the ways in which top-down legislation does not influence cultural practice. After 1961, all additional wives were to have required the first wife's uncoerced acceptance. In practice this rarely happens. Seraj, like many of the children here at the orphanage, is called an orphan, but his mother is still alive; she had no means to support her children without a male protector. She was never divorced, and her husband did not pay maintenance for the children. Had she been divorced and then remarried, like so many of the women must do in order to survive, her new husband might well have rejected the children.

Seraj was present at a number of my interviews and served as both a formal and informal research assistant. As a male resident of the area, he was able to introduce me to many people who might otherwise have been wary of me. Although his presence offered

me entry into certain spheres, it was with his wife that I often learned the most about Islam and Islamic law. She was as much of a research assistant as her husband was throughout my fieldwork, although this label can hardly encapsulate my relationships with both of them. His wife and I have become close friends over the last ten years. She is only one year older than me, but with two children at the time of my fieldwork in 2008-2010 (now three) and a busy household, she often seemed much older. The oldest of five children, Rashida is warm and patient. She comes from what might be viewed as an educated, lower middle class family: her father runs his own business in Dhaka.

It was in Rashida's kitchen that I often sat and listened to women of the area chat and tell stories, while Rashida cooked. The kitchen is a structure separate from the house, although connected by a corrugated tin roof. The area inside is quite small, with a large part taken up by the earthen structure over which she cooks fish, *ruti* (unleavened flat bread), and various kinds of *shaag* (spinach, but more generally, green plants). Seated on the earthen floor, Rashida or her younger sister would cut vegetables and meat, on a sharp knife that curves backwards and is held in place by one's foot (*bouti*). She cooks for a joint household, so a great deal of her time is spent in this cooking shack: her younger sister and brother live in the home[52], in addition to her husband, children, elderly mother-in-law, and adult brother-in-law.

While my relationship to the orphanage provided me a sort of legitimacy in the larger Char Fasson community, it also presented a number of impediments to my research, not least of which was the time I spent working on issues related to the orphanage. I was often called to meetings with local governmental officers, at which the

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[52] Because Rashida's parents live in a remote, rural area, they chose to send their younger children to live with Rashida and her husband, so that they have access to higher-level schools.

topic discussed was rarely related to my research interests. Because of Seraj's busy days as director, he could not give all his time as a research assistant. I sometimes felt ashamed to ask him to do even more work, but he was by far the best person available to work with me.

There were economic and political complications as well. I gave a great deal of my Fulbright stipend to keep the orphanage running during that particularly lean period. I felt this gesture was the least I could do, even though I was already paying for "rent" and my food. I also felt constrained in my interactions with political officials, not because the orphanage and its staff were aligned with any particular party, but because they had to curry favor with whoever was in power.

Despite my relationship to the orphanage, I was still an outsider. As an outsider "intruding" in the area, the fieldworker causes a "problem of confrontation" for residents "with the possibility of otherness, even the existence of a conceptual anomaly" (Kotolova 1996, 28). The response to this confrontation is often to categorize the fieldworker in familiar ways; in this case, to make her "as Bengali as possible in accordance with . . . conception[s] of womanhood" (Kotolova 28 and Kondo 1986). Kotolova (1996) likened her fieldwork experience to that of the *notun bou* (new bride), entering the village of her husband within the patrilocal culture. She describes herself in this way in order to highlight not only her marginality when she first arrived, but the shifting perspectives of insider and outsider, in which one is "constantly interpreting, negotiating, and consolidating between these two intellectual and emotional positions and between two sorts of belonging, agnation and affinity" (Kotolova 25). As the *bou*/fieldworker becomes

more accepted within the village, she is privy to multiple explanations given for patterns of behavior such as women's veiling (see pages 30-34).

Perhaps because of my research interests, and my attention to the concerns of religion, I often felt much more like a potential convert, or even small child being schooled in the ways of being Muslim, than a new bride. My position in the community was certainly that of an outsider – a foreigner, a woman, a non-Muslim – but I was subtly accepted with the belief (one that I did not advocate) that I would one day become Muslim like my friends. My interlocutors could not fathom that, having studied so much about Islam, that I would not someday recognize the truth of the religion and accept it as my own. I witnessed a great deal of angst on the part of Seraj and his wife as they tried to deal with their belief that I, as a Christian, would be punished in the Hell-Fire after death if I did not convert. "But you are a good person," he would say to me. "That's why you *must* convert. So you will not be punished." My presence caused him to think through his own beliefs on whether or not Christians would be able to go to Paradise after having endured punishment; punishment was necessary, but he came to the conclusion that surely God would allow good Christians to go to Paradise later. Until then, I would be taught about Islam, while I was otherwise free of the responsibilities incumbent upon other women my age in the area (such as cooking and cleaning).

I enjoyed the opportunity to sit with the orphanage children, listen to, and play with them. Later, I found that these relationships led to interviews with family members of the resident children. I also advocated on behalf of the orphanage for food, government funds, and concerns related to the land. This type of relationship required a great deal of time on my part. Such a position, though, as part of this institution, provided insight into

unique aspects of the area, in that the orphanage is intimately tied to its history. I describe below the cyclone that necessitated the building of the orphanage in 1972. Several months into my field research, I became aware that the government land (*khas*) rented by the orphanage to plant rice and vegetables is considered 'abandoned' property that once belonged to Hindus. Thus, it is land covered under a controversial law, now called the Vested Property Act; this law has been used to strip Hindus of their land and has contributed to the movement of Hindus out of Bangladesh. The land rented by the orphanage is a reminder that the area was once home to far more Hindus than it is today, as well as an indication of the layers of oppression and exploitation within which I found myself at various junctures during my fieldwork.

Because I worked with an orphanage, I gained access to a variety of people in a number of professions, from government to development and aid work to domestic service (as with some of the children's mothers). There is no doubt that my white skin provided me the authority to speak to people whom most residents of the area would never have approached, including the police chief, the member of Parliament, and the mayor. Within this dissertation, I often note how my gender affected my research, but just as important was my race and the attached presumptions. I was often treated with a respect I did not earn and given benefits that I would not otherwise have been granted.

Although I conducted research in a remote, rural area, I had surprisingly good access to computer technology and to the Internet. I did not have to write notes long-hand, although I often did. More importantly, I had access to the Internet—through the mobile phone line—when we did not, as was often the case, have electricity. I knew, for

example, that Cyclone Aila (May 2009) was coming, because I received a list-serve e-mail from a meteorological institution.

I chose to wear conservative clothing, in the form of the *shalwar kameez*, but I did not often wear a *burqa*, the cloak-like garment worn in public by women past puberty. I decided to wear it only in situations where I would not otherwise have been given access. Wearing the *burqa* contributed to expectations that I would eventually convert to Islam, although such an expectation did not simply come from dialogue about dress. Therefore, because I wanted to be as clear as possible about my research and my goals, I did not engage in activities (such as wearing the *burqa*) or speech that would heighten the expectation of conversion.

The Ethnographic Experience

I was asked this question in a similar way by many (urban) Bangladeshis: it was not unusual for them to ask me why I was doing research in a remote town, with people who were, most likely, ignorant of their religion; such people could not possibly teach me correctly about Islam. Why not learn from the learned scholars, or from educated, urban Muslims?

My answer to urban Bangladeshis was, in part, the same as it would be to academics: I wanted to study what people do and think about religion, not what the scholars say they *should* do or think. The latter project would certainly be interesting— for example, a study on the questions asked of famed Islamic scholars who become, in a way, television personalities. But within this research, I wanted to understand the perspective of lay-people, of their conceptions of authority, and how they learn what is "Islamic" and what is not.

The religious practices and beliefs of the Bangladeshis with whom I worked would most often be discussed by Religious Studies or Islamic Studies scholars under the paradigm of "syncretism," as Muslims who have integrated seemingly "Hindu" practices and beliefs, or in the category of "folk religion." Conversely, in the last decade, they are included in the population that is supposedly "Islamizing." In the former characterization, they are not treated as "true" Muslims; in the latter, they are presented as ignorant masses, easily swayed by religious fervor and persuasive leaders.

In the chapters that follow, I hope to illustrate the agency through which the people in my field site make religious and legal decisions. Following Shehabuddin (2008), I insist that, contrary to assumptions by both secularists and Islamists in Bangladesh, the rural poor are not gullible,[53] nor are their lives as Muslims inconsequential. The benefit of this study to the academic study of Islam is its examination of the many sources of authority that co-exist, without some hegemonic, totalizing discourse taking ascendance.

Relationship to Community

Following the turn to self-reflexive ethnographic writing, scholars have criticized the sometimes overwhelming presence of the fieldworker in the ethnography. Indeed, this push in the late 1980s and 1990s did encourage new forms of scholarship, including those that advanced the idea that all one can really know is oneself.[54] This dissertation is about the Muslims of Char Fasson, but I am not absent from the narrative. I have a long-term, and ongoing, relationship with this community.

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[53] Shehabuddin, 3.
[54] See, for example, Clifford and Marcus's *Writing Culture.*

It mattered to my interviewees that I am white, non-Muslim, female, and American. In different situations, each of these identity markers became more or less relevant. On the one hand, I was allowed into certain female spaces and barred from some male spaces, as are the Bangladeshi women with whom I worked and lived. On the other hand, my whiteness and nationality provided me a privileged access to local officials that the vast majority of residents lack, and they often offered me a place of prominence at local events. Even while conducting research, I sought to procure resources for the community, using channels available to me. I often worked with local officials to acquire necessary resources to benefit marginalized children in the area. This relationship augmented and complicated my status as a foreigner in the hierarchical structure of the patronage system that still exists in Char Fasson. I was both enmeshed in, and yet outside of, this hierarchy. As a foreigner who obviously had access to funds (if not being wealthy by my own country's standards), I was often asked to give money to poor families, in addition to the inquiries about visas to come to the U.S.

Yet in my more personal interactions, it was my status as a non-Muslim that was a source of concern (although not necessarily antagonism). I was often asked how it could be that, having learned so much about Islam, and, therefore, its status as the true religion, I did not convert. Sometimes this question was asked in a way that might be considered aggressive; more often, it was asked with a deep concern for my fate on the Day of Judgment (*becharer din*). Many people in this area believe that everyone (except the most powerful *pir*s and scholars) will go to Hell (*Jahannam*) for some period of time: the question is how long one will stay there. As a non-Muslim, I could possibly stay in Hell forever, and this prospect noticeably upset those closest to me.

My religious affiliation also affected the way people talked to me about Islam. I was, quite often, treated as a child or student, one who must be taught basic rituals and beliefs. At times, I found the superficial rendering of the tradition ("*Islam mane shanti*" or "Islam means peace") quite irritating, but it sometimes led to intriguing descriptions of prophetic stories or ritual acts. With those with whom I had more than a passing acquaintance, the relationship provided insight into how one is 'taught' to be Muslim; it offered a framework for determining how Bangladeshi Muslims "know what they know" about Islam.[55]

Not being Muslim shaped the course of many conversations I had with community members and ultimately shaped the "knowledge" produced in this ethnographic study. My perceived interests and lack of understanding influenced the topics that were discussed with me, how often religion came up in the conversation, and the religiosity displayed. In writing this text, I have kept in mind that many other factors influence the lives of residents in Char Fasson, and religion, while important, is not their only concern.

It is tempting to claim that in this dissertation that I will "take religion seriously." That claim, however, has come under some criticism, particularly from Religious Studies scholar Elizabeth Pritchard. She argues that for many in our field, "taking religion seriously" means to "perform . . . a particular task a summoning differences and controlling the outcome so that conflict is deflected, managed, or preempted. 'Taking seriously' is a controlled experiment in which risks are alluded to but ultimately avoided" (Pritchard 2010, 1089). Pritchard is ultimately concerned that the notion of "taking

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[55] I am certainly not claiming here that my situation was unique. Michael Lambek also describes situation in which he was

seriously" or "radical openness" can potentially re-inscribe a secular assumption of a space in which there is no power dynamic. Thus, she asks of Robert Orsi's work, that "[s]urely, [he] cannot deny that the scholar has power and privilege" (Pritchard 1099). In addition, she questions that 'openness to the other' in fact means "self-discovery and revitalization for the scholar" (Pritchard 1100).

Instead, Pritchard offers a "seriousness" that regards religions "as having historical, material, and bodily consequences. It is also to consider religions as internally contentious, and to evaluate aspects of them on a case-by-case basis via explicit criteria of interpretation and judgment" (1004). The cases she cites with favor are those in which the scholar allows "conflict to play out," thus teaching the reader about "*internal* boundaries and divisions of the community" being studied (1004). She notes that Carolyn Moxley Rouse, in her book, *Engaged Surrender: African American Women and Islam,* "highlights women's ambivalence as well as her interpretations of what they are doing" (1106). In effect, Rouse does not shy away from interpreting conflict even when it is not specifically articulated.

While I find Pritchard's arguments intriguing and useful, I am uneasy with too deeply interpreting issues not specifically verbalized. When possible, I tried to tease out background context to conversations by asking more questions of the same person or others – I did not assume that I knew *why* a person felt a certain way about a particular topic or situation. I do, however, note ambivalence and conflicting accounts wherever necessary: these I consider extremely telling in the ethnographic research context.

I also find it important to be aware of the manner in which I affected situations, as well as how my writing is in some ways a fiction.[56] Otherwise, I try to be straightforward in separating my interpretation from the events and interviews themselves.

Photograph 2.3: The original orphanage building, built after the 1970 cyclone to house the many children left without families.

Research in Bangladesh: the Production of 'Knowledge'

Because of the nature of much social science research in Bangladesh—where the goal is often to explain and then solve a social problem or issue—researchers are expected to be able to generalize their results to the whole country. This usually means

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[56] See Kirin Narayan, "Ethnography and Fiction: Where is the Border?" *in* Anthropology and Humanism, 24:2, December 1999: 134-`47.

that research is conducted in several sites, but without long-term commitment to staying in any one community. My work here could be criticized on these very grounds, as it is not generalizable and is not meant to speak to situations across the very different regions of Bangladesh. Rather, it is focused on a specific region, recognizing that this region is distinct from other areas.

The research conducted by non-Bangladeshis in Bangladesh, while valuable, must be read with an eye to the methodology. While research assistants are used in many contexts in academic research, the use of such assistants has become systematized in Bangladesh in ways that must be explored and articulated. First, many research assistants in Bangladesh, particularly those used by international development organizations, are young Bangladeshis who can speak both Bangla and English. It is often the case that they are not well-paid, particularly in comparison to their foreign colleagues and might have little expectation of moving up in the organizational ladder. While non-Bangladeshis may travel to rural areas outside of the capital city, it is the job of their Bangla-speaking research assistants to set up interviews and translate conversations.

Second, these research assistants are rarely be co-authors of studies based on the research they have conducted. The data, once collected, is in the hands of foreigners whose command of English and educational backgrounds in development-related fields mark them as the "experts." The finished report is rarely questioned, and the findings will be referred to and cited repeatedly as established fact. Development and research projects are often conducted in the same few towns. Perhaps the most popular location for research is Matlab, a town now associated with a number of projects on maternal health.

The residents of towns like Matlab have become quite accustomed to having researchers come to ask questions and observe. It is quite possible that such a population has been exposed to research fatigue. As Sukarieh and Tannock note, "the problem of over-research can arise anywhere," but it is most likely to occur in places "characterised by three key features: communities that are poor, low income . . . or otherwise marginalized; communities that have experienced some sort of crisis . . . and/or have engaged in active resistance to the conditions of their poverty and marginalisation; and communities that are accessible to outside researchers, in particular, by being located in close geographical proximity to research centres and universities" (Sukarieh and Tannock 2012, 496). Matlab is located approximately 40 miles from the capital, Dhaka and has served as a laboratory of sorts for those wanting to improve maternal health and decrease population growth.

Sukarieh and Tannock note several negative effects of over-research in a Palestinian camp in Lebanon. First, residents begin to question whether or not the research was really meant to improve their lives directly. In their study, participants noted that they are promised that research gives them a 'voice,' but they see little change on the ground. Second, residents have misgivings about research agendas and practices. In this case, many of the researchers do not know Arabic and thus use interpreters; they come for an interview or two, promise to stay in touch, but then do not. Third, the research has led to problems for individuals who are seen as 'stars' for a time period, but who then quickly realize they are only highlighted because of their identities as camp dwellers. The

situation also creates an opening for 'fixers' who make money by acting as guides for researchers.[57]

It's very possible that these negative effects have been or could become evident in places like Matlab. My own field site is sufficiently far from any urban centers to attract many researchers. In fact, as I've noted, I was actively discouraged by Bangladeshi city-dwellers from researching in this remote area. And in Char Fasson itself, there was less expectation as to what a researcher could or would provide than there would have been in communities in which researchers regularly come, although this lack was supplemented by expectations tied to my involvement with the orphanage.

The above should not be taken to as a sweeping indictment of development/public health studies and activities. It is, however, meant to illustrate the difference between my own long-term research in a single site and my knowledge and active use of Bangla and that of the vast majority of research that is undertaken in Bangladesh.

Daily Life In Historical Perspective

Far too often, ethnographers write their manuscripts as if their fieldwork occurred in a time vacuum. The research occurs over a period of time, in which places, politics, and people change. For example, the *upazila* (sub-district) in which I work may, by the end of 2014, be upgraded to a district. Once that occurs, Char Fasson town will be a district center, with government offices and a district court. On the one hand, those I spoke with noted that, while this change might affect the rate at which residents appeal to the government courts for assistance, they did not expect a significant impact in dispute

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[57] For another study on the precursors of research fatigue, see Tom Clark, "'We're Over-Researched Here!': Exploring Acccounts of Research Fatigue with Qualitative Research Engagements," in *Sociology* 42 (1998): 953-970.

resolution. On the other hand, district status would mean a specific focus on Char Fasson in matters of development and budgeting.

On one level, it could be argued that the political scene matters little in relationship to the kinds of topics I am exploring: the unwillingness of any of the democratically elected parties to enact significant change might lead to the assumption that it doesn't matter who is in power. But the situation early on in my research was somewhat unique. I conducted my primary fieldwork from October 2008 until March 2010. For two months, until late December 2008, the country was ruled by a military-backed caretaker government. This government had refused to allow elections to occur at the usual time (within four months of the end of the previous civilian-elected administration), on the pretense that fair elections could not occur at that time. The caretaker government then stayed in power for over two years. In contrast to the period after the Awami League came into power by a landslide vote, the end of 2008 witnessed no street protests or strikes (*hartal*s).

Local elections were then held in January of 2009, with the Awami League again winning in the area, despite the upazila's strong ties to the Bangladesh National Party (BNP). In fact, in October 2001, when the BNP came to power, Char Fasson and the surrounding areas witnessed some of the worst violence against minorities and women in the country. While this time period was not discussed by my Muslim interlocutors, it was often brought up by Hindus still living in the area (see above).

Not long after they came into power, the Awami League took steps to re-examine a long-standing controversy - that of the role of certain figures in siding with the Pakistani army against the Bangladesh liberation forces. These alleged war criminals

have enjoyed relatively little social ostracization in the era of independent Bangladesh, and many have reached high-level positions in the Islamist party, Jamaat-i-Islami (JI) Bangladesh.

Even at my remote field site, one could sense the political re-centering, in which the Awami League attempted to compel a re-orientation towards secularism. The strategy appeared to be to cut the JI off at the knees by jailing its top leadership for their roles in the murder of civilians in the Liberation War. At least on its face, this made the Awami League government appear to be less hospitable towards religious authorities of all kinds than their predecessors had been.

Ethics

While following IRB guidelines, one must still make a number of individual decisions about what is ethical in fieldwork and ethnographic writing. I have made the decision not to use a fictional name for the town in which I conducted my fieldwork. This decision was made after considering several factors. First, the *place* of my fieldwork is very important. Throughout my research, I consider how the environmental and geographic factors affect my results. But it is not simply that: I am aware of how diverse Bangladesh is from region to region. It is not possible to generalize my findings to every part of Bangladesh, despite the relative homogeneity of the population's ethnicity. Second, one must consider the nature of fieldwork in an increasingly digitized and electronic world. The increased access to media around the world makes it difficult to be anonymous in the ways that one might have in earlier decades. I worked with a specific organization in Char Fasson and that work has been highlighted in local media available

online. Even if I used a fictional name in this text, one would only have to go to the Internet to find out the actual name of the town.

With the exception of Seraj and Rashida, however, I use pseudonyms for the people with whom I worked and lived; even with respect to these two, I do not provide specific, personal information. People in the local community are aware of where I spent the majority of my time and with whom, but I make every effort to preserve the privacy of those who shared their lives with me. In the following chapters, I recount a number of situations and stories that require sensitivity, as they might be used to prompt or further tensions in the community. Seraj introduced me to a majority of the religious and legal authorities I describe in the following chapter.

Chapter Three

The Range of Religious Leaders and the Production of Authority

When I began my research in Char Fasson town, I was primarily interested in how local lay-practitioners understand Islamic law and its relation to state and customary law in the area. I wanted to know to whom they brought their legal concerns and disputes. But alongside discussions about this or that *mufti* or which *pir* had offered them water that has been prayed over (*phoo deowa*) were answers to Talal Asad's query on "*how* 'religious' duties are embedded in social relations and *what* specific duties are entailed by social relations" (2003, 243, italics in original). As I allowed my interlocutors to take conversations in their desired direction, I most often heard a variety of narrative genres that had little to do with dispute resolution and more to do with how my friends and acquaintances narratively negotiate the possible ways to think, act, and *interact* in the "correct" way as pious Muslims.

A cacophony of voices claims interpretive authority for Muslims in Char Fasson. *Tablighi Jamaat* members from all over the world spend time in the town. To the north-east of the town is a *madrasa* complex built by a famous *mufti* and *pir*, whose lineage continues to serve the population. Another *pir*, referred to as Jaunpuri Huzur after his birthplace, visits several times a year to address particular concerns of the population (see chapter five). The town also contains a well-known upper-level *madrasa* and at least twelve *mufti*s who regularly provide *fatwa*s to petitioners. Small mosques can be found in every hamlet. Access to new media, through CDs and VCDs produced by nationally-recognized religious leaders further adds to the plurality of voices speaking for Islam.

The discourses of these authorities, while not identical, often overlap. It is not that the various authorities vastly disagree on points of law; rather, they disagree on the nature of God's interaction with, and through, human beings. Sufi *pir*s and (non-Sufi) *mufti*s, for example, do not belong to mutually exclusive groups that refute the authority of one another. Where there is disagreement, petitioners do not seem to be troubled by incongruence, rendering an attempt to chart communal authority a difficult endeavor.

Field research in rural Bangladesh has encouraged me to reconsider the manner in which individuals within rural communities define and maintain authority and, subsequently, orthodoxy. The analysis of authority within a given setting proves complicated: it defies location in any singular institution, texts written in the past, or speeches of contemporary leaders. Research on authority that privileges the perspective of religious authorities, even ethnographically, fails to explain the influence of such discourses upon the lives of everyday believers and lay persons.

These believers do not, in fact, choose one source alone for their information and guidance on religious matters. As the previous chapter illustrates, a number of figures in the community provide advice and resolutions to disputes; this chapter shifts the perspective to that of the lay people and attempts to explain a method of teaching or relating religious information that is rather separate from institutional or formal teaching structures. I look at the informal, "living" nature by which people draw together multiple sources of authoritative discourse.

In communities across Bangladesh, Muslims are faced with a variety of religious actors who claim to speak authoritatively about Islam. They turn to these religious

leaders when they have specific religio-legal problems or questions, often bypassing the state legal structures. But how do they choose to whom they will address their inquiries? In the course of my ethnographic fieldwork, I have identified two basic types of religious authorities: those who are respected for their education and knowledge, and those who are revered for their proven ability to produce miracles (efficacy). As mentioned in Chapter One, these two categories are not mutually exclusive. The study of Islamic authority is particularly difficult when one considers the number of potential authorities available—*mufti*s, *kazi*s, *pir*s, *imam*s, teachers, *kabiraj*s, etc.—as well as the highly fluid nature of every day religious life.

Scholars have long recognized the dichotomy of authority within Muslim religious communities: "[w]ithin the Sufi milieu, both *turuq*-affiliated and independent, religious authority was understood and practiced in ways that as a rule differed markedly from those of the *'ulama'*…. If one presupposes literacy (in the Arabic language!), the other is commonly thought to be premised on charisma (another of Weber's difficult concepts), either inherited or acquired" (Krämer and Schmidke, 10). However, within a local community, the differences and boundaries between these two types of authority are often not clear. *Pir*s, often not known for their Sufi-*tariqa* brotherhoods by those in the area, might also be highly trained in the Islamic sciences. Influential *mufti*s may be remembered for their miracle-producing *keramat* (spiritual power).[58] But there are some distinctions in the subjects of concern or dispute brought to each of these authorities and in the ways in which they interact with community members.

While scholars in Religious Studies have followed the careers and writings of influential Pakistani and Indian leaders, Bangladeshi authorities have not been similarly

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[58] In Bangladesh, I have most often seen this rendered in English as 'keramat' or 'keramot.'

studied. This is perhaps due to the lack of a major, well-known educational institution like Deoband in Bangladesh. But I would argue that it is also part of a continuing—albeit sometimes unintentional—marking of Bangladeshi Muslims as less educated about their religion and perhaps, more conspiratorially, not actually "real" Muslims like their Indian and Pakistani counterparts. Even in the imagination and discourse of the educated Bangladeshi elite, "illiterate mullahs" becomes a category encompassing all religio-legal specialists, from those with the most basic religious education, to those with master's level, specialized training. For example, as I will describe in detail in chapter five, in 2000, the High Court brought a case against the perpetrators of a forced marriage of a woman named Shahida to her ex- husband's cousin. The case involved the pronouncement of unilateral, instant *talak* (Ar. *talaq,* divorce, in which a man says "I divorce you" three times). The judges disparaged those who would support the tradition of instant divorce, saying that such men, who receive their education from *madrasa*s (religious schools), "are becoming fanatics with wrong views. They must be defect in their education and their attitude" (sic, *Editor* 2002: 231). This case declared the pronouncement of *fatwa*s illegal.[59] In the perspective of the judges – and those who agree with them – *madrasa*s are incompatible with the needs of the secular state and, worse yet, teach only fanaticism.

Despite these views, Muslims all over Bangladesh- including in Dhaka itself and in Char Fasson – continue to seek out the advice of authoritative figures not associated with the secular state. In this chapter I discuss a range of religious authorities in Char Fasson, asking how each authority is constructed, and what is at stake in this community

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[59] This verdict has been overturned.

as its members choose certain authorities over others. I end the chapter with a description of an alternative form of authority: a woman leading women in study of *hadith*.

Bangladeshis, like citizens of most countries, live in a legally pluralistic society. The state law is ostensibly secular, except with respect to family law, which is governed, for the most part, through the Muslim Family Law Ordinance, 1961 (MFLO, see chapter five). Though family law is the only area within which Islamic law is codified and legislated in Bangladesh, Muslims also practice Islamic law in other areas. The majority of Bangladeshi Muslims are Sunni and follow the Hanafi legal school. Like Muslims all over the world, they practice *shari'a* every day in prayer, ablutions, *zakat* (alms-giving), *roja* (fasting), etc. Lay people and scholars alike discuss and debate the contours of Islamic law, and contrary (minority) opinions are called *motanoikko*.

I begin with a short description of the state judiciary in Bangladesh. Although it is not the focus of this study, it is certainly a forum to which residents can and do take their legal problems and stands in contrast to the other forums studied. In order to understand the relationship between the community court, state law, and the relegation of religion to the 'personal,' family sphere, however, I will first discuss the history of Islamic law—and of the informal, community court—in South Asia generally and Bangladesh in particular.

History of Islamic Law in South Asia

Muhammad Basheer Ahmad has argued that, when the British came to India, they encountered a fully functioning judicial system, created by the Mughals, which they largely left in place (Ahmad, 1941, 32). The *kazi*s had a great deal of authority as the primary officials within the courts, sometimes presiding over cases for both Muslims and non-Muslims. This system included a number of levels, from the Emperor down to the

district, then sub-district (*pargana*), and finally village. At the village level, disputes were

handled by the *panchayat*[60], the village court run by the 'headman' (*chaudhri*) (Ahmad

1941, 169). About the *panchayat,* the precursor to the *salish,* Ahmad says:

> The Panchayet held its sittings in a public place and administered
> justice in the village so far as punishing small offences and
> deciding petty civil disputes were concerned. The decision of the
> Panchayet was binding and in most cases no appeal was filed.
> The decrees were generally executed (Ahmad 169).

Although the *salish* is not exactly the same as the *panchayat* described by Ahmad, it

would seem that it had a precedent in the Mughal judicial system and existed perhaps

even long before the Mughals ruled the subcontinent.

Despite the complex system—which operated even under the deteriorating power

of the Mughals—there appears to have been little in the way of written case records or

organized statutes. With the increasing reach of the British in the subcontinent in the 18th

century came a focus on codifying the law in such a way that it could be administered by

the new colonial power. The personal (family) laws[61] of the various religious

communities under their rule became a major focus for colonial authorities as they

instituted what John Griffiths calls legal pluralism in the 'juristic sense' (Merry 1988,

871, citing Griffiths). In order to create a legal system consisting of "different bodies of

law for different groups of the population varying by . . . religion," (Merry 1988, 871),

the British authorities relied upon a (small) collection of translated Muslim and Hindu

religious texts. Sir William Jones, colonialist and philologist, was prominent among those

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[60] Scott Kugle notes that official *panchayats* were established by Aungier, the governor of Bombay, in 1673. Kugle 2001, 260. *Panchayat,* in Hindi, comes from the Sanskrit for *panch* (five) and *ayatta* (depending upon).
[61] By the 19th century, the British had introduced their own criminal laws in the subcontinent.

who insisted that the authentic and authoritative Muslim (or Hindu) laws to govern the
population could be found in the oldest legal texts, if only one could find and translate
them into English (Cohn 1996, 69). Often referred to as Anglo-Muhammadan law, this
construction became something quite other than *shariʻa,* or even *fiqh,* by the very act of
attempting to codify and fix it in time.

Early on, the colonial courts depended on *kazi*s who "served as mechanisms of
inquiry, while the classical religious-legal texts, whatever their genuine relevance, were
taken as the key to understanding colonized cultures and societies" (Anderson 1993,
172). For example, a legal text such as *al-Hidaya,*[62] despite being only one of many legal
texts used by pre-colonial *kazi*s and *mufti*s, served as the foundation for the formulation
of Islamic law in the subcontinent. *Al-Hidaya,* translated into English by Charles
Hamilton in 1791, was followed by the translation of *al-Sirajiyya*[63], a treatise on
inheritance, and *Fatawa-i Alamgiri.*[64] While Jones often consulted Muslim legal scholars
early in his career as in India, he had a profound distrust of the "fallible and seemingly
overly susceptible" religious scholars whose "interpretations and knowledge had to be
found or reconstituted" (Cohn 1996, 69). Gradually the *kazi*s lost their influence, and
Jones embarked on a project to create a complete digest of Muslim law based only upon a
few medieval legal texts.

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[62] Also spelled "Hedaya," this text was written by the Central Asian Hanafī jurist, Burhan al-din Abu ʻl
Hasan ʻAli b. ʻAbd al-Jalal Farghani al-Marghīnānī (d. 1197), as a commentary on his own *Kitāb Bidāyat
al-mubtadī.*

[63] This text was written by Siraj al-Din Muhammad bin ʻAbd al-Rashid al-Sujawandi (d. 1411/814) (Kugle
2001, 272).

[64] *Fatawa-i Alamgiri* was a compilation of laws put together by Muslim legal experts under the reign of the
Mughal emperor, Alamgir. It is not, in fact, a compilation of *fatwa*s, but rather a text of *furuʼ al-fiqh,*
(substantive law).

The use of texts without reference to social situations ignored the actual flexibility of Islamic law. Gregory Kozlowski has argued that the colonial process produced a modern state that

> has given Muslims a Personal Law. Such a focus on texts also served to hypostasize Muslim law and fix it in time: the British understanding of Muslim law was based upon a few historical texts that were taken as the final word on law, thus "presenting the *sharī'a* as something it had never been: a fixed body of immutable rules beyond the realm of interpretation and judicial discretion (Anderson 1993, 176).

The actions of the British served as a foundation for Muslim personal law in the subcontinent long after their colonial rule ended. The creation of a domain of 'personal law' ignored the fact that "both Hindu and Muslim 'world-views' considered all aspects of life [to be] equally subject to religious rules," thus producing the conception of "a religious/private sphere and a secular/political sphere" (Lemon 2010, 8; quoting Parashar and Dhanda 2008, *xi*). The notion that Islamic law in the subcontinent can only be found within the state legal apparatus has been reproduced in contemporary Bangladesh; what counts as religious law is "personal," family law. When Islamic law is acknowledged as existing outside of the state's purview, it is viewed as illegitimate and spurious.

Formal Judiciary System

The Bangladeshi court system is made up of two tiers – the subordinate courts and the Supreme Court, comprised of the High Court and the Appellate Court. The subordinate courts are divided into two types, civil and criminal courts. The legal system is based in part on British common law, introduced during the colonial period. Islamic family law is in force in the state courts, but only applies to Muslims (other religious groups have their own personal legal codes). Islamic family law is not legislated in detail;

rather, the courts depend on classical understandings of Hanafi *fiqh*. There have been several cases, however, in which such understandings have been questioned, as in the case of *Muhammad Hefzur Rahman v. Shamsun Nahar Begum* (15 BLD (1995) 34), in which the courts overturned the classical interpretation of maintenance[65] for the *iddah* period for the wife in favor of indefinite maintenance (alimony).

In 1985, Bangladesh introduced the Family Court System, whose jurisdiction is limited to civil cases. The Family Courts are for members of all religious groups and are meant to serve as a means to move cases on divorce, restitution, custody, etc. more quickly than through the regular, civil courts.[66] There is a Family Court in every district, presided over by an assistant judge, but residents of Char Fasson have to travel a difficult, often impassable road to reach the nearest one, in Bhola town. Instead of traveling so far to have their cases heard, many in the area choose to approach *mufti*s, scholarly experts in Islamic law.

Mufti

When I first began asking Seraj to arrange a meeting with a *mufti*, he told me that there were no longer any knowledgeable *mufti*s in the area. He simply did not respect any of the practicing scholars near and around Char Fasson. His sentiment was echoed by other, educated men in the community. After repeated requests, however, he arranged for meetings with several of the approximately twelve muftis in the area. These men often work in several capacities (as teachers, *imam*s, etc), but as muftis they give *fatwa*s on various questions of Islamic law to petitioners. In some cases, these answers are meant to

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[65] For the *iddah* period, and then it ends. The *iddah* period has generally been defined as 90 days, except in the case of a pregnant woman.

[66] See Zahidul Islam, "The Confusions and Uncertainties thwarting Family Courts in Bangladesh." Available at http://works.bepress.com/zahid/1/. Accessed November 11, 2013: 3

solve disputes between community members. The questions can be on any number of topics, but the muftis in this area maintained that the majority of questions were about *zakat* (alms-giving), *qurbani* (sacrifice)*,* prayer, fasting, marriage, and divorce. Thus, the topics spanned both *ibadat* (devotion shown to God) and *muamalat* (interactions between human beings)*.* The *mufti*s claim a continuing stream of petitioners (*abedonkari*) because they answer the questions of pressing importance to people's lives: questions, as one *mufti* offered, like those of correct burial.

*Mufti*s often see petitioners in their houses, but most will only allow audience with other men. Should women have a problem, they will go to the *mufti'*s wife, tell her the issue at hand, and wait while she relays it to her husband. The *mufti* will provide the petitioner with a written response: in Arabic, if he is capable, otherwise in Bangla.[67] They are generally paid for their services, but none of the *mufti*s I interviewed admitted to it. Petitioners told me that they had to pay anything from 20 taka to 100 taka (from approximately $.25 to $1.28 in 2010) for a first visit. It would have been very helpful and insightful had I been able to sit with one of these *mufti*s in order to watch the process of receiving petitioners and providing answers, but my first interaction with a young scholar illustrates why this would not have been possible.

On the day I was supposed to interview the *mufti*, I pulled on my *burqa*—a garment I wore rarely in rural Bangladesh—and waited anxiously with Seraj at the orphanage building. When the *mufti* arrived, he quickly asked for an alternative arrangement, one in which he was not speaking directly to me. I had very little chance to even look at him; in a brief glance, I ascertained that he was fairly young, with a short

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[67] This can, in fact, cause considerable confusion, as I describe below, when a young man was given a *fatwa* in Arabic that he did not understand.

beard and a white turban. The situation in which he eventually felt most comfortable was not ideal and slightly humorous; the *mufti* sat on one side of the door frame, I sat on the other, and the orphanage director hovered in the middle of the open door, my voice recorder in his hand. Once satisfied with the seating, however, the *mufti* was surprisingly friendly and inquisitive.

However, he would not agree to allow me to come to his home and observe his interactions with petitioners. This arrangement, he suggested, would not only put his reputation at risk, but the men who approach him with questions would feel uneasy by my female presence. This is not to say that other *muftis* may not have allowed it, or that there is some way of predicting which religious authorities will engage with a young adult female.[68] Indeed, I have been surprised at encounters in which I expected not to be welcomed but have been warmly received. But amongst the *mufti*s with whom I worked in this area, observing their work in their homes was not a viable proposition.

The interviews I conducted with the *mufti*s often involved an equal number of questions asked on both sides. Having had little chance to interact with Christians, they wanted to determine whether their ideas about the religion were correct and whether or not I personally believed in the precepts that differed so greatly from Islam. Like many lay persons in the community, they asked how Christians treat their dead: do they bury like Muslims or burn the bodies like Hindus? It was clear, as Joyce Flueckiger has pointed out, that one of the places of greatest distinction between the two groups occurs at death (Flueckiger 2006, 14-16).

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[68] In other parts of Bangladesh, religious scholars have been more open to such arrangements. So, for example,

In Char Fasson, there are at least twelve muftis to whom residents may directly appeal. The authority of a particularly learned *mufti* is often transmitted by word of mouth. People hear that a certain mufti has a great deal of knowledge and has given sound decisions, which increases the likelihood that they will take their own problems to this man. Unlike *kazi*s, *mufti*s do not generally advertise their services.[69] It is also the case that choosing a *mufti* is sometimes a matter of expedience – each scholar tends to provide services primarily to those who live in the area surrounding his home.

The *mufti*s continue to use *fatawa* texts written centuries ago, including *Radd al-Mukhtar,*[70] *Fatawa Alamgiri,*[71] and *Fatawa Qadi Khan.*[72] Each could read and comprehend Arabic beyond rote memorization. In order to be properly labeled a *mufti,* one must not only complete the bachelor's level in *madrasa* education but also master's work in Islamic law. There are, however, those who claim the title of *mufti* without such training.

Because *mufti*s are the primary pronouncers of *fatwa*s, one might assume that *fatwa* violence in Bangladesh is associated with *mufti*s. The relationship, however, is rather tenuous. Despite the use of the term "fatwa" with reference to the violence perpetrated against women, the common usage in Bangladesh is not a "fatwa" in its historical sense of a scholarly opinion about law. It means here a declaration of guilt in a *salish* (informal court), with associated punishment, such as whipping. There is no

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[69] It is not unusual to see an advertisement for a *kazi*'s services painted on a public wall.

[70] Ibn Abidin's (d. 1842, also known as Al-Shami) commentary on *Radd al-Muhtar* by Ala al-Din al-Haskafi (d. 1677).

[71] A compendium of Muslim law assembled under the Mughal Emperor Aurangzeb.

[72] A treatise on *fiqh* by Hanafi jurist, Fakhruddin Qadi Khan (d. 1196); widely used in the Indian subcontinent.

opportunity to seek another 'opinion'; the punishment is generally carried out immediately.

The *muftis* with whom I spoke did not condone the kind of violence that has occurred against women in other areas of the country. Despite the relationships that I formed in the community, I have no doubt that some respondents carefully picked their words to portray a certain perspective to me; but it is also true that, during my fieldwork research, I did not hear of *salish*es convened to hand down physical punishments for alleged activities such as adultery, nor did anyone in the community mention such penalties.

When I asked to talk to *mufti*s in the area, I was often told, by Seraj and other community leaders, that the *mufti*s of the contemporary period are not as knowledgeable as the ones of the past. Community memories survive of more 'powerful' and knowledgeable *mufti*s of earlier times, those who commanded respect, not only in the Char Fasson area, but across Bangladesh and some parts of India.

Rashida's mother's grandfather (*dada*) was one such mufti. His uncle, Abd al-Gafor, was even more well-known and the eponym of the Gafuriyya madrasas across Bangladesh. Both men were also Sufi *pir*s within the Chishtiyya *tariqa*, although few beyond their disciples and male family members are aware of their brotherhood membership.[73] The extended family of Abdul Gafor still lives near his grave; across the lane from the *mazar* (grave shrine) is one of the tin-roofed *alia* (government) *madrasa*s that are named for the *mufti*.[74]

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[73] Joyce Flueckiger notes in her research on Sufis in Hyderabad that the term "Sufi" was never used in the immediate vicinity of the healing room. Flueckiger 2006, 31.

[74] The madrasa in Dhaka is a major institution, unlike its village counterpart.

Abdul Gafor was a local *pir* and *mufti* respected in the community for his vast knowledge about and ability to use legal texts in Arabic and Persian in order to answer petitioners' questions. He had attended Calcutta Madrasa in the late nineteenth century and spent a great deal of his life teaching and living outside of Bangladesh. Community members told me of his fair and knowledgeable decisions. One decision involved a young man of lower economic stature who married two sisters. His neighbors told him that this was incorrect practice for a Muslim, so he approached the *mufti*. The *mufti* told him that this was indeed *haram* and that he must divorce one of the sisters, but his *fatwa* was written in Arabic, which the young man did not understand. It was only after some confusion—and a second visit to the *mufti*—that the young man decided to divorce one of his wives. With respect to state law, the young man would not have acted illegally in marrying these two women (if, in fact, he had received consent from both women). However, the *mufti*'s knowledge of Islamic law enabled him to impart knowledge of how to act correctly within an Islamic framework.

Certainly not all *mufti*s are Sufi *pir*s, however, and not all *pirs* are part of Sufi orders. In the next section, I describe a variety of ways in which residents interact with *pir*s and shrines, including through the most material and ubiquitous practice of wearing amulets.

Pir

One day, as I walked along the road toward the sea, a group of children asked me if I would like to go to a shrine (*mazar*). It was not the first *mazar* I had entered, but was the first in a private home. Most formal *mazar*s have separate entryways for men and women; at this home, I cautiously walked in with several children and stopped to let my

eyes adjust to the dark. I could see a woman, kneeling on the ground, with a scarf completely covering the top half of her face. She was praying aloud, but stopped when we entered. In front of her was a low bed, but I could not see properly. In fact, it wasn't until I took a picture, complete with flash, that I could see the setting properly: the bed was a shrine. She was eager to answer my questions, but throughout the encounter seemed distraught and tense.

This shrine was in its early stages and serves as an example of the many shrine centers that, unlike their well-known counterparts, fail to evoke the religious sentiments of the majority of the local population. Those in the surrounding area questioned the authenticity of the woman's story and scoffed at the possibility that her dead son could offer blessings. She was able to garner meager resources from the few who did believe, but this became part of her miracle story: these resources were always enough to feed those who came to her home every week for a meal.

Such distrust of the power and authority of *pirs* was not uncommon, even at more established shrines in Dhaka. The sentiment expressed by many with whom I spoke was one of reverence for the saints of centuries ago—less so for those of the last century. Many told me that the *keramot* of contemporary saints is not as great, nor is their knowledge as deep.[75]

A *pir* is generally a "religious teacher who has been given permission by his own *pir* to teach and initiate disciples" into the Sufi order (*silsila*) (Flueckiger 2006, 32). Thus, the *pir* participates in an ongoing teacher-student relationship in which knowledge, often secret knowledge, is passed on from generation to generation. Most of the *pir*s I became familiar with were associated with the Indian Chishti line, which historians

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[75] Katherine Ewing has also observed this phenomenon, in Pakistan.

generally mark as beginning with Mu'in al-Din Chishti's journey to Rajasthan in the late

12th century (Ernst and Lawrence 2002, 14). Chishtis are known for their practices of the

remembrance of God and evocation of God's presence through song (*sama'*).

Not all *pir*s are associated with specific *silsila*s, however, and so the description

by Chishti master, Nizam al-Din Awrangabadi is telling: the "Sufi exemplar is 'one who

is both lover and beloved, both the seeker and the sought, both the impassioned and the

impassioning, both the perfect and the perfected . . . His way is sometimes intoxicated

and sometimes sober, at times absorbed, and at times effaced'" (Awrangabadi, quoted in

Ernst and Lawrence, 17). Ernst and Lawrence note that Sufis range from "*qalandars,*

ecstatic dervishes among whom cognitive knowledge is either absent or refused, to the

'ulama', jurists and scholars who represent the official religious classes and are part of

both the economic and political elites of their societies (Ernst and Lawrence, 17). Some

Sufi *pir*s may not receive authority through 'official' lines like the *silsila,* but from a

sufficient following of the populace. After their deaths, such unaligned *pir*s might even

be posthumously 'placed' in a *silsila* for further authoritative power.

Residents come to *pir*s for a variety of problems, including illness, problems with

neighbors, and marital disharmony. Flueckiger cautions against classifying such issues as

"psychologically based illnesses as opposed to physical ones," since the practitioners

themselves often label them all *shaitani,* or, of the devil (Flueckiger 64). Many *pir*s,

especially those who give amulets, are knowledgeable about Islamic numerology. Based

on decisions made by the *pir,* and not made explicable to the petitioner, certain verses are

chosen for the petitioner, who is then expected to do a variety of actions: "wear, drink,

burn, or bury the very word of God" (Flueckiger 68).

*Pir*s may give these verses in silver/white metal amulets to be worn on the body. Inside the amulets are slips of folded paper on which are written (in Arabic) Quranic verses, but which verse is not terribly important to the wearer. Often children wear these protective accessories, meant to ward off *bhut* (ghosts) or *jinn* (spiritual creatures made of fire); I rarely saw an infant or toddler in Char Fasson without one tied to the arm or around the stomach.[76] *Pir*s are not the only ones who give amulets, however; the silver amulets are also often sold near *mahfil*s (religious gatherings) and in the local markets by shopkeepers and those who have little religious training. [**Photograph 3.1**].

Other *pir*s do not give amulets or verses of the Qur'an, but instead perform miracles: female healing practitioners are known especially to "give *foo*," or blow holy words in the direction of the petitioner.[77] Still others, historical *pir*s who have passed away, are not petitioned face-to-face, but are appealed to at their shrines (Bangla, *mazar*; Urdu, *dargah*).

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[76] See also Flueckiger 68-69.
[77] See Alyson Callan 2008, 396. The celebrated film by the late Tareque Masud, *Matir Moina,* illustrates this process quite vividly.

Photograph 3.1: Man selling amulets in the Char Fasson market.

Kazi

Seemingly separate from the shrine culture are the *kazi*s and their governmental

positions. In cities and towns across Bangladesh, one can find the ubiquitous "*Kaji ofish*"

(Kazi office)[78] signs. It is these men, as government employees, who are supposed to

register marriages and divorces amongst the local population (as per the Muslim

Marriages and Divorces (Registration) Act of 1974). They are *not* judges, as the term

kazi/kadhi has historically meant.[79] Many marriages are still not registered in Bangladesh,

causing a great deal of misfortune for women who are later divorced. Without the

registration of the marriage, a divorced wife cannot claim maintenance (alimony) and

other rights granted to her, including legal recourse in the case of a second marriage

(Shehabuddin 208, 83). Those who do engage the services of the *kazi* must provide

information regarding the ages of the bridge and groom, as well as the *mahr* (dower)

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[78] The 'j' in Bangla is often pronounced as a 'z'

[79] They are more akin to the *'adl/'udul* in Morocco or the *ma'zun* in Egypt.

amount [**Fig. 3.1-3.2**]. According to government regulations, the bride must be at least eighteen years of age; the groom, twenty-one.[80] Because of the unsystematic way in which birth certificates are acquired (if at all), it is not uncommon for the *kazi* to be bribed to consent to the marriage of under-age brides. This does not simply happen amongst 'uneducated' families; I witnessed several weddings among educated, moderate-income families, in which the bride was only sixteen.

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[80] Child Marriage Restraint Act of 1929, amended in 1984.

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V-2

বাংলাদেশ ফরম নং ১৬০১

সত্যায়িত প্রতিলিপি
কনের জন্য/বরের জন্য

৪৪

নিকাহনামা

১৯৭৪ সালের মুসলিম বিবাহ ও তালাক (রেজিস্ট্রেশন) আইনের ৯ ধারা অনুযায়ী প্রতিলিপি

১। ওয়ার্ড, শহর, ইউনিয়ন, তহশীল, থানা এবং জেলার নাম যেখানে বিবাহকার্য নিষ্পন্ন হইয়াছে — চরফ্যাশন পৌরসভা ছাবী অফিস, ১, ২, ৩ ও ৮ নং ওয়ার্ড, চরফ্যাশন, ভোলা

২। নিজ নিজ বাসস্থানসহ বর ও তাহার পিতার নাম

৩। বরের বয়স — ৩২ বৎসর

৪। নিজ নিজ বাসস্থানসহ কন্যা ও তাহার পিতার নাম — মোসাম্মৎ মৌলুদা আক্তার পিতা মো: মুরাদ ইসলাম মাষ্টার সাং দক্ষিণ চরফ্যাশন, পো: ও উপ: চরফ্যাশন জেলা ভোলা

৫। কন্যা কুমারী, বিধবা অথবা তালাকপ্রাপ্তা নারী কিনা ? — কুমারী

৬। কন্যার বয়স — ১৮ বৎসর

৭। কন্যা কর্তৃক উকীল নিযুক্ত হইলে ঐ উকীলের পিতার নাম ও বাসস্থানের ঠিকানা

৮। পিতার নাম, বাসস্থান ও কন্যার সহিত সম্পর্কের বর্ণনাসহ কন্যার উকীল নিয়োগের ব্যাপারে সাক্ষীদের নাম—

(১)

(২)

৯। বর কর্তৃক উকীল নিযুক্ত হইলে ঐ উকীলের ও পিতার নাম ও বাসস্থানের ঠিকানা

১০। পিতার নাম ও বাসস্থানসহ বরের উকীল নিয়োগের ব্যাপারে সাক্ষীদের নাম—

(১)

(২)

১১। বিবাহের সাক্ষীদের নাম, তাহাদের পিতার নাম ও বাসস্থানের ঠিকানা—

(১) মো: সাহাবুদ্দিন পিতা মো: মফিজুর রহমান সাং দক্ষিণ চরফ্যাশন উপ: চরফ্যাশন জি: ভোলা

(২) মো: আসলাম পিতা মো: বজলুর রহমান সিকদার সাং উত্তর মাদ্রাজ উপ: চরফ্যাশন জি: ভোলা

১২। যে তারিখে বিবাহের কথাবার্তা ঠিক হইয়াছিল সেই তারিখ — ২৩/০৬/২০০৫ইং

১৩। দেনমোহরের পরিমাণ — ২,০০,০০০/= দুই লক্ষ টাকা মাত্র

১৪। দেনমোহরের কি পরিমাণ মু'য়াজ্জল এবং কি পরিমাণ মু'অজ্জল — দেন মোহরের বাবদ বাকী
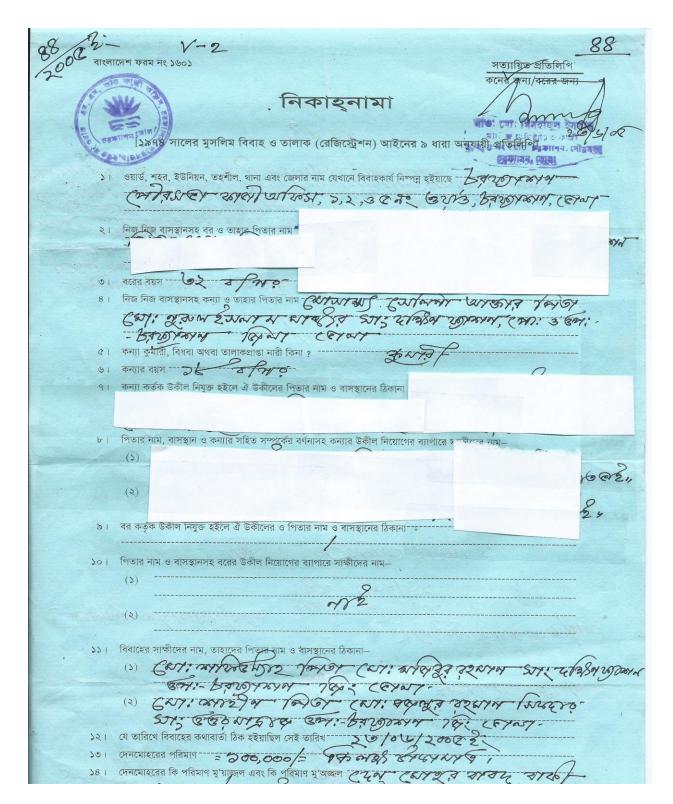
Figure 3.1: The *nikahnama,* which specifies the amount of *denmohor/mahr* (dower) to be paid.
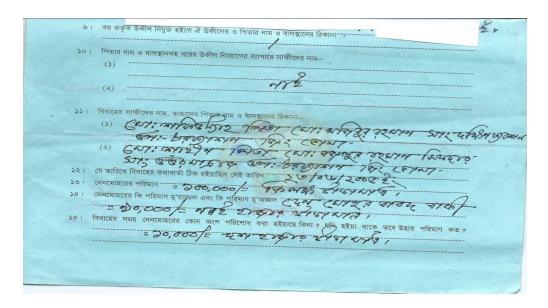
Figure 3.2: Shows the dower amount to be paid immediately and the amount to be paid at a later date.

Most of the *kazi*s in the area have some religious training, but the post alone does not earn them a great deal of respect on religious matters. Such respect is based on perceived knowledge of Islamic and Bangladeshi law. Within Char Fasson *upazila*, there are several older *kazi*s who are called upon to give their opinion on certain points of law. These men are acutely aware of the discrepancies between Islamic and state law in Bangladesh. The state law is primarily covered under the Muslim Family Law Ordinance, 1961 (MFLO), passed while Bangladesh was still a part of the Pakistani state.

The Muslim Family Law Ordinance (MFLO), 1961, is the most comprehensive legislation with regard to collective personal (family) law in independent Pakistan, and, subsequently, in Bangladesh. It is the only part of contemporary Bangladeshi law that can be termed "Islamic." The Commission on Marriage and Family Laws which advocated the reforms later instituted in the MFLO included only one member of the *'ulama',* Maulana Ihtishām-ul-Huq Thanvi. He was the only dissenting member of the

commission, and he produced his own minority report.[81] In the Majority Report, however, it is clear that the Commission viewed the reform of Muslim family laws as necessary. The Majority Report applauded those scholars and legal experts who were "progressive enough to believe that the reconstruction and fresh adaptation of the basic injunctions of Islam are urgently needed to remedy the evils and remove the hurdles caused by unsalutary traditions and customs masquerading in the garb of religion" (Donohue and Esposito 1982, 203). The new laws were introduced in order to reduce the injustices suffered by women and children and perceived to be prevalent in Pakistani society.

With the exception of one clause relating to the inheritance of orphans from their grandparents, the MFLO did not speak to inheritance laws. Previously, the Muslim Personal Law (Shariat) Application Act, 1937, passed while contemporary Bangladesh was still a part of the British-ruled colonial empire, had stated that, "[n]otwithstanding any customs or usage to the contrary, in all questions . . . regarding intestate succession" as well as a number of other family law concerns were to be judged according to "Muslim Personal Law (Shariat)" (Section 2). The specifics of inheritance are not included. This law continues to be in effect in Bangladesh; it is only with respect to orphans that the inheritance laws changed under the MFLO.

The portion of the MFLO related to inheritance for grandchildren stands out as particularly controversial to the *kazi*s with whom I met. Inheritance is a key issue in the Qur'an; verses related to inheritance are among the few verses in the Quran that can be

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[81] The member made it quite clear in his Minority Report that he viewed the other members as unqualified to take on the issue of reform and *ijtihād,* as they were not scholars or legal experts of Islam. According to his perspective, only members of the *'ulama'* should be permitted to work on such topics.

labeled strictly legal in nature.[82] As it is interpreted within Hanafi Sunni Islam, the

Qur'an provides for a son of a deceased person as an inheritor. He will receive twice the

amount that his sister receives; if he has a son, his son will also receive a residuary

amount, meaning a balance of the estate once the fixed shares have been calculated and

dispersed. If the son has preceded the father in death, the grandson still receives a

residuary amount, but cannot receive his father's share. This position differs under Shia

law, according to which grandchildren are entitled to inherit on behalf of their pre-

deceased parents.

The MFLO made a move that local officials continue to criticize, despite the fact

that it was meant to protect orphans.[83] Following Shia law, the MFLO provides

obligatory bequests for orphaned grandchildren, allowing them to inherit land and assets

from either their paternal or maternal grandparents, in place of their deceased mother or

father. The MFLO, section 4 states that: "In the event of the death of any son or daughter

of the *propositus* before the opening of succession, the children of such son or daughter,

if any, living at the time the succession opens, shall *per stirpes* receive a share equivalent

to the share which such son or daughter, as the case may be, would have received if

alive."[84] This portion of the law is considered by many Sunnis in Pakistan and

Bangladesh to be non-Qur'anic in basis. In 2000, in fact, a federal Shariah court in

Pakistan struck down the ordinance, saying that, instead, aunts and uncles should be

asked to take care of the orphaned children and meet their needs.

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[82] The traditional count is 500 legal verses in the whole of the Quran, thirty-five of which refer to inheritance.

[83] This move followed a similar change made in Egypt in 1946: Law no. 71, articles 76-79 "mandate obligatory requests for [orphaned grandchildren]". See footnote 17 in Agrama 2010. Agrama notes that a *mufti* told him that Sharia Courts in Egypt made the judgement "out of mercy to orphans (*rahmanatan lil aitaam*)" (Agrama 6, 2010). The *mufti*s with whom he worked in Egypt seemed much more comfortable with this decision than did the *kazi*s with whom I worked in Bangladesh.

[84] Available at <http://bdlaws.minlaw.gov.bd/sections_detail.php?id=305&sections_id=13528>.

Kazi Abdul Hannan has been working since 1962, right after the MFLO was promulgated. He is very knowledgeable about the family laws of Bangladesh, and after asking him about his daily responsibilities, I asked him what he thought about the MFLO 1961. From his perspective, was it sufficiently in line with what he understood to be Islamic *shari'a*? The MFLO 1961 was the subject of controversy even within the committee charged with producing it, and its the members argued over the law's correspondence to traditional *shari'a*. I wondered how rural *kazi*s in Bangladesh might respond to this debate. But, instead of referring to the very controversial portions about instant divorce and polygamy, Kazi Hannan only mentioned the segment on giving the parents' inheritance to the orphaned grandchild. This addition, he felt, was un-Islamic. The orphanage director was sitting next to me as I conducted the interview, and he, quite uncharacteristically, jumped into the conversation. Such a law, he said, was for the good of the orphans. Despite the fact that it is not traditionally a part of Islamic law, he argued, it was necessary for the state to make such a provision in order to protect those who are vulnerable.

Because of local opposition to this law, it is rarely enforced. Relatives of the deceased take possession of the land and assets before the child reaches the age of maturity. As an adult, the orphan has little chance of regaining the land, and *kazi*s offer little help. The situation clearly illustrates what happens when local concerns or cultural notions supersede state law, especially where there is no motivation for enforcement.

Perhaps just as importantly, this fissure shows the role religious authorities like the *kazi* play in maintaining the discourse about and implementation of contradictory

sources of law. Even someone who serves as an employee of the government—like the *kazi*—confers authority upon alternative, non-state sources of law.

Salish Chairperson

Corruption and cost deter most rural residents from seeking arbitration through the state courts. They often turn first to the *salish* (community court), an informal means of settling disputes amongst community members. The *salish* will be discussed in more detail in Chapter Five; here I will look primarily at the role played by the *salish* chairman, along with the education and preparation required of those who are invited to preside over these courts.

The *salish* as a whole is made up of three or five people, agreed upon by both sides to the dispute. While all the members might have some legal or religious knowledge, only the chairperson is expected to know state law and the Qur'anic injunctions about inheritance. Local political leaders, including union chairmen and party leaders, are often asked to be *salish* chairmen, as are businessmen and landowners. Although those interviewed emphasized the qualities of *salishkar*s—honesty, knowledge of state law, trustworthiness—it was clear that only those of the middle class or higher would be considered for such a position. Economic class plays a vital role in the *salish*; Elora Shehabuddin observes that, "[l]ike the formal legal system, . . . the traditional shalish also suffers from the problems of gender and class bias, with male members of the local elite disproportionately represented among the …(members of the shalish committee)" (Shehabuddin 2008, 79-80).

Why would men and women of the lower classes go to an informal court system that more often than not protects the interests of the elite? Those who are familiar with

the corruption in the Bangladeshi justice system will quickly respond that it is because of the necessity of bribing officials throughout the formal judicial process; poor people do not have the money to afford *ghush* or bribes (although it is also true that *salish* members must be paid money). It is also because of the time involved. One case with which I was familiar was still in the Appeals Court after 12 years, despite the fact that the case involved what might be considered a small piece of land—no more than 2 acres. As one of Shehabuddin's interviewees responds, "I feel my son would have to continue the case long after my death" (Shehabuddin, 78).

There are other reasons, however, that are less obvious. People interviewed in Char Fasson have a certain respect for the knowledge of the *salishkar*s (chairpersons); they were seen as people who knew religious law (here, family law) and therefore had the authority to make decisions about what was correct with respect to Islam. Second, people may go to *salish* because they believe that other local people will better know the situation—with less opportunity for lying in front of, for example, a court that is not familiar with the local circumstances.

In order to understand their authority in the community, especially with respect to family law, I asked several local *shalishkar*s about their training—how did they come to know 'the law' (*ain* – refers generally to law, whether state or religious)? Some told me that their knowledge is based on the experience of dealing with multiple situations. Each chairperson should, however, be fairly well-versed on the Muslim Family Law Ordinance (1961) and its amendments and the rules of inheritance. Small handbooks are available in town markets, specifically for the purpose of educating *salishkar*s. One *salishkar* also noted that he had learned parts of Islamic law "practically," in the sense that he had

grown up learning about parts of the Qur'an. For example, with respect to inheritance, he

said, "*Amader je Qur'an shorif ache . . . ei jinish-guli practically amra jani*" (It

[inheritance laws] is in the Qur'an . . . these things we know about practically). Unlike

previous researchers in other areas (Shehabuddin 2008, Riaz 2005), I did not find the

salish chairmen to be uninformed about state law, although the lack of formal training is

rather stunning considering the reach of the *salish.* The increased knowledge might be

because I was working very near to a town and not in a remote village.[85] This may also

be due to the increasing reach of the state over the last decade and a half.

Imam, Arabic Teacher

Imams and Arabic teachers are the religious specialists with whom laypersons are

most likely to come into contact. Many of these men have received education up through

an equivalent of class X, called *doura hadis* in the *qawmi madrasa*s[86]. This level of

education is enough to enable them to teach Arabic to young children or lead prayers in

the neighborhood mosques.

Many such scholars actually have slightly more education, allowing them to take

on several part-time positions. In the Char Fasson area, a number of imams to small,

neighborhood mosques also serve as Arabic teachers or as teachers in the *qawmi*

*madrasa*s. Those with specialized, master's level training teach at the large *alia madrasa*s

or serve as superintendents at the smaller *qawmi* madrasas. Others run *hafiziyyah*

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[85] Several of the *salish* chairmen with whom I interacted in the town were called to preside over *salish* proceedings in the remote *char*s in the south of the *upazila.*

[86] *Qawmi madrasa*s are private, non-governmental schools that have their own curricula. Some follow the Deoband curriculum, while others follow Deoband-like curricula or that of a particular *pir*. *Qawmi madrasa*s tend to be more conservative and less likely to accept girls than the government-run *alia madrasa*s. The term *alia* has two meanings, however: both as 'government-run' but also as a level (high school).

*madrasa*s, where children, almost exclusively young boys, learn to memorize the Qur'an.[87]

These scholars, because of their location within neighborhoods and their interaction with local children, are often asked basic questions about Islamic legal issues. They may serve on a local *salish* if agreed to by both sides. The teacher from the *hafiziyyah* madrasa across the road from the orphanage served on the local *eid-gah* (Eid grounds) committee and was therefore consulted in matters pertaining to the correctness of celebrating the two Eid holidays.

Power and Authority

The term '*huzur*' is ubiquitously used for all the religious specialists discussed above; it is used instead of the specialist's name. This nomenclature can make it difficult to ascertain the level of education attained by a particular practitioner; *huzur* can refer to someone who has the most basic education in Arabic[88]or it can also refer to someone who has received the highest possible education level in Islamic Studies in Bangladesh. Men of even some learning in Islam are afforded the title and the respectful "*As-salamu alaikum*" when passed on the streets.[89]

But Bangladeshis also use a variety of other terms that signify various levels attained in the madrasa system, including *maulana* and *mufti*. Often times these terms are added to an individual's name as a title, but few in the community know what these terms refer to with respect to educational attainment. A *mufti* has passed the master's level madrasa exams ("*kamil*"), with a special concentration in law; a *maulana* has also passed

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[87] In these schools, children are *only* taught to memorize the Qur'an, to become a *hafiz.* Other subjects are generally not taught.

[88] Huzur comes from the Urdu/Persian, "hazrat," which is an honorific title.

[89] While "As-salamu Alaikum" is the standard greeting in Bangladesh, I often noticed that it was specifically directed at those in positions of authority.

the master's level, but without special study in *fiqh*. The *huzur* who teaches at the orphanage had completed the *kamil* level. He noted that he had read *Jalalayn*,[90] the *Mishkat*,[91] and the *Hedaya*. Someone who has completed the *fazil* level of education (bachelor's) is called a *maulvi*, as are those who have completed class XI and XII. Those who have only completed up to class X are called *munshi*s. The term, *mulla*, he explained, is used for those who have only completed some education, not through class X; they might be able to teach at the *hafiziyyah* schools.

While the terminology is not of importance to the general lay person, the use of one of these terms sets apart the designee as someone of higher authority, someone who will be listened to and whose advice will be followed. The use of such terms was often the first signal to me in meeting someone that he was viewed as an Islamic scholar or practitioner to whom some respect was to be afforded. But beyond this first interaction, how was I to understand authority within Char Fasson? To whom was authority granted, and why? What constituted an authoritative figure, worthy of study?

Khalid Abou El-Fadl defines the authoritative loosely, as "principles, texts, and discourses that are considered binding or dispositive of an issue." The authoritative "warrants deference—an individual will exclude the possibility of considering particular beliefs or courses of action in deference to what is perceived as authoritative" (Abou El-Fadl, 39) Brinkley Messick has argued that in the Islamic tradition, "textual authority is established through ancestry, authorship, dissemination, and reputation" (Messick 1993, 16). Part of this ancestry is direct genealogical linkages that connect the scholar to the

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[90] *Tafsir al-Jalalayn* is a Qur'anic exegesis, first written by Jalal al-Din al-Mahalli in 1459 and completed by his student, Jalal al-Din al-Suyuti, in 1505.
[91] *Mishkat al-Masabih* is an abridged version, written by Muhammad ibn 'Abd Allah Khatib al-Tabrizi (d. 1340/41 CE), of Al-Baghawi's *Masabih al-Sunnah*. It is a collection of *hadith*.

Prophet or to other major scholars. One could also point to the genealogy of one's

teachers – the generations of scholars who have passed on their knowledge to their

students, who have then become teachers to other students.

This authority also depends on reputation – a reputation that is built in part upon

the efficacy of the practitioner's words and actions. As I show below, this is especially

true for *pir*s, whose spiritual blessings (*barakat*) enable them to perform miracles, from

making trees bow to them (giving *shezda*) to raising people from the dead. Such

performances, and the oral and textual narratives of them, build a reputation for the

practitioner.

But how might something such as the *mufti*'s *fatwa* command respect and

adherence from the petitioner? Anthropologist Hussein Ali Agrama's examination of the

fatwa court in Egypt helps us to move beyond the widely accepted view of the *fatwa* as a

way of applying traditional legal principles to new situations faced by Muslims. In that

perspective, the *fatwa* is a creative tool to extend the applicability of Islamic law.

Agrama argues, however, that such a view of the *fatwa* "rel[ies] on questionable

assumptions about tradition, creativity, and temporality that both obscure crucial ethical

dimensions of the fatwa and impoverish our understanding of its authority" (Agrama

2010, 4). Instead, he suggests that,

> [a]uthority, it seems, is intimately related to questions of
> termporality and the self. The practices of the fatwa . . .might be
> usefully understood as a form of the care of the self, and its authority
> is linked to how it connects selves to the broader practices, virtues,
> and aims of contemporary Islamic tradition as it has been shaped and
> reconstituted under the modern state (Agrama 2010, 4).

One might think that the reason for this argument is the very fact that petitioners do not have to follow a *fatwa* given to them. Agrama notes, however, that it is important to investigate *why* petitioners will obey the authority of a *fatwa,* even when not compelled. In his ethnography of the Fatwa Council in Egypt, he argues that the *fatwa* "connects and advances the self to and within the practices and goals that constitute Islamic tradition" (Agrama 10, 2010); the *mufti* is thus the guide who is able to "'say the right words at the right time' for the person who seeks guidance" (Agrama 14, 2010).

Authority in Islam

In the early centuries of Islam, a class of religious experts--the *ulama*-- emerged who "claimed the right, on the basis of their acquired religious knowledge, to interpret the foundational texts of the Qur'an and *sunna* and to compose authoritative texts themselves" (Krämer and Schmidtke 2006: 5-6). In Islamic Studies, we continue to privilege the voices of the *ulama*. Contemporary studies, like that of Muhammad Qasim Zaman, working in Pakistan, (2002), examine the textual authority of high-profile members of the *ulama*, scholars who write texts defending their right to define the parameters of correct behavior and belief. But the authority of the *ulama* has become contested on several grounds.

As Zaman observes, it is "[p]recisely because religious classics had become accessible, often through translations into the vernacular, [that] the special claims of the 'ulama as the guardians and authoritative interpreters of religious texts came to be disputed" (54-55), particularly in the twentieth century. In Pakistan, as well as India and Bangladesh, there has been a proliferation of religious knowledge and of actors, those who stake claim to interpretation of the Islamic tradition. This includes, of course,

political organizations, such as Jamaat-i-Islami, as well as proselytizing groups like

Tablighi Jamaat. Given this situation, we are compelled to ask, as Krämer and Schmidtke

do,"[t]o what extent d[oes] knowledge (*'ilm*) equal authority in religious matters?"

(Krämer and Schmidtke, 7). Zaman uses the commentary,[92] in particular, as a way to

understand how authority is articulated, particularly by and to those engaged in print

media.

One might also ask which *types of knowledge* equal authority and respect within a

Muslim community. Scholars have often classified authority into two categories: the

'ulama and the Sufi saints. Nikki Keddie's (1972) volume, for example, includes two

sections; the first section covers the *'ulama,* and the second, Sufis. There is a temptation,

as Ernst and Lawrence note, "to see *shari'a* and *tariqa* as not only symbolic terms but

also as referents for contrasting views of Muslim piety" (Ernst and Lawrence 17). The

distinction is not just about what kind of "Islam" should be practiced, but the institutions

and officials who should gain ascendancy.

The debate certainly exists within the Islamic tradition and has a contentious

history in South Asia. So, for example, Pnina Werbner notes in her article "The Making

of Muslim Dissent" that "in South Asia, at least two classes of 'learned doctors' have

emerged. The organizations (including mosques, seminaries, and Qur'an schools) of

Reformer jurists and Saintly jurists share many formal properties and are locked in

continuous religious controversy."[93] Werbner makes this distinction in order to point out

that the Barelwi movement in Britain has uniquely united "saints *and* scholars, pirs *and*

maulwis, the charistmatic elect *and* the knowledgeable doctors within . . . a *single* very

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[92] Commentaries

[93] Werbner, "The Making of Muslim Dissent," 111.

loose organization."[94] Thus, she goes on to remark that, "Sometimes pirs are also learned

men, while doctors sometimes become saints. On the whole, however, the saints disdain

the ulama while relying heavily upon their services."[95] But, as SherAli Tareen argues,

despite the epistemic debates between groups—and particularly between the Deobandis

and the Barelwis—"it would . . . be quite inaccurate to frame the Deobandi-Barelvi

rivalry as one between proponents of cult-based Sufism (Barelvis) and custodians of legal

conservatism (Deobandis)," as both are "deeply invested in both Hanafi law and Sufism"

(Tareen, 523).

Scott Kugle challenges these categorizations in his work on the Sufi jurist, Ahmad

Zarruq. Kugle, in seeking to provide a "distinct concept of juridical sainthood that fuses

Islamic legal rectitude and devotional piety" (Kugle 1), argues for the possibility of

balance. He notes that "religious authorities with deep experience in both Islamic law and

Sufi devotion assert that both disciplines, law and devotion, are disciplines of

knowledge" (Kugle 3). Ahmad Zarruq, a Sufi jurist in the late fifteenth century Morocco,

is a strong example of this balance, as he "endeavored to create a new devotional order"

of Sufis learned in the law.

In South Asia, these Sufis are part of a diverse group of individuals called *pir*s.

Katy Gardner defines them as "generally charismatic figures resembling the role of gurus

(*murshid*) to their followers," (Gardner 230) who are "loosely associated with Sufism"

(231). The variety of practitioners claiming the office of *pir* and their relation to changing

perceptions of 'orthodoxy' have led Landell-Mills to view the concept of the *pir* in

Bangladesh as marking "the fluctuating line between what is considered acceptable for

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[94] Werbner, 111.
[95] Werbner, 111.

Bengali Muslims and what is not."[96] This notion is useful in examining the continual change and discussion that occur as authorities and laypersons seek to understand what is "correct" in belief and practice. Gardner argues that those practices deemed '*deshi*,' or of the country, are suspect while those that are marked '*bideshi*' are viewed as ideal: while she rejects the use of stark "oppositional categories," in talking about 'mysticism' and "purist" "scripturalism," she contends that "the cluster of beliefs and practices associated with mysticism is gradually being replaced in Sylhet with those of formalized purism" (Gardner 246).

Alyson Callon, in her work with *pir*s in Sylhet, notes this distinction and highlights those *pir*s who are also members of the *ulama*, but she aligns these men with 'orthodoxy': two *pir*s that she observes are "the most orthodox of the pirs . . . : Both teach at madrassahs, and their expansive rooms are lined with holy books."[97] Here we see not only the distinction, but the alignment of one group with the 'orthodox' in opposition to the other.

Saifur Rahman Sherani chooses a much more uncompromising categorization: the *pir*, in his paradigm, is unlike the Sufi saint *because* he "neglects the Shari'a" (Sherani 219). Thus, *ulema* and Sufis "represent the formal, legal tradition preserved in the Qur'an and the Sunna" (Sherani 220), while *pir*s "legitimize the popular, prevalent beliefs and practices in society at large, and in so far as these are opposed to Islamic beliefs and practices, they could be called 'superstitious'" (220). What is interesting about this categorization is that it exalts long-dead saints as the ideal Sufi exemplars, while

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[96] Landell-Mills, 1992: 401; quoted in Callon, 398.
[97] Callon, 401.

contemporary practitioners are degraded to the status of *pir*, veritable tricksters, preying

on the illiterate and poor in the rural population.

Sherani's descriptions highlight a tension voiced by many, including those I

worked with in Bangladesh, about the presence of large numbers of "fake" *pir*s, those

who do not have special *barkat,* but instead make their money off of those willing to

believe. One of the difficulties, though, of using such a paradigm is that it confuses the

use of the term, at least in Bangladesh, where *pir* is used to describe anyone from the

most famous Sufi saint in Bangladesh, Shah Jalal (described below) to rural practitioners

with few followers. Second, it provides no space for the *pir* who is also an *alim.* Third,

Sherani assumes that belief in the efficacy of the *pir* comes primarily from lack of

education and funds on the part of his rural followers (with such resources, they would

go, for example, to medical doctors).[98]

As Katy Gardner has demonstrated, the growth of a middle class/student-

supported Islamist movement, in addition to widespread migration out of Bangladesh, has

created a shift towards what she and Alyson Callon term 'orthodox' Islam.[99] This move

to 'new' normative behaviors and beliefs does not mean, however that Sufism is rejected

completely; rather, it is conformed to reformist ideals.[100] Sufism has, in fact, come under

attack in Bangladesh, particularly through the shrine structures, which have been the

target of bomb attacks in recent years.

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[98] To be fair, Sherani's final argument is that rising levels of education have not, actually, decreased the popularity of *pir*s in Pakistan. Rather, the *pir*s have accessed technology—and politics—to spread and consolidate their power. But early on in the chapter, he stresses that, particularly for the rural poor, illiteracy plays a large role in their belief in the power of the *pir.*

[99] See Callon, 397. Gardner, 231 and 246. Kelley Pemberton refers to the discourses surrounding the move toward such 'orthodoxies' as "Islamicizing discourses" (Pemberton 58).

[100] It is perhaps worth noting that all of the major anthropological studies on Sufi practice in Bangladesh were conducted in Sylhet, in the north-east of Bangladesh. It is an area known for its shrines, and particularly for the Shah Jalal shrine, to which I took Rashida and her children and describe below.

But, as Pemberton notes, "[t]he synthesis of Sufism and *shari'a* became a rallying point for Sufi-affiliated reformists of the nineteenth and twentieth centuries, although opinions about the practical application of this synthetic mode diverged widely both within and among reformist groups" (Pemberton, 69). In my own research in Char Fasson, I also found these categories to be blurred.

A Mahfil

*Mahfil*s (religious meetings/gatherings) in rural Bangladesh are cause for great excitement among the local population, especially the larger gatherings in honor of well-known Sufi *pir*s. Sufia Uddin, in her text on the history of Islam and culture in Bengal, calls the *waz-mahfil* a powerful reform tool in which those gathered are "encouraged" to align with the praxis of the group hosting the event.[101]

The *mahfil* that I attended multiple times is held every February for three days, marking the death anniversary of Abdul Gafur. In 2009, it marked the 62nd death anniversary of this legendary figure. Even in his biographical history, one realizes that the Sufi *pir* is not antithetical to the legal sphere: Abdul Gafur was also a *mufti*, well-known for his library of Arabic legal texts.

During the *mahfil*, stories about his life are shared. At this point, sixty-two years after his death, there are few alive who knew him personally. But his followers, family members, and the surrounding community pass down stories about him and his miracles. At least one book has been written on his life, *Allama Abdul Gafur: Jibon o Kormo*. I heard one story repeated several times that demonstrated the *pir*'s miraculous powers. While studying in colonial Calcutta, at the Calcutta Madrasa, his roommate was a

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[101] Sufia Uddin, *Constructing Bangladesh: Religion, Ethnicity, and Language in an Islamic Nation,* 63.

studious young man who turned out to be a *jinn*. The *jinn* recognized the power of Abdul
Gafor and ultimately bowed to him (*shezda dilo*).

The local population does not know him primarily as a Sufi; in fact, if one asks
his own family, they remember him not as a Sufi, but as a *mufti*. Those of his extended
family members who are not a part of the direct male family line are unaware of the
tariqa (order, particular Sufi brotherhood) to which he belongs (Chishtiyya-
Qadariyya).[102] On the fliers, when giving the place where the *mahfil* will be held, Abdul
Gafor is given the title, "Sufi Marhum Hajrat Allama" (the late Sufi, the respected
scholar), but this instance is the only time I heard or saw the term outside conversations
with the members of the *tariqa.* Otherwise, he is referred to as *pir* or *mufti.*

The *mahfil* is held in a rural village in the northeast corner of Char Fasson upazila.
It is not easily accessible by any major roads, yet the organizers claim that devotees from
across Bangladesh and India come to celebrate the death anniversary of Abdul Gafor.
Rice paddies surround the site, with the ubiquitous water 'tanks' for bathing and all other
cleaning needs. The extended family of Abdul Gafor still lives near his grave; across the
lane from the mazar is a tin-roofed alia (government) madrasa that is named for the mufti.
It is in this madrasa area that vendors set up little shops selling candy and toys during the
mahfil. Along the lane leading to the entrance of the mahfil sit old men on sheets, selling
amulets and other 'blessed' items from major mazars. During the *mahfil*, a large area is
covered by multi-colored tents, and large jute mats are spread out across the ground.

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[102] The Chishtiyya *tariqa* was introduced to Bengal by Siraj al-Din (d. 1357). See Richard Eaton, *The Rise of Islam in Bengal,* 84-85. The order was very popular, not least because of the relationship between the shaikhs and the political leaders of Bengal.

Alyson Callon also found, in her research in Sylhet, that Sufism is not often referred to by laypersons. Her work with female *pir*s (*pirani*s), however, does not involve a *tariqa*; the *pirani*s are healers and only in this sense are they similar to other *pir*s who are part of Sufi brotherhoods.

I never entered the *mahfil* grounds during the event. Only once was I invited, by a (male) member of the mahfil committee, to come see a speaker; my female companion's disapproving look validated my self-censoring feeling of impropriety. The mahfil grounds are not a place for women, as it is open to strangers (non-family members). Should a woman enter, she would be risking her honor, and the local people would surely talk about her and ask why she had mixed with unknown men.

When I 'went to the *mahfil*,' I simply traveled around the perimeter of the grounds in order to visit the homes of the pir's family members. The *mahfil* served as an opportunity for women to gather and visit with one another. These visits (always at night) also afforded the female members of the pir's family the opportunity to question and educate me, the outsider. I always wore a *burqa* and *niqab* (face covering) when traveling near or around the mahfil. I chose not to wear either of these garments on a daily basis, but it was specifically requested of me in this space. It was necessary in order for me to interview the current pir, although he did not seem to notice when I removed the obtrusive *niqab*. Based on my interlocutors' behavior, wearing these garments were obligatory in any space near the *mazar* and *mahfil* grounds.

Although I could not sit with the men in the *mahfil,* I could hear the proceedings over the loudspeaker. I interviewed the *pir* himself, as well as members of his family. But my female identity made it very difficult to engage in the kind of participant-observation that I would have preferred to conduct. My research assistant took a picture from the back of the *mahfil* grounds, during one of the lectures. Along with lectures, another major activity during the *mahfil,* almost exclusively held at night, is the *zikr* (Arabic, *thikr*), in which men together chant "Allah-hu, Allah-hu," (with the emphasis on the *hu*) while

swaying with the cadence. There is no music, and when I asked if such settings would ever include music, I was met with sharp denials.[103] Devotees might become engaged in some level of ecstasy. Women were not invited in any way to the *zikr*. The event is otherwise 'open,' but observers contend that only the most mature … Fliers for the *mahfil* announce that the event will include *halkae zikr*. When I first read this flier, I took *halka* to mean the Bangla word for "light" or "subdued." After noticing the locative suffix ('e'), I realized that it referred to the Arabic/Persian term for "circle."[104] According to those gathered at the *mahfil,* Abdul Gafor himself was capable of arriving at a powerful level of ecstasy that few can achieve.

Late in the night on the third evening, a number of animals are sacrificed, cooked, and served, along with a special rice dish (called by the generic *pulao*), to those gathered. Even though I fell asleep long before this food (called *tobarak*) was passed out, my hosts saved some and insisted that I eat it the next morning: it had been blessed by the *pir*. As one middle-aged man explained to me, a person who is sick may eat this food and become well; if a woman wants to become pregnant, she will do so after eating *tobarak.*

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[103] This exclusion of music, and, therefore, the *sama',* might be somewhat unusual, considering it has historically been a feature of the Chishtiyya brotherhood. See Ernst and Lawrence, *Sufi Martyrs of Love: The Chishti Order in South Asia and Beyond,* 5.

[104] From Hans-Wehr dictionary of Modern Arabic: *halqa al-dikr* is "collective liturgical exercise by a group of members of an order (Sufism)."

Photograph 3.2: *Tobarak* **from the last day of the** *mahfil,* **blessed by the current** *pir.*

One other striking ritual is practiced at this site, although it is not limited to the

mahfil event. A young man offered me a blade of grass that he had picked from the area

around the shrine. While eating, I was to request of God something, and, because the

grass had grown in this sacred spot, the *mufti*'s *baraka* would cause the request to be

fulfilled. I do not doubt that there are a number of such activities that surround the

shrine—and are not necessarily accepted by the *pir* and his disciples—but I found this

one particularly interesting due to the connection between the earth surrounding the place

where Abdul Gafor was buried, his spiritual power, and the growth of organisms in that

earth. His power emanates throughout the area, affecting all that grows there.

As Engseng Ho stated in his study of grave-pilgrimage networks in the Indian

Ocean sphere, "The grave is a productive starting point because it is a particularly dense

semiotic object … As a compound of place, person, name, tombstone, and text, the grave

enacts a passage from silence to vocalization." For this very reason, Ho explains, Ibn

Taymiyya opposed visiting graves because they create "powerful dynamics of

signification with the potential to create communities based not on revelation but on something autochthonous and incipient in the grave complex."[105]

Meeting with the Pir

The male line of Abdul Gafor's family maintains the spiritual legacy; his son, now in his late sixties, is the current chairperson and *pir*, thus mixing the responsibilities of spiritual leadership with the administrative concerns of maintaining the *mahfil* and the local Gaforia madrasas. During my last interview with him, he requested that I donate money for the construction of outdoor toilet facilities, to be used by the *mahfil* visitors.

While the *pir* is well-versed in the law, his perspective on Islam is unlike that of "radical" or militant Islamists in the country. Following the Chishti tradition, he has not accumulated a great deal of wealth, despite the reputation of the family and affiliated *madrasa*s; he lives and dresses modestly (quite unlike some of the popular *pir*s in Dhaka). He was kind, but not overly attentive to me. During our several meetings, he was always surrounded by a number of other men, including relatives and associated members from the *madrasa* and *mazar* committee. Despite my concern about being appropriately dressed, he was much less bothered by my clothing choice than others had been.

The *pir,* like his father, has been trained in both the *tariqa* and the *madrasa* to the level of *mufti.* His cousin, Rashida's grandfather (*dada*) was also a reputable *mufti,* as evidenced by stories that are still told about his fairness and knowledge of Arabic and *shariat*. Thus, the *pir* in this case bridges both categories of religious authority – as Sufi and as a member of the *'ulama.*

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[105] See Engseng Ho, *The Graves of Tarim: Genealogy and Mobility across the Indian Ocean*, Berkeley: University of California Press, 2006, 25.

Photograph 3.3: The current *pir* of the Abdul Gafor line, Aslampur, Char Fasson.

Conclusion

Despite the assumptions by the secular, urban elite in Dhaka that all religious authorities are 'illiterate,' education is valued by the local Muslim population at my field site. The presence of a large library of Arabic books in someone's home, for example, although quite rare, is seen as an indicator of knowledge and erudition. At least in Char Fasson town, people are well-aware of the different levels of religious education: *kamil* (doctorate), *fazil* (university), *alim* (class 11-12), and *dakhil* (high school), and they understand that someone who has reached the *kamil* level has more depth of religious knowledge than someone trained only until the *alim* level.

This does not mean, of course, that less educated men are not called upon to make decisions or give advice, particularly in very remote areas of Char Fasson *upazila*. As Talal Asad reminds us, "orthodoxy" is "not a mere body of opinion but a distinctive

relationship—a relationship of power" (1986, 15). This relationship might be built on political power- i.e. one's ties to the current political party in power-but it can also be based on connections through family, physical proximity, and/or perceived trustworthiness. Unlike in the case of Egypt's *mufti*s, these religious and legal authorities live and work in the same community as their petitioners.

Yet there is still space for authorities who lie outside the 'named' spectrum, those who have not received specialized educations, such as some Sufi *pir*s. Fulbanu – and the Tablighi Jamaat world of which she is a part – does not have petitioners per se, but during the *talim*s, she is asked questions about correct Islamic behavior and comportment, similar to those brought to the *mufti* and the *imam*s. Such positions are necessary because women lack other direct sources of access to Islamic authority.

Examining the roles of the religious and legal authorities in this community helps us to understand the variety of issues that are brought forth, the questions asked by the populace, as well as the training received by those authorities. It also encourages us to consider authority in Islamic law as understood by the community as coming from more than one individual source (e.g. the *mufti*), but rather from a multiplicity of sources.

Chapter Four

Women's Authority in the Talim

While written texts are respected in Char Fasson, written commentaries are not

the primary way in which Muslims in the area gain knowledge, nor is the constitution of

authority directly through print media. There are, for example, television programs that

even illiterate Bangladeshis have access to, including a number of call-in shows on

Fridays in which callers can ask religious scholars questions not unlike the *ifta'* format of

question-answer. It is not unusual for even rural Bangladeshis to mention Zakir Naik, the

South Indian doctor whose DVDs of his lectures on Islam are widely available.[106] Or they

might ask for the advice of their own local *mufti*s, *kazi*s, or *pir*s, as mentioned above. It is

the Tablighi Jamaat, however, that most conspicuously highlights a subtle critique of the

ulama's power and authority within the community, particularly because the group

enables access to authority for women.

Women's Religious Authority

Women face many difficulties in gaining access to religious authorities for

answers to their religious and legal questions. As mentioned earlier, male petitioners may

approach the *mufti* or *pir* directly, but women must ask a male relative to go to the

religious specialist on their behalf or request the *mufti*'s wife to relay their question to

him.[107]

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[106] See Geoffrey Samuel and Santi Rozario, "Contesting Science for Islam: The Media as a Source of Revisionist Knowledge in the Lives of Young Bangladeshis," in *Contemporary South Asia* 18:4 (December 2010): 427-441.

[107] This arrangement is, of course, exactly the opposite of the one described by Callan, in which men must ask their female relatives to approach female *pir*s. See Callan 2008.

Women are not only excluded from direct contact with *mufti*s and some *pir*s, they are also generally barred from *mahfil*s—religious events often held in the name of religious leaders, in which speakers admonish and advise listeners through stories of ideal Muslim behavior. In addition to more unstructured ways of learning about Islam, such as from female family members, a primary way in which women gain instruction on Islamic belief and practice is through *talim*s (training, instruction, advice; here, referring to a specific type of gathering for religious education). *Talim*s may be more recognized for their use among male members of Tablighi Jamaat; as Tablighi pilgrims travel from site to site on their *chilla*s (Urdu, *khurūj*; the tour), they sit together with the local population in these educational gatherings to discuss the principles of the Tablighi movement. In Dhaka and Char Fasson, however, many *talim*s are held for women, by women. Some are explicitly tied to Tablighi Jamaat and its *dawa'* (proselytizing) activities. Others, including several I attended in rural Bangladesh, are not.

Barbara Metcalf has emphasized the reconfiguration of the hierarchical structure between men and women in Tablighi families: "[w]omen, like other socially humble communities, may find in Tabligh a less hierarchic familial structure and means of resisting conventional social hierarchies" (Metcalf 1996). Metcalf's arguments are based on interviews with and observations of Tablighi men and women, as well as the literature of Muhammad Zakariyya, whose works, such as *Hikayat-us-sahaba,* are the foundational texts of the Tablighi movement. Metcalf notes that, despite the fact that in most of South Asia, women are discouraged from going to mosques, the Tablighi women in Karachi go to the Makki Mosque.[108]

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[108] Metcalf notes that during one of her visits, a man and a woman both addressed a crowd of women in the mosque. This mosque is known as a *tablighi markaz,* or Tablighi center. Metcalf, "Islam and Women: The

This broader claim about Tablighi participants resisting gender hierarchies has been contested by Mareike Jule Winkelmann, who observed in her research on an Indian girls' madrasa with Tablighi links, the "temporary and rather limited nature" of the inversion of gender roles (Winkelmann 125).[109] While the role of women in the Tablighi movement as a whole is not part of my argument here, discussion of female authority and participation in *talim*s in Char Fasson requires analysis of agency and personhood within, as Mahmood insists, "semantic and institutional networks that define and make possible particular ways of relating to people, things, and oneself'" (Mahmood **, quoting Asad, 34).

Metcalf's research points out the type of authority that is valued most within the Tablighi movement: authority is conferred based on "personal work and qualities, rather than markers of birth and status" (Metcalf, 1996). One's authority comes through the strength of one's piety, regardless of how much formal training in religion and Islamic studies that person may have or the amount of wealth and family status. This emphasis on piety opens up more possibilities for women.

Based on my research, particularly of the *talim*s, I would argue that women are not, as they are frequently portrayed, duped into religious behaviors by patriarchal, uneducated male religious specialists. Elora Shehabuddin has powerfully and effectively illustrated the balancing act that Muslim women of lower socio-economic status in Bangladesh must perform. Rural women do not simply and blindly follow religious injunctions by male religious authorities and other powerful men; rather, they make decisions recognizing the many powerful forces in their communities, including politics

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Case of the Tablighi Jamaat," *SEHL,* 1996, accessed January 11, 2011, <https://web.stanford.edu/group/SHR/5-1/text/metcalf.html.>

[109] Mareike Jule Winkelmann, *'From Behind the Curtain': A Study of a Girls' Madrasa in India,* 125.

and local antagonisms. This does not mean that rural Bangladeshi women cannot be pious, but that they must be, and are, savvy in dealing with forces more powerful than themselves.

A Female Talim

The academic literature on Islamic authority tends toward a dichotomization of authoritative power, in which "spirit possession and knowledge of the holy scriptures reflect two distinct, gendered domains of religious practice" (Callan, 400). Maimuna Huq's work on female Quran circles in Dhaka refutes this division (2008), as does Joyce Flueckiger's work with a female Sufi healer in Hyderabad, India (2006).

The female *talim*s I observed also undermine the assumption that religious knowledge, and authority based on religious knowledge, is only the sphere of the male *ulama*. The authority of the *talim* leader is predicated on her knowledge of the Qur'an and hadith and not solely on her charisma or her association with spirits, although, of course, charisma plays an important role. People who speak well—in *mahfil*s, in lectures, or in *talim*s—are said to speak "*tene tene,*" literally, with pull, drawing in the listener. This description was used for several *pir*s who worked in the area, but it was also used to describe the appeal of the female prayer circle leader I describe below.

Because of the relative lack of scholarly depictions of women's *talim*s, it is constructive to describe a typical session:

The *talim* held down the road from my field site residence was generally on Tuesday mornings, unless cancelled on account of prior commitments on the part of the woman who led it. My friend, Rashida, did not go every week, so we went to the woman's home to check on the time and day. The *talim* was held in the home of an older

woman (late fifties)—I will call her Fulbanu—who led the *talim*. She was married, but all of her children had married and left the home. Her knowledge of Islam was taught by a woman in Lalmohan, a town to the north of Char Fasson. This teacher, whose husband was a member of the Tablighi Jamaat, was of a higher economic class than Fulbanu and had held *talim*s for at least ten years in Lalmohan. Fulbanu received permission from this woman to begin leading her own *talim*s in Char Fasson when the teacher became too elderly to continue to travel. Throughout the talim, Fulbanu wore a house-dress, signaling her comfort level in her home, and a *dupatta* (scarf) loosely covering her head.

The other women who joined Rashida and me on our first visit were diverse in age. Two were older, perhaps in their forties or fifties, wearing dark red and black *burqa*s with brightly colored *dupatta*s that they did not take off once in the house, despite the frequent urgings by the other women to "*khul*" (open [the burqa]). Both wore *niqab*s (face veils) into the house, which they did remove. A few younger women joined us as the *talim* went on; these women appeared to be of a lower economic class than the older women. Fulbanu offered all the women *pan* (betel nut), which they chewed throughout the three-hour session.

None of the women present at this *talim* explicitly identified as Tablighi, including Fulbanu. Only one woman had significant knowledge about Tablighi Jamaat as a group. The community does receive a number of Tablighi traveling groups, including, during my field research, a man from South Africa. A number of people from the community have attended the Biswas Ijtema in Tongi (near Dhaka), but none of these women or their husbands had attended, nor, presumably, had they attended teachings of the traveling groups.

Fulbanu has a basic education, through class ten. She began the *talim* by reading—quite quickly—from *Fazail-e-Sadaqat* (The Merits of Alsmgiving), a book of hadith on voluntary alms, compiled by Maulana Zakariyya Kandhlavi (d. 1982)**.** The book is one of the three texts in the *Tablighi Nisaab* (Tablighi Curriculum); the other book I saw most often used in Bangladesh was *Fazail i-Amal* (The Merits of (Devotional) Works)*,* but it was not used as often in the *talim*s in Char Fasson. The primary lesson on this day was the importance of giving voluntary alms, even when one is poor. Fulbanu stressed that the giving of just a little bit of money from a poor person is worth more than the giving of hundreds of thousands of *taka* given by a rich person.

The other women simply listened, often nodding assent, but without interrupting. At one point, I noticed that my friend, Rashida, had fallen asleep, but this was not surprising, considering the heat and her pregnant state. The older women, sitting on the floor, often rocked back and forth, sometimes closing their eyes. Every once in a while, young girls would wander into the house and listen, but there was a surprising lack of the usual traffic of children through a rural home. Fulbanu's husband, a day laborer, sat outside for a while, right before lunch. He spoke to his wife through the door, but did not enter while the other women were gathered.

After listening to Fulbanu read from the book for over thirty minutes, the women began to chat. After telling a few stories with religious teachings, including one on the difference between Muslims and Hindus (in which the Hindu figure in the story converts to Islam), Fulbanu began to focus more earnestly on me and my lack of knowledge. She related to me the story of Adam and Eve. She also told me several stories about Paradise (*jannat*) and stressed that women are the best teachers of Islamic knowledge and piety.

Often the older women would add to the story, interrupting Fulbanu; sometimes she ignored them, but there did not seem to be a need to aggressively assert her place as the authoritative figure.

Intermingled in Fulbanu's performance of narratives, women in her audience periodically interrupted her to ask specific questions of Fulbanu, who answered with Quranic verses or *hadith*. One woman asked about the proper way to greet someone of a high stature, such as the union chairman, the Member of Parliament, or other political figures (*shagotom*). In accordance with Tablighi ideals, Fulbanu disapproved of huge (expensive) displays of adoration for other humans. The exchange brought to mind the many processional 'greetings' that I had witnessed, in which crowds put up huge displays, wave flags, sing, and garland political figures as they are welcomed into a school or other public space.

The *talim* concluded with supplications (*doa*) to God led by Fulbanu, performed in Bangla with interspersed Arabic verses. The intensity of the prayer increased at several junctures; the women listening were moved to tears and cried out. As noted by Rashida, some religious authorities like Fulbanu speak "*tene tene*" (with pull), which she responds to through crying. This practice is not unlike what Saba Mahmood (2005) describes concerning Egyptian women in the *taqwa* movement. Certain behaviors are the "*spontaneous* expression of *well-rehearsed* emotions and individual intentions" (Mahmood 129, italics in original). Rather than conventionalized performances of "social obligations," Mahmood argues that the ritual of crying during prayer are part of the "development and formation of the self's spontaneous and effortless expressions. . . . Thus, ritual worship . . . [is] both *enacted through,* and *productive of*, intentionality,

volitional behavior, and sentiments." (Mahmood 131). For Rashida and the other women

present, learning more content about Islam was not the sole purpose of their gathering. It

was also to perform ritual activities together that enabled the expression as well as the

development of their Islamic selves.

It was not until later in the day that I realized there were several women behind

the house cooking our meal. We all ate together, from communal dishes: rice, dal,

shrimp, and spinach. The women did not give any money for the food; it was paid for by

Fulbanu.[110] The women fed each other, in order to show their humility and affection

(Photograph 4.1).

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[110] My presence there seemed to disrupt this pattern, however: I was asked by Rashida to give a little money to Fulbanu, which I did.

Photograph 4.1: Women at *talim* eating communally and feeding one another.

Unlike other religious leaders in the community, Fulbanu does not have any

political ties, wealth, or family status. The respect given to her is based on her knowledge

of Quran and *hadith*, her ability to speak charismatically, and her personal piety.

Conclusion

Marion Holmes Katz notes that "[i]t has long been recognized that much of the

richness of Muslim women's ritual lives has been found outside of both the mosque and

the "five pillars of Islam," in a wide set of devotional practices that have met with

varying degrees of affirmation and censure from male religious authorities" (Katz 2008,

467). She argues that such activities, often categorized as "popular Islam" play an

important role, as their critique is "an important rhetorical strategy in the construction of

scholarly orthodoxy" (Katz 2008, endnote 7). Katz points out that "popular Islam" often

refers to the religious practices of various groups that have "differential access to the

means of authenticating and valorizing" such practices (Katz 2008, 467).

Katz's work on the Yemeni practice of celebrating the *mawlid* (birth date of the

Prophet Muhammad) reminds us that Muslims, past and present, continue to debate the

correctness of certain practices. She argues, however, that the women who perform the

mawlid are themselves "adhering to clear models of "correct practice"" (Katz 2008, 470).

The women participating in the *talim* described above seek to learn about Islamic

practices in order to perform them more correctly. In the chapter below, I discuss another

way in which women, in particular, learn about correct practice – narrating morality

stories.

Chapter Five

Narratives and Norms: Locating Religious Orthodoxy

Like many of my evening visits to residents in the area, my trip to Al-Amin's home was made in the dark with a less-than-powerful "torch" (flashlight) to light the brick-laid path. When my friend Rashida and I, along with a young boy of fifteen, entered the home, a middle-class structure with stone steps and newly fortified wood beams, we were quickly ushered to the back of the house. Al-Amin's wife made us tea and a plate of fruit and sat down to chat with us, the lights still out. I immediately liked Arju, who is light-hearted and welcoming. A graduate of class X, she is in her early forties.

Soon after sitting down, the "current" (electricity) returned. The conversation began with Rashida's exclamation over Arju's *chula* (gas-powered stove top). She wanted to know if Arju's cooking time had diminished; where did she buy the *chula*, and how much did it cost? Rashida had been thinking about purchasing one, but the on-going gas purchases were prohibitive. Arju asked about Rashida's two sons, and Rashida complained that they did not listen to her and were particularly difficult about doing their schoolwork.

The conversation turned to me, as often happened on these visits with Rashida's acquaintances. Rashida did not seem to tire of answering the same set of questions, even if I did. Despite knowing by this point that I was capable of speaking Bangla, the questions were always directed at Rashida, and she answered as if I was not there. Is she Muslim? Is she Australian? Is she married? Why is she here? Does she always wear a *shalwar kamiz*? Does she cover her head outside? To this last question, Rashida replied in the negative, but she added vigorously that I covered my head during the *azan*.

Arju turned her attention to me directly and began to tell me a hadith (*hadis*).[111] There was no introduction, no lead-in to this narrative. Despite my own understanding about the nature of most *hadith,* there was no mention of Muhammad in the story. The central figure is a young, married woman, who, on her way to the market, passes a strange man. The woman allows her veil to fall, showing a strand of her hair. Soon after, the woman dies, and her transgressions serve as the grounds of her torment in Hell. Here, the boy who had accompanied us joined in the narrative, eagerly explaining the method of torture endured by the woman for showing her hair to a stranger – her head is pecked by a bird until her brains begin to spill out. In the depths of her despair, she calls out, and her living mother-in-law hears her. She explains to her mother-in-law the pain that she is in; her mother-in-law reacts by asking God to exchange her for her son's wife. At this point in the narrative, Arju and my friend began to argue about the nature of the conversation between the woman and her mother-in-law and the appeal to God: did the mother-in-law die immediately? Did the son ask his mother to take his wife's place? They agreed, however, that God complies with her wishes, and the wife is given a second chance at life, so long as she is obedient to her husband.

It was not entirely clear if this narrative was meant to warn me of my own demise as a woman who does not veil, although my friends in the community were clearly concerned about my fate in the Hereafter as a non-Muslim. It does, however, serve as a powerful exemplar to the women (and to the young boy) of the consequences of women allowing themselves to interact in inappropriate ways with strange men. This narrative, along with many others I heard, was designated a *hadith*, although it is doubtful that one

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[111] I asked later what this narrative would be called and was told it was a *hadis.*

could find it in Bukhari or Muslim.[112] It may well have been a story told at a *mahfil*

(religious gathering) or in all-women's *talim* (learning circle). My point is not that these

women are ignorant about their religion; rather, it is that for them, this story had

particular salience and usefulness and that it is an important example of the creative ways

in which religious ideals are expressed through narrative.

Photograph 5.1: When outside of their family compounds, women are expected to dress in ways similar to the above. Char Fasson local elections, January 2009.

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The *hadis* shared with me offers insight into the women's understanding of

correct behavior and dress, as well as their conceptions of humans' ability to act and

interact with God. While Muslim women in this area often wear what they refer to as a

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[112] Two of the six 'canonical' *hadith* collections.

burkha (an outer coat)*,* as well as the face scarf (*nikab* or *moukha*), usually in black, the garments have really only come into use in the last two or three decades. A woman in her fifties would have grown up wearing a *sari* with the *anchol* (edge, the end of the sari cloth) drawn over her head when necessary. She may also have used an umbrella to form a barrier between her and strange men on the path or road.

It is not unusual to see older women today with umbrellas, in addition to their burkas and face veils. Many women will add a *dupatta* or *orna* (head-scarf) to cover their heads, in addition to wearing the *burqa* and face veil. Nor is it unusual to see girls younger than twelve wearing headscarves. Just as important as the garments, however, is the other manifestation of *parda* (lit., curtain): the partial exclusion of women from public spaces and rules about the relations of males with whom one can converse. It is not that women in the Char Fasson area do not attend festival activities and celebratory events (such as the arts program for *Pahela Baishakh,* the first of the Bengali New Year), but they are rarely in the markets or government offices. They certainly do not allowed to go to the *masjid* (mosque) to pray, although they do frequent *mazar*s (shrines).

Parda is necessary, the women say, because God insists upon it, and society demands it. As a component of Islamic law, *parda* is, as Katy Gardner notes, a "blurring of boundaries between the 'religious' and 'social'" that is "very much part of Muslim ideology that conflates" the two (Gardner 209). So, for example, when asked about the reasons for wearing the *burkha* to the market, women often responded that it was both because God insists upon it and because it is inappropriate not to wear it and others would speak poorly of a woman who did not. A *hadis* such as this explains the consequences for not following God's injunctions. When I asked local religious scholars

about *parda,* they referred to the Qur'an ("*Qur'an Sharif bole*" or "The Noble Qur'an says) or to general statements about the need for the sexes to be separated. Narratives such as the one above, however, are far more powerful in teaching about and substantiating the patterns of everyday life, particularly for women, as they do not have access to the same religious instruction in the mosques as do men.

Orthodoxy: "Islam Says…"

I have chosen to study these discourses through the analysis of multiple narratives expressed by lay people, including contested and sometimes conflicting *hadith*, stories about the prophets, and miracle and healing narratives. My claim is not simply that Muslims respond to and interact with a number of sources that are not Qur'anic in origin or found among the canonical books of *hadith,* although I think such a point is far too often overlooked. Nor can the argument be reduced to 'culture'—in this case, of course, this would be perceived as the 'incorrect' cultural influences upon ignorant, rural Bangladeshi Muslims; and narratives such as the ones I will relate would have been relegated to the category of 'folktale' by scholars like Geertz or Gellner.[113] Instead, I am arguing that the Muslims with whom I lived and worked create a fluid, imagined textual authority that enables them to negotiate social norms and spaces, one that informs their decisions far more than any single authoritative institution or individual within the community.

To speak of a dichotomy, or even a continuum, between the "local" and the "orthodox" implies that the local is derivative, or that the orthodox fixed. While the Islamic tradition presents itself as fixed and universal, Rich Martin and Abbas Barzegar have argued that the evolving nature of religion, as it is practiced by lay-persons, is not

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[113] See Geerz 1968; Gellner 1981. Cited by Saba Mahmood 1989, 95.

"necessarily a deterioration of orthodoxy but rather . . . often the source[…] of it"
(Barzegar and Martin, 182). Building upon the argument of Peter Brown on medieval
Christian saint worship, they note that various theological positions within Islamic history
that were once considered heretical are now viewed as orthodox, including the emphasis
on *hadith* by Ibn Hanbal.

Barzegar and Martin also acknowledge different levels of orthodoxy, from the
global to the local. To argue this, one must also recognize that authority within any
community is not wholly coercive, not completely hegemonic—a view that is in sharp
contrast to the ways in which authority in the lives of rural Bangladeshis, and particularly
women, is often represented.

Many Muslims and scholars would argue that the female-performed narratives
such as that with which this chapter opens are not *hadith,* and they are wrong to believe
them to be so. *Hadith* are accounts of things said or done by the prophet Muhammad;
generally for *hadith* to be considered valid, they must have an *isnad,* or a chain of
transmission that begins with someone close to Muhammad who saw him do particular
acts or say certain statements.[114] The argument that these *hadith* narrated by the women
are invalid would also resonate with secular elites in Bangladesh, who contend that rural
women are controlled at the whims of 'illiterate' and/or fake religious leaders. To such
commenters, the examples I give below are thus more evidence that these *mullah*s do not
know "true" Islam.

Jonathan Berkey (2001) and Saba Mahmood (2005) also argue, however, that "the
boundary between scholarly practices of *hadith* and popular stories has always been

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[114] See J. Robson, "Hadith," in Encyclopaedia of Islam, second edition.
<http://referenceworks.brillonline.com.proxy.library.emory.edu/entries/encyclopaedia-of-islam-2/h-adi-th-COM_0248>

permeable" (Mahmood 98). Drawing on her work with Egyptian women, Mahmood contends that such discursive practices in the modern period look not so different from those in the pre-modern period: "[i]nvocations of the hadith constitute of genre of speech act that is constantly lived, reworked, and transformed in the context of daily interactions" (Mahmood 98).

Rather than employing the dichotomy of "folk" versus "elite" or "scriptural" Islam, Joyce Flueckiger, in her work on a female Sufi healer in Hyderabad, India, argues for the use of the phrase, "vernacular Islam." The vernacular is in relationship to the universal: the Five Pillars, the belief in the authority of the Qur'an and Muhammad as Prophet, etc. The universal lives in the imaginary: as soon as it is lived out, it takes the form of the vernacular. Unlike the universal, or transnational, the vernacular refers to practices which "take local . . . forms while still being considered Islamic" (Flueckiger 2006, 2). There is no doubt that Muslims represent Islam as universal, accessible by everyone, in all places. Flueckiger's argument, however, also assumes a universal Islam—however narrow—does exist, at least imaginatively.

It could certainly be argued, as anthropologist Abdul Hamid el-Zein has, that even this universal does not exist: Islam does not already have meaning prior to the experiences that make up what is referred to as Islam. "Islam," El-Zein argues, "as an expression of this logic can exist only as a facet within a fluid yet coherent system; it cannot be viewed as an available entity for cultural systems to select and put it to various uses" (El-Zein 252). Thus, the *ulama* do not represent some uncorrupted Islam; indeed, like Martin and Barzegar, El-Zein argues that the Islamic scholars in fact draw from the principles of 'lived' Islam as they establish their traditions (246). Such a perspective

makes it all the more important to turn to theoretical and methodological strategies that do not privilege the written text over oral texts.

The Imagined Text

Leela Prasad's *Poetics of Conduct* (2006) uses narrative analysis in examining the construction of authority within a Hindu-majority community and provides a useful framework for the consideration of moral lives in practice. In order to understand what *shastra* (authoritative Hindu text) means to Hindus in a small, South Indian town that is the site of a famous *matha* (monastery, site of religious authority), Prasad asked her interlocutors what the *matha* meant to them, as both a symbol of authority and a physical institution. Furthermore, she asked what individuals understood the *shastras* to be. The answers she heard caused her to realize that *shastra*s were not viewed as a collection of (physical) texts. Prasad argues that as Hindus in this area seek to act morally, the "underlying ethical practice is a dynamically constituted 'text' that draws on and weaves together various sources of the normative—a sacred book, an exemplar, a tradition, a principle, and so on. Such a text is essentially an *imagined text*" (Prasad 119, italics in original). This imagined text is not learned just in religious institutions or through explicit religious training. Rather, with respect to Hindus, there are "osmotic ways in which one, growing up in a Hindu family, learns traditions, practices, and ways of being that are saturated with the sense of 'this is auspicious, this is correct, this is ethical'" (129). "Auspicious" is not the terminology used by Muslims in the community where I work, but how one learns ethical/moral ways of acting is quite similar and is often based on what is referred to as tradition (*pratha*), rule (*niyom*), or custom (*obhash*).

So, for example, my friend's mother taught her that one must bury nail clippings and hair strands in a shallow dirt hole; she, in turn, as the oldest daughter, taught her younger sisters. They do this because such bodily fragments never forget one's sins, and it is unfavorable to leave such things lying about just anywhere. Indeed, in doing so, someone who knows black magic (*kufri kalam*) might pick them up and use them (*tabiz kora,* to possess) against an unsuspecting victim. This custom is not understood to be separate from other forms of Islamic knowledge; it is all *shari'a* and often indicated by the phrase, *islam-er drishti-te* (in the view of Islam). One's religious knowledge is first and foremost learned in the family; school, mosque, and *mahfil* add to this knowledge. The imagined text is necessarily fluid and "animated by human agency" (Prasad 118).

Such a perspective on religious knowledge and practice is in great contrast to the way it was understood by the authors of the colonial legal codes in South Asia. Not unlike their notion of *shari'a*, British colonial administrators imagined the *dharmashastra*s to be "*exclusive* and fixed codes for Hindus across the breadth of India. British colonial policy, relying on a book-based understanding, subjected these highly context-driven codes to parochial deployment in the creation of an Anglo-Indian judicial system" (99). A number of scholars have argued that this process subjected both Hindus and Muslims to a legal system "with rules clearer and more rigorously enforced than in any previous epoch" (Kozlowski 1993, 77). The actions of the British served as a foundation for Muslim personal law in the subcontinent long after their colonial rule ended. The creation of a domain of "personal law" ignored the fact that "both Hindu and Muslim 'world-views' considered all aspects of life [to be] equally subject to religious rules," thus producing "a religious/private sphere and a secular/political sphere" (Lemon

2010: 8; quoting Parashar and Dhanda 2008: xi). This dichotomy was reproduced in the Muslim Family Law Ordinance of 1961, even as the legislation attempted to "modernize" Islamic law as practiced in South Asia.

Perhaps even more so than with the *dharmashastra*s, Islamic knowledge (theory) and practice, based on the views of Islamic scholars, have been assumed to form an orthodoxy that is in opposition to 'popular' religion. Scholars of Islam in the academy reproduce this concern with orthodoxy by over-emphasizing the work of the *ulama*. Prasad argues that the dichotomy between the "theory" of religion and everyday practice can be dissolved once you "admit that moral theorization [is] taking place in everyday life where "practitioners" identify, historicize, and improvise upon plural sources of the normative" (Prasad 15).

Narrative in Law

Hadith and Prophetic Biographies

The narrative with which I opened this chapter concerning the consequences of not veiling correctly highlights the significant weight carried by stories presumed to be *hadith.* Bellamy has remarked that "[t]he hadith and akhbār literature is the strongest persuasive and didactic instrument that Muslim society has produced for the purpose of maintaining respect for the sunna of the Prophet among the members of that society" (Bellamy, in Al-Sayyid-Marsot, 1979: 41). In this case, the *hadith* serves primarily as a didactic instrument. The story not only explains the torture (*shasti*) waiting for women who do not cover completely in front of strange men; it also opens up the possibility that pious individuals can intervene—quite actively—with God on behalf of others. In contrast, I was also told quite definitively, and often within the same sitting, that Muslim

women cannot hope to get to Jannat on account of the piety of their husbands, sons, or other family members: God decides upon the actions of the individual alone.

With respect to these narratives, the common gloss of *hadith* as the actions and sayings of the Prophet Muhammad is not quite accurate. Muhammad was not mentioned, nor was he the source of the narrative. Instead, the narratives were meant to teach a particular lesson or moral. The use of *hadith* as stories with imbedded morals is evident in a book with which many of the women in the area (even some with little schooling) are familiar, *Behishti Zewar* ("The Heavenly Ornaments"). This book, originally written in Urdu early in the twentieth century by Maulana Ashraf 'Ali Thanawi (1864-1943), is still given to some rural women, along with the Qur'an, when they leave their parents' homes for marriage.[115] The Bengali translation, like the Urdu original, is meant to educate young Muslim women so that they do not give over to incorrect or even corrupt behaviors. This desire to educate Muslim women was, in Thanawi's time, quite unusual: his text "illustrates a new concern for bringing mainstream Islamic teachings to women" (Metcalf 1), for in order for women "to act as they should, this work argues, they must be instructed" (Metcalf 2).

Thanawi includes a section, Book Eight, of biographical stories of women that, while linked to the Prophet, are not necessarily about him or even about his actions or reactions. In this section, Thanawi provides the biographies of women from Hawwa (Eve) to pious women in the centuries following the death of the Prophet Muhammad. They resemble the stories told by women in Char Fasson, and Thanawi explicitly lays out

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[115] Metcalf also notes this in her introduction to her translation of *Bihishti Zewar*: new brides "'entered their husband's home with the Holy Qur'an in one hand and the *Bihishti Zewar* in the other'" (3, quoting C.M. Naim).

the moral in each.[116] As Metcalf notes, the *hadith* chosen by Thanawi, including those in

Book Eight, "are chosen to illustrate the promise of reward and the threat of punishment"

(Metcalf 29). For example, in telling the biography of Asiya, the wife of the Pharaoh,

Thanawi ends with this moral: "O women! Faith is a great treasure. . . If your husband

acts against the faith, never support him" (Metcalf 266).

Not long before the night I heard the veiling story from Arju, I sat in a similar

situation with three women as they told me two stories: one about the prophet Daud and

another about the wife of the Egyptian Pharaoh. It was late at night, prior to a nine-thirty

meal of left-over chicken and *begun bhaja* (fried egglant), and my friend was sitting

down for a rare moment of rest. Two other women, one of whom would be spending the

night before a long journey back to Dhaka, sat on the low, wooden beds and added their

versions of the stories. I am not sure what initiated this conversation. As happens in

fieldwork settings like the one in which I worked, important and interesting information

was often divulged in unexpected settings. I was paying attention to something else and

began to catch the conversation only after it had started.

Daud (David), they began, was married to a beautiful woman, who could have

married anyone else in the land. He was at this time extremely poor and covered with

open sores. His wife, a devout woman, licked his sores (apparently in the hopes of curing

him), and worked outside the home to earn money to feed them both. As might be

expected, her work outside the home, surrounded by strangers, led to talk amongst the

neighbors that she was a "bad" and unfaithful woman. In a last ditch effort to provide for

her family, she cut off her hair and sold it to another woman. Angered by her actions,

Daud slapped her face. The angels stepped in and informed Daud of his wife's piety and

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[116] See pages 253-314 in Metcalf 1992.

desire to help the family, effectively shaming him. In response, he prayerfully bowed to her (*shezda deowa*) and asked for her forgiveness.

Photograph 5.2: The *chula* (oven) in the kitchen.

At this point in the narrative, my friend turned to me and very seriously advised me that a devout (*dhormopran; dharmik*) wife always obeys her husband. I should, in fact, always ask my husband or father if I can go outside the house. I found it striking that this was the conclusion she came to after telling me this narrative of female strength, piety, and endurance. The absolute necessity of asking permission from one's husband was a legal and moral duty that took precedence over all else. Her acceptance of this teaching, which came to her from a number of sources, guided her understanding of the narrative and certainly brought her to a conclusion that was quite different from my own.

What would happen, I asked, if my husband did not want me to come to Bangladesh? She answered that I should make him understand (*bhujiye dao*) the

importance of visiting Bangladesh for my studies and, of course, to see my friends. At the
very least, the interaction illustrated the difficult situation faced by the Muslim women I
worked with in 'placing' me within their own paradigm of wifely obedience and religious
piety, even as I, as a non-Muslim American, seemed to require different rules.[117] The
discussion also demonstrates the kind of message that the women extrapolated from the
story. Despite what seems to be a story about the piety of the wife, the women sharing the
story with me inserted their own understanding of the importance of wifely obedience,
even in such a dire situation.

Perhaps more importantly is the juxtaposition within the narrative of a pious
woman—a woman more pious than her prophetic husband!—who must still ask her
husband's permission to leave the home and work. In doing so, she eventually deserves
the *shezda* of her husband. To give *shezda* to one's wife seems to challenge everything
commonly said about the action: that it is to be given only to God, that one must be
vigilant against actions that might appear similar to the act of showing ultimate obedience
only to God.

Even wives with husbands as terrible as the Pharaoh can be deserving of praise,
and may, in fact, have to disobey their husbands in order to obey God. Following fluidly
from the discussion about my obedience to the males in my life, the women began
another story, this time of the Pharaoh's wife, who, as a monotheist, did not believe in the
Pharaoh's insistence that, "*Ami ishwar*" ("I am god").[118] The use of *ishwar,* as opposed to

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[117] Not unlike the paradigm within which Kotalova situates her book, *Belonging to Others*, although
Kotalova characterizes herself as the 'new bride' within the community. I felt not so much the new bride as
the potential convert.

[118] Thanawi also includes a mention of Hazrat Asiya in his *Bihishti Zewar,* Book Eight. See pages 265-266
of Metcalf 1992. The moral, as he concludes it, is that women should never follow disbelieving husbands:

Allah or *khoda*, was quite intentional. *Ishwar* is the term used by Bengali Muslims specifically to refer to Hindu gods, not to the one god. It signaled the polytheistic, and therefore incorrect, outlook of the Pharaoh. He is committing *shirk* by placing himself on the level of God, and the narrator clearly views this as heretical.

When Pharoah's wife prayed, he would punish her, and when she was fasting, she would pretend to eat *paan* (betel nut). At this statement, the orphanage director, Seraj, who had walked in a few minutes before, laughed and asked disbelievingly, "*O paan kano khaise*? (Why did she eat betel nut?)" The women overlooked this interjection, and went on, disagreeing over the number of children the couple had and whether or not the Pharaoh had killed his wife for her disobedience. The story ended when Seraj began explaining to me plans for the new orphanage dormitory, and the other women, in deference to the male presence, left for the kitchen shed.

Having just explained the importance of obeying one's husband, the women used the story of Pharaoh's wife as a counter-narrative: a story in which a wife must disobey her husband. While obeying one's husband is a religious duty, it is not all-encompassing. Throughout my time in fieldwork, I observed the uncertainty experienced by those around me who, when faced with the choice between patriarchy (following the religion of my father) and my converting to Islam (as the true religion), often provided conflicting answers.

The women in both narratives above are more devout than their husbands; their devotion is expressed through obedience, even at great danger to themselves. Although the purity of David's wife is questioned by those in her community, the angels (and God)

"If your husband acts against the faith, never support him" (Metcalf 266). The stories are reflective of the Qur'anic stories in which the Pharaoh says "I am your highest lord." See Qur'an 79:24.

have seen her true deeds, and she is absolved of guilt.[119] The narrative recognizes the

usual social response to women's activity outside of the home—that of suspicion and the

assumption of nefarious motivations. While the *hadis* do not entirely absolve women of

any guilt or guile (see below), this particular narrative calls for a husband's patience and

understanding in his wife's reasons for leaving the home.

Localizing Hadis

As the inclusion of *paan* in the Pharaoh's wife narrative demonstrates, many

hadis narratives performed in Char Fasson include familiar cultural and physical

phenomena. These often incorporate elements of the deltaic environment that contrast

greatly with the desert of the Prophet's Arabia, including scenes of rivers and jungle,

populated by animals like water buffalo (*mahish*), snakes, and tigers.[120] The settings

imagined by the narrators appeared as the world around them. This was particularly true

in the story of the man who became a woman, told to me by an elderly man,[121] who had

heard it, as far as he could remember, at numerous *mahfil*s. I was sitting in the yard of the

orphanage with several children who were sharing stories with me about the prophets. It

was Eid al-Adha (Qurbani Eid), and I was asking them about how they know to sacrifice

on that day. The elderly man, whom I knew from the community, sat down, listened for a

while, and then began telling me this story about the man who becomes a woman. It is a

story, essentially, about the *mi'raj* (the ascension of the Prophet Muhammad from

Jerusalem to Heaven in one night), that is meant to support the Prophet's claims about his

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[119] This type of story is not unusual in South Asia; the story of Ram and his wife, Sita, reflects similar
themes.

[120] Joyce Flueckiger also noticed this phenomenon in her fieldwork. See Flueckiger ,187-191.

miraculous journey. A man goes to take a bath in the river, and when he emerges, he has

been transformed into a woman. A man notices her and marries her; they live together for

27 years and have children. Then one day, the wife goes to the river and re-emerges as a

man again. The man (who had been a woman) goes to find his wife, whom he sees

cutting a fish for dinner, and he realizes that she has experienced only "real" time (a few

minutes) and not the 27 years that he has experienced.[122] At this same time, the Prophet

had gone on his *mi'raj*, and he is trying to explain to the people in the market what

happened, but they do not believe him. The man who has become a woman and

"returned" also goes to the market and corroborates the Prophet's story. When the crowd

hears that this man has also had an experience in which many years passed for him, while

only minutes passed for his wife, they believe the Prophet's story.

The scene evokes the environment around them: people bathing in rivers and

ponds, the common dish of fresh fish. This gender-bending does not necessarily have a

place in contemporary, conservative Muslim culture, but it certainly does show up often

across South Asia.[123] To associate this situation directly with the Prophet's *mi'raj* is rather

astonishing, but the narrator perceived this aspect as an illustration of the miraculous

nature of the Prophet's journey and the very spectacular nature of his experience.

Women's didactic stories did not always include pious women. Another *hadis*

related to me included a devious woman and a pious *madrasa* student. Rashida and I,

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[122] This narrative framework also exists in Hindu contexts. According to V. Narayana Rao, in the *Devi Bhagavata,* the sage Narada asks Vishnu how *maya* (illusion) works. Vishnu tells Narada to immerse in a lake, after which Narada emerges as a woman. She marries a king, has many sons, who themselves produce many sons. But then an enemy invades the kingdom and kills all the queen's sons. During her mourning period, a sage comes to the queen and tells her that this is all *maya.* The sage tells her to go to a lake, to purify herself and perform the necessary death rituals. When she emerges, she is Narada the man again, and he sees Vishnu standing there, as if the entire lifetime of the queen and her sons had never taken place. Rao, oral communication, via Joyce B. Flueckiger.

[123] See, for example, Flueckiger, *When the World Becomes Female: Guises of a South Indian Goddess*. Bloomington: Indiana University Press, 2013.

along with two of her neighbors, were walking past one of the larger, local *madrasa*s when Rashida asked me, in her straight-forward yet somehow bashful way, if I knew that men and women shouldn't mix (*misha,* have sex) with anyone except their spouses. I replied in the affirmative, but I was curious about what had motivated her question. Why, I asked her, did it matter?

Rashida began to tell me the story of the devious woman who sees the young *madrasa* student go by her house every day. The woman attempts to seduce the young man, and he refuses her advances and thwarts her desire by covering himself with his own excrement. After washing himself in a pond, he goes to *madrasa,* and his teacher, contrary to what one might have expected, compliments him on his *su-gran* (good fragrance). The boy thinks his teacher is teasing him, but his classmates agree: he is emitting a good smell because he is *behester manush,* a heavenly person.

In reflecting on the point of the story, the storyteller, my friend Rashida, and her neighbors emphasized that a husband and wife should have desire for one another and no one else. Muslims condemn those who have sex with those to whom they are not married. This 'moral' of the story was not surprising to me; it was striking to me, however, that the narrative underscored a sentiment I had heard before: that women are generally to blame for misplaced desire, and that it is the burden of a woman to ensure that she does not tempt men.

When Rashida had finished telling the tale, I asked her about the genre of the story, to which she replied that it was a *hadis.* Still puzzled over this classification, I asked her if Muhammad himself had told the story about the *madrasa* student, and she

said, no, it was someone else's story. Then why call it *hadis*? For those telling the narratives, it provided authority.

Gendered Process

I have focused on the narratives told by women to women, partly because I had access as a woman to informal conversational settings, but also to begin to fill the need for a gendered ethnography that, "'rather than foreground men's relationships to one another (which classical ethnography does quite well), or women's relationships to men," instead focuses on "'women's relationships to other women'" (Ruffle 2005, 133, quoting Visweswaran 1994, 19-20). Because I have chosen to emphasize women teaching women, one might be tempted to view this transmission of knowledge as essentially female. However, I also heard similar stories from men (such as that of the man who became a woman, above). The fluid nature of story-telling is not limited to women, but it was most often with women that I heard these narratives, which, I believe, was related to their desire to form me into a proper Muslim woman. Furthermore, while institutional forums for women to learn about religion are certainly less numerous than those for men, forums such as women's *talim* learning circles in which one woman reads from a text, belie the generalization that one may be tempted to make that women's learning is essentially 'text-less' in comparison to the text-driven world of the *mufti* or the *imam*. In Dhaka, scholars have observed Qur'an circles, in which women learn from one another about how to read and understand the teachings in the Qur'an. Maimuna Huq (2008) describes a *dars al-Qur'an* given by a young Islamic activist.

Conclusion

The perspective I have taken in this chapter, with a focus on narrative in discourse, is similar to John Bowen's in *Muslims Through Discourse* (1993). However, unlike the Indonesians with whom he worked, who appear quite aware, not only of their personal differences as individuals, but also of their positions within a larger debate between "modernists" and "traditionalists," the women and men with whom I lived and worked did not articulate such differences. Similarly, Flueckiger, in her work in urban Hyderabad, also notes that, unlike the practitioners with whom Katherine Ewing worked, the community in which she researched seemed less "self-conscious about the terms of such debate about what Islam is and should be," (Flueckiger, 33). The difference is thus not about a rural/urban divide or simply the amount of (secular) education available to community members. It may be more about the discursive framework within the communities about religious difference and authenticity.

This is not to say that Muslims in Char Fasson do not show any discrimination based on types of practice or belief. For example, many noted the difference between 'authentic' healers and 'false' ones. Rather, most people seemed to be along a continuum between the two positions of 'modernist' and 'traditionalist.' It is because of the lack of specific, narrow ideological positions in places like Char Fasson, however, that it is particularly important to recognize the multiple sources from which Muslims receive information and influence.

My research also differs from what is now a major focus of many studies of contemporary Islamic popular discourse—Muslims on the internet (see, for example, Blunt 2003, 2002) or literate Muslims who are "involved in movements that have led them to shed the traditional Islam of their parents and practice, a new, self-conscious, or,

to use Deeb's term, "authenticated" Islam" (Shehabuddin 20, citing Deeb 2006). Most of

the people with whom I interacted in Bangladesh are not participating in the elite

discourses of the Internet or even the public discourses of major religious figures in the

urban setting of Dhaka. This does not mean, of course, that Muslims of Char Fasson are

somehow cut off from discussions amongst the global *ummah*. The concept of an

imagined text is all the more powerful in a transnational environment, where even rural

Muslims receive their information from an ever-diversifying array of sources. What it

does highlight is the continuing need to take into account discourses that do not occur

amongst the literate or amongst highly visible individuals.

Chapter Six

The 'Hungry Tide'[124]: Loss of Land and Legal Arbitration

The day did not feel particularly ominous to me. It was only because I had seen the weather report that I felt any apprehension. Even then, I was not overly worried, because all reports were telling us that the tropical storm, Aila, would miss our island and hit West Bengal. The wind had picked up, and it was raining, but I had seen such intensity before in my stay in Bangladesh. It was not until the afternoon, when the people from the coast eight kilometers away began to arrive in the town in rickshaws and by foot that I realized how much I had underestimated the power of this tropical storm. Later, residents would say that the people of Char Fasson *upazila* (sub-district) had been lucky: if the storm had occurred at night, the water would have risen too fast for those on the outer *char*s (islands) to get to the larger island safely. Instead, the hours of daylight gave the local government time to put out the word and assist in transport for those on the outer *char*s and along the coast to get to safety.

The water kept rising into the settlements closest to the Meghna River into the late afternoon, although we did not know this first-hand. There was constant discussion, however, as to what should be done with the seventy-odd children of the orphanage. The orphanage building in which I lived was thirty-years old and falling apart, but it was three stories tall with a flat stone roof. It was not certain to any of us that it could sustain a bad storm, but there would be no other place to take so many children in the immediate vicinity. The orphanage director said to me, as he said about other storms, that it was

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[124] The title of Amitav Ghosh's 2005 novel, about a young woman who travels to the islands of the Sundarbans to conduct research on the river dolphin. In the midst of her research, she and her fisherman friend/guide are caught in a cyclone.

God's will if he should die with the children in the building. Staying outside was not an option. Other people coming in from the coastline asked to stay with us in the orphanage, and the director agreed. It was our makeshift cyclone shelter for a cyclone that, fortunately, did not come.

Aila hit West Bengal on May 25, 2009, bringing damaging winds and rain that flooded villages. In Bhola, the tide surge brought water inland to within three kilometers of Char Fasson town. Only one death was reported in Char Fasson, but cropland was ruined by the salt water. When I went to the coast at Betua River one month later, I could see the broken embankment (*beri bhadh*). The embankment had already been broken in several places, with reconstruction ongoing in December 2008. Now, however, the damage was quite evident, with sea water continuing to seep through the now-severely broken embankment into nearby fields.

Residents with whom I spoke asserted that years of erosion had cut one kilometer from the coastline at this point of the island. Their claims are not unfounded. Maps by COAST, an NGO working specifically in the coastal areas of Bangladesh, show areas along the eastern coast of Bhola Island (Meghna River) that have been vastly eroded, as silt accumulates at other points. Erosion is worst in Daulatkhan upazila, north of Char Fasson. Many of those leaving Daulatkhan have come to this southern most upazila, including a teacher at one of the *hafiziyyah* madrasas (where children memorize the Qur'an) in Char Fasson. He owned land along the Meghna River, but after one storm, the land, and his house, fell into the river. He moved to Char Fasson and now serves as a teacher and imam at a local mosque.

In addition to experiencing a `high occurrence of natural disasters, Bhola is acknowledged as one of the poorest areas in Bangladesh, yet it has a relatively small number of NGOs operating in the district. Many people are involved in fishing. Most of those who are fortunate enough to own land do not have large tracts; as in all places in Bangladesh, land is highly valued. Today, more than one million people live on Bhola Island, with 400,000 in the sub-district of Char Fasson.

Char Fasson is now the most populous of the sub-districts on Bhola Island, in part because of in-migration from other areas of the island.[125] As land disappears and the population increases, families are faced with disputes over smaller and smaller plots. When I first spoke with one of the local *salish* chairmen, he remarked on the number of inheritance and land disputes—far more than other legal issues. Indeed, at our first meeting, he was coming from a land dispute and leaving the next day for the southernmost tip of Char Fasson upazila for another land case. His characterization of his work as a chairman in the informal court system runs counter to the depiction of *salish* primarily as a tool against women. While there is no doubt that the *salish/fatwa* structure has been used as a tool of oppression against some poor women (and, to a much lesser extent, poor men), the contemporary discourse about the *fatwa,* Islamic law, and religio-legal authority has not recognized that the *salish* still provides a popular venue for dispute resolution or that Islamic law in Bangladesh cannot be reduced to the violence of these cruel *fatwa*s. Despite the shortcomings of the *salish*[126] as a forum for justice, it

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[125] The sub-district has grown so much in population that plans are currently underway to make it into a district of its own.

[126] Throughout this dissertation, I use the term *salish* to describe the informal community court. Others have preferred the term *bichar,* meaning judgment (cf Kotolova 77-86, Inden 1976, 45). Although people in Char Fasson were obviously familiar with the word *bichar,* they did not use it as often as *salish* to describe the event, but rather as a verb to describe the action (*bichar deowa,* to give judgment).

serves as a salient option for the inhabitants of Char Fasson, who utilize it with the sense

that it can provide better justice than other forums. It also serves as a space in which

Islamic law is practiced, articulated, and (re)interpreted.

During my fieldwork, I observed a number of *salish*es and also interviewed *salish*

chairpersons. In the final section of this chapter, I describe in depth a *salish* over land

and inheritance. I will also point out the discursive amalgamation of *salish* and *fatwa* that

has transpired as a result of violence against women in the last two decades in

Bangladesh. The association of these leads to a diminished space for the practice of

*mufti*s, who also give *fatwa*s, often outside the *salish*.

The Role of the *Salish*

Informal dispute resolution has a long history in the rural areas of South Asia. The

panchayat, as noted above, preceded the British and served as a way to resolve both

criminal and civil disputes among villagers. As noted above, the British left the

panchayat system largely intact, until the Village Government Act of 1919; village courts

were supposed to take over the functions of the *panchayat* or *salish*. At the same time,

the union level of government was created, over which elected officials—chairmen—

would preside. A union, in contemporary Bangladesh, is the lowest tier of

government.[127] While union chairmen continue to be elected and serve as the primary

government officials for villages in contemporary Bangladesh, the village court has not

served a major role for decades.[128] But the *salish*, which does not have any legal standing

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[127] The union is made up of 9 wards. One village is a ward.
[128] The United Nations Development Programme (UNDP) has taken the lead in reviving these courts, in cooperation with the government of Bangladesh.

and whose "resolutions are non-binding to parties involved in the mediation process,"[129] continues to be practiced. By "non-binding," Ali Riaz is referring to its lack of backing by the state, in which case those who have had their cases decided (unfavorably) in the *salish* can then take their case to the state court. It is, however, binding upon those who do not have the social or economic power to circumvent the decision of the *salish*.

Although traditionally it was understood that the *salish* was a free service to the people, everyone I spoke with in Char Fasson said that members of the *salish* require payment. Several noted that they had been unable to convene a *salish* because they could not come up with enough money to pay the invited members.[130] None of the *salish* chairmen, however, admitted to taking anything more than food or tea from participants.

*Salish*es are not just held for civil law concerns, although there is no legal mandate for them to oversee criminal law cases. I observed several instances in which corporal punishment was used to penalize the accused, even when such punishments are not prescribed by state law. In one instance, a man was beaten for allegedly stealing a duck. The ongoing utilization of such punishments calls into question the power of the state to establish itself as the only legitimate force to utilize violence. The relationship between the state and the community courts is even more ambiguous than the state's intentional ignorance. For example, in Char Fasson, a local *salish* chairman's relative (who was himself a former union chairman) was physically attacked one day on the road. He brought a charge against another local man and asked the Officer–in- Charge at the

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[129] Ali Riaz, "Traditional Institutions as Tools of Political Islam in Bangladesh," in *Journal of African and Asian Studies* 40:3 (June 2005): 176.

[130] People in the community noted this "bribe" can be anywhere from Tk 1,000 to Tk 5,000 ($12.78 to $63.90 USD).

thana (police station) to sit on the salish committee. The *salish* itself was held on the *thana* grounds, but none of the members was troubled by the conflict of jurisdictions.

As in most *salish* cases, if the accused is found guilty, the committee has several options for punitive action. They can physically punish the accused—which may involve whipping or beating him—or levy a fine. If the accused does not agree to this punishment, the case may be taken to the local courts. The accused must weigh the possibilities: he might decide that the punishment will be lighter under the *salish*. For the very poor, with families to support, choosing the physical punishment is often cheaper than spending money for lawyers, and such punishment is far less detrimental to his earning ability than jail time would be.

There are other reasons for not approaching the formal courts. I often heard the argument, also observed elsewhere in Bangladesh by Willem van Schendel, that going to court is viewed as entering the domain of outsiders. Van Schendel notes that "[a]nyone not satisfied with the outcome of decisions at the village level could have recourse to 'official law,' conceived of as 'outside' the village because it took one beyond village arrangements based on face-to-face interaction and into a realm dominated by outsiders and their ways" (Rahman and van Schendel 1997, 261). Indeed, it is not only that those who sit in the courtroom are unknown to disputants; the whole system is perceived of as "foreign." As Ferdous Jahan argues, the legal system was "brought in and imposed by the foreign rulers mainly to serve their purposes. . . Besides, the laws, their procedures, arrangements . . . are unknown to majority (sic) of the common people" (Jahan, 8). The courts are perceived as elite institutions that do not provide the type of justice expected by those in lower social classes.

The foreign-ness of the state court extends to the perception that it cannot attain the truth about the cases brought before it. The court—with its strangers officiating—cannot gain access to the accurate details of the case. The *salish,* on the other hand, is overseen by members of the community, who generally *know* the disputants. Jahan records a saying in Bengali: "In *shalish* you have no other way but truth, and in court you have no other way but to tell lies" (Jahan 12). Or, as one *salish* chairman put it to me, if, in an inheritance case, a man says he has one sister, but he actually has two, the *salish* members will know he is lying—the court will not. The informality of the *salish* itself, as I describe below, enables neighbors and onlookers to affirm or deny the facts of the case directly in front of those who will make the decision.

The *salish* system in Char Fasson does, however, suffer from the same problems that other regions experience: nepotism and justice skewed toward the rich and strong. Siddiqui notes, from fieldwork conducted in the 1990s, that "justice tended to tilt in favour of the rich and the male" (Siddiqui 1998, 8), which is certainly still true today. Yet such an observation does not set Bangladesh and its informal court system apart from many other judicial structures. If this is, in fact, true, one might wonder why the poor of Bangladesh continue to take their disputes to the *salish*. Even if poor citizens are aware that they have less power relative to the opposing side of the dispute (and the *salish* members, as well), they continue to participate in the hegemonic institution. James Scott argues that in such situations, "compliance by subordinate groups is more likely to reflect a consciousness that the system is inevitable and compliance necessary than that it is just" (Merry, 7; citing Scott 1985, 314-351).

The institution may be necessary, but, as Sally Engle Merry argues, it might also provide the opportunity to challenge the power of dominant groups. In Char Fasson, for example, a young man trying to gain control over land that his father had once owned decided to (attempt to) hold a *salish*, despite the fact that his opposition—his paternal uncle—commanded more authority in the community and had more money to spend on the proceedings. He had hope that the law could be not only a source of domination, but "contain . . . the possibilities of a challenge to that domination" (Merry 8).

For some people in Bangladesh in the last two decades, the *salish* system has been not just hegemonic, but oppressive in the most brutal sense. In these situations, the alleged 'offenders' have had no say in initiating the informal court; rather, it has been forced upon them, along with horrifying punishments. These cases have compelled a widespread re-examination of the role of the *salish* in relation to Islamic law.

Salish and the *Fatwa*

In the early 1990s, journalists began to document a rise in *salish* cases that ended in brutal violence against women. The decisions of these *salish*, when given by a *mullah* or other religious authority, were called *fatwa*s, but this designation was rather new. Prior to the 1990s, the *salish* was not connected to or associated with the *fatwa*, which was traditionally pronounced by a *mufti*.

Unlike the classical notion of a *fatwa*—in which it is a non-binding answer to a petitioner's question—these *salish*-generated fatwas are not opinions upon points of Islamic law. They are ad hoc judgments, meant to be carried out without appeal. The first, most high-profile of these fatwas was not performed in the context of salish: rather, it was a call for the execution of Taslima Nasreen, a Bangladeshi feminist author whose

provocative writings had angered Islamists (the most famous of which was *Lojja,* or

"Shame," a book about the persecution of Hindus in the aftermath of the destruction of

the Babri Masjid in India, 1992).[131] Nasreen fled the country in 1994 and went into exile

in Europe.

Very soon after this, in 1993, a poor rural woman named Noorjahan was accused

of adultery and sentenced through a *salish* to be buried to her waist in the ground and

stoned. The judgment against her was called a *fatwa* by the *salish,* despite the lack of past

usage of the term in this way. Following the stoning, which she survived, Noorjahan

committed suicide by drinking pesticide. Her case generated a media firestorm, and

women's activists criticized the use of *fatwa*s by 'ignorant mullahs' to oppress women.

Since that time, newspapers frequently announce that police are investigating allegations

of fatwa violence, but rarely is anyone charged with a crime. In the years following this

case, researchers have documented many more incidences, although most believe the

number is far higher than reported.[132] Deena Nargis and Faustina Pereira, well-known

human rights activists in Dhaka, note that the punishments from *fatwa*s range from

inhumane treatment such as "shaving their victims' heads, or parading them around the

village, or ostracizing them" to "physical mutilation or even death" (Nargis and Pereira,

216). The brutality involved, and the fact that the violence is most often directed at

women and justified by the *salish* members as *shari'a,* has concerned many secularists

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[131] The UNHCR, quoting a report by Amnesty International, identifies the group who issued the *fatwa* as the Bangladesh Sahaba Sainik Parishad (Council of Soldiers for Islam). "Bangladesh: A group called the Sahaba Soldiers; the goals and activities of the group; treatment of those who hold progressive religious and social views by the Sahaba Soldier members (1990–2003)". UNHCR. 29 July 2003. Accessed 20 March 2015.

[132] See, for example, the statistics cited by Nargis and Pereira 2002, 217.

and women's rights activists who fear the possibility of Islamic law gaining greater influence in the country.

It was in response to this rise in *fatwa*-induced violence that, in late 2000, two High Court judges decided to take up the case of a woman named Shahida, despite the fact that no one involved in the situation had approached the courts for a ruling. A neighbor had pronounced a *fatwa* against Shahida calling for *hilla* (*tahlīl* marriage).[133] Shahida didn't want to divorce her husband; nor did her husband want to divorce her, despite his pronunciation of *talak* (divorce) in anger. They continued to live together as a married couple and even had a child. But their neighbor, many months later, issued a *fatwa* that their marriage had been dissolved by the *talak*; if Shahida wanted to stay with her husband, she would have to marry another man before she could re-marry her husband. This type of arrangement, called *hilla/hila* in Bangladesh, allows a woman to return to her husband—if both so desire it—after *talak* has been pronounced, but requires her to marry another person, consummate the marriage, and divorce before returning to her first husband. Having followed the directive, however, Shahida was left to face a husband who no longer wanted her. After reading about her plight in a newspaper, *The Daily Bangla Patrika*, the judges issued a show cause ruling[134] against the district magistrate in her area, asking why nothing had been done either to protect Shahida or arrest the perpetrators. The lack of police involvement during or after the forced marriage is not unusual in Bangladesh. Even in more public, physically violent cases of *fatwa*

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[133] *Tahlil* marriage occurs when a man divorces his wife but decides he wants to remarry her. He cannot remarry her until she marries another man, consummates the marriage, divorces the second man, and then waits the *iddah* period. After this, the original couple may remarry.

[134] An order to "show cause" is one in which the court asks one or more of the parties to explain or prove something in court. In this cause, the court was asking the district magistrate to explain why he had done nothing in the case prior to the newspaper revealing Shahida's situation.

punishments, the police rarely intervene, and suits are seldom brought against those
responsible.

The judges ruled that, not only had the district magistrate failed to punish the
perpetrators of this particular *fatwa*, but that *fatwa*s in general were illegal. The judges
argued against the *fatwa* against Shahida on the question of *talak* (divorce) utilizing
Qur'anic verses, *hadith* (narratives about the Prophet Muhammad), and state law, in the
form of the Muslim Family Law Ordinance. They disparaged those who would support
the tradition of instant divorce, saying that such men, who receive their education from
*madrasa*s (religious schools), "are becoming fanatics with wrong views. They must be
defect in their education and their attitude" (*Editor* 2002: 231).

While many human rights activists cheered the decision, the Supreme Court
issued a stay on the ruling. The court did not take up this particular case again until
March 2011. In the ten years between the two proceedings, the right-of-center
Bangladesh National Party (BNP) gained power in the 2001 election season, which
included a number of incidences of violence against women and minorities. From 2006 to
2008, the country then experienced two years of a "caretaker" government backed by the
military.[135] In 2008, the left-leaning Awami League took power in a landslide election.
Despite the change in political parties, newspapers continued to publish reports of *fatwa*-
induced violence, and it was not until 2010 that another major case on *fatwa*s came
before the High Court. This writ petition, filed by five human rights organizations,

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[135] Although the process is, as of 2011, under review by the current Awami League government,
Bangladesh has had, for two decades, a system in which a caretaker government takes over between elected
governments, to ensure that parliamentary elections are free and fair.

including the Bangladesh Mahila Parishad and Ain-o-Salish Kendra, covered a number of incidents of extra-judicial violence carried out following *fatwa*s.

The judges in the 2010 case were clear in stating that they were not ruling on the validity of *issuing fatwa*s; rather, their case was "concerned with the question of imposition of extra-judicial punishments including those in the name of execution of Fatwa" (Hossain 2010: 20). The judiciary thus left open the possibility that Islamic law, through *fatwa* pronouncements, could still be lawful under the state, so long as the pronouncers did not impose punishment. A May 2011 final judgment on the appeal of the 2001 case supports this ruling.

State Regulation

In the landmark 2001 case, the judges note: "Fatwa means legal opinion, which, therefore, means legal opinion of a lawful person or authority. Legal system of Bangladesh empowers only the Courts to decide all questions related to legal opinion on the Muslim and other Laws as in force. We, therefore, hold that any fatwa including the instant one are all unauthorised and illegal" (sic, *Editor* 2001*:* 231). The judges appear to condemn the giving of *any fatwa*, regardless of whether or not the *fatwa* calls for punishment that is illegal under Bangladeshi law. It seemed that even a *fatwa* given on a question of, for example, the correct amount of yearly alms, would be illegal following this judgment.

This was the complaint of religious leaders in Dhaka; thus, well-known scholars such as Obaidul Haq (d. 2007), the then-*khatib* (leader of the *khutba*, or sermon) at the Baitul Mukarram National Mosque, publicly called for *fatwa*s to be legal. Perhaps overshadowing this particular concern, however, was the eruption of violence on the

streets following the judgment, as Islamists demonstrated more generally against the ruling and its perceived attack on the status of Islam in Bangladesh. The judges were labeled *murtadd*s, or apostates. The Supreme Court stay on the ban on *fatwa*s was in direct response to this unrest.

In the most recent Supreme Court case, decided in May 2011, the judges finally grappled with the dual nature of the *fatwa* in the Bangladeshi context: is a *fatwa* a non-binding opinion on Islamic law? Or is it a final judgment, complete with prescribed punishment for supposed transgressions? The judges ruled that religious experts may give *fatwa*s, so long as they do not force the petitioner to engage in otherwise illegal activities or prescribe illegal punishments. But then the question becomes: who qualifies as an expert?

The 2011 court heard arguments on this issue, with both sides denouncing the sentencing of punishment by uneducated "quacks." Islamic scholars, chosen by the Islamic Foundation Bangladesh to give statements in this case, argued that the pronouncement of *fatwa*s is integral to Islamic life, yet agreed that only those highly trained in Islamic jurisprudence should be allowed to engage in this activity. Underlying this criticism of the education level of the *fatwa*-givers is anxiety over the relative lack of regulation of *madrasa*s (religious schools) by the state. At least three million students in Bangladesh receive their education in *madrasa*s; these schools vary widely in the level of governmental control, with a large number operating with no oversight at all (these are called *qawmi madrasa*s[136], and the government has little sense of how many actually exist in Bangladesh). The judges in the 2001 case called for a unified educational system;

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[136] *Qawmi* here come from the word *qom,* meaning public. This refers to the fact that the *madrasa*s receive their funding from the public, not the government.

the judges in 2010 asked that the government disseminate educational materials to all schools on the laws of Bangladesh. The rulings display a concern that goes beyond the educational level of those giving *fatwa*s: it questions the very nature of the *madrasa* system of education in the modern state.

Court Case/issue	Date	Verdict
Editor v. *District Magistrate*/ on the issue of *hilla*	January 2001	*Fatwa*s illegal; not clear what kind of *fatwa*s; judgment immediately stayed
variety of instances, including several assaults	July 2010	*Fatwa*s that call for illegal/extralegal punishment are illegal
revisiting *hilla* case	May 2011	Only *fatwa*s that call for such punishment are illegal; other *fatwa*s on points of religion are legal

Figure 6.1: Court cases on *fatwa*s

As suspicion has grown over the role of religious scholars or authorities in this particular form of violence against women, all such religious scholars have become suspect, as have all *salish* proceedings.

Salish and Land Disputes

Sometimes, in fieldwork, we learn from what we don't find. When I began my dissertation research in Bangladesh in the fall of 2008, I thought I would learn more about rising levels of violence against women perpetrated by the informal community courts. What we needed, I thought, was more on-the-ground ethnographic research about the communities in which these events occur; I picked, however, the "wrong" community – one in which such shocking violence has not occurred. The absence of such events can, however, teach us about the day-to-day workings of community courts that do not engage in that particular form of violence. My fieldwork site, in Char Fasson, Bhola Island, is

quite conservative, both religiously and in its politics. Although one might assume that *salish* or *fatwa* violence would most likely occur in the most conservative areas of the country, I found that the pronouncement of fatwas that provoke violence is not necessarily a consequence of 'fundamentalist' views or the ignorance of local mullas, or religious leaders.

Ali Riaz and Elora Shehabuddin have both argued that the *fatwa*s against women and NGOs have occurred in places where religious leaders feel their authority is being undermined. Elora Shehabuddin has argued that the forces at work behind the increased violence and use of *fatwa*s are often related to popular politics, "the multiple constraints of poverty, the laws of the land, the customs and traditions of [a] particular community, and the power of local elites" (1013). While Riaz does not disagree that such forces may be present, he instead argues that it is the rising power of Jamaat-e-Islami, the major Islamist political party, that sustains this valorization of the *fatwa*.

While Riaz places more emphasis on the transformations that increase the "salience of the local cleric as the custodian of a moral order and the source of "knowledge" (87), both scholars focus their attention on the ways in which the desire for power and political gains encourage and instigate the giving of *fatwa*s against women and NGOs. In some of the cases, however, the motives for the particular cases might have been far more mundane.

I noted above the case of Noorjahan, who committed suicide after being stoned. Later, when members of the human rights organization, Ain o Salish Kendro, went to the area and interviewed Noorjahan's father, they discovered more to the story than initially reported. Some of the community members who participated in the *salish* were

embroiled in a conflict over land with her father (Shehabuddin 1-2, 75-76). It is not my point that the Noorjahan case was completely about land, nor that *fatwa/salish* violence against women is insignificant. Rather, even this infamous case illustrates the importance of considering land as a tool of power and the need to understand land struggles as partly informed by local understandings of religion and religious law.

Land as a Religious Concern

When I first realized that the majority of the cases I would have the opportunity to observe were not related to my initial research concerns—dowry, divorce, and *hilla*—I was disappointed. A focus on land would undoubtedly uncover far less about gender than I had hoped. But more importantly, land inheritance simply did not seem like a 'religious' concern. Indeed, it seemed to be all about wealth, greed, and power. It is certainly true that land has value beyond the religious – as Baqee notes, "land ownership carries with it a great measure of social prestige in the eyes of all. More land means higher social prestige, which paves the way to greater access to the power structure, offering greater command over the local administrative system dealing with both revenue and property ownership documents" (Baqee 23).

Yet the very fact that devolution is so complicated in Bangladesh—and requiring much arbitration—compelled me to acknowledge what was, in fact, quite plainly evident: inheritance for Bangladeshi Muslims is based on the complex laws of the Qur'an, which have been accepted by the government of Bangladesh as state law (although they are not explicitly laid out). The Succession Act, 1925 confirms the Islamic legal tradition, in which devolution of property proceeds immediately, if no legitimate will has been signed. Later, the Shariat Act of 1937 specified that inheritance for Muslims in British India

would be carried out according to *sharī'a.* The only portion that the state had sought to change substantially regarded the inheritance of orphans, which was ardently contested by religious scholars (see Chapter Three, on the *kazi*).

In order to determine these shares, *salish* members might use text/books such as *Mulla's Principles of Law,* Fyzee's *Muslim Law,* or translated versions of *Al-Hidaya.*[137] These books, written or translated in the colonial period, describe the complex inheritance system. The first two texts are, indeed, textbooks of cases, many of which were decided under British rule. Unlike as would have been procedure prior to the codification process described above, these textbooks set out precedents for future cases.

For a widow like the one in the case described below, the portion of inheritance depends on whether or not the deceased husband has living children. She is what is considered a "sharer"; she will receive a portion, regardless of how many other inheritors are involved in the situation. The other group of inheritors is called the "residual" group; residual members receive inheritance only as there are portions left after all the sharers have received their allocations. The widow stands to receive *at least* 1/8 of the total inheritance; she will receive ¼ if there are no children (*Mulla* 16th edition, 194).

Women are often persuaded to "give" their land holdings to their sons or brothers in return for a sense of security and protection.   Such actions are supported by the *salish*es, at least tacitly. Such community acceptance for the renunciation of what is, in fact, a Muslim woman's right to inheritance, is not unique to Bangladesh or even to South Asia. Annalies Moors has documented the explanations given by women themselves for the decision to forgo their rights to inheritance in Palestine. She

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[137] Al-Hidaya (or Hedaya) is a compendium of *fiqh* written by Burhanuddin Abu Bakr al-Marghinani (d.1197). It was translated into English by Charles Hamilton, British colonial officer, in 1791. The text is widely used in South Asia.

emphasizes that women feel that this is a strategic move, one which "does not necessarily imply giving up all rights to" inheritance, because the act of inheritance has multiple meanings (Moors, 75). Thus, daughters whose fathers have died might "renounce their rights to the estate," because they "both identify emotionally with their brothers, sharing in their prosperity, and in order to underline their brothers' obligations towards them" (Moors, 76). Similarly, "when a widow leaves her share to her sons, rather than a sign of powerlessness, this tends to strengthen her position" (Moors 76). This appears to be the perspective of the widow in the *salish* I describe below.

A Salish *on Land and Inheritance*

Kotolova, drawing on Bruner (1986) describes the *salish* (or *bichar,* meaning judgment) as a "multilevelled performance" (sic) with two levels of narration. One is the narration of past events. The second is the "act of narrating." Thus, she claims, "what is right and wrong with respect to a particular case that appears at *bichar,* is not the only concern of the session. Equally important is its expressive form – the verbal competition, to which the concerns of the victim and the culprit may be marginal" (Kotolova 78). It opens up the space to "display political ambition" as well as make definitive statements about "the proper order of society" (Kotolova 78).

In describing the following *salish,* I will note the performance of authority through narration, but I will also highlight the religious significance of the land case. This *salish* is fairly representative of other land-dispute *salish*es that I observed. Seven men made up the deciding body, including a surveyor who been called to mark the correct boundaries of the property in question, particularly since there was some dispute over the boundaries between this property and the neighbor's. Quite apart from the inheritance

questions in this case, several other issues arose that are not at all unusual in land disputes in this area. The documents upon which the boundaries had been recorded at the Land Office (*Bhumi Ofish*) were incorrect and had not been updated in decades. In addition, the deceased had sold a piece of land to the neighbor, but the deed (*dalil*) on the land had not been changed. All that documented the sale was a hand-written bill of sale allegedly signed by the two parties. Although the disputants in the case were family members, the neighbor played a role in assessing how much property was to be divided amongst the relatives of the deceased. As this example illustrates, the disputes often occur within families, each side choosing members for the *salish* who, they believe, will rule in their favor.

The *salish* was held within the 'hamlet' of four homes inhabited by the family members who had called the gathering. The seven members of the *salish* (and the ethnographer) were given chairs around a table; all others, including the parties to the dispute, were expected to stand. As with many events in Bangladesh, the *salish* was attended by a number of uninvolved onlookers, including children (see **Picture 1**). One of the disputants was the widow of the deceased, and only once did she come out from her two-room, wood and tin home. At that point, she spoke primarily to her son, who served as her representative in front of the men of the *salish,* although she did have a short interchange with one of the court members. Otherwise, several men, including her son, answered questions and gave testimony. The other disputant in this case was her deceased husband's brother.

Photograph 6.1. The surveyor is in a yellow shirt. The chairman is to my left.

As Kotolova notes, "[j]udgment, discrimination, and verbal eloquence in extrahousehold concerns are the very attributes women are believed to be without" (Kotolova 80), thus "muting" them. Instead, they are supposed to exhibit *lojja* (shame, shyness) in addressing the *salish* members: in this case, the widow never completely stepped out of her home, thus concealing her body and averting her eyes. She was not wearing a *burqa,* but her *achol* (end of the *sari*) was pulled over her head, covering her hair.

The chairman at this gathering was a former union vice-commissioner of the *paurashava* (unit of local government; the vice-commissioner is an elected position), but none of the members were currently in political office. As influential members of the community, politicians and political operatives are sometimes asked to serve as members

of the *salish*. In an odd moment later in the day, the current vice-chairman of the union drove up on his motorcycle (with two others on the seat behind him). The members of the *salish* chatted with him, but not about the case at hand. His presence seemed to offer some authority, but not because of his position; rather, his influence appeared to be due to his relationship to the political party, which was also the ruling party of the country at the time.

The setting and atmosphere were very informal. Throughout the day, the members of the *salish* talked about a number of unrelated topics, often asking questions of me about everything ranging from Palestine to my reasons for being in Bangladesh. It was clear that they viewed their work as judgment upon religious law, comparing their own legal situation to that of the United States, in which most citizens are not expected to divide their inheritance based on a pre-determined, religiously imposed formula. The members noted that they had studied pamphlets on the Muslim Family Law Ordinance (MFLO) and on the complex laws on inheritance as laid out in the Qur'an.

The mood and tone of the court members varied throughout the day. In Bangladeshi style, they spent long periods of time all speaking loudly at the same time, interspersed with calls to "Listen to me!" (*"amar kotha shunen"*). They began the proceedings leisurely, but took pains to explain the order of events to all present. They often spoke to the disputants, if not condescendingly, with the tone of a teacher teaching a lesson to a child: "I will explain to you [the situation]" ("*Ami bujhe dii*").

The proceedings spanned over many hours. In the final decision, the widow kept the home of her husband, and the committee apportioned not simply the land, but the particular trees and other usable resources on the land, between the disputants. The

boundary between the widow and her neighbor was established. The widow received .28 *bigha*s, while her deceased husband's brother received .15 *bigha*s of land adjacent to his own property. It was never clear that any changes would be made at the Land Office to demarcate the new portioning of the property. Even during the proceedings, the *salish* members noted that the widow would not take the land for herself or in her own name. Rather, her inheritance portion would go straight to her adult son. The family was landowning, which placed them far above the majority of landless day-laborers, but perhaps firmly within the elusive middle class. The widow was, while far from elderly, not young in age; her eldest son was an adult of about thirty years. She would not, therefore, be expected to return to her father's home. She did, however, expect that her son would take her husband's place as 'provider.' In return, as Moors remarks in connection with similar cases in Palestine, the grown son is not only "legally obligated to provide for her, but the claim of [the] mother" would also be very "emotionally and morally strong" (Moors, 60).

The *salish* in this case was a useful option for the family. It worked well, because the *salish* members knew the family, and the family was familiar with the *salish* members. It was not possible to lie about certain factors related to the case. The family was able to choose the *salish* members, so they felt comfortable with the verdict.

Salish members are also called to judge on issues that are directly related to the MFLO 1961 (and its revisions under the government of Bangladesh) and are viewed as experts on religious law. The injustice that brought the *fatwa* case to the attention of the High Court—*hilla*—was not something that occurs often in the Char Fasson area, or at least this is what I was told by several religious authorities and *salish* chairmen. None of

the people with whom I spoke admitted to the legality of *hilla.* Indeed, a number of people noted that *hilla* used to happen much more often but, with education, people were far less likely to perform it. More frequently commented upon was the decrease in men pronouncing the *tin talak*[138] presumably because they were more aware of the consequences.

Conclusion

One warm morning in March 2009, I was reminded of the harsh side of the *salish.* As with so many things I observed in the rural area, the commotion occurred first, and I only received bits and pieces of information about what was going on, with full discovery never an option. A crowd of men had gathered at the edge of our orphanage pond, growing larger with every passing minute. I was headed out the door down to the scene when a staff member stopped me and advised against it. A man who had stolen a duck had been caught (not by police), and the crowd, led by the local union chairman, was deciding how to punish him. The police never came, despite the presence of the *thana* (police station) within five minutes walking distance. After much argument, the men decided to take the offender across the road to the logging workshop; it was not so much a concern over flogging (*dora*) a man on the orphanage property, as a need for space within which onlookers could gather and easily observe the punishment. Within an hour, the event was over.

In this case, the alleged perpetrator had very little opportunity to call for another forum for his transgression. He had no 'trial,' was not 'innocent until proven guilty.' The duck in his possession (which presumably was identifiable as someone else's) was all the

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[138] Meaning "three divorces": the pronouncement of "I divorce you" three times in one sitting, which unilaterally divorces the wife. It is a contested, but widespread, form of divorce in Islam.

evidence necessary. The physical punishment of the duck thief was similar to punishments given to other petty theft crimes described by *salish* chairmen. Because such crimes are not under family law, they are not judged according to religious rules, but according to social custom.

Many community members feel secure in the reliability of such a system; whereas the police are never trusted or expected to act judiciously, the *salish* works quickly and effectively to bring perpetrators to justice. But witnessing the flogging of the duck thief was a powerful reminder that the *salish* does indeed act with impunity, with the specter of physical violence always perceptible.

For activists hoping to end the brutal violence against women, it is imperative to understand the significance of the *salish* in the lives of many Bangladeshis. It is not simply that poor and marginalized Bangladeshis are forced to use the informal courts because of monetary concerns. Those who bring their disputes before the court have some confidence that they will receive justice, even against those of higher economic or social status. Perhaps it would be useful to separate discursively those *salish*es like the inheritance case described above from those that involve criminal charges in a spontaneous, unilateral verdict.

Just as important, however, is the role played by the *salish* in maintaining and interpreting Islamic law in Bangladesh. *Salish* members, unlike the portrayal in the media, are often *not* religious authorities in the traditional sense; they are not *muftis*, *mulla*s, or *imam*s. More often, they are businessmen, political leaders, and respected citizens who understand Islamic law through the documents related to the laws of the Bangladeshi state. But just like the *fatwa*s given by *mufti*s, the decisions of the *salish* are

not controlled by the state and therefore receive their legitimacy through continued use

by the local population.

Chapter Seven -- Conclusion

The *mazar* (shrine, *dargah*) at the High Court of Bangladesh is not an imposing

structure, but one cannot miss it when entering the High Court grounds. It is only one

floor, and, like most of the major shrines I visited in Bangladesh, has separate entrances

for men and women. While men can go directly to the *chador* (cloth spread)-covered

tomb, women are directed to a prayer room, from which they can see the tomb through a

window. Women engage in a number of activities in this room—praying, talking, *tasbih*

(recitation with prayer beads), and more informal entreaties to the saint for a number of

concerns, including, but of course not limited to, success in their court cases.

I noticed in this room an inscription stating that the saint buried in the tomb is

Hazrat Shah Khwaja Sharfuddin Chishti (d. 1590 CE).[139] This figure is far less well-

known than the one who is often associated with the shrine, Islam Khan Chishti,

grandson of Salim Chishti (a confidant of the Mughal ruler, Akbar). But the particular

identity of the body in the tomb is less important to those who come to the shrine than his

ability, through his spiritual power, to solve their problems.

The physical proximity of the *mazar* to the High Court is striking – and a

reminder of the myriad ways in which religion and law intertwine in Bangladesh. This

dissertation has encouraged an expansive view of law – and of religion – that recognizes

the complex, embedded nature of religion in the lives of rural Bangladeshis, but does not

assume that they follow blindly those in authority. Rather, the contribution of this

dissertation is to highlight the many choices made by Bangladeshi Muslims as they

interpret Islam and *shari'a*.

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[139] The current Mazar Administration Committee contends that the saint buried in the tomb is Khwaja
Sharfuddin, who they claim to be the 'lost' son of Moinuddin Chishti.

Much of Elora Shehabuddin's book, *Reshaping the Holy: Democracy, Development, and Muslim Women in Bangladesh,* is based in the argument that "[b]oth Islamists and secularists seem to agree, however, that the rural poor, especially illiterate women, naively believe anything that is said in the name of religion" (Shehabuddin 11). Indeed, she argues against the "commonly assumed dichotomy between Islam, on the one hand, and modernity and secularism, on the other" (4); this dichotomy "holds little meaning for the vast majority of Bangladeshi Muslims who are poor and live in rural areas" (4). It is true that Bangladeshi Muslim women are moved to make choices based on their material lives – including economic concerns – but they are also motivated by the desire to know "how to improve their lives in this world and to ensure a good *akhirat* (afterlife)" (Shehabuddin 5). It is for questions such as this, that we find Bangladeshi Muslims seeking out answers and advice from the sources discussed in this dissertation.

Focusing on the lives of rural, non-elite Muslims allows us to see *shari'a* through a different lens than that of the elite or religious specialists. While Chapter Six looks specifically at the informal courtroom of the *salish,* the majority of this dissertation is not about dispute resolution. Rather, I have sought to ground the discussion of *shari'a* and all its complexity within the every day lives of Bangladeshi Muslims and their pursuit of what it means to lively piously. This pursuit includes the stories that are passed from one generation to the next, between men at the *mahfil* and women in the *talim. Shari'a* is thus not the fixed set of rules that many understand it to be, but, rather, is embedded, traversed, and debated in the complicated fabric of life, in the "ordinary ethics" of "everyday comportment and understanding" (Lambek 2010, 3). In Chapter Five, I provide some of the stories shared between women that are examples of "'what we say

when"' (Lambek 2010, 2), meaning, in this case, what narratives are told in response to the presence of a non-Muslim woman (myself) to whom correct, ethical knowledge must be imparted. Far from "idle stories," these narratives tell us a great deal about how rural Bangladeshi Muslims understand what it means to be devout and, with respect to *shari'a,* legally correct.

By bringing together the fields of legal anthropology and Islamic studies, it is my intent to show that *shari'a* must be explored through questioning "how, where, and with what effect" it is "produced in and through commonplace social interactions" (Ewick and Silbey 20). By viewing Islamic law as "both an embedded and an emergent feature of social life" (Ewick and Silbey 22), Muslims can be seen as "legal agents" even "when no formal legal agent is involved" (Ewick and Silbey 20). This is particularly important in the situations I describe in Chapter Three, in which Muslims engage in legal decision-making outside of the state structure. Having laid out the range of religious and legal authorities, it is now possible to do further research into each of these authorities, while keeping in mind the challenges (for example, the inability of a female researcher to directly engage with and observe some of these authorities).

This dissertation looks in to the lives of rural Bangladeshi Muslims in order to better understand how they make decisions about what it means to be devout. By looking at various sites of legal activity – those beyond formal legal sites – we have the opportunity to see Muslims making decisions about the interpretation of Islam and *shari'a.* It is clear that when Seraj goes to a *mahfil* or Rashida tells narratives with her female friends, they do not blindly follow one authority. Rather, they are constantly adding information to their understanding of Islam from a variety of sources as they seek

to lead pious lives. By utilizing the theories and methods of legal anthropology, this dissertation brings together the study of religion and law in a way that does not limit either one.

Glossary of Terms

Ain: law

Behest: Heaven/Paradise

Bichar: judgment

Fatwa: historically, a legal opinion given by a *mufti* on an issue brought by a petitioner;
but in common parlance in Bangladesh, meaning a declaration of guilt that is
accompanied by a punishment

Gunah: sin

Hadis: Hadith, traditions generally related to the Prophet Muhammd's actions and
sayings

Hafiziyyah: school where children (boys) learn to memorize the Qur'an

Huzur: general term for a man of respect; often applied to men of religious learning

Jahannam: Hell

Jannat: Paradise

Madrasa: school; but in Bangladesh, refers only to 'religious' schools; can be
government-run (*alim*) or independent (*qawmi*)

Maulana: someone with a higher degree in the Islamic Sciences

Mazar: shrine, *dargah*

Mouza: administrative unit, often synonymous with village boundaries

Mufti: one who has completed a specialized Islamic degree in law; qualified to give religio-
legal advice, called *fatwa*s

Mulla: often used pejoratively to describe a man who claims religious learning but who does not
in fact have a great deal of education

Pir: Sufi master or saint; living or dead; may or may not be affiliated with a Sufi
brotherhood (*tariqa*)

Salish: (also spelled shalish): a group of local people called together to make a decision about a legal matter; must be an odd number of participants

Salishkar: person who is often called to sit on *salish*

Talim: learning (circle)

Tabiz: something that protects the wearer, an amulet

Thana: police station

Waris: inheritance

Zamindar: land-owner

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